

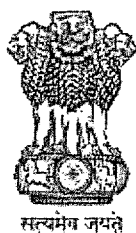
**JOINT COMMITTEE ON OFFICES OF PROFIT**  
**(SIXTEENTH LOK SABHA)**

**TWENTY EIGHTH REPORT**

**A Comprehensive Review of the Parliament (Prevention of Disqualification)  
Act, 1959-Way Forward.**

Presented to Lok Sabha on 09.08.2018

Laid in Rajya Sabha on 09.08.2018



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

**\$ Shri Kalraj Mishra**

-

**Chairperson**

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**LOK SABHA**

2. Shri T.G. Venkatesh Babu
3. Adv. Sharad Bansode
4. Smt. Meenakashi 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 Manas Ranjan Bhunia
12. Shri Mahesh Poddar
- &13. Vacant
- &14. Vacant
- &15. Vacant

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- |    |                         |                         |
|----|-------------------------|-------------------------|
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| 2. | Smt Rita Jaikhani       | Director                |
| 3. | Smt. Maya Lingi         | Additional Director     |
| 4. | Shri Lalengzau Ngaihthe | Executive Officer       |
| 5. | Ms. Vandana             | Sr. Committee Assistant |

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\$ Appointed as Chairperson vide Bulletin Part-II dated 08.01.2018 (Para 6262) vice Dr. Satyapal Singh resigned from membership and Chairpersonship of the Committee w.e.f. 04.09.2017.

# Elected as Members 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 03.07.2016.

\* Elected as Members of the Committee vide Bulletin Part-II (Rajya Sabha) dated 22.12.2017 (Para No.57264) and Bulletin Part-I (Lok Sabha) dated 27.12.2017 (Para No.4) vice Shri Dilipbhai Pandya and Shri Sukhendu Sekhar Roy retired from Rajya Sabha w.e.f. 18 August, 2017.

& Shri Sharad Yadav ceased to be the Member of the Committee consequent upon his disqualification from membership of Rajya Sabha on 04 December, 2017.

Shri Naresh Aggarwal ceased to be the Member of the Committee consequent upon expiration of his term of Rajya Sabha on 02 April, 2018.

Shri C.P. Narayanan ceased to be the Member of the Committee consequent upon expiration of his term of Rajya Sabha on 01 July, 2018.

## 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 Twenty Eighth Report of the Committee.

2. The Committee constituted for 16th Lok Sabha had undertaken exercise of detailed review of the Parliament (Prevention of Disqualification) Act, 1959 for scrutiny of the Bodies under the administrative control of various Ministries/ Departments of the Government of India and the State Governments, from the angle of office of profit and with a view to update the list of bodies as included 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, seeking relevant information pertaining to various Bodies falling under their purview. The Committee also called representatives of the 55 Ministries/Departments of the Government of India and State Governments in a phased manner for oral evidences. In this connection, Study Tours to 7 State Governments (Haryana, Himachal Pradesh, Chennai, Karnataka, Kerala, Sikkim, West Bengal) and Union Territory of Chandigarh were also undertaken by the Committee. The representatives of the Ministry of Law and Justice remained present throughout these sittings and the Study Tours of the Committee.

3. The Report on "A comprehensive Review of the Parliament (Prevention of Disqualification) Act, 1959-Way Forward" is a conclusive report on the comprehensive review exercise undertaken by the present Committee. It highlights the need for a proper definition of the term "Office of Profit" as also other actionable points which are considered important for a proper revision of the Act.

4. The Committee discussed this Report in their sittings held on 31.01.2018 & 25.07.2018 and adopted the same in their sitting held on 07.08.2018.

5. The Committee believe that this Report will prove to be quite useful in bringing about the required modifications in the Parliament (Prevention of Disqualification) Act, 1959. The Committee wish to express their thanks to the concerned Ministries/Departments and the State Governments for the information/cooperation received from them during the review.

6. 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:

07 August, 2018

16 Sravana, 1940 Śaka

 KALRAJ MISHRA

Chairperson,

Joint Committee on Offices of Profit

## REPORT

The concept of disqualifying a holder of Office of Profit for being chosen as, and for being, a Member of Legislature in a democracy originated from the need to prevent control and influence of the Executive over the Legislature. However, considering the importance of effective coordination between executive and legislative, exceptions are felt necessary in the case of certain office bearers like Ministers and some other authorities.

1.2 In India, the principle is embodied in Articles 102(1)(a) and 191 (1)(a) of the Constitution of India in regards to the Members of Parliament and State Legislatures respectively. Article 102(1)(a) of the Constitution reads as under:

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

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

### Explanation

[For the purposes of this Clause] a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

1.3 The constitutional provision seeks to attain two fold objectives of (i) separation of power between the legislature and the executive and (ii) prevention of possibility of a conflict between duty and interest of an individual who is required to perform the role of both a legislator and a member of the executive.

1.4 Certain legislations were passed in the year 1950 (The Parliament (Prevention of Disqualification Act) 1950 (XIX of 1950), 1951( The Parliament (

Prevention of Disqualification Act, (LXVIII of 1951) and 1953 (The Prevention of Disqualification (Parliament and Part C State Legislatures) Act, 1953 (71 of 1954) by Parliament, in terms of the provision of Article 102(1)(a). Since it was felt that these enactments had not appropriately covered all the necessary aspects of the issue, the Hon'ble Speaker, Lok Sabha in consultation with the Hon'ble Chairman of the Rajya Sabha, on the expressed desire of members of various political parties, constituted a Joint Committee under the Chairmanship of Pandit Thakurdas Bhargava, M.P. to study various matters connected with the disqualification of members under Article 102(1)(a) of the Constitution with the following terms of reference:—

- to study various matters connected with disqualification of members,
- to make recommendation in order to enable the Government to consider the lines along which a comprehensive legislation should be brought before the House; and
- collect facts, data and make suggestion as to how the matter should be dealt with.

1.5. The Bhargava Committee in their Report had observed that ordinarily Members of Parliament should be encouraged to go on such Committees which are of an advisory character and represent the local or popular point of view in a manner which will effectively influence the officials' point of view. Members of Parliament by virtue of their membership are in a position to say and represent certain matters with some authority and confidence, and their views are likely to go a long way in influencing the view-point of officials. It is at the same time felt that consistent with above view, Members of Parliament should not be permitted to go on Committees, Commissions, etc. which jeopardize their independence or which will place them in a position of power or influence or in a position where they receive some patronage from Government or are themselves in a position to distribute patronage.

1.6 The Bhargava Committee recommended, inter-alia, 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.

1.7 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.

1.8 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, Chairmanship 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.

1.9 The Parliament (Prevention of Disqualification) Act, 1959 (Annexure I) was enacted by the Parliament, to declare that certain offices of profit under the Government shall not disqualify the holders thereof for being chosen as, or for being a Member of Parliament.

1.10. A Parliamentary Joint Committee on Offices of Profit was first constituted for the duration of the remaining period of Second Lok Sabha on a

motion moved in Lok Sabha on the 3rd August, 1959. It was constituted successively for the duration of each Lok Sabha except for Sixth Lok Sabha.

1.11. The functions and scope of the Joint Committee on Offices of Profit are:—

- (i) to examine the composition and character of all existing 'committees' and all 'committees' that may hereafter be constituted, membership of which may disqualify a person for being chosen as, and for being, a Member of either House of Parliament under Article 102 of the Constitution.
- (ii) to recommend in relation to the 'committees' examined by it what offices should disqualify and what offices should not disqualify; and
- (iii) to scrutinize 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.

1.12 The Ministry of Law and Justice (Legislative Department) is responsible for preparing drafts Bill and their introduction in the Parliament for amendment in the Parliament (Prevention of Disqualification) Act, 1959 in accordance with the recommendations of the Committee made in terms of mandate indicated at 1.11.(iii) above.

1.13 Section 3 of the said Act as amended from time to time provides that none of the offices mentioned therein, so far as it is an office of profit under the Government of India or the Government of any State, shall disqualify the holder thereof for being chosen as, or for being a member of Parliament. The section reads as under :—

*“ Sec 3. Certain offices of profit not to disqualify.—It is hereby declared that none of the following offices, in so far as it is an office of profit under the Government of India or the Government of any State, shall disqualify the holder thereof for being chosen as, or for being, a member of Parliament, namely:—*



(a) any office held by a Minister, Minister of State or Deputy Minister for the Union or for any State, whether ex officio or by name;

[(aa) the office of a Leader of the Opposition in Parliament;]

[(ab) the office of Deputy chairman, Planning Commission;]

[(ac) the office of [each leader and deputy leader] of a recognized party and recognized group in either House of Parliament;]

[(ad) the office of the Chairperson of the National Advisory Council constituted by the Government of India in the Cabinet Secretariat vide Order No. 631/2/1/2004-Cab., dated the 31<sup>st</sup> May, 2004;]

(b) the office of Chief Whip, Deputy Chief Whip or Whip in Parliament or of a Parliamentary Secretary;

[(ba) the office of Chairperson of-

(i) the National Commission for Minorities constituted under section 3 of the National Commission for Minorities Act, 1992 (20 of 1992);

[(ii) the National Commission for the Scheduled Castes constituted under clause (1) of article 338 of the Constitution;

(iia) the National Commission for the Scheduled Tribes constituted under clause (1) of article 338A of the Constitution;

(iii) the National Commission for Women constituted under section 3 of the National Commission for Women Act, 1990 (20 of 1990);]

(c) the office of member of any force raised or maintained under the National Cadet Corps Act, 1948 (31 of 1948), the Territorial Army Act, 1948 (56 of 1948), or the Reserve and Auxiliary Air Forces Act, 1952 (62 of 1952);

(d) the office of a member of a Home Guard constituted under any law for the time being in force in any State;

(e) the office of sheriff in the city of Bombay, Calcutta or Madras;

(f) the office of a chairman or member of the syndicate, senate, executive committee, council or court of a university or any other body connected with a university;

(g) the office of a member of any delegation or mission sent outside India by the Government for any special purpose;

(h) the office of chairman or member of a committee (whether consisting of one or more members), set up temporarily for the purpose of advising the Government or any other authority in respect of any matter of public importance or for the purpose of making an inquiry into,

or collecting statistics in respect of, any such matter, if the holder of such office is not entitled to any remuneration other than compensatory allowance;

*[(i) 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;]*

*(j) the office of village revenue officer, whether called a lambardar, malguzar, patel, deshmukh or by any other name, whose duty is to collect land revenue and who is remunerated by a share of, or commission on, the amount of land revenue collected by him, but who does not discharge any police functions.*

*(k) the office of Chairman, Deputy Chairman, Secretary or Member (by whatever name called) in any statutory or non-statutory body specified in the Table;*

*(l) the office of Chairman or Trustee (by whatever name called) of any Trust, whether public or private, not being a body specified in the Schedule;*

*(m) the office of Chairman, President, Vice-President or Principal Secretary or Secretary of the Governing Body of any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law relating to registration of societies, not being a body specified in the Schedule.]"*

"Compensatory Allowance" has been defined under Section 2(a) of the said Act, 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.

## Guiding Principles laid down by the Joint Committee on Offices of Profit:

1.14 Keeping in view the above statutory provisions as well as judicial pronouncement on the subject, 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."*

1.15 Keeping the above criteria 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 person for being chosen as, and for being a Member of Parliament:-

i Whether Government exercise control over the appointment to and removal from the office and over the performance and functions of the office;

ii 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.)*

iii 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

*iv 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. "*

### **Scrutiny/Review of the Schedule by Parliamentary Committees:**

1.16. The Parliament (Prevention of Disqualification) Act, 1959 was amended in the years 1993, 1999, 2000, 2006 and 2013 respectively. While almost all the amendment to the Act were in the nature of insertion of certain offices / Office holders in section 3 of the Act, the amendments suggested by Amendment Bill, 2006 were major and substantial as it sought exemption from disqualification in respect of a number of bodies/entities in Section 3, notably a Table under Section 3 (k) containing a list of 55 bodies/organisations with retrospective effect. The Parliament (Prevention of Disqualification) Amendment Bill 2006 was returned by the then President of India invoking Article 111 of the Constitution of India. While reconsidering the said Bill by the Lok Sabha on 31<sup>st</sup> July, 2006, an assurance was given on the floor of the House that the various points raised in the message of the Hon'ble president will be examined by the Joint committee of both the houses of Parliament. Accordingly, Joint Committee of 15 Members of Parliament (10 of Lok Sabha and 5 from Rajya Sabha) was constituted to examine the Constitutional and Legal Position Relating to Office of Profit on 18 August, 2006. The terms of reference of the said Joint Committee were as follows :—

*"(i) to examine in the context of settled interpretation of the expression "office of profit" in Article 102 of the Constitution and the underlying constitutional principles therein, and to suggest a comprehensive definition of "Office of Profit";*

*(ii) to recommend, in relation to "office of profit", the evolution of generic and comprehensive criteria which are just, fair and reasonable and can be applied to all States and Union Territories;*

*(iii) to examine the feasibility of adoption of system of law relating to prevention of disqualification of Members of Parliament as existing in*

*the United Kingdom and considered by the Constitution (Forty-Se cond Amendment) Act, 1976; and*  
*(iv) to examine any other matter incidental to the above."*

1.17 The Committee submitted its Report to the Parliament on 22 December, 2008. 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. In respect of the above mentioned terms of reference, the main recommendations of the Committee(Annexure II) were as follows :-

**(i) Need for definition of Office of Profit and its feasibility**

As mentioned in the report, the experts like Attorney General and the Ministry of Law and Justice were not in favour of evolving a definition. In their opinion a workable definition, did not appear to be feasible , as it would open a floodgate of dispute. Relevant extracts of Committee's recommendations on these issues are reproduced below:

*" 6. The Committee felt that a precise definition is very necessary, primarily because without knowing what constitutes an office of profit and what does not, the exercise of giving exemptions from holding any office of profit seems to be a vacuous one. The Committee do not, therefore, agree with the doubts expressed that it may lead to heavy litigation. On the contrary it will lessen the risk of litigation. The task must, therefore, be performed, however, difficult it may be.*

*7. If the Parliament or any legislature feels that the definition covers an office that does not really advance the policy and purpose of the Constitution, ad hoc legislation may be resorted to for removing the disqualification in advance or on discovery.*

*10. To summarise the advantages of having a definition of Offices of profit, would interalia be as follow:-*

*(i) it would impart clarity to a large extent as to what is an office of profit and what is not;*

*(ii) it will reduce the arbitrariness, in such appointments and Governments would be extremely circumspect;*

(iii) the legislators can make an informed choice before accepting any office under the Government;

(iv) chances of litigation would be reduced as (a) constitutional validity of the definition would not be in doubt as this would be largely based on the criteria evolved by the courts themselves through their various judgments, (b) arbitrariness would be vastly reduced in matter of appointments;

(v) with overall discipline in the system number of such appointments would fall substantially which is a matter of concern presently;

(vi) transparency through enactment of law would improve the public image of the legislators which is very important for representatives of the public."

## **(ii) Generic criteria and definition**

11. The Committee feel that the issues relating to uniform principles/common criteria and evolving a definition of 'office of profit' and their application to various States are interlinked and are not mutually exclusive. It was also felt that before defining the term 'office of profit' it is essential to evolve the principles and generic criteria. The definition would emerge from these criteria. While discussing this aspect the focus has to be on the following issues:—

- (i) to identify the generic criteria/principles which could determine what would constitute an office of profit and what would not, leading to its definition ;
- (ii) how this definition could be used uniformly;
- (iii) what criteria be employed for granting exemptions from disqualification;
- (iv) exploring the possibility of having one to one correspondence between the offices/posts at the Centre and in different States for exemptions.

41. After analyzing the issue threadbare, the Committee feel that any definition of office of profit has to be the sum total of every conceivable ideas/opinions including court judgments reduced in terms of parameters/criteria such as salary, remuneration, functions, patronage, powers including that of disbursement of funds, issue of licenses etc. as it is not known as to which element in terms of weightage would precisely render an office into an office of profit in a given circumstance under legal scrutiny. At the same time the Committee cannot be oblivious of the observations made by the Ministry of Law and Justice (Legislative Department) according to which any comprehensive definition of the term "office of profit" which cast the net so wide that all our citizens with specialties and know-how offering some voluntary services in para-official, statutory or like projects run or directed by Government or controlled by the State are inhibited from entering

elected organs of public administration, may be detrimental to the democracy itself. Accordingly, the Committee strongly felt that while defining an office of profit, it is also essential to identify the generic criteria of the offices/posts which would not constitute offices of profit or in other words which would not be deemed as offices of profit. And this aspect has to be the part of the definition itself. Accordingly, the Committee have identified the following three categories of offices which should not be deemed to be offices of profit:-

- (1) Minister for the Union or for States;
- (2) Office in Parliament or State Legislatures;
- (3) Advisory offices in Union or States.

1.18 On the question of generic criteria the Joint Parliamentary Committee had observed that only JCOP were employing parameters other than pecuniary aspect viz. functions, powers, patronage attached with any particular office/post to determine whether or not it was an office of profit. The Ministry of Law and Justice had also provided a definition for consideration of Committee which has been reproduced below:-

*" 28. In Article 102 of the Constitution, in clause (1) for the Explanation, the following Explanations shall be substituted, namely:—*

*Explanation I. For the purpose of this clause—*

*(I) "Office of profit" means—*

*Any office—*

*(i) under the control of the Government of India; or the Government of a State, as the case may be, whether the salary or remuneration for such office is paid out of the public revenue of the Government of India or of the Government of State; or*

*(ii) under a body, which is wholly or partially owned by the Government of India or the Government of any State and the salary or remuneration is paid by such body; and*

*(A) the holder of office under sub-clause (i) is capable of exercising legislative, judicial or quasi-judicial power;*

*(B) the holder of office under sub-clause (ii) is capable of exercising powers by means of disbursement of funds, allotment of lands, issuing of licenses and permits or making of public appointments or granting of such other favours of substantial nature.*

*(II) A person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such a State."*

*Explanation II. For the purposes of this clause the expression—*

*(a) "office" means the permanent substantive position which exists independently of the holder of the office;*

*(b) "remuneration" means any pecuniary gain commensurate with the status and responsibilities attached to the office;*

*(c) "salary" means salary or pay scale attached to the office whether or not the holder of such an office draws such salary.*

*After Clause (1), the following clause shall be inserted, namely:—*

*"(1A) Notwithstanding anything contained in sub-clause (a) of clause (1) if a member of either House of Parliament has become subject to any disqualification mentioned in that sub clause he shall not be so disqualified unless he has not resigned from such office which is the subject to disqualification."*

1.19 The Committee had however not found the definition satisfactory. It was felt that it did not specifically address the issue of profit arising out of pecuniary gain. As it took into consideration mainly the functions, powers, patronage etc. The Committee felt that aspect of pecuniary gain also needs to be addressed while evolving definition.

1.20 Thereafter, the Committee had also suggested a definition of "office of profit" taking into account all the parameters. The definition was as follows:-

*" 49. Office of profit" means any office—*

*(i) under the control of the Government of India, or the Government of a State, as the case may be, whether or not the salary or remuneration for such office is paid out of the public revenue of the Government of India or of the Government of State; or (ii) under a body, which is wholly or partially owned by the Government of India or the Government of any State and the salary or remuneration is paid by such body; and*

*(A) the holder of which is capable of exercising executive powers delegated by the Government including disbursement of funds,*



allotment of lands, issuing of licenses and permits or making of public appointments or granting of such other favours of substantial nature; or legislative, judicial or quasi-judicial functions; and/or

(B) the holder under (i) or (ii) is entitled to draw salary or remuneration irrespective of whether he actually receives it.

A person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reasons only that—

(i) he is a Minister for the Union or for such a State;

(ii) he is holding an office in Parliament or such a State Legislature;

(iii) he is holding an advisory office for the Union or for such a State.

#### Explanation

(a) "offices in Parliament and State Legislature" means the offices which are directly connected with the discharge of legislative functions in Parliament or in a State Legislature e.g. office of Leader of Opposition in Parliament, office of Leader and Deputy Leader of Party and recognized Parties/groups in Parliament, the Chief Whips, Deputy Chief Whips or Whips in Parliament/State Legislature etc.;

(b) "salary" means salary or pay scale attached to the office whether or not the holder of such an office draws such salary;

(c) "remuneration" means any pecuniary gain commensurate with the status and responsibilities attached to the office, but shall not include the expenditure incurred on staff and infrastructure for running office;

(d) "compensatory allowance" means 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 [Salaries and Allowances and Pensions of Members of Parliament Act, 1954 (30 of 1954)] any conveyance allowance, house rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office;

(e) "Advisory office" means any office (by whatever name called) which is associated with purely giving counsel or recommendation on any particular subject/policy, in respect of any matter of public

importance/interest and no salary or remuneration except for compensatory allowance is attached with it.

50. The general principle that emerges from the above definition is that virtually all offices under Government are offices of profit until stated otherwise. The Committee feel that this would amply clarify the concept of office of profit without much ambiguity."

**(iii) The uniform application of the criteria**

62. On perusal of Parliament (Prevention of Disqualification) Act, 1959 and other State Government Acts the Committee found that in granting exemption from disqualification no specific criteria had been followed except for, in few cases, remuneration. In not having any criteria, except for remuneration, it seemed that the States too had given exemptions on similar lines/pattern of exemptions given to certain posts/offices in the Central Act.

63. Now that a definition of office of profit has been worked out and a criterion for giving exemptions from disqualification has been identified, it is only logical that for having the desired results the Central and the State laws are brought on equal footing, as is the existing position. Accordingly the Committee suggest that the Article 102(1) (a) should be amended on the following lines:—

**Article 102(1)**

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

**I. Provided that**

the holder of such office should not draw any salary/remuneration except for compensatory allowance:

**II. Provided further that**

a person shall not be deemed to hold an office of profit under the Government of

India or the Government of any State by reasons only that—

- (i) he is a Minister for the Union or for such a State;
- (ii) he is holding an office in Parliament or such a State Legislature;
- (iii) he is holding an advisory office for the Union or for such a State.

**Explanation :** For the purposes of this clause

(a) "Office of profit" means any office—

(i) under the control of the Government of India, or the Government of a State, as the case may be, whether or not the salary or remuneration for such office is paid out of the public revenue of the Government of India or of the Government of State; or

(ii) under a body, which is wholly or partially owned by the Government of India or the Government of any State and the salary or remuneration is paid by such body; and

(A) the holder of which is capable of exercising executive powers delegated by the government including disbursement of funds, allotment of lands, issuing of licenses and permits or making of public appointments or granting of such other favours of substantial nature; or legislative, judicial or quasi-judicial functions; and/or

(B) the holder under (i) or (ii) is entitled to draw salary or remuneration irrespective of whether he actually receives it.

(b) "offices in Parliament and State Legislature" means the offices which are directly connected with the discharge of legislative functions in Parliament, or in a State Legislature e.g. office of Leader of Opposition in Parliament, office of Leader and Deputy Leader of Party and recognized Parties/groups in Parliament, the Chief Whips, Deputy Chief Whips or Whips in Parliament/State Legislature etc.

(c) "salary" means salary or pay scale attached to the office whether or not the holder of such an office draws such salary.

(d) "remuneration" means any pecuniary gain commensurate with the status and responsibilities attached to the office, but shall not include the expenditure incurred on staff and infrastructure for running office.

(e) "compensatory allowance" means 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 [salaries and Allowances and Pensions of Members of Parliament Act, 1954 (30 of 1954)] any conveyance allowance, house rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office.

(f) "Advisory office" means any office (by whatever name called) which is associated with purely giving counsel or recommendation on any particular subject/policy, in respect of any matter of public importance/interest and no salary or remuneration except for compensatory allowance is attached with it.

64. The Committee are also of the opinion that in order to maintain uniformity in the provisions of Articles 102(1)(a) and 191(1)(a), as is the position at present, Article 191(1)(a) may also be amended on the similar lines. This would in no way take away or curtail any existing legislative rights of States, as has been apprehended in some quarters. Rather this would smoothen the implementation of the provisions of the Constitution thereby imparting clarity, certainty and uniformity to a large extent in identifying offices of profit and reducing arbitrariness in its application. Thus, the States would simultaneously retain the right to

legislate for seeking exemptions from disqualification of offices keeping in view the overall national perspective as well as the local factors/compulsions, keeping the federal fabric intact.

**(iv) UK law and revisiting 42nd amendment**

75. The Committee finds that one clear merit of the approach followed in the United Kingdom is that there is no ambiguity surrounding whether or not the holding of a particular office would result in disqualification. If an office is listed in the schedule then it would result in a disqualification, and if it is not listed then it would not.

76. Notwithstanding the advantages of having such a negative list as exists in U.K. and as attempted in Constitution 42nd Amendment Act, 1976 in so far as they give clarity and certainty in identifying an office of profit which should not be held by a legislator, the Committee feel that this may not be suitable for the Indian system as here all the laws made by Parliament are subject to judicial review whereas in U.K. the Parliament is supreme which even exercises judicial powers. In Indian system, there will be a plethora of litigations involving the left over offices/posts, which have not been included in the negative list and otherwise are available for occupancy by the legislators on which nevertheless the shadow of office of profit will always loom large as these would not be protected under any law. Further, any office under the Government of India, which fetches remuneration higher than compensatory allowance, is an office of profit except the offices exempted under the law and the concept of disqualification on the ground of office of profit does not seem to apply to the membership of the House of Lords, which is a House of hereditary peerage.

77. The Committee found that in fact in the U.K. law the actual use of the phrase 'office of profit' is not used while placing various offices/posts in the negative list and there is no bar in holding any office outside this list. Whereas in India, Article 102 (1)(a) specifically uses the phrase 'office of profit'. The changes as proposed in the 42nd Amendment Act will also not be adequate in providing the real solution just because the offices/posts outside the negative list will still not be safe as these would be subject to the vagaries of 'office of profit' tests which will be determined and decided by the court of law on the circumstance and merit of each case.

78. In this regard, the Committee also note that the reason given by the Ministry of Law & Justice (Legislative Department) for dropping the 42nd Amendment Act, 1976 through 44th Amendment Act, 1978 in the context of office of profit was that it would jeopardize the independence

*of Members of Legislatures and would enable the Government of the day to 'pack' the legislature with persons who would hold office of profit for continuance in which they would be dependent upon Government.*

*79. Most importantly, the Committee feel that the 42nd Constitution Amendment Act sought to vest all the powers in the hands of Parliament for declaring office of profit for disqualification, both at the Centre and the States. This, according to many States is not desirable. Here, the Committee note the observation made by the Council for Political Studies, Kolkata according to which "a fully sovereign Parliament does not go with the spirit of the Constitution—the spirit that has been reinforced by the Courts' judgment on the unamendability of the basic structure.*

*80. The Committee, therefore, do not feel the need for adoption of the U.K. law or revisiting the 42nd constitutional amendment in the matter. This is more so as a solution has been worked out under the existing system, albeit, sprucing it up.*

1.21 The above mentioned Report of the Joint committee was also forwarded to the Government of India for necessary action on the recommendations of the Committee contained therein. It is almost a decade that the report was forwarded to Ministry of Law and Justice. However, no concrete action has so far been taken by the Ministry in this regard. On a recent enquiry by the Committee, the Committee was apprised that draft Note for the Cabinet and a draft Constitution amendment Bill based on the Report (22.12.2008) of the Joint Committee constituted to examine the constitutional and legal position relating to the Office of Profit was circulated to 72 Ministries/Departments including the Planning Commission and Election Commission and the Background Note along with draft Bill was forwarded to all State Governments/Union Territory Administrations seeking their views/comments on the draft Bill. So far Ministry has reportedly received comments/ information from 72 Ministries/Departments including Planning Commission and Election Commission and 26 State Governments and 7 Union territories have provided inputs so far. The monthly progress reports as sought by the Committee are, however, not being furnished by the Ministry.

1.22. During 15th Lok Sabha the Joint Committee on Offices of Profit at their sitting held on 20 October, 2010 desired to amend the Parliament (Prevention of Disqualification) Act, 1959 to incorporate an express provision in section 3

of the Act. The Committee felt that this would dispel apparent conflict in the provisions of some statutes requiring election of Members of Parliament for their appointment to Government bodies with that of the Parliament (Prevention of Disqualification) Act, 1959. The Ministry of Law and Justice had prepared a draft with the following express provision -

*"In the Parliament (Prevention of Disqualification) Amendment of Act, 1959, in Section 3, after clause (1), the following clause shall be inserted namely:-*

*(1a) the office of the Chairman or Chairperson, member or Director of a Board, committee, commission, authority, council or court of a university, body, society, trust, (by whatever name called) held by any member of the House of the People or the Council of States on being elected or appointed by the House or the Council, as the case may be, to such office constituted or established under any law for the time being in force."*

In this connection the Bhargava Committee had also opined in para 74 of the report as reproduced below:-

*"74.....The Speaker of Lok Sabha and Chairman of Rajya Sabha are independent of the executive Government and, therefore, the nomination by them cannot be said to affect the independence of the Members. Hence, the membership so acquired cannot be said to be an office of profit, but in order to remove doubt, the Committee feel that they may be saved from incurring disqualification specifically."*

1.23 The Committee after all due deliberations, finally agreed with the proposal of Ministry of Law and Justice and adopted the Eighth Report regarding the proposal for Amendment of Parliament (Prevention of Disqualification) Act, 1959. The report was presented to Parliament on 14.12.2012. The Ministry of Law and justice was required to move the draft Bill, however no action has been taken by the Ministry so far.

1.24 The Joint Committee on Offices of Profit for the term of 16<sup>th</sup> Lok Sabha was constituted on 11 December, 2014. After its constitution, the Committee in its first sitting held on 12 January, 2015, observed that several entries in the Schedule to the Parliament (Prevention of disqualification) Act, 1959 as amended from time to time, are obsolete as the

Committees/Bodies/Organisations have either ceased to exist or there has been significant changes in the composition/character etc. of such Committee/ Commission/ Body/Organization after their inclusion in the Schedules. 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. The Committee, therefore, decided to undertake a comprehensive review of the Act.

1.25 In pursuance of the said decisions of the Committee, information and comments were sought from all Ministries/Departments of the Government of India and State Governments on the following major points:-

(a) 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 and details of changes in chronological order in case such Committees/ Boards/ Corporations/ Bodies, etc. and have ceased to operate/exist or nomenclature/title changed.

(b) Details of Composition, Character, etc. of all the other Committees/Boards/Corporations/ Bodies, etc. wherein nomination of Members of Parliament have specifically been provided for in an Acts of Parliament.

(c) Complete details of all Centrally funded/sponsored schemes/programmes under the Administrative control of various Ministries wherein there may/may not be a provision for the nomination/election of Members of Parliament well as schemes/plans wherein inclusion of Members of Parliament is proposed in future.

1.26 In this process of comprehensive review, the Committee took oral evidences of 55 Union Ministries regarding various Bodies/Boards/Committees functioning under their respective administrative domain. The representatives of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) were present in each of these sittings. The Committee has

already presented Eight Reports pertaining to Eight union Ministries. These are as mentioned hereunder:-

- (i) Ministry of Civil Aviation
- (ii) Ministry of External Affairs
- (iii) Ministry of Coal
- (iv) Ministry of Commerce & Industry
- (v) Ministry of Agriculture
- (vi) Ministry of Chemicals & Fertilizers
- (vii) Ministry of Development of North Eastern Region
- (viii) Ministry of Food, Public Distribution and Consumer Affairs.

1.27 In these reports, the Committee had been focusing on the various requisite changes/deletion/addition needed in the Schedule of the Parliament (Prevention of Disqualification) Act, 1959.

1.28 The Committee in connection with the examination of bodies under various State Governments also visited State Governments of Tamil Nadu, Kerala, Karnataka, Haryana, Himachal Pradesh, Sikkim, West Bengal and Union Territory of Chandigarh to hold informal discussions with the State authorities to have a clear picture of the various State bodies and laws applicable thereto in connection with Offices of Profit.

1.29 From the deliberations held in these meetings with representatives of Union Ministries, analysis of different cases referred to the Committee and the past efforts made by the Parliamentary Committees to revisit the Act, the following important points emerged, most of which have already been reflected upon in the aforementioned Reports on individual Ministries presented by the Committee.

(1) The expression "Office of Profit" has neither been defined in the Constitution of India nor in any statute. Even the Parliament (Prevention of Disqualification) Act, 1959 does not provide for the definition of "Office of Profit". Though a definition of Office of Profit was attempted by the Ministry of Law and Justice during the examination of the Parliament (Prevention of Disqualification) Amendment Bill, 2006 by the Joint Committee to examine the



Constitutional and Legal position relating to Office of Profit', the same was not found satisfactory by the Committee. The Joint Parliamentary Committee instead, had suggested a comprehensive definition as reproduced in Para no. 1.20 above. No concrete follow up action in this connection has been taken by the Ministry of Law and Justice so far.

(2) The language and formatting of the Parliament (Prevention of Disqualification) Act, 1959 is very complex and difficult to comprehend. During the evidence of the Union Ministries, the Committee observed that most of the Ministries/ Departments were not very clear about the provisions of the Act. The complexity of the provisions of the Act is also manifested in the divergent views taken by the Legislative Department and Department of Legal Affairs on the cases referred to them by the Committee, though both of them are departments of the same Ministry i.e. Ministry of Law and Justice under whose purview the Parliament (Prevention of Disqualification) Act, 1959 comes. Therefore, provisions of the 1959 Act is required to be simplified in order to make it comprehensible to all concerned.

(3) Under clauses (a) to (m) of Section 3 of Parliament (Prevention of Disqualification) Act, 1959 details of offices of profit exempted from disqualification have been provided. Further, the clause (k) of the same Section 3 provides a list of 55 offices exempted from disqualification. Though the Committee understand that insertion of Table in clause (k) was done by way of amendments in the Act carried out in the year 2006, yet it is felt that such piecemeal insertions/amendments make the reading of the Act quite complicated. This needs to be addressed so as to give a clear comprehensible reading of the Act.

(4) The Parliament (Prevention of Disqualification) Act, 1959 predominantly takes into consideration pecuniary aspect relating to "office of profit" to determine and identify, if any office would be considered as an "Office of Profit" under the Government so as to incur disqualification of nominated MPs. Other than that no specific criteria for prevention of disqualification has been specifically spelt out in section 3 of the 1959 Act. The criteria

followed by Joint Committee on Offices of Profit has been indicated in para no. 1.15 above. The criteria needs to be suitably incorporated in the Act of 1959 to avoid any possible legal implications on this account. The JPC Report have also recommended accordingly in Para no. 28 of their Report as reproduced in para 1.18 above.

(5) In certain cases there appears to be apparent conflict between The Parliament (Prevention of Disqualification) Act 1959 and certain other statutes which provide for nomination/ election of MPs in organisations setup there under. As already indicated in para 1.22, the Committee in their Eighth report (15th Lok Sabha) had recommended for insertion of an express provision in the Act. The Ministry of Law and Justice are yet to take action in this regard.

(6) Presently, MPs are involved in implementation of various flagship Schemes/Programmes like Swachh Bharat Mission, Smart City Mission, Deen Dayal Upadhyay-Gramin Kaushalya Yojna etc. and other programmes. There may be cases, where MPs responsibilities and role in implementation of these programmes/ schemes are not strictly advisory in nature. Considering the importance of involvement of public representatives in review and monitoring of these scheme, the Committee feel that such nomination should be saved from incurring disqualification. However, care should be taken by the Executive to ensure that the nature of duties to be performed by the MPs and the allowances admissible to them, if any, are in accordance with the existing provisions of the Act.

(7) While so many amendments have been carried out in the Act, no efforts were apparently made to remove/delete the obsolete/irrelevant provisions. Some such provisions are still existing in the Act which are as follows:

(i) Section 4 of the Parliament (Prevention of Disqualification) Act, 1959 provides for temporary suspension of disqualification in certain cases whereby a sort of grace period of 6 months has been provided for a person for being a member of Parliament who immediately before the commencement of this Act

held an office of profit declared by any law repealed by this Act, not to disqualify the holder thereof for being such member, becomes so disqualified by reason of any of the provisions contained in this Act, such office shall not, if held by such person for any period not extending beyond a period of six months from the commencement of this Act disqualify him for being a member of parliament. The said provision is no longer relevant.

(ii) As per the submissions made to the Committee, many Bodies mentioned in the Schedule to Parliament (Prevention of Disqualification) Act, 1959 have ceased to exist but still being reflected in the Schedule. Some such entities reported by the concerned Ministries/Departments are as under:

(a) Air India International Corporation established under section 3 of the Air Corporations Act, 1953 (27 of 1953).

(b) Board of Directors of the [Hindustan Chemicals and Fertilizers Limited]

(c) Board of Directors of the Sindri Fertilizers and Chemicals Limited

(d) Coal Board established under section 4 of the Coal Mines (Conservation and Safety) Act, 1952 (12 of 1952).

(e) Coal Mines Labour Housing Board constituted under section 6 of the Coal Mines Labour Welfare Fund Act, (32 of 1947)

(f) Cotton Textiles Fund Committee constituted under the Textile Funds Ordinance, 1944 (Ord 34 of 1944)

(g) Tariff Commission established under Section 3 of the Tariff Commission Act, 1951 (50 of 1951)

(h) Advisory Committee for the Air-India International Corporation appointed under Section 41 of the Air Corporations Act, 1953 (27 of 1953)

(i) Advisory Committee for the Indian Airlines Corporation appointed under section 41 of the Air Corporations Act, 1953 (27 of 1953)

(j) Indian Central Coconut Committee constituted under Section 4 of the Indian Coconut Committee Act, 1944 (10 of 1944)

(k) Indian Central Cotton Committee constituted under section 4 of the Indian Cotton Cess Act, 1923 (14 of 1923)

(l) Indian Central Jute Committee

(m) Indian Central Oilseeds committee constituted under section 4 of the Indian Oilseeds Committee Act, 1946 (9 of 1946)

(n) Indian Central Sugarcane Committee

(o) Indian Central Tobacco Committee

(p) Indian Lac Cess Committee constituted under section 4 of the Indian Lac Cess Act, 1930 (24 of 1930)

The Committee in their 6<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup>, Reports pertaining to Ministries of Civil Aviations, Coal, Commerce and industry, Agriculture, Chemicals and Fertilizers have already recommended for deletion of bodies mentioned above.

(iii) Some Bodies included in the schedule have been reportedly merged to form new entities. The following may be seen for instance:

(a) Air India Ltd and Indian Airlines Limited amalgamated with National Aviation Company,

(b) Dock Labour Board, Bombay established under the Bombay Dock Workers (Regulation of Employment) Scheme, 1956, made under the Dock Workers [(Regulation of Employment) Act, 1948 (9 of 1948) has been Merged with Mumbai Port Trust,

(c) Dock Labour Board Madras, Chennai established under the Madras Dock Workers (Regulation of Employment) Scheme, 1956, made under the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948) Merged with Chennai Port Trust.

In its 6<sup>th</sup> Report pertaining to the Ministry of Civil Aviations, Committee has already recommended for updation of the Schedule in respect of Air India Ltd and Indian Airlines Corporation. Therefore, the relevant entries are required to be amended to reflect the changed status of these bodies.

(iv) The Part I of the Schedule to the Act includes several PSUs. Some of the listed PSUs in Part I of the Schedule are given below:-

- (a) Board of Directors of the Export Risks Insurance Corporation Limited
- (b) Board of Directors of the Heavy Electrical Limited
- (c) Board of Directors of the Hindustan Cables Limited
- (d) Board of Directors of the Hindustan Insecticides Limited
- (e) Board of Directors of the Hindustan Machine Tools Limited
- (f) Board of Directors of the Hindustan Shipyard Limited
- (g) Board of Directors of the National [Industrial] Development Corporation Ltd.
- (h) Board of Directors of the National Instruments Limited
- (i) Board of Directors of the National Small Industries Corporation Limited
- (j) Board of Directors of the Neyveli Lignite Corporation (Private) Limited

The Act provides for disqualification specifically for the holders of the post of Chairman in the Bodies listed in this Schedule thereby implying that the Members nominated in the PSU's Boards would not attract disqualification. This is not in conformity with the DPE guidelines. The Committee during the course of evidence have been apprised by the witnesses that Department of Public Enterprises governing Public Sector Enterprises vide letter No.2(158)/70-BPE(GM) dated 13<sup>th</sup> October, 1972 had issued certain guidelines-relating to composition of Board of Directors of Central Public Sector Enterprises wherein Members of Parliament were excluded from the Board of Public Sector Enterprises, based on the recommendations of the Krishna Menon Committee. The DPE guidelines have been reproduced below.

***"Composition of Boards of Directors of Public Enterprises. (BPE No. 2(158)/70- BPE (GM) dated 13th October, 1972)***

***Composition of Board of Directors 39. DPE/Guidelines/II(b)/1***

***Composition of Boards of Directors of Public Enterprises***

*The question as to how the structure of the Boards of Directors of Public Enterprises can be rationalized, consistent with efficient functioning of these enterprises has been under consideration of*

Government for some time. It has now been decided that the following principles should be followed by the administrative Ministries in this regard:

- i. For large multi-unit enterprises and large trading organizations, the typical structure of a Board could be a full-time Chairman-cum-Managing Director assisted by at least two functional Directors, one of whom would be in-charge of Finance, and part-time Directors. As regards the inclusion of General Managers of constituent units and executive in charge of different regions in the Boards of multi-unit or multi-regional enterprises, inclusion of a few General Managers and Directors by rotation could be considered. Even if all the General Managers are not made directors, those left out should also, in principle, be invited to attend and participate in all the Board meetings. It is, of course, understood that in certain situations, they may not, for good reasons, all be invited to a particular meeting.
- ii. A typical structure of a Board for the smaller enterprises could be a Chairman-cum Managing Director with one, and possibly even two senior officers of the undertaking itself as functional Directors together with some part-time Directors. One of the functional Directors could, if necessary, be designated as Executive Director or Director (Co-ordination), should the burden on the Chairman-cum-Managing Director be too heavy.
- iii. In the cases referred to in (i) and (ii) above, there should be no bar to the appointment of a part-time Chairman, if in particular cases this course appears desirable. In such cases, a suitable whole-time Managing Director should invariably be appointed.
- iv. The number of part-time non-official Directors on the Boards of multi-unit and multi-regional Public Enterprises may be about 1/3rd of the total strength, which may be of the order of 12 to 15. In relatively smaller enterprises, the Board strength should be between 8 and 12, including official and non-official part-time Directors, the number of the latter being about 1/3rd of the total.
- v. The policy regarding appointment of full-time Chairman/ Managing Directors/Functional Directors from out of the "panels" being prepared by the Empanelment Selection Board in accordance with the Prime Minister's directive, should be followed without exception to ensure maximum utilization of the panels. The aim should be for the enterprises themselves to generate their own top executives at this level also, who should, therefore, be screened by the Empanelment Selection Board before considering empanelment of Government servants and men from private enterprises.

- vi. Appointment of Government representatives on the Boards should ordinarily be restricted to the dealing Joint Secretary/Director, but in the case of some Ministries, other officials within it might be chosen so as to constitute a Management Coordination Cell, as proposed to be done in the Ministry of Industrial Development and Internal Trade or to meet the conditions about the number or directorships held by each officer.
- vii. With regard to part-time Directors, as an interim measure, the services of those from the private sector, who have volunteered for full-time appointment in Public Enterprises and considered fit and empanelled to hold such top level posts in Public Enterprises may be advantageously utilised. A comprehensive list of those considered suitable for appointment as part-time Directors will, in due course, be prepared and circulated, it being understood, however, that discretion would be available to appoint those outside the list, where necessary. The final decision on the question of representation of workers on the Boards of Industrial Enterprises being pursued by the Department of Labour and Employment will also be relevant in this context.
- viii. On the question whether Government representatives on the Boards of Public Enterprises should necessarily include a representative of the Finance Ministry, while Finance Ministry representatives may be appointed to the major Public Enterprises, the relatively smaller enterprises may do without representatives of the Finance Ministry. In such cases, however, where there is no representative of the Finance Ministry on the Boards, the undertakings should ensure that the concerned Financial Advisers (Heads of the respective Expenditure Divisions in the Finance Ministry) receive, sufficiently in advance of the Board meetings, the agenda papers, as also the minutes of the meetings. This will enable the Finance Ministry to keep in touch with the activities of the enterprises.
- ix. The policy decision in regard to the exclusion of Members of Parliament in the Boards of Public Enterprises, which is based on the recommendations of the Krishna Menon Committee, should remain unchanged. (The relevant extract from the report of the Krishna Menon Committee on State Undertakings and Government's decisions thereon, referred to above, is enclosed in Annexure).

2. The above decisions are brought to the notice of the Ministry of Petroleum and Chemicals, etc., for information and compliance.

## ANNEXURE

### 42. **Members of Parliament on Boards**

A more difficult question to decide arises in the matter of Members of Parliament or Legislative Assemblies, and whether they should be members of Boards of Management. The overwhelming weight of considerations must be against it. Such membership even if it carries no emoluments, carries much power and patronage. The Member of

Parliament concerned is part of the organ of public control and is the exponent of public criticism in Parliament. As a Director or part of a concern's administration he is responsible for the very conduct and affairs which Parliament, and therefore, he is called upon to examine, criticize and judge. Having specialized and inside knowledge, he can use it in Parliament and elsewhere, when he has disagreements with his colleagues on the Board and wishes to take a line apart from the team of which he is a Member. His colleagues who are not Members of Parliament like himself cannot reply. They are "officials"—employed in State Undertakings. His Parliamentary colleagues are also at a disadvantage because he purports to speak from expert and inside knowledge. The Minister finds himself in a very embarrassing position when the matter is debated in the House.

43. There is also the further consideration—for whom does he speak? (1) If he speaks for the industry in Parliament he takes the place of the Minister; (2) if he speaks for the Board as Managing Director or Chairman, being one himself, then he has greater facilities which other MPs do not have; (3) if he turns critic, he places everyone including the industry in an adverse position.
44. It will be understood that such a Member of Parliament, who is not a member of Government, cannot take over the functions and duties of a Minister. He cannot be a critic for the reasons stated above. Thus, he can neither defend nor criticize, for as Chairman or a Director of the Company concerned he has access to information which others do not have and which he should not use. Therefore, if a Member of Parliament is Chairman or even a Director, he would disqualify himself for participation in discussions in regard to the concern he is associated with, and there would be severe limitations in regard to his participation in debates on similar concerns or State concerns as a whole. On the other hand, he cannot be obliged to sit in Parliament unconcerned, when the debate is on matters of which he has knowledge. This, in effect, would prevent him from functioning fully as a Member of Parliament. If, on the other hand, he were to use his position and his knowledge, then he places the concern of which he is an active and responsible part and the Board at a great disadvantage as well as in a position of embarrassment. His colleagues and the concern are not represented in Parliament except through the Minister. Conflicts will arise as to whom the Minister represents. In the result, therefore, appointment of Members of Parliament in Corporations is altogether an unhealthy practice and is difficult to justify.

Government's Decision on the Above Recommendation

**"Members of Parliament should not be appointed to Boards of Directors".**

(BPE No. 2(158)/70-BPE (GM) dated 13th October, 1972)



Thus, the position relating to induction of Members of Parliament in the Board of Public Sector Undertaking was clarified way back in the year 1972. The Schedule to the 1959 Act has been amended five times, post issuance of DPE guidelines dated 13 October, 1972 but in none of these amendments this issue has ever seems to have been addressed.

(v) During the course of review the Committee also noted that several new bodies have come into existence post enactment of 1959 Act, having Members of Parliament nominated in different capacities. These Bodies need to be taken into account and suitable provisions need to be made to prevent undue disqualification of the Members under the Parliament (Prevention of Disqualification) Act, 1959.

(vi) As per the information provided by the concerned Ministries, there are some Bodies /Committees/ Corporations listed in the Schedule of the Act of 1959, but never had Members of Parliament nominated/appointed, such as-

- (a) Central Warehousing Corporation (CWC) under the Department of Food and Public Distribution.
- (b) Licensing Committee and Tariff Commission, under the Department of Industrial policy and promotion.
- (c) Hindustan Insecticides Limited under Department of Chemicals and Petrochemicals.
- (d) Hindustan Shipyards Limited under Department of Defence Production.
- (e) Company Law Advisory Commission under the Ministry of Corporate Affairs.
- (f) Under the Ministry of Minority Affairs a) National Commission for Minority, b) Durgah Khawaja Saheb, c) Central Waqf Council, and d) Maulana Azad Education Foundation (MAEF)

1.30 Entries relating to such Bodies, where there is no scope for nomination or appointment of a member of Parliament does not serve any useful purpose. The Committee in their 9th Report pertaining to Ministry of Commerce and Industries has already recommended deletion of entry of

Licensing Committee in Part I of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959. M/c Law and Justice, in consultation with concerned Ministries/ Departments may take action for deletion of all obsolete/ redundant entries as indicated in Para 7 [ (i) to (vi) ]. This is required to be done in a time bound manner under intimation to the Committee.

1.31 The Committee after taking stock of the progress made with reference to the comprehensive review of the Act undertaken by it, decided in its meeting held on 31.1.2018 to present a consolidated Report highlighting its major findings and suggesting the way forward.

## RECOMMENDATIONS/ OBSERVATIONS

1.32 The Committee is well aware that the constitutional provision enshrined in Article 102(1)(a) seeks to attain two fold objectives of (i) separation of power between the legislature and the executive and (ii) prevention of possibility of a conflict between duty and interest of an individual who is required to perform the role of both a legislator and a member of the executive. The Parliament (Prevention of Disqualification) Act, 1959 is the only Central legislation governing "Office of Profit". On taking up their work, the Joint Committee on Offices of Profit constituted for the 16<sup>th</sup> Lok Sabha were fully conscious of the fact that despite several amendments that had taken place in the past, no concrete efforts were made by the Government for a comprehensive review or revision of the Act, despite such recommendation having been given from time to time by the previous Joint Committee on Offices of Profit. The Committee, therefore felt that a comprehensive review of the Act, in order to make it contemporary and responsive to the current socio economic environment, is need of the hour.

1.33 The Committee undertook a comprehensive review of the Act. In the process of review, the Committee held discussions with the representatives of 55 Union Ministries and their Departments. Eight Reports pertaining to Eight individual Union Ministries namely the Ministry of Civil Aviation, Ministry of External Affairs, Ministry of Coal, Ministry of Commerce & Industry, Ministry of Agriculture, Ministry of Chemicals & Fertilizers, Ministry of Development of North Eastern Region and Ministry of Food, Public Distribution and Consumer Affairs have already been presented by the Committee to the Parliament. In these Reports, the Committee mainly focused upon various requisite changes/deletion/addition needed in the Schedule of the Parliament (Prevention of Disqualification) Act, 1959.

1.34 During the course of review, the Committee felt that a revisit, not merely to the Schedule, but of the whole Act was important. In this connection, the Committee also considered important to take into account the previous recommendations of the Committees constituted earlier and the action taken thereon by the Government.

1.35 While going into the details of past efforts made in this connection, the Committee noted that the Amendment Bill 2006 for substantial amendments in the Parliament (Prevention of Disqualification) Act, 1959 was returned by the then President of India invoking Article 111 of the Constitution of India. While reconsidering the said Bill by the Lok Sabha on 31<sup>st</sup> July, 2006, an assurance was given on the floor of the House that the various points raised in the message of the Hon'ble president will be examined by the Joint committee of both the Houses of Parliament. In pursuance of that assurance, a Joint Committee of 15 Members of Parliament (10 of Lok Sabha and 5 from Rajya Sabha) was constituted to examine the Constitutional and Legal Position Relating to Office of Profit on 18 August, 2006.

The said Joint committee had emphasized upon the need for definition of Office of Profit and had also suggested a comprehensive definition specifying the criterions for determination of the Office of Profit. The Committee had also recommended suitable amendments in Article 102(1) (a) of the Constitution. The Committee is however, disappointed to note that that despite the matter being so important as to an assurance given to the Parliament in response to a message received from the Hon'ble President, no concrete action has so far been taken by the Ministry of Law and Justice in this regard even after a decade.

Similarly, during 15th Lok Sabha the Joint Committee on Offices of Profit at their sitting held on 20 October, 2010 desired to amend the Parliament (Prevention of Disqualification) Act, 1959 to incorporate an

express provision in Section 3 of the Act. The Committee felt that this would dispel apparent conflict in the provisions of some statutes requiring election of Members of Parliament for their appointment to Government Bodies with that of the Parliament (Prevention of Disqualification) Act, 1959. Although, the Ministry of Law had prepared and got a draft approved by the Joint Committee on Offices of Profit, no further action was taken by them to introduce a draft legislation.

1.36 Taking into account the past efforts, analysis of cases referred to them and the submission made during the review of various Ministries and Departments, the committee recommend the following:

(1) The expression "Office of Profit" has neither been defined in the Constitution of India nor in any statute. Even the Parliament (Prevention of Disqualification) Act, 1959 do not provide for the definition of "Office of Profit". The JPC had suggested a comprehensive definition as reproduced in Para No. 1.20 above. No concrete follow up action in this connection has been taken by the Ministry of Law and Justice so far. Expressing its displeasure on this inordinate delay, the Committee direct the Ministry of Law and Justice to take it up on priority and submit action taken report on monthly basis as already asked for.

(2) The language and formatting of the Parliament (Prevention of Disqualification) Act, 1959 is very complex and difficult to comprehend. During the evidence of the Union Ministries, the Committee observed that most of the Ministries/Departments were not very clear about the provisions of the Act. On a number of occasions, divergent views are taken by the Legislative Department and Department of Legal Affairs on the same issue. Therefore, provisions of the 1959 Act is required to be simplified by the Ministry of Law and Justice in order to make it comprehensible to all concerned.

(3) The Parliament (Prevention of Disqualification) Act, 1959 predominantly takes into consideration pecuniary aspect relating to

"office of profit" to determine and identify, if any office would be considered as an "Office of Profit" under the Government so as to incur disqualification of nominated MPs. Other than that no specific criteria for prevention of disqualification has been specifically spelt out in section 3 of the 1959 Act. The criteria followed by Joint Committee on Offices of Profit need to be suitably incorporated in the Act of 1959 to avoid any possible legal implications on this account. The JPC Report referred to in Para 1.18 above have also recommended accordingly. The Ministry of Law and Justice may submit an Action Taken Report within a month.

(4) In certain cases there appears to be apparent conflict between the Parliament (Prevention of Disqualification) Act 1959 and certain other statutes which provide for nomination/election of MPs in organisations setup thereunder. As already indicated in Para 1.22, the Committee had recommended for insertion of an express provision in the Act in their Eight report (15th Lok Sabha). The Ministry of Law and Justice are yet to take action in this regard. The Committee directs the Ministry to expedite the same and report action taken to the Committee within three months positively.

(5) Presently, MPs are involved in implementation of various flagship Schemes/Programmes like Swachh Bharat Mission, Smart City Mission, Deen Dayal Upadhyay-Gramin Kaushalya Yojna etc. and other programmes. There may be cases, where MPs responsibilities and role in implementation of these Programmes/ Schemes are not strictly advisory in nature. Considering importance of involvement of public representatives in review and monitoring of these scheme, the Committee feel that such nominations should be saved from incurring disqualification. However, care should be taken by the Executive to ensure that the nature of duties to be performed by the MPs and the allowances admissible to them, if any, are in accordance with the existing provisions of the Act. The Committee recommends that the

Ministry of Law and Justice issue suitable advisory to the Central/State Governments in this connection.

(6) While so many amendments have been carried out in the Act, no efforts were apparently made to remove/delete the obsolete/irrelevant provisions. Some such provisions still existing in the Act are as follows:

(i) Section 4 of the Parliament (Prevention of Disqualification) Act, 1959 is no longer relevant for the reasons given in Para 1.29(7)(i) above.

(ii) As per the submissions made to the Committee, many Bodies mentioned in the Schedule to Parliament (Prevention of Disqualification) Act, 1959 have ceased to exist but are still being reflected in the Schedule. Some such entities reported by the concerned Ministries/Departments are mentioned in Para 1.29(7)(ii) of the Report.

(iii) Some Bodies included in the Schedule have been reportedly merged to form new entities. Some such examples are given in Para 1.29(7)(iii) above.

(iv) The committee was also apprised that there are some Bodies /Committees/ Corporations listed in the Schedule of the Act of 1959, but never had Members of Parliament nominated/appointed. Some such examples have been given in Para 1.29(7)(vi) above.

(v) The Part I of the Schedule to the Act of 1959 includes several PSUs, examples of which are given in Para 1.29(7)(iv) above. The Act provides for disqualification specifically for the holders of the post of Chairman in the Bodies listed in this Schedule thereby implying that the Members nominated in the PSU's Boards would not attract disqualification. This is not in conformity with the DPE guidelines as reproduced in Para 1.29(7)(iv) above. The Government's decision on the issue is very clear that "Members of Parliament should not be appointed to Boards of Directors".

The Ministry of Law and Justice need to take into account the above obsolete entries in the Act for appropriate amendment in a time bound manner. They may also take a view in consultation with the concerned authorities regarding the relevance of DPE guidelines to State/UT PSU Boards. The Committee, however feel that the rationale behind the said DPE guidelines should hold good for State/UT, PSUs also in so far as appointment of MPs in the Boards of such PSUs is concerned.

(vi) During the course of review the Committee also noted that coming up of new Bodies or winding up/closing of existing ones having Members of Parliament nominated in different capacities is a regular feature. Therefore, no list of such bodies can be treated as final/static or all inclusive. The need therefore, is to have a proper reporting mechanism which may enable the Committee as well as the Nodal authorities in Government to have an updated position of all such entities where MPs are involved or proposed to be engaged. The Committee feel that appropriate application of 'e-governance' should be considered by the Ministry of Parliament Affairs so as to have the position updated on real time basis or at quarterly intervals whatever is feasible, available on the Ministry's Dashboard for use by all concerned.

NEW DELHI:  
07 August, 2018  
16 Sravana, 1940 (Saka)

KALRAJ MISHRA  
Chairperson,  
Joint Committee on Offices of Profit



THE PARLIAMENT (PREVENTION OF DISQUALIFICATION) ACT, 1959  
(10 OF 1959)

[4th April, 1959.]

An Act to declare that certain offices of profit under the Government shall not disqualify the holders thereof for being chosen as, or for being, members of Parliament.

BE it enacted by Parliament in the Tenth Year of the Republic of India as follows:—

1. Short title.—This Act may be called the Parliament (Prevention of Disqualification) Act, 1959.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “compensatory allowance” means 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 <sup>1</sup>[the Salary, Allowances and Pension of Members of Parliament Act, 1954 (30 of 1954)]], any conveyance allowance, house rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions, of that office;

(b) “statutory body” means any corporation, committee, commission, council, board or other body of persons, whether incorporated or not, established by or under any law for the time being in force;

(c) “non-statutory body” means any body of persons other than a statutory body.

3. Certain offices of profit not to disqualify.—It is hereby declared that none of the following offices, in so far as it is an office of profit under the Government of India or the Government of any State, shall disqualify the holder thereof for being chosen as, or for being, a member of Parliament, namely,—

(a) any office held by a Minister, Minister of State or Deputy Minister for the Union or for any State, whether *ex officio* or by name;

<sup>2</sup>[(aa) the office of a Leader of the Opposition in Parliament;]

<sup>3</sup>[(ab) the office of Deputy Chairman, Planning Commission;]

<sup>4</sup>[(ac) the office of <sup>5</sup>[each leader and deputy leader] of a recognised party and recognised group in either House of Parliament;]

<sup>6</sup>[(ad) the office of the Chairperson of the National Advisory Council constituted by the Government of India in the Cabinet Secretariat *vide* Order No. 631/2/1/2004-Cab., dated the 31st May, 2004;]

(b) the office of Chief Whip, Deputy Chief Whip or Whip in Parliament or of a Parliamentary Secretary;

1. Subs. by Act 54 of 1993, s. 2, for certain words (w.e.f. 27-8-1993).

2. Ins. by Act 33 of 1977, s. 12 (w.e.f. 1-11-1977).

3. Ins. by Act 54 of 1993, s. 3 (w.e.f. 19-7-1993).

4. Ins. by Act 5 of 1999, s. 5.

5. Subs. by Act 18 of 2000, s. 5, for certain words (w.e.f. 7-6-2000).

6. Ins. by Act 31 of 2006, s. 2 (w.e.f. 18-8-2006).

<sup>1</sup>[(ba) the office of chairperson of—

(i) the National Commission for Minorities constituted under section 3 of the National Commission for Minorities Act, 1992 (19 of 1992);

<sup>2</sup>[(ii) the National Commission for the Scheduled Castes constituted under clause (1) of article 338 of the Constitution;

(iia) the National Commission for the Scheduled Tribes constituted under clause (1) of article 338A of the Constitution;]

(iii) the National Commission for women constituted under section 3 of the National Commission for Women Act, 1990 (20 of 1990);]

(c) the office of a member of any force raised or maintained under the National Cadet Corps Act, 1948 (31 of 1948), the Territorial Army Act, 1948 (56 of 1948), or the Reserve and Auxiliary Air Forces Act, 1952 (62 of 1952);

(d) the office of a member of a Home Guard constituted under any law for the time being in force in any State;

(e) the office of sheriff in the city of Bombay, Calcutta or Madras;

(f) the office of chairman or member of the syndicate, senate, executive committee, council or court of a university or any other body connected with a university;

(g) the office of a member of any delegation or mission sent outside India by the Government for any special purpose;

(h) the office of chairman or member of a committee (whether consisting of one or more members), set up temporarily for the purpose of advising the Government or any other authority in respect of any matter of public importance or for the purpose of making an inquiry into, or collecting statistics in respect of, any such matter, if the holder of such office is not entitled to any remuneration other than compensatory allowance;

<sup>3</sup>[(i) 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;]

(j) the office of village revenue officer, whether called a *lambardar*, *malguzar*, *patel deshमुख* or by any other name, whose duty is to collect land revenue and who is remunerated by a share of, or commission on, the amount of land revenue collected by him, but who does not discharge any police functions.

<sup>4</sup> [(k) the office of Chairman, Deputy Chairman, Secretary or Member (by whatever name called) in any statutory or non-statutory body specified in the Table;

1. Ins. by Act 54 of 1993, s.3 (w.e.f. 27-8-1993).

2. Subs. by Act 28 of 2013, s. 2 (w.e.f. 19-2-2014).

3. Subs. by Act 54 of 1993, s. 3, for clause (i) (w.e.f. 19-7-1993).

4. Ins. by Act 31 of 2006, s. 12 (w.e.f. 4-4-1959).

(l) the office of Chairman or Trustee (by whatever name called) of any Trust, whether public or private, not being a body specified in the Schedule;

(m) the office of Chairman, President, Vice-President or Principal Secretary or Secretary of the Governing Body of any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law relating to registration of societies, not being a body specified in the Schedule.]

<sup>1</sup>[*Explanation 1*].—For the purposes of this section, the office of <sup>2</sup>[Chairman, Deputy Chairman or Secretary] shall include every office of that description by whatever name called.

<sup>3</sup>[*Explanation 2*.—In clause (aa), the expression “Leader of the Opposition” shall have the meaning assigned to it in the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977 (33 of 1977).]

<sup>4</sup>[*Explanation 3*.—In clause (ac), the expressions “recognised party” and “recognised group” shall have the meanings assigned to them in the Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Act, 1998 (5 of 1999).]

4. Temporary suspension of disqualification in certain cases.—If a person being a member of Parliament who immediately before the commencement of this Act held an office of profit declared by any law repealed by this Act not to disqualify the holder thereof for being such member, becomes so disqualified by reason of any of the provisions contained in this Act, such office shall not, if held by such person for any period not extending beyond a period of six months from the commencement of this Act disqualify him for being a member of Parliament.

5. Repeals.—The Parliament (Prevention of Disqualification) Act, 1950 (19 of 1950), the Parliament Prevention of Disqualification Act, 1951 (68 of 1951), the Prevention of Disqualification Act, 1953 (1 of 1954), and any provision in any other enactment which is inconsistent with this Act are hereby repealed.

1. *Explanation* numbered as *Explanation 1* thereof by Act 33 of 1977, s. 12 (w.e.f. 1-11-1977).

2. Subs. by Act 54 of 1993, s. 3, for certain words (w.e.f. 27-8-1993).

3. Ins. by Act 33 of 1977, s. 12 (w.e.f. 1-11-1977).

4. Ins. by Act 5 of 1999, s. 5.

## THE SCHEDULE

[See section 3(i)]

### PART I

#### BODIES UNDER THE CENTRAL GOVERNMENT

Air-India International Corporation established under section 3 of the Air Corporations Act, 1953 (27 of 1953).

Air Transport Council constituted under section 30 of the Air Corporations Act, 1953 (27 of 1953).

Board of Directors of the Export Risks Insurance Corporation <sup>1</sup>\* \* \* Limited.

Board of Directors of the Heavy Electrical <sup>1</sup>\* \* \* Limited.

Board of Directors of the Hindustan Cables <sup>1</sup>\* \* \* Limited.

Board of Directors of the Hindustan Insecticides <sup>1</sup>\* \* \* Limited.

Board of Directors of the Hindustan Machine Tools <sup>1</sup>\* \* \* Limited.

Board of Directors of the Hindustan Shipyard Limited.

Board of Directors of the <sup>2</sup>[Hindustan Chemicals and Fertilizers Limited].

Board of Directors of the National Coal Development Corporation (Private) Limited.

Board of Directors of the National <sup>3</sup>[Industrial] Development Corporation <sup>1</sup>\* \* \* Limited.

Board of Directors of the National Instruments <sup>1</sup>\* \* \* Limited.

Board of Directors of the National Small Industries Corporation <sup>1</sup>\* \* \* Limited.

Board of Directors of the Neyveli Lignite Corporation (Private) Limited.

Board of Directors of the Sindri Fertilizers and Chemicals <sup>1</sup>\* \* \* Limited.

Board of Directors of the State Trading Corporation of India <sup>1</sup>\* \* \* Limited.

Central Warehousing Corporation established under section 17 of the Agricultural Produce (Development and Warehousing) Corporations Act, 1956 (28 of 1956).

Coal Board established under section 4 of the Coal Mines (Conservation and Safety) Act, 1952 (12 of 1952).

Coal Mines Labour Housing Board constituted under section 6 of the Coal Mines Labour Welfare Fund Act, 1947 (32 of 1947).

Commissioners for the Port of Calcutta.

Committee for the allotment of land in the township of Gandhidham.

Company Law Advisory Commission constituted under section 410 of the Companies Act, 1956 (1 of 1956).

1. The brackets and word "(Private)" omitted by Act 58 of 1960, s. 3 and the Second Schedule.

2. Subs. by Act 58 of 1960, s.3 and the Second Schedule, for "Nangal Fertilizers and Chemicals (Private) Limited".

3. Ins. by s. 3 and the Second Schedule, *ibid.*

Cotton Textiles Fund Committee constituted under the Textile Funds Ordinance, 1944 (Ord. 34 of 1944).

Dock Labour Board, Bombay, established under the Bombay Dock Workers (Regulation of Employment) Scheme, 1956, made under the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948).

Dock Labour Board, Calcutta, established under the Calcutta Dock Workers (Regulation of Employment) Scheme, 1956, made under the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948).

Dock Labour Board, Madras, established under the Madras Dock Workers (Regulation of Employment) Scheme, 1956, made under the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948).

Forward Markets Commission established under section 3 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952).

Indian Airlines Corporation established under section 3 of the Air Corporations Act, 1953 (27 of 1953).

Industrial Finance Corporation of India established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948).

Licensing Committee constituted under Rule 10 of the Registration and Licensing of Industrial Undertakings Rules, 1952, made under the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Mining Boards constituted under section 12 of the Mines Act, 1952 (35 of 1952).

National Co-operative Development and Warehousing Board established under section 3 of the Agricultural Produce (Development and Warehousing) Corporations Act, 1956 (28 of 1956).

Rehabilitation Finance Administration constituted under section 3 of the Rehabilitation Finance Administration Act, 1948 (12 of 1948).

Tariff Commission established under section 3 of the Tariff Commission Act, 1951 (50 of 1951).

Trustees of the Port of Bombay.

Trustees of the Port of Madras.

Trustees or Commissioners of any major Port as defined in the Indian Ports Act, 1908 (15 of 1908), other than the Port of Calcutta, Bombay or Madras.

#### BODIES UNDER STATE GOVERNMENTS

##### *Andhra Pradesh*

Agricultural Improvement Fund Committee constituted under section 3 of the Hyderabad Agricultural Improvement Act, 1952.

Co-operative Agricultural and Marketing Development Fund Committee.

Livestock Purchasing Committee.

#### *Assam*

Adhi Conciliation Boards constituted under section 2A of the Assam Adhiars Protection and Regulation Act, 1948.

Assam Evacuee Property Management Committee constituted under section 12 of the Assam Evacuee Property Act, 1951.

Assam Text Book Committee.

#### *Bihar*

Mining Board for Coal Mines.

Text Book and Education Literature Committee.

#### *Bombay*

Allocation Committee (Allopathic) under the Employees' State Insurance Scheme.

Allocation Committee (Ayurvedic) under the Employees' State Insurance Scheme.

Board to conduct over-all supervision of the business and affairs of the *Narsinggiriji* Mills, Sholapur.

Bombay Housing Board constituted under section 3 of the Bombay Housing Board Act, 1948.

Bombay State Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948 (54 of 1948).

Bombay State Electricity Consultative Council constituted under section 16 of the Electricity (Supply) Act, 1948 (54 of 1948).

Medical Service Committee under the Employees' State Insurance Scheme.

Pharmaceutical Committee under the Employees' State Insurance Scheme.

Regional Transport Authority for Ahmedabad, Aurangabad, Bombay, Nagpur, Poona, Rajkot and Thana constituted under section 44 of the \* Motor Vehicles Act, 1939 (4 of 1939).

Saurashtra Housing Board constituted under section 3 of the Saurashtra Housing Board Act, 1954.

State Transport Authority constituted under section 44 of the \* Motor Vehicles Act, 1939 (4 of 1939).

Vidarbha Housing Board constituted under section 3 of the Madhya Pradesh Housing Act, 1950.

#### *Kerala*

Board of Examiners appointed under rule 8 of the Travancore-Cochin Boiler Attendants Rules, 1954.

Panel of Assessors constituted under rule 63 of the Travancore-Cochin Boiler Attendants Rules, 1954.

Panel of Assessors constituted under the Travancore-Cochin Economiser Rules, 1956.

#### *Madhya Pradesh*

Madhya Pradesh Housing Board constituted under section 3 of the Madhya Pradesh Housing Board Act, 1950.

Mahakoshal Housing Board.

\*Now see the relevant provisions of the Motor Vehicles Act, 1988 (59 of 1988).

<sup>1</sup>[*Tamil Nadu*]

Committee to select Books for Study for S.S.L.C. Examination.

Landing and Shipping Fees Committees for Minor Ports.

Local Committee constituted under regulation 10A of the Employees' State Insurance (General) Regulations, 1950.

Madras Board of Transport.

<sup>2</sup>[Tamil Nadu Electricity Board] constituted under section 5 of the Electricity (Supply) Act, 1948 (54 of 1948).

Madras State Electricity Consultative Council constituted under section 16 of the Electricity (Supply) Act, 1948 (54 of 1948).

Port Conservancy Boards.

Port Trust Boards of Minor Ports.

State Board of Communications.

Text Books Committee.

<sup>3</sup>[*Karnataka*]

Board of Management, Mysore Iron and Steel Works, Bhadravathi.

Board of Management of Industrial Concerns.

*Orissa*

Appeal Committee under the Board of Secondary Education.

Orissa Board of Communications and Transport.

Regional Transport Authority constituted under section 44 of the \*Motor Vehicles Act, 1939 (4 of 1939).

State Transport Authority constituted under section 44 of the \*Motor Vehicles Act, 1939 (4 of 1939).

*Punjab*

Punjab State National Workers (Relief and Rehabilitation) Board.

*Rajasthan*

City Improvement Trust, Kota constituted under the City of Kota Improvement Act, 1946.

Excise Appellate Board, Ajmer.

Rajasthan State Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948 (54 of 1948).

Urban Improvement Board, Jaipur.

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1. Subs. by the Madras State (Alteration of Name) (Adaptation of Laws on Union Subjects) Order, 1970, for "Madras" (w.e.f. 14-1-1969).

2. Subs. *ibid.*, for "Madras State Electricity Board".

3. Subs. by the Mysore State (Alteration of Name) (Adaptation of Laws on Union Subjects) Order, 1974, for "Mysore" (w.e.f. 1-11-1973).

\*Now see the relevant provisions of the Motor Vehicles Act, 1988 (59 of 1988).

### *Uttar Pradesh*

Government Cement Factory Board.

Local Committees for Agra, Kanpur, Lucknow and Saharanpur appointed under section 25 of the Employees' State Insurance Act, 1948 (34 of 1948).

Sub-Committee to select books for Educational Expansion Department.

U.P. Sugar and Power Alcohol and Labour Housing Board constituted under section 10 of the U.P. Sugar and Power Alcohol Industries Labour Welfare and Development Fund Act, 1950.

### *West Bengal*

Licensing Board constituted under the regulations made under rule 45 of the Indian Electricity Rules, 1956.

West Bengal Housing Board constituted under the West Bengal Development Corporation Act, 1954.

### BODIES IN UNION TERRITORIES

Delhi Development Authority constituted under section 3 of the Delhi Development Act, 1957 (61 of 1957).

Delhi Electricity Power Control Board constituted under section 5 of the Bombay Electricity (Special Powers) Act, 1946, as applied to Delhi.

Delhi State Electricity Council constituted under section 16 of the Electricity (Supply) Act, 1948 (54 of 1948).

## PART II

### BODIES UNDER THE CENTRAL GOVERNMENT

Advisory Committee for the Air-India International Corporation appointed under section 41 of the Air Corporations Act, 1953 (27 of 1953).

Advisory Committee for the Indian Airlines Corporation appointed under section 41 of the Air Corporations Act, 1953 (27 of 1953).

Central Silk Board constituted under section 4 of the Central Silk Board Act, 1948 (61 of 1948).

Coffee Board constituted under section 4 of the Coffee Act, 1942 (7 of 1942).

Coir Board constituted under section 4 of the Coir Industry Act, 1953 (45 of 1953).

Development Council for Acids and Fertilizers established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Alkalis and Allied Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Bicycles established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Drugs, Dyes and Intermediates established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Food Processing Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).



Development Council for Heavy Electrical Engineering Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Internal Combustion Engines and Power Driven Pumps established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Light Electrical Engineering Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Machine Tools established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Non-ferrous Metals including alloys established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Oil-based and Plastic Industries established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Sugar Industry established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Textiles made of artificial Silk including artificial Silk Yarn established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Development Council for Textiles made of Wool; including woollen yarn, hosiery, carpets and druggets established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

Durgah Committee, Ajmer, constituted under section 4 of the Durgah Khawaja Saheb Act, 1955 (36 of 1955).

Indian Central Arecanut Committee.

Indian Central Coconut Committee constituted under section 4 of the Indian Coconut Committee Act, 1944 (10 of 1944).

Indian Central Cotton Committee constituted under section 4 of the Indian Cotton Cess Act, 1923 (14 of 1923).

Indian Central Jute Committee.

Indian Central Oilseeds Committee constituted under section 4 of the Indian Oilseeds Committee Act, 1946 (9 of 1946).

Indian Central Sugarcane Committee.

Indian Central Tobacco Committee.

Indian Lac Cess Committee constituted under section 4 of the Indian Lac Cess Act, 1930 (24 of 1930).

Rubber Board constituted under section 4 of the Rubber Act, 1947 (24 of 1947).

Tea Board constituted under section 4 of the Tea Act, 1953 (29 of 1953).

#### BODIES UNDER STATE GOVERNMENTS

##### *Andhra Pradesh*

Market Committee constituted under section 4 of the Hyderabad Agricultural Market Act No. II of 1339F.

Market Committee constituted under section 4A of the Madras Commercial Crops Markets Act, 1933.

*Bihar*

Bihar State Board of Religious Trusts.

Bihar Subai Majlis Awqaf.

Bodh Gaya Temple Advisory Committee constituted under section 15 of the Bodh Gaya Temple Act, 1949.

Body Gaya Temple Management Committee constituted under section 3 of the Bodh Gaya Temple Act, 1949.

*Kerala*

Administration Committee for Coir Purchase Scheme.

Malabar Market Committee constituted under section 4A of the Madras Commercial Crops Markets Act, 1933.

Tapioca Market Expansion Board.

<sup>1</sup>[*Tamil Nadu*]

Area Committee for Hindu Religious and Charitable Endowments constituted under section 12 of the Madras Hindu Religious and Charitable Endowments Act, 1951.

Madras State Wakf Board constituted under section 9 of the Wakf Act, 1954 (29 of 1954).

*Punjab*

State Marketing Board constituted under section 3 of the Patiala Agricultural Produce Markets Act, 2004.

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<sup>3</sup>[TABLE

[See section 3(k)]

<i>S. No.</i>	<i>Name of body</i>
(1)	(2)
1.	The Tripura Khadi and Village Industries Board, a body constituted under the Tripura Khadi and Village Industries Act, 1966.
2.	The Uttar Pradesh Development Council.
3.	The Irrigation and Flood Control Commission, Uttar Pradesh.
4.	The Indian Statistical Institute, Calcutta.
5.	The West Bengal Handicrafts Development Corporation Limited.
6.	The West Bengal Small Industries Development Corporation Limited.

1. Subs. by the Madras State (Alteration of Name) (Adaptation of Laws on Union Subjects) Order, 1970, for "Madras" (w.e.f. 14-1-1969).

2. Part III omitted by Act 54 of 1993, s. 4 (w.e.f. 19-7-1993).

3. Ins. by Act 31 of 2006, s. 3 (w.e.f. 4-4-1959).

(1)	(2)
7.	The West Bengal Industrial Development Corporation Limited.
8.	The Sriniketan Santiniketan Development Authority, a body constituted under the West Bengal Town and Country (Planning and Development) Act, 1979 (West Bengal Act No. 13 of 1979).
9.	The Haldia Development Authority, a body constituted under the West Bengal Town and Country (Planning and Development) Act, 1979 (West Bengal Act No. 13 of 1979).
10.	The West Bengal Minorities Development and Finance Corporation, a body constituted under the West Bengal Minorities Development and Finance Corporation Act, 1995.
11.	The Hooghly River Bridge Commissioners, constituted under the Hooghly River Bridge Act, 1969 (West Bengal Act No. 36 of 1969).
12.	The Board of Wakf, West Bengal, a body constituted under the Wakf Act, 1995 (43 of 1995).
13.	The State Fisheries Development Corporation Limited, West Bengal.
14.	The West Bengal State Haj Committee, constituted under the Haj Committee Act, 2002 (35 of 2002).
15.	The Asansol Durgapur Development Authority, West Bengal, a body constituted under the West Bengal Town and Country (Planning and Development) Act, 1979 (West Bengal Act No. 13 of 1979).
16.	The West Bengal Pharmaceutical and Phytochemical Development Corporation Limited.
17.	The West Bengal Handloom and Powerloom Development Corporation Limited.
18.	The West Bengal Khadi and Village Industry Board.
19.	The Society for Self-employment for Urban Youth, a society registered under the West Bengal Societies Registration Act, 1961 (West Bengal Act No. 26 of 1961).
20.	The Tirumala Tirupathi Devasthanams Board.
21.	The Agricultural and Processed Food Products Export Development Authority, an authority constituted under section 4 of the Agricultural and Processed Food Products Export Development Authority Act, 1985 (2 of 1986).
22.	The National Agricultural Co-operative Marketing Federation of India Limited (NAFED).
23.	The Indian Farmer Fertilizers Co-operative Limited (IFFCO).
24.	The Krishak Bharati Co-operative Limited (KRIBHCO).
25.	The National Co-operative Consumers Federation of India Limited (NCCF).
26.	The Auroville Foundation established under sub-section (1) of section 10 of the Auroville Foundation Act, 1988 (54 of 1988).
27.	The National Commission of Enterprises in the Unorganised Sector.
28.	The Planning Board (Asiatic Society) established under sub-section (1) of section 8 of the Asiatic Society Act, 1984 (5 of 1984).
29.	The Delhi Rural Development Board.
30.	The Maulana Azad Education Foundation.

(1)	(2)
31.	The Indira Gandhi National Centre for the Arts.
32.	The Dr. Ambedkar Foundation.
33.	The Bihar State Board of Religious Trust, a body constituted under the Bihar Hindu Religious Trust Act, 1950 (Bihar Act No. 1 of 1951).
34.	The Research and Information System for the Non-Aligned and Other Developing Countries.
35.	The Indian Institute of Psychometry.
36.	The Uttar Pradesh Film Development Council.
37.	The Uttar Pradesh Provincial Co-operative Federation.
38.	The Uttar Pradesh Co-operative Federation Limited.
39.	The National Co-operative Union of India.
40.	The Uttar Pradesh Krishi and Gram Vikas Bank.
41.	The Uttar Pradesh Co-operative Bank Limited.
42.	The Indian Council for Cultural Relations.
43.	The Board of Control — A.N. Sinha Institute of Social Studies, Patna.
44.	All India Council for Sports.
45.	The Howrah Improvement Trust.
46.	The Dalit Sena, 12, Janpath, New Delhi.
47.	The Social Justice Trust, 12, Janpath, New Delhi.
48.	The Bahujan Foundation (Charitable Trust), Lucknow, Uttar Pradesh.
49.	The Bahujan Prerna Charitable Trust, Delhi.
50.	The Central Wakf Council, established under section 9 of the Wakf Act, 1995 (43 of 1995).
51.	The Nehru Memorial Museum and Library (NMML).
52.	The Jalianwala Bagh Memorial Trust.
53.	The Haj Committee of India constituted under section 3 of the Haj Committee Act, 2002 (35 of 2002).
54.	The Mallickghat Phoolbazar Parichalan Committee.
55.	The West Bengal Fisheries Corporation Limited.]

# Joint Committee to Examine the Constitutional and Legal Position Relating to Office of Profit (14<sup>th</sup> Lok Sabha)

## PART II

### CONCLUSIONS AND RECOMMENDATIONS

The terms of reference of the Joint Committee to examine the constitutional and legal position relating to office of profit as per the motion adopted in Lok Sabha on 17.8.2006 and concurred in by Rajya Sabha on 18.8.2006 are as follows :—

- (i) to examine, in the context of settled interpretation of the expression "office of profit" in Article 102 of the Constitution and the underlying constitutional principles therein, and to suggest a comprehensive definition of "office of profit";
- (ii) to recommend in relation to "office of profit", the evolution of generic and comprehensive criteria which are just, fair and reasonable and can be applied to all States and Union Territories;
- (iii) to examine the feasibility of adoption of system of law relating to prevention of disqualification of Members of Parliament as existing in the United Kingdom and considered by the Constitution (Forty-Second Amendment) Act, 1976; and
- (iv) to examine any other matter incidental to the above.

2. Based on the material placed/evidence tendered before them the Committee have made analysis of each of the above terms of reference. Some of the views/ideas being discussed in the succeeding paragraphs may not strictly be under the terms of reference (i) to (iii) above, but all the same are germane in so far as understanding the issues in right perspective is concerned and are incidental to the terms of reference of the JPC.

#### (i) Need for definition and its feasibility

3. The constitutional experts including the Attorney General of India were of the opinion that while a definition of 'office of profit' was a theoretical possibility, its application, encompassing the entire gamut on the issues involved, to have the desired results would be very difficult in terms of interpretation of the words/phrases/clauses contained in it which would result in numerous court cases. Therefore, majority of them were not in favour of evolving any definition. According to the Ministry of Law & Justice (Legislative Department), the Attorney General of India had opined against laying down any particular criteria defining office of profit as the judgments of the Courts were enough guidelines to determine whether a particular office was an office of profit or not and a workable definition did not appear to be feasible.

4. The Ministry of Law & Justice (Legislative Department) were also of the opinion that evolving of common criteria would open flood gates of disputes because the determination of the fact as to whether the holder of any particular office other than the office of profit would fall within the guidelines or principles, itself would be a point of dispute or form part of that dispute. Moreover, there would be an increase in the reference under Article 103 of the Constitution

virtually leading to an enormous rise in the election petitions to be decided by the President and Election Commission.

5. Many of the States were also against any uniform definition, although on different grounds altogether. They had apprehensions that it might go against the federal structure of the Constitution thus curtailing their legislative powers and in the process undermining their authority. Some of them were of the opinion that the definition might at best be illustrative only. Nevertheless a few States had endorsed the draft definition provided by the Ministry of Law & Justice, as according to them it was quite comprehensive although not exhaustive.

6. The Committee feel that a precise definition is very necessary, primarily because without knowing what constitutes an office of profit and what does not, the exercise of giving exemptions from holding any office of profit seems to be a vacuous one. The Committee do not, therefore, agree with the doubts expressed that it may lead to heavy litigation. On the contrary it will lessen the risk of litigation. The task must, therefore, be performed, however, difficult it may be.

7. If the Parliament or any legislature feels that the definition covers an office that does not really advance the policy and purpose of the Constitution, *ad hoc* legislation may be resorted to for removing the disqualification in advance or on discovery.

8. As regards apprehensions by the State Governments that enactment of law on definition might go against the spirit of federal structure of the country, the Committee would like to recall the views expressed by the Government of Tripura according to which while the power of the State legislatures to make laws under article 191 should remain with the States, there was a need for amending the Constitution to bring about a comprehensive definition of office of profit for uniform application. Taking the cue the Committee feel that federalism has to survive through some common denominator *vis-a-vis* the country as a whole. A pointer in this regard is the existing almost identical language and provision of Articles 102(1)(a) and 191(1)(a). The States have the liberty to enact laws on creating exceptions for disqualification from offices of profit but not to define the term 'office of profit' itself, it is felt. In this regard the views expressed by a former Chief Justice of India are also perhaps worth mentioning according to which in India, a unified judiciary with the Supreme Court at the apex level ensures a uniform standard and meaning of the rule of law throughout the country. Hence, there would be no scope for conflicting interpretations of the meaning of 'office of profit' after evolution of a generic and comprehensive criteria emerging from it.

9. On the other hand the fall out of not having a definition of office of profit is there to be seen for all in whatever had happened in the year 2006 in the run up to the constitution of the Joint Committee to examine the constitutional and legal position relating to office of profit which need not perhaps be elaborated here.

10. To summarise, the advantages of having a definition of the office of profit would *inter-alia* be as follows:—

- (i) it would impart clarity to a large extent as to what is an office of profit and what is not;
- (ii) it will reduce the arbitrariness, in such appointments and Governments would be extremely circumspect;

14. Whether an office in order to be characterized as an office of profit under the Government should satisfy these tests or whether any one or more of them might be decisive of its true nature and even what weightage was to be assigned to each factor had been the subject matter of several cases decided by the Supreme Court. But no decision appeared to lay down conclusively the character of an office of profit under the Government although the court had no doubt determined in each case whether a particular office involved in the case before it was or was not an office of profit under the Government.

15. A perusal of Parliament (Prevention of Disqualification) Act, 1959 and other State Governments Acts revealed that in granting exemption from disqualification no specific criteria had been followed except for remuneration in few cases. The Committee noted that there were number of posts bearing the same name with same duties. But while some Boards/Corporations/Bodies like Fishery Boards, Haj Committee etc. have been given exemptions in some States, similar bodies have not been given exemptions in other States.

16. A propensity of the Government has been seen, be it the Union or the States, to include an ever increasing number of offices under the exemption list. The Committee observe that the Constitution (Ninety First) Amendment Act, 2003 has placed a ceiling on Council of Ministers in the Union and the States [Articles 75(1A) and 164 (1A)] and prohibited members being disqualified on grounds of defection from holding any "remunerative political post" till they got re-elected (Article 361 B). Here the Committee would endorse the sentiments of a legal expert that the very purpose of the amendment would be defeated if one were to liberally interpret the concept of "office of profit" so as to comprehend within its scope for giving exemption to a very large number of offices from disqualification under Articles 102 (1)(a) and 191(1)(a), circumventing the provisions of those Articles.

17. Also according to this expert any definition of 'office of profit' could be introduced only through an amendment of Article 366 of the Constitution, which defined the phrases and words used in various provisions of the Constitution.

18. Again according to the National Law School University, Bangalore some aspects viz. compulsion of coalition Governments both at Centre as well as in the States, various local factors/conditions which varied from State to State and private interests of legislators should be taken into account while evolving definition/generic criteria on office of profit.

19. On the issue of principles, which were to be followed in the matter of office of profit, a former Chief Justice was also of the view that the difficulty arose because of the ambiguity created by the latter part of sub-clause (a) of clause (1) of Art. 102—'other than an office declared by Parliament by law not to disqualify its holder'. The provision while empowering the Parliament to create exceptions to the disqualification prescribed in the first part, did not specify the principle to be applied in creating exceptions to the general rule. That being so, the principle governing the exercise of power by the Parliament had to be deduced on the basis of general rules of interpretation, reading the provision as a whole and bearing in mind the avowed object. Any interpretation, which rendered the provision otiose by the second part neutralizing the first part, had to be rejected. An interpretation, which empowered the Parliament to destroy the disqualification relating to a basic feature, had to be rejected. If the amending power of the Parliament under Art. 368 could not destroy a basic feature of the Constitution; it could not be so done by a law enacted under Art. 102(1) (a), he opined.

- (iii) the legislators can make an informed choice before accepting any office under the Government;
- (iv) chances of litigation would be reduced as (a) constitutional validity of the definition would not be in doubt as this would be largely based on the criteria evolved by the courts themselves through their various judgments, (b) arbitrariness would be vastly reduced in matter of appointments;
- (v) with overall discipline in the system number of such appointments would fall substantially which is a matter of concern presently;
- (vi) transparency through enactment of law would improve the public image of the legislators which is very important for representatives of the public.

(ii) Generic Criteria and definition

11. The Committee feel that the issues relating to uniform principles/common criteria and evolving a definition of 'office of profit' and their application to various States are inter-linked and are not mutually exclusive. It is also felt that before defining the term 'office of profit' it is essential to evolve the principles and generic criteria. The definition would emerge from these criteria. While discussing this aspect the focus has to be on the following issues:—

(i) to identify the generic criteria/principles which could determine what would constitute an office of profit and what would not, leading to its definition ; (ii) how this definition could be used uniformly; (iii) what criteria be employed for granting exemptions from disqualification; (iv) exploring the possibility of having one to one correspondence between the offices/posts at the Centre and in different States for exemptions.

12. There is general agreement over the fact that the office of profit disqualification sought to maintain two constitutional principles (i) the separation of power between the legislature and the executive and (ii) the prevention of the possibility of a conflict between duty and interest of an individual who had to perform the role of the legislator and a member of the executive.

13. The essential feature of an 'office' is that it must exist independent of its holder. An important expression that occurs in article 102(1)(a) of the Constitution is 'under the Government'. The expression 'office of profit' occurs in various Articles viz. 18(3), 18(4), 58(2), 66(4), 102(1), 158(2) and 191(1). The expression has been used in different contexts in different Articles except for 102(1) and 191(1) and nowhere it has been defined. The courts have enunciated [(in the Shivamurthy Swamy Inamdar etc. Vs. Agadi Sanganna Andapa (1971) 3 SCC 870] certain broad criteria for determining whether a particular office could be termed as an office of profit under the Government for the purposes of Article 102(1)(a) and Article 191(1)(a) of the Constitution. These are as follows:—

- (a) Whether Government made the appointment;
- (b) Whether Government had a right to remove or dismiss the holder of office;
- (c) Whether the Government paid the remuneration;
- (d) What were the functions of the holder of office; and
- (e) Did the Government exercise any control over the performance of those functions.



20. The Committee agree with this view in principle.

21. Further some of the experts had opined that the explanation to Clause 1 of Art. 102, which exempted the Ministers from disqualification was relevant as an aid to construction of any law thereunder. The National Law School University, Bangalore were of the view that no definition was necessary and Parliament might by law include only such offices, which were ministerial in character but not in nomenclature.

22. This would perhaps mean that the categories of offices which would not be deemed to be offices of profit should be identified on the lines of existing provision of the Constitution.

23. A legal expert stated that the power of exemption must have followed a rigorous procedure to ensure that it was not misused. Any appointment must be for the public interest, and under conditions of transparency and accountability. He proposed that:—

- (a) the system be operated so that appointments were made only in the public interest;
- (b) the appointments be approved by the Cabinet;
- (c) A public statement needed to be made that such an appointment was in the public interest with an explanation (a) giving the reasons for such an appointment; and (b) full disclosure of the perks and emoluments;
- (d) The public statement must be simultaneously placed before the House concerned;
- (e) The appointment was to be for the term of that Parliament;
- (f) All efforts should be made to make the appointments on a voluntary and *pro bono* basis.

24. Further, the Committee noted that there was a Joint Committee on Offices of Profit (JCOP) in Parliament, which was constituted at the beginning of each Lok Sabha. That Committee examined the composition and character of Government bodies from office of profit angle and made suitable recommendations in the matter. The JCOP generally applied two tests in deciding whether a member of a body ought to have been exempted from disqualification i.e. (a) the emoluments and allowances attached to the members; and (b) the nature and function of the body. If a member of a body got only compensatory allowance and the body exercised merely an advisory function, then no disqualification would arise. But if the allowances given were more than compensatory allowance and/or the body exercised executive and financial powers and was in a position to wield influence and patronage, then its membership would not be exempted from disqualification. Based on the recommendations of the JCOP, exemptions had been made by adding certain offices to the list from time to time. There was, however, no such mechanism in place in any State legislatures, the Committee noted.

25. The Joint Committee on Offices of Profit (JCOP) in their report (9th Report 7th LS) were of the view that if the real spirit of Articles 102 and 191 of the Constitution was to be maintained sacrosanct, the exemption enabling provision should have been kept within its bounds and restricted in its scope both in regard to the areas of operation and legislative competence. Otherwise, the object of the imposition of the disqualifications as envisaged would become frustrated. In the wake of recommendations of the JCOP an exercise of inviting comments/views of the States on evolving common principles/criteria for uniform application was undertaken by the Ministry of Law and Justice. However, the Ministry of Law and Justice apparently did not pursue the matter due to lack of consensus among the States/UTs.

26. As was found in the past, the current exercise undertaken by this Committee also received almost similar reactions from the various State Governments. While some of the States were amenable to the idea of evolving a common criteria based on certain principles which could be made applicable to all the States, *albeit* by bringing out constitutional amendment, a large number of States were against any such move citing diverse needs based on cultural/socio-economic and political ethos of each State/region. Here the compulsion of coalition politics, which was very common at the prevailing time, was also a determining factor. Yet some of the States were in favour of having general guidelines, which might be followed by them instead of fixed definition/common criteria for identifying offices of profit without any legal binding. Mostly it was felt that there should be some guiding principles, which could be suggestive in nature for declaring a particular post, or office to be an office of profit but it should be left open ultimately to the legislature to decide on the matter. One of the views given by Ministry of Law and Justice (Legislative Department), which found many takers, was that if at all the common criteria had to be evolved, that could be enforced only through constitutional amendment. Here the State Government of Nagaland had sounded a discordant note. According to them such uniform principles could be evolved by Parliament only for members of Parliament and not for the members of the State Legislature as Parliament did not have the legislative competency in view of provisions in article 191(1) of the Constitution. Subsequently, however, on a specific query whether the Parliament had the competency under Article 368 to amend the article 191(1), the State Government of Nagaland stated that it was possible but having a uniform definition would be difficult.

27. Again the Ministry of Law and Justice (Legislative Department) were of the opinion that evolving common criteria would lead to several disputes because the determination of the fact as to whether the holder of any particular office other than the office of profit would fall within the guidelines or principles; would itself be a point of dispute or form part of that dispute. Moreover, there would be an increase in the number of references under Article 103 of the Constitution virtually leading to an enormous rise in the election petitions to be decided by the President and Election Commission.

28. On the question of generic criteria it was apparent that only JCOP were employing parameters other than the pecuniary aspect *viz.* functions, powers, patronage attached with a particular post/office to determine whether or not it was an office of profit. The text of the definition provided by the Ministry of Law and Justice, Government of India for consideration by the Committee which read as under was based on these parameters:—

*"In Article 102 of the Constitution, in clause (1) for the Explanation, the following Explanations shall be substituted, namely:—*

*Explanation 1. For the purpose of this clause—*

*(1) "Office of profit" means—*

*Any office—*

*(i) under the control of the Government of India, or the Government of a State, as the case may be, whether the salary or remuneration for such office is paid out of the public revenue of the Government of India or of the Government of State; or*

- (ii) under a body, which is wholly or partially owned by the Government of India or the Government of any State and the salary or remuneration is paid by such body; and
- (A) the holder of office under sub-clause (i) is capable of exercising legislative, judicial or quasi-judicial power;
- (B) the holder of office under sub-clause (ii) is capable of exercising powers by means of disbursement of funds, allotment of lands, issuing of licenses and permits or making of public appointments or granting of such other favours of substantial nature.

(II) A person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such a State."

*Explanation II. For the purposes of this clause the expression—*

- (a) "office" means the permanent substantive position which exists independently of the holder of the office;
- (b) "remuneration" means any pecuniary gain commensurate with the status and responsibilities attached to the office;
- (c) "salary" means salary or pay scale attached to the office whether or not the holder of such an office draws such salary.

*After Clause (1), the following clause shall be inserted, namely :—*

- "(1A) Notwithstanding anything contained in sub-clause (a) of clause (1) if a member of either House of Parliament has become subject to any disqualification mentioned in that sub clause he shall not be so disqualified unless he has not resigned from such office which is the subject to disqualification."

29. The Committee note that the above definition does not specifically address the issue of profit arising out of pecuniary gain. Rather it dwells on the functions, power, patronage etc. The aspect of pecuniary gain, perhaps, also needs to be addressed while evolving a definition.

30. On the other hand, some of the top legal experts, the National Law School University, Bangalore and majority of the State Governments were veering to the idea that the remuneration/pecuniary aspect should be the major criterion in determining an office of profit as it was the only parameter which could be quantified. All other parameters were more or less subjective in nature. In this regard the Government of Nagaland were of the view that there was no office in the executive realms, which did not involve exercise of power or influence. Again according to a legal expert, perception of conflict arose not because of the nature of the powers one exercised. This perception arose because one was earning an income, a profit or gain from the Government; it did not matter what powers one exercised. An eminent lawyer went to the extent of recommending insertion of a specific provision in the Constitution to the effect that a person should not be disqualified for being chosen as, or for being a Member of either House of Parliament or of a State Legislature, only because that person held an office under the Government of India or the Government of any State, whether it be an office of profit or not, so long as that

person did not in fact receive or enjoy any benefit, whatsoever, monetary or otherwise, in connection with the holding of that office. Further he stated that it should also be clarified in a sub-clause inserted in article 103 (and a corresponding provision in Article 192) that where a person held any office (whether an office of profit or otherwise) under the Government of India or the Government of any State, and a question arose as to whether that person had or had not received, or had or had not enjoyed a benefit (monetary or otherwise) in connection with the holding of that office, the burden of proving that he or she had not received or enjoyed any benefit with reference to that office should be on the person who held that office. This should be in addition to the existing prevention of disqualification law as enacted and as amended.

31. On the issue of onus of burden of proof, the Committee feel that the matter perhaps comes under the realm of laws of evidence and/or laws of jurisprudence and accordingly should be left to the Government/Courts to decide. In any case it does not make any material difference to the subject matter being discussed and considered by the Committee.

32. A contrary view has, however, been held on the issue of remuneration by the Administrative Reforms Commission. It has held that holding of positions, in the advisory capacity, carrying certain remunerations and other perks did not make them executive offices. According to the Commission, often the crude criterion applied was whether or not the office carried remuneration. In the process, the real distinction of whether executive authority was exercised in terms of decision-making or direct involvement in deployment of public funds was often lost sight of. The Supreme Court's clarification about the appointment and removal being in the hands of the executive branch of Government did not help either, because many appointments made might be in advisory capacities. According to the report, legislators who were not Ministers often did have significant expertise from their own personal or professional background. In addition, their experience in public service gave them unique insight and understanding of public policy. Such expertise and insights would be valuable input to executive in policy making. Therefore, the Committees and Commissions of a purely advisory nature could be constituted with legislators. The Constitution recognized that holding of such offices in expert and advisory bodies did not violate separation of powers and left it to Parliament and State Legislatures to exempt such non-executive offices from disqualification. But appointment in statutory or non-statutory authorities with direct decision making powers and day to day control of field personnel, or positions on the governing boards of public sector undertakings or as Government nominees in private enterprises clearly carried direct executive responsibilities and involved decision making powers. Such appointment would undoubtedly violate separation of powers. Giving discretionary powers to legislators to sanction or approve public works was clearly an exercise of executive function, whether or not the Government appointed the legislators to a designated office. It was necessary to sharply distinguish executive functions and exercise of executive authority while defining office of profit, irrespective of whether such a role or office carried remuneration and perks. Accordingly, the Commission has made the recommendations for amendment in the Law to define office of profit based on the following principles:

- (i) All offices in purely advisory bodies where the experience, insights and expertise of a legislator would be inputs in governmental policy, should not be treated as offices of profit, irrespective of the remuneration and perks associated with such an office.

- (ii) All offices involving executive decision making and control of public funds, including positions on the governing boards of public undertakings and statutory and non-statutory authorities directly deciding policy or managing institutions or authorizing or approving expenditure should be treated as offices of profit, and no legislator should hold such offices.
- (iii) If a serving Minister, by virtue of office, was a member or head of certain organizations like the Planning Commission, where close coordination and integration between the Council of Ministers and the organization or authority or committee was vital for the day to day functioning of government, it should not be treated as office of profit.

33. The Committee note that the Administrative Reforms Commission do not recommend a blanket exemption for the Ministers to hold any office of profit unlike the existing provision. It says that an office shall not be treated as an office of profit only in cases where a Minister, by virtue of his being a Minister is a member or head of certain organization which is vital for day to day functioning of the Government. This is a new concept in as much as it seeks to curb the hitherto unrestricted access to offices of profit enjoyed by the Ministers, ostensibly to cater to the Westminster model in which executive (Council of Ministers) is drawn from the legislature. However, the Committee feel that incorporating it in the definition, disturbing the status quo, would create serious imbalance in the overall scheme of things as it stands today.

34. The Bhargava Committee appointed in 1955 had also echoed almost the same sentiments. As per Bhargava Committee (report presented in Nov. 1955), Members of Parliament should be encouraged to serve on such Committees, which were of an advisory character and represent the local or popular point of view, in a manner, which would effectively influence the official point of view. Members of Parliament by virtue of their membership were in a position to say and represent certain matters with some authority and confidence, and their views were likely to go a long way in influencing the view point of officials. But at the same time, it felt that consistent with the above view expressed, Members of Parliament should not be permitted to serve on committees, commissions etc. which jeopardized their independence or which would place them in a position of power or influence or in a position where they received some patronage from Government or were themselves in a position to distribute patronage.

35. On the issue of identifying an office of profit one of the suggestions given by a Senior Advocate was to classify the agencies and bodies into the following four categories keeping in view the nature of functions and activities being performed by them:—

- (i) Directly under the Government;
- (ii) Statutory authorities or Corporations in which Government have the power either to appoint or remove or both;
- (iii) Public Sector Undertakings owned wholly or partly by the Government where the Government have the power to appoint or remove;
- (iv) 'Other bodies' significantly funded by the Government where the Government have pervasive control.

36. So far as the first three of the above categories of offices are concerned, the import of the suggestion was that legislators should not hold these offices. As regards the fourth category of bodies, exemption from disqualification etc. should be made on the basis of recommendations of a designated Committee following due procedure.

37. For the purpose of office of profit, yet another two categories of offices of different genre had been identified by an eminent lawyer which are as follows:—

(i) Offices in the judiciary; and

(ii) Legislators of some other legislative body or Panchayat.

38. On the question of definition of office of profit, a new concept was introduced by State Government of Nagaland, which envisaged rewording of Article 102 on the pattern of Article 361B which dealt with 'remunerative political post'.

39. The State Government of Nagaland were of the view that the proposed definition given by the Ministry of Law and Justice (Legislative Department) did not define the 'Office of Profit' comprehensively. According to them, the definition of 'Office of Profit' in the proposed Article was same as the definition of 'remunerative political post' provided in Article 361B.

40. The Committee feel that although the idea propounded by Government of Nagaland seems to be bit interesting, there does not appear to be overwhelming reasons for making or even perceiving that Article 102(1)(a) or 191(1)(a) are almost analogous to Article 361B, which otherwise, embody entirely two different concepts, philosophy and ideals. The canvas for 'office of profit' is much larger than the 'remunerative political post', it is felt.

41. After analyzing the issue threadbare, the Committee feel that any definition of office of profit has to be the sum total of every conceivable ideas/opinions including court judgments reduced in terms of parameters/criteria such as salary, remuneration, functions, patronage, powers including that of disbursement of funds, issue of licenses etc. as it is not known as to which element in terms of weightage would precisely render an office into an office of profit in a given circumstance under legal scrutiny. At the same time the Committee can not be oblivious of the observations made by the Ministry of Law and Justice (Legislative Department) according to which any comprehensive definition of the term "office of profit" which cast the net so wide that all our citizens with specialties and know-how offering some voluntary services in para-official, statutory or like projects run or directed by Government or controlled by the State are inhibited from entering elected organs of public administration may be detrimental to the democracy itself. Accordingly, the Committee strongly feel that while defining an office of profit, it is also essential to identify the generic criteria of the offices/posts which would not constitute offices of profit or in other words which would not be deemed as offices of profit. And this aspect has to be the part of the definition itself. Accordingly, the Committee have identified the following three categories of offices which should not be deemed to be offices of profit:—

(1) Minister for the Union or for States;

(2) Office in Parliament or State Legislatures;

(3) Advisory offices in Union or States.

42. The rationale for identifying the above three categories is dealt with in the succeeding paragraphs.

*(1) Minister for the Union or for States*

43. This is as per existing provision of the Constitution *i.e.* to account for the Westminster model in which the executive (Council of Ministers) is drawn from the legislature.

*(2) Office in Parliament or State Legislatures and Advisory offices in Union or States*

44. These generic criteria have been identified to account for the very spirit and soul (sanctum sanctorum) of the provisions of Article 102(1) (a) which, it is felt, need to be bracketed under a separate category, as in case of item (1) under paragraph 41 above, through positive assertions of the lofty ideals, philosophy on which the article is based in so far as evolving the generic criteria for keeping outside the purview of office of profit is concerned. This would also impart clarity and teeth to the definition of the office of profit sought to be inserted in the article.

45. Many experts and National Law School of India University, Bangalore are of the opinion that the explanation to clause 1 of Article 102 which exempts the Ministers from disqualification is relevant as an aid to construction of any law made thereunder and Parliament may by law include such offices which are ministerial in character but not in nomenclature.

46. Also there appears to be a clear consensus, as brought out in the reports of Joint Committee on Office of Profit (JCOP), Administrative Reforms Commission, among experts and cognoscenti that in a parliamentary democracy services of the representatives of the people having proven expertise, skill, vision, perspicacity etc. in various spheres of public importance should be utilized in the nation building process, policy formulation and governance, besides law making activities, by associating them in various government bodies, committees etc. in advisory and honorary capacity utilizing their core competence.

47. Again for vibrant and smooth functioning of parliamentary democracy certain posts/offices directly connected with the Parliament/State Legislatures such as office of Leader of Opposition in Parliament, office of Leader and Deputy Leader of Party and recognized Parties/groups in Parliament, the Chief Whips, Deputy Chief Whips or Whips in Parliament/State Legislature etc. are needed to be kept outside the purview of the office of profit. From perusal of 1959 Act as amended till date it can be seen that these categories of offices are already included in it. Given the lofty ideals behind the provisions of Article 102 (1)(a), these exemptions perfectly fit into the scheme of things.

48. Other exemptions suggested in the Act, although may fall under some generic nature, do not seem to fit into 'not be deemed to hold an office of profit' category going by above yardsticks and may be dealt under office declared by Parliament by law not to disqualify its holder'.

49. In view of the above, the Committee suggest the definition of office of profit as follows:-

*"Office of profit" means any office—*

- (i) under the control of the Government of India, or the Government of a State, as the case may be, whether or not the salary or remuneration for such office is paid out of the public revenue of the Government of India or of the Government of State; or*

- (ii) under a body, which is wholly or partially owned by the Government of India or the Government of any State and the salary or remuneration is paid by such body; and
- (A) the holder of which is capable of exercising executive powers delegated by the Government including disbursement of funds, allotment of lands, issuing of licenses and permits or making of public appointments or granting of such other favours of substantial nature; or legislative, judicial or quasi-judicial functions; and/or
- (B) the holder under (i) or (ii) is entitled to draw salary or remuneration irrespective of whether he actually receives it.

A person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reasons only that—

- (i) he is a Minister for the Union or for such a State;
- (ii) he is holding an office in Parliament or such a State Legislature;
- (iii) he is holding an advisory office for the Union or for such a State.

#### Explanation

- (a) "offices in Parliament and State Legislature" means the offices which are directly connected with the discharge of legislative functions in Parliament or in a State Legislature e.g. office of Leader of Opposition in Parliament, office of Leader and Deputy Leader of Party and recognized Parties/groups in Parliament, the Chief Whips, Deputy Chief Whips or Whips in Parliament/State Legislature etc.;
- (b) "salary" means salary or pay scale attached to the office whether or not the holder of such an office draws such salary;
- (c) "remuneration" means any pecuniary gain commensurate with the status and responsibilities attached to the office, but shall not include the expenditure incurred on staff and infrastructure for running office;
- (d) "compensatory allowance" means 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 [Salaries and Allowances and Pensions of Members of Parliament Act, 1954 (30 of 1954)] any conveyance allowance, house rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office;
- (e) "Advisory office" means any office (by whatever name called) which is associated with purely giving counsel or recommendation on any particular subject/policy, in respect of any matter of public importance/interest and no salary or remuneration except for compensatory allowance is attached with it.

50. The general principle that emerges from the above definition is that virtually all offices under Government are offices of profit until stated otherwise. The Committee feel that this would amply clarify the concept of office of profit without much ambiguity.



### *Exceptions from disqualification*

51. In regard to creating exceptions from disqualification declared by law which is quite distinct from exceptions made in the definition under the 'not to be deemed as office of profit' category, the Committee feel that the pecuniary aspect could be one of the criteria. In fact this criteria has been the mainstay of the Union and most of the State Acts.

#### (iii) Opportunity for Resignation

52. As regards incorporation of an enabling provision in the Constitution for an elected member of Parliament to exercise an option to resign from an office in the event of the office he was holding being determined as an "office of profit" under the Government without losing his membership of the House, the majority of the State Governments were in favour of such a provision subject to modification in the definition incorporating such a clause proposed by the Ministry of Law and Justice (Legislative Department), Government of India which read as under:—

*"(1)(A) Notwithstanding anything contained in sub-clause (a) of clause (1) if a member of either House of Parliament has become subject to any disqualification mentioned in that sub-clause he shall not be so disqualified unless he has not resigned from such office which is the subject to disqualification."*

53. It has been the opinion of many of the State Governments that the manner in which such a clause has been drafted, it has the effect of giving unrestricted discretion to the legislator to continue in office notwithstanding occurrence of disqualification if he did not resign.

54. It was felt that the issue of resignation clause needed to be dealt with in the light of opinion expressed by a few experts and National Law School, Bangalore that there should not be any retrospective exemption from disqualification from certain offices of profit by legislation. For having proper appreciation and correct perspective of the matter, the views expressed by one of these experts in this regard (on resignation) could be summoned here. The thrust of his argument was that it made perfect sense to have such a clause, as after having done all the hard work in getting elected to Parliament or State Legislature the members should not find themselves on the wrong side of the law simply on account of holding some office/post which otherwise were perfectly alright until they got elected but subsequently turned out to be office of profit under the intense glare of legal scrutiny rendering them disqualified from being chosen as or being a member of the legislature. And they could not do anything about it. In this connection the Committee also wondered why only membership had to be sacrificed, especially when they had been elected by the people, and not the office/post which was the root cause of the problem.

55. The National Law School University, Bangalore, however, thought otherwise. According to them such a clause in the proposed definition would defeat the constitutional purpose of punishing holder of office of profit. Alternatively, they had given a suggestion that a 2-month moratorium might be allowed after constitution of the new House to the elected members holding office of profit to resign those offices, which would ensure avoidance of unnecessary disqualification.

56. Further, an expert has introduced a concept whereby a distinction was made between 'being chosen as' and 'for being' a member of the legislature. According to this view currently, articles 102 and 191 envisaged an absolute disqualification, i.e. all offices of profit must be given up before the election. However, this absolute disqualification was too wide and unnecessary.

According to him there was a distinction between two fundamental principles as to why the 'office of profit' concept was created. Broadly, these prohibitions applied to legislators (a) to prevent undue influence during elections; and (b) to avoid a conflict of interest after elections. For this reason, he had proposed that (i) the question of undue influence be dealt with under the applicable electoral law on the basis of which 'office of profit' holders must resign all their posts before filing their candidacy nominations for elections; and (ii) avoiding the problems posed by conflict of interest could be resolved by an elected legislator resigning his remaining offices of profit after the elections. On the basis of this distinction there might be:

(a) offices that must be given up before an election;

[such persons (civil servant under Articles 310 and 311 and members of Judiciary), must resign their office before becoming candidate in an election. This was in order to ensure that (1) undue advantage in the electoral process is avoided; and (2) conflict of interest was eliminated in so far as process of election was concerned] and

(b) offices (Article 12 institutions or bodies and legislators or members of some other legislative body or Panchayat) that must be given up after an election but before taking oath as a member of the legislature.

57. For this purpose Articles 102 and 191 would require to be amended to categorize disqualifications into those for 'being chosen as' and for 'being' a Member of the Legislature. The question of a uniform approach to the States was resolved if amendments were made to corresponding Articles in the Constitution, for both the Centre and the States. Statutorily this would mean that Sections 9A and 10 of the Representation of People Act, 1951 (which provides an absolute disqualification for persons holding Government contracts or an officer of a Government company), would have to be repealed. However, the parliamentary scrutiny was necessary which could be achieved in the following two ways:

(i) At the beginning of every Parliament, a full declaration must be made by all MPs/MLAs. The list of offices held by MPs/MLAs could then be scrutinized by the Joint Parliamentary Committee on the basis of the criteria mentioned above, after which it could determine whether Parliament should validate those offices;

(ii) Thereafter, if the Government made any appointment of a legislator to an office, it must be referred to the Joint Parliamentary Committee. The findings of the Committee, although recommendatory, must be taken into account in the final determination by the Election Commission if a question arose under Article 103.

58. The Committee, however, are of the view that they have been mandated to suggest a comprehensive definition of the office of profit in the context of settled interpretation of the expression in Article 102 of the Constitution. They have to take the constitutional scheme as it was. They are not authorized to interpret how Article 103 should be changed. They can not even make distinctions between pre-election disqualification and post-election disqualification because Article 102 was committed to that. The same disqualifications apply and that was the settled aspect of the matter. Any deviation on this count has to be through constitutional amendment only.

59. Coming to Article 103 the Committee note that with reference to a query whether there could be any authority other than those provided under the existing law for deciding

whether a particular office was an office of profit or not the overwhelming view among the experts and the States was that the existing scheme in this respect should not be tampered with.

60. The Committee feel that the objective behind the proposed resignation clause may have some merit. However, with the evolution of the definition of office of profit, which would clearly indicate, as to what is an office of profit and what is not deemed to be an office of profit, and also which office is exempted from disqualification under the law, clarity to a very large extent would be available before the persons intending to contest the elections. Accordingly they may make an informed choice before filing nomination papers. This clarity is presently not available. Thus, the main reason for which the resignation clause was intended to be inserted would now be addressed by the definition. On the other hand the proposed insertion of resignation clause may cause some disputes in regard to identifying the offices in the respective categories viz. the offices which are to be resigned before election and those which are to be resigned after election, even within the ambit of articles mentioned above. Moreover this move may not be consistent with the constitutional principles and may not stand judicial scrutiny. In this regard the Committee also note the apprehensions expressed in some quarters about inserting this clause as it would defeat the very purpose of provisions of disqualification on account of holding office of profit. Accordingly, the Committee feel that a resignation clause may not be necessary after having defined the office of profit.

61. Regarding appointment of a Committee for scrutiny of offices of profit, while the concept envisioned by some of the experts may be a laudable one, the proposal does not, perhaps, fit into the overall perspective of the Committee and also constitutional scheme of things *vis-a-vis* Article 103. In any case, the Committee feel that the existing JCOP are addressing the issue to a large extent.

(iv) Uniform application of the criteria and definition in Union and State Governments/ Union Territories

62. On perusal of Parliament (Prevention of Disqualification) Act, 1959 and other State Government Acts the Committee found that in granting exemption from disqualification no specific criteria had been followed except for, in few cases, remuneration. In not having any criteria, except for remuneration, it seemed that the States too had given exemptions on similar lines/pattern of exemptions given to certain posts/offices in the Central Act.

63. Now that a definition of office of profit has been worked out and a criterion for giving exemptions from disqualification has been identified, it is only logical that for having the desired results the Central and the State laws are brought on equal footing, as is the existing position. Accordingly the Committee suggest that the Article 102(1)(a) should be amended on the following lines:—

*Article 102(1)*

*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. Provided that

*the holder of such office should not draw any salary/remuneration except for compensatory allowance:*

II. Provided further that

a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reasons only that—

- (i) he is a Minister for the Union or for such a State;
- (ii) he is holding an office in Parliament or such a State Legislature;
- (iii) he is holding an advisory office for the Union or for such a State.

*Explanation :* For the purposes of this clause

(a) "Office of profit" means any office—

- (i) under the control of the Government of India, or the Government of a State, as the case may be, whether or not the salary or remuneration for such office is paid out of the public revenue of the Government of India or of the Government of State; or
  - (ii) under a body, which is wholly or partially owned by the Government of India or the Government of any State and the salary or remuneration is paid by such body; and
  - (A) the holder of which is capable of exercising executive powers delegated by the government including disbursement of funds, allotment of lands, issuing of licenses and permits or making of public appointments or granting of such other favours of substantial nature; or legislative, judicial or quasi-judicial functions; and/or
  - (B) the holder under (i) or (ii) is entitled to draw salary or remuneration irrespective of whether he actually receives it.
- (b) "offices in Parliament and State Legislature" means the offices which are directly connected with the discharge of legislative functions in Parliament or in a State Legislature e.g. office of Leader of Opposition in Parliament, office of Leader and Deputy Leader of Party and recognized Parties/groups in Parliament, the Chief Whips, Deputy Chief Whips or Whips in Parliament/State Legislature etc.
- (c) "salary" means salary or pay scale attached to the office whether or not the holder of such an office draws such salary.
- (d) "remuneration" means any pecuniary gain commensurate with the status and responsibilities attached to the office, but shall not include the expenditure incurred on staff and infrastructure for running office.
- (e) "compensatory allowance" means 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 [salaries and Allowances and Pensions of Members of Parliament Act, 1954 (30 of 1954)] any conveyance allowance, house rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office.
- (f) "Advisory office" means any office (by whatever name called) which is associated with purely giving counsel or recommendation on any particular subject/policy, in respect of any matter of public importance/interest and no salary or remuneration except for compensatory allowance is attached with it.

64. The Committee are also of the opinion that in order to maintain uniformity in the provisions of Articles 102(1)(a) and 191(1)(a), as is the position at present, Article 191 (1)(a) may also be amended on the similar lines. This would in no way take away or curtail any existing legislative rights of States, as has been apprehended in some quarters. Rather this would smoothen the implementation of the provisions of the Constitution thereby imparting clarity, certainty and uniformity to a large extent in identifying offices of profit and reducing arbitrariness in its application. Thus, the States would simultaneously retain the right to legislate for seeking exemptions from disqualification of offices keeping in view the overall national perspective as well as the local factors/compulsions, keeping the federal fabric intact. For example, Manipur Government have stated that there are more than 33 different communities of tribes and more than 7 non-tribal communities speaking different languages which need to be given representation in the Government. As a natural corollary the Committee, therefore, feel that there cannot and need not be a one to one correspondence between the offices exempted from disqualification under the Union and various State laws, in absolute terms, even while agreeing on common principles/criteria.

(v) U.K. Law and revisiting 42nd Amendment

65. The Committee note that the conundrum thrown up by the existing system had necessitated in having a serious rethinking on its efficacy in dealing with the seemingly intractable problems on the issue of office of profit. This had opened up a search for an alternative method which was in the form of examining the feasibility and exploring the possibility of adoption of system of law relating to prevention of disqualification of Members of Parliament as was existing in the United Kingdom and considered by the Constitution (Forty-Second Amendment) Act, 1976. It was felt that introduction of negative list on the pattern of U.K. law could obviate the need for having a definition of 'office of profit' and evolving of uniform criteria.

66. It was observed that The House of Commons (Disqualification) Act, 1975 disqualifies a large number of public office holders. It was the single most important legal measure affecting eligibility for parliamentary candidature. It laid down six classes of office holders who were disqualified which were as under:—

- (1) Holders of certain judicial offices including High Court and Court of Appeal judges (Law Lords are disqualified already by virtue of being members of the House of Lords);
- (2) Civil servants, whether established or not, and whether full-time or part-time;
- (3) Members of the regular armed forces;
- (4) Full-time police officers;
- (5) Members of the Legislature of any country outside the Commonwealth; and
- (6) Holder of any of the offices listed in Schedules of the Act.

67. The Act also limited the number of Ministers who could sit in the House of Commons at a time. The Act enabled the government to add or vary the list from time to time by Parliamentary resolution and an order in Council. The judicial Committee of the Privy Council had jurisdiction to decide matters in relation to jurisdiction under 1975 Act provided that an election petition was not pending or that the Commons had not made an order directing that the disqualification should be disregarded.

68. Importantly, there appeared to be no criteria in the schedule for what exactly constituted an office of profit under the Crown.

69. One clear merit of the approach followed in the United Kingdom was that there was no ambiguity surrounding whether or not the holding of a particular office would result in disqualification. If an office is listed in the schedule then it would result in a disqualification, and if it is not listed then it would not.

70. There are certain basic differences between the Indian Act [Parliament (Prevention of Disqualification Act, 1959)] and the House of Commons Disqualification Act. These were (i) The House of Commons Act did not adopt the concept of compensatory allowance in the context of office of profit, whereas this allowance was a major factor in the determination of an office of profit in the Indian law. (ii) The House of Commons Act specified the disqualifying offices fairly exhaustively and declared that no other office or place of profit under the Crown should disqualify the holder for the membership of the House. The Indian law specified the offices, which disqualify as well as do not disqualify. It did not, however, contain any definitive declaration in regard to non-disqualifying offices other than those specified in the Schedule. (iii) Further, under the Indian law any office under the Government, which fetched remuneration higher than compensatory allowance, was an office of profit except the offices exempted under the Constitution. (iv) the concept of disqualification on the ground of office of profit did not seem to apply to the membership of the House of Lords, which was a House of hereditary peerage. The Indian law applied to both Houses of Indian Parliament and Article 191(1) covered the State Legislatures. The State Legislatures had also enacted laws in this regard. (v) The Constitution of India exempted all Ministers of the Union Government as well as of the States from disqualification on account of holding an office of profit. The House of Commons law put a restriction on the number of ministers who can sit and vote in the House.

71. There was, however, one similarity. The term "office of profit" had not been clearly defined either in the House of Commons Act or the Indian Act.

72. Sections 19 and 32 of the Constitution (Forty-Second Amendment) Act, 1976 aimed to reverse the basis of disqualification by providing that only those offices which were specified by law made by Parliament would disqualify the holder on the lines of the United Kingdom law, namely the House of Commons Disqualification Act, 1975.

73. The above amendment in 1976 was brought with a view that there should be an exhaustive list of offices by a Parliamentary legislation which disqualify its holder being chosen, as or for being a member of either House of Parliament or State Legislature. The power to enact law to declare offices of profit, which would attract disqualification of its holder for being chosen as or being a member of a State Legislature, was also vested in the Parliament. However, the sections 19 and 32 of the said constitutional amendment were not brought into force and the same were omitted *vide* section 49 of the Constitution (Forty-Fourth Amendment) Act, 1978. It was felt in regard to the amendment made by the Constitution (42nd Amendment), Act 1976 that it would jeopardize the independence of Members of Legislatures and would enable the Government of the day to 'pack' the legislature with persons who would hold offices of profit for continuance in which they would be dependent upon Government.

While many of the States were in favour of adoption of system of law relating to prevention of disqualification of members of Parliament as existing in the United Kingdom and reintroduction of disqualification as envisaged in Constitution (Forty-Second Amendment) Act, 1976 as it (negative list) provided certainty and clarity regarding the offices/posts holding of which would attract disqualification, some of the State Governments and prominent experts had advised against the proposal. It is according to them United Kingdom did not have a written constitution. There, the Monarch was supreme. It even exercised judicial power in England. There Courts did not have power to strike down laws of Parliament. They could only declare that these laws would not be valid until Parliament otherwise decided. Whereas in India the Constitution was Supreme. However, there were stark differences between the ground realities in both the countries.

The Committee finds that one clear merit of the approach followed in the United Kingdom is that there is no ambiguity surrounding whether or not the holding of a particular office would result in disqualification. If an office is listed in the schedule then it would result in a disqualification, and if it is not listed then it would not.

Notwithstanding the advantages of having such a negative list as exists in U.K. and as provided in Constitution 42nd Amendment Act, 1976 in so far as they give clarity and certainty in identifying an office of profit which should not be held by a legislator, the Committee feels that this may not be suitable for the Indian system as here all the laws made by Parliament are subject to judicial review whereas in U.K. the Parliament is supreme which exercises judicial powers. In Indian system, there will be a plethora of litigations regarding the left over offices/posts, which have not been included in the negative list and which will arise are available for occupancy by the legislators on which nevertheless the shadow of office of profit will always loom large as these would not be protected under any law. Further, any office under the Government of India, which fetches remuneration higher than honorarium, is an office of profit except the offices exempted under the law and the concept of disqualification on the ground of office of profit does not seem to apply to membership of the House of Lords, which is a House of hereditary peerage.

The Committee finds that in fact in the U.K. law the actual use of the phrase 'office of profit' is not used while placing various offices/posts in the negative list and there is no prohibition on holding any office outside this list. Whereas in India, Article 102 (1)(a) specifically uses the phrase 'office of profit'. The changes as proposed in the 42nd Amendment Act will also be inadequate in providing the real solution just because the offices/posts outside the negative list will still not be safe as these would be subject to the vagaries of 'office of profit' which will be determined and decided by the court of law on the circumstance and facts of each case.

In this regard, the Committee also notes that the reason given by the Ministry of Law and Justice (Legislative Department) for dropping the 42nd Amendment Act, 1976 through the Constitution (Forty-Second Amendment) Act, 1978 in the context of office of profit was that it would jeopardize the independence of Members of Legislatures and would enable the Government of the day to pack the legislature with persons who would hold office of profit for continuance in office as they would be dependent upon Government.

79. Most importantly, the Committee feel that the 42nd Constitution Amendment Act sought to vest all the powers in the hands of Parliament for declaring office of profit for disqualification, both at the Centre and the States. This, according to many States is not desirable. Here, the Committee note the observation made by the Council for Political Studies, Kolkata according to which "a fully sovereign Parliament does not go with the spirit of the Constitution—the spirit that has been reinforced by the Courts' judgment on the unamendability of the basic structure."

80. The Committee, therefore, do not feel the need for adoption of the U.K. law or revisiting the 42nd constitutional amendment in the matter. This is more so as a solution has been worked out under the existing system, *albeit*, sprucing it up.



EXTRACTS OF THE MINUTES OF THE FORTY NINTH SITTING OF  
THE JOINT COMMITTEE ON OFFICES OF PROFIT (SIXTEENTH LOK SABHA)  
HELD ON 31 JANUARY, 2018

The Committee met on Wednesday, 31 January, 2018 from 1500 hrs to 1600 hrs. in Committee Room 'C', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Kalraj Mishra

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Chairperson

MEMBERS

LOK SABHA

2. Smt. Meenakshi Lekhi
3. Shri Bhagwant Maan
4. Shri M.K. Raghavan
5. Shri Janardan Mishra

RAJYA SABHA

6. Shri Mahesh Poddar

SECRETARIAT

1. Dr. Preeti Srivastava - Joint Secretary
2. Smt. Rita Jaikhani - Director
3. Smt. Maya Lingi - Additional Director

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

3. xx xx xx xx

4.           XX                         XX                         XX                         XX

5.       XX                          XX                          XX                          XX

6 Thereafter, the Committee deliberated upon the issue of Reports on the comprehensive review of the Schedule to Parliament (Prevention of Disqualification) Act, 1959 undertaken during the 16<sup>th</sup> Lok Sabha. It was noted that Reports on 8 Ministries/Departments have already been presented and some more reports are under preparation. The Chairperson emphasized upon the need for suitable amendments in the Act, simplification of its provisions and need for a proper definition of the Office of Profit. In this connection he also emphasized upon the importance of recommendation given in the previous Reports of the Joint Committee to examine the constitutional and legal position relating to office of profit (14<sup>th</sup> Lok Sabha and that in the 8<sup>th</sup> Report (15<sup>th</sup> Lok Sabha) pertaining to Proposal for amendment of Parliament (Prevention of Disqualification) Act, 1959 on which action is yet to be taken by Ministry of Law & Justice. The Committee unanimously agreed that instead of separate Reports giving recommendation in respect of the bodies under individual Ministries/Departments, a composite and comprehensive Report containing important recommendations should be presented which may lead to suitable/required amendments in the Act.

The Committee then adjourned.

xx matter not related to this Report.

**EXTRACTS OF THE MINUTES OF THE FIFTY SECOND SITTING OF THE JOINT  
COMMITTEE ON OFFICES OF PROFIT (SIXTEENTH LOK SABHA) HELD  
ON 07<sup>TH</sup> JUNE, 2018**

The Committee met on Thursday, 07<sup>th</sup> June, 2018 from 1500 hrs. to 1545 hrs. in Committee Room No. '03', Parliament House Annexe Extension Building, New Delhi.

**PRESENT**

Shri Kalraj Mishra - Chairperson

**MEMBERS**

**LOK SABHA**

2. Smt. Meenakashi Lekhi
3. Shri M.K. Raghavan
4. Shri Kunwar Pushpendra Singh Chandel
5. Shri Janardan Mishra

**RAJYA SABHA**

6. Shri Manas Ranjan Bhunia

**SECRETARIAT**

1. Dr. Preeti Srivastava - Joint Secretary
2. Smt. Rita Jaikhanani - Director
3. Smt. Maya Lingi - Additional Director

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee and apprised them about the agenda of the sitting which are as follow:

(i) xx xx xx xx xx xx xx

(ii) *Consideration of the Draft consolidated Report " A Comprehensive Review of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959 - Way Forward".*

3. xx xx xx xx xx xx xx

4. The Committee then considered the second agenda draft Consolidated Report on "A Comprehensive Review of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959 - Way Forward", prepared in pursuance of the Committee's decision during the sitting of the Committee held on 31.1.2018. The draft Report was discussed in detail. The Committee observed that it is an important draft as it is not only a conclusive Report depicting comprehensive review exercise undertaken by the present Committee but it also highlights the need for a proper definition of the term 'Office of Profit' as defined in the Parliament (Prevention of Disqualification) Act, 1959, and emphasises upon the Actionable points emerging from the Reports of previous Parliamentary Committees which are still pending with the Ministry of Law and Justice. It was felt that all the Members of the Committee should go through the draft Report and offer their valuable suggestions if any, for further modifications and improvements within the next ten days i.e. by 18th June 2018. The same may be discussed in the Committee's meeting again thereafter, before finalisation of the Report for adoption.

The Committee then adjourned.

EXTRACTS OF THE MINUTES OF THE FIFTY THIRD  
SITTING OF THE JOINT COMMITTEE ON OFFICES OF  
PROFIT (SIXTEENTH LOK SABHA) HELD ON  
WEDNESDAY 25<sup>TH</sup> JULY, 2018

The Committee met on Wednesday, 25<sup>th</sup> July, 2018 from 1515 hrs. to 1545 hrs. in Committee Room 'E', Basement, Parliament House Annexe, New Delhi.

Shri Kalraj Mishra - Chairperson

MEMBERS

LOK SABHA

2. Adv. Sharad Bansode
3. Smt. Meenakashi Lekhi
4. Shri M.K. Raghavan
5. Prof. Saugata Roy
6. Smt. Supriya Sule
7. Kunwar Pushpendra Singh Chandel

RAJYA SABHA

8. Shri Mahesh Poddar

SECRETARIAT

1. Dr. Preeti Srivastava - Joint Secretary
2. Smt. Rita Jaiikhani - Director
3. Smt. Maya Lingi - Additional Director

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

3. XX XX XX XX

4. The Committee then discussed the draft Report on 'A Comprehensive Review of Schedule to Parliament (Prevention of Disqualification) Act, 1959 – Way Forward'. The Hon'ble Chairperson, while-highlighting the importance of the Report and its special features, emphasised upon the comprehensive approach adopted in examining and drafting of the Report. He once again invited comments and suggestions for improvement of the Report from the Members of the Committee present in the sitting. The Members of the Committee, however, requested that the draft Report be considered in the next sitting of the Committee. The Chairperson agreed to their request and decided that another round of discussion on the Report may be held in the next sitting of the Committee.

5. The Committee then adjourned.

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XX Matter does not pertain to this Report.

MINUTES OF THE FIFTY FOURTH SITTING OF  
THE JOINT COMMITTEE ON OFFICES OF PROFIT (SIXTEENTH LOK SABHA)  
HELD ON 07 AUGUST, 2018

The Committee met on Tuesday, 07 August, 2018 at 1500 hrs. in Committee Room No.03, Block A, Parliament House Annexe Extension, New Delhi

PRESENT

Shri Kalraj Mishra                      -                      Chairperson

MEMBERS

LOK SABHA

2. Smt. Meenakashi Lekhi
3. Shri M.K. Raghavan
4. Smt. Supriya Sule

RAJYA SABHA

5. Shri Mahesh Poddar
6. Shri Manas Ranjan Bhunia

SECRETARIAT

1. Dr. Preeti Srivastava                      -                      Joint Secretary
2. Smt. Maya Lingi                              -                      Additional Director
3. Shri Munish Kumar Rewari                      -                      Deputy Secretary

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

3. Thereafter, the Committee considered and adopted the draft Twenty Eighth Report pertaining to "A Comprehensive Review of the Parliament (Prevention of Disqualification) Act, 1959-Way Forward.

4. The Committee considered and adopted the Report with minor modification.

5. The Committee also authorized the Chairperson to finalize the Report and present the same to the Parliament in the current Monsoon Session, 2018.

The Committee then adjourned.