

JOINT COMMITTEE ON OFFICES OF PROFIT

(2014-2019)

(SIXTEENTH LOK SABHA)

EIGHTH REPORT

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

Presented to Lok Sabha on 03.08.2016

Laid in Rajya Sabha on 03.08.2016



LOK SABHA SECRETARIAT

NEW DELHI

July, 2016/Sravana, 1938(Saka)

Price : _____

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INTRODUCTION

I, the Chairperson of the Joint Committee on Offices of Profit, having been authorised by the Committee to present the Report on their behalf, present this Eighth Report of the Committee.

2. The Committee undertook the exercise of scrutiny of the Bodies under the administrative control of various Ministries/Departments of the Government of India or the State Governments, as the case may be from the angle of office of profit and update the list of bodies as reflected in the Schedule to the Parliament (Prevention of Disqualification) Act, 1959. Office Memoranda were issued to all the Union Ministries and Chief Secretaries of State Governments and Union Territories on 14.02.2015, inviting information pertaining to various Bodies falling under their respective administrative domain to facilitate their examination from the angle of "Office of Profit". In this context, the Committee decided to call the representative of the various Ministries/Departments of the Government of India and State Governments in a phased manner, to undertake their evidence for the purpose. In pursuance of this decision of the Committee, the representatives of the Ministry of Coal were called to tender their oral evidence before the Committee on 31.03.2015. The representatives of the Ministry of Law and Justice were also called to remain present in the sitting of the Committee.

3. The Committee considered and adopted this Report at their sitting held on 11 May, 2016.

4. The Committee wish to express their thanks to the Ministry of Coal and the Ministry of Law and Justice for furnishing the requisite information to them in connection with the examination of the Bodies under the administrative domain of the Ministry of Coal from the angle of 'Office of Profit'.

5. The Observations/Recommendations made by the Committee in respect of the matters considered by them are given in this Report in bold letters. The Recommendations of the Committee will, however, remain advisory in nature and as such cannot give any protection from disqualification under the law until the recommendations are given statutory effect by the Government by suitably amending the Parliament (Prevention of Disqualification) Act, 1959.

NEW DELHI

Dr. SATYAPAL SINGH
Chairperson
Joint Committee on Offices of Profit

28 July, 2016

06 Sravana, 1938 (Saka)

JOINT COMMITTEE ON OFFICES OF PROFIT
(SIXTEENTH LOK SABHA)

Dr. Satyapal Singh - **Chairperson**

MEMBERS
LOK SABHA

2. Shri T.G. Venkatesh Babu
3. Adv. Sharad Bansode
4. Smt. Meenakshi Lekhi
5. Shri Bhagwant Maan
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RAJYA SABHA

11. Shri Naresh Agrawal
12. Shri C.P. Narayanan
13. Shri Dilipbhai Pandya
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- | | | | |
|----|--------------------|---|-------------------------|
| 1. | Shri U.B.S. Negi | - | Joint Secretary |
| 2. | Shri Rita Jaikhani | - | Director |
| 3. | Smt. Maya Lingi | - | Additional Director |
| 4. | Shri T.R. Nauriyal | - | Deputy Secretary |
| 5. | Km. Vandana | - | Sr. Committee Assistant |

§ Appointed as Chairperson w.e.f. 19 July, 2016 vice Shri P.P. Chaudhary resigned from the Chairpersonship of the Committee w.e.f. 05 July, 2016

Shri P.P. Chaudhary, Chairperson of the Committee and Shri Arjun Ram Meghwal resigned from the membership of the Committee due to their appointment as Minister w.e.f. 05.07.2016.

* Shri K.C. Tyagi ceased to be the member of the Committee due to expiration of his Rajya Sabha term on 07.07.2016.

REPORT

Chapter-I

Introductory

The concept of disqualifying a holder of Office of Profit under the Government for being chosen as, and for being, a Member of the Legislature originated from the need in democratic Government to limit the control and influence of the Executive over the Legislature by means of an undue proportion of office holders being Members of the Legislature. Further holding of certain offices was considered incompatible with membership of legislatures due to physical impossibility of a person attending in two placed or heavy duties being usually attached to those offices. Exception was, however, made in the case of Ministers and other members of Government with a view to having effective coordination between the executive and the legislature.

1.2. In democracies, including the United Kingdom and U.S.A. , office holders under the Government, as a rule, are disqualified for being Members of Legislature. In India, the principal is embodied in Articles 102(1)(a) and 191 (1)(a) of the Constitution of India in regards to the Members of Parliament and State Legislatures respectively. Article 102(1)(a) of the Constitution reads as under:

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

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

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

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

1.4. The expression “office of profit” has not been defined in the Constitution or in the Representation of the People Act, 1951 or in the Parliament (Prevention of Disqualification) Act, 1959, or in any Judgment rendered either by the High Courts or Supreme Court evidently because it is not easy to frame an all embracing definition, covering all the different kinds of posts which exist under Government and those which might hereafter be created. Broadly speaking, it signified that Government must not be in a position to seduce a member by placing him in a position where he can exercise authority, where he things he somebody important, even if he gets no pecuniary remuneration. Its scope has, therefore, to be gathered from the pronouncements on the subject made by courts, election tribunals and other competent authorities on what constitutes, “office”, “profit”, “office under the Government”, and so on.

1.5. The term 'office' is not capable of being accurately defined. In the usual sense of the word an 'office' means a right to exercise a public or private employment and to take the fees and emoluments thereunto belonging. The term connotes the elements of tenure, duration, emoluments and duties. It has also been held that an office is an employment on behalf of Government in any state or public trust and not merely transient, occasional or incidental. "Profit" normally connotes any advantage, benefit or useful consequences. Generally, it is interpreted to mean monetary gain but in some cases benefits other than monetary gain may also come within its meaning. "Office of Profit" is one to which some power of patronage is attached or in which the holder is entitled to exercise the executive functions, or which carries dignity, prestige or honour to the incumbent thereof.

1.6. Shri C.C. Biswas, the then Union Minister of Law and Minority Affairs, speaking on 24th December 1953 in the debate in the Lok Sabha relating to the Prevention of Disqualification (Parliament and Part C States Legislatures) Bill, 1953 said:

"....As the disqualification mainly arises from the office being an office of profit, it is necessary to consider what profit means....Now, so far as profit is concerned, generally no doubt profit is interpreted in terms of rupees, annas, pies- it means monetary profit. But in some cases the view has been taken that office includes something more than that. Even where it is not monetary profit, but other benefits, that also may come within the meaning of

the word 'profit'. For instance, if the office is one to which some power or patronage is attached, the office is one in which the holder is entitled to exercise executive functions, an office of dignity, of honour that might be regarded also an office of profit, the idea being that Government must not be in a position to seduce a Member of Parliament by placing him in a position where he can exercise authority, where he thinks he is a somebody and either he has got some money or he is otherwise made very important. All these temptations must be removed. That being the object, the word 'profit' has been given a larger interpretation."

1.7. When a Member of a body is permitted to get some monetary benefit, the question of its quantum assumes importance and becomes a matter of serious consideration. This monetary benefit may be in the nature of a salary attached to the membership or office. When it is a salary attached to the office, it immediately and indisputably makes the office an 'office of profit', but when the monetary benefit is in the nature of an allowance or fee, it makes the question of declaring the office to be an 'office of profit' a bit difficult one.

If consideration is paid in the shape of 'sitting fee' or 'attendance fee', not being daily allowance, it becomes a 'profit' inasmuch as it does not even purport to cover any actual expenses. Such consideration or remuneration is deemed to constitute 'profit' even though, on detailed accounting, it may be found that no financial advantage has, in fact, been gained by the member in question. Travelling allowance do not act as a disqualification if one draws not more than what is required to cover the actual out-of-pocket expenses. House rent allowance and conveyance are not profits as the allowances are utilised for the purposes of paying the house rent and meeting conveyance charges; they do not give a pecuniary benefit to the person to whom they are paid. If the quantum of daily allowance is such as not to be a source of income, no disqualification shall be incurred.

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

1.9. Unless otherwise declared by Parliament by law, a person is disqualified for being chosen as, and for being, a member of either House of Parliament if he holds

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

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

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

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

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

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

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

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

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

1.17. On 18 August, 2006, a Joint Committee of 15 Members of Parliament (10 from Lok Sabha and 5 from Rajya Sabha) was constituted to examine the Constitutional and Legal position relating to Office of Profit. The Committee inter-alia made certain observations and recommended the amendment of Article 102(1)(1) of the Constitution which provided for disqualification for Members of Parliament for being chosen as, and for being, a Member of either House of Parliament on certain well delineated and defined conditions. The amendment of Article 191(1)(a) (for Members of State Legislatures) was also suggested by the Committee for amendment on the similar lines- in order to maintain uniformity in the matter. The Committee submitted its Report to the Parliament on 22 December, 2008. The Report was also forwarded to the Government of India for necessary action on the recommendations of the Committee contained in the Report.

Guiding Principles

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

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

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

- i. Whether the holder draws any remuneration, like sitting fee, honorarium , salary, etc. i.e. any remuneration other than the

„compensatory allowance“ as defined in section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.

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

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

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

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

1.21. The Joint Committee on Offices of Profit consisting of 10 Members of Lok Sabha and 5 Members of Rajya Sabha is constituted on a Government motion for the duration of the term of each Lok Sabha. The Joint Committee on Offices of Profit for the term of 16th Lok Sabha was constituted on 11 December, 2014 on the basis of the motion moved by the Government and adopted by Lok Sabha on 01.08.2014 and concurred by Rajya Sabha on 14.08.2014, After its constitution, the Committee in its first sitting held on 12 January, 2015, took note of various Committees/Bodies/Organisations mentioned in the Schedules annexed to the Parliament (Prevention of disqualification) Act, 1959 as amended from time to time., which though exempted from the angle of office of profit, ceased to exist. However,

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

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

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

be a provision for the nomination/election of Members of Parliament along with other such future schemes/plans wherein inclusion of Members of Parliament is proposed.

1.23. The process of scrutinising the Schedule of the Parliament (Prevention of Disqualification) Act, 1959 was initiated by the Committee and in this context, the Committee decided to call the representatives of the various Ministries/Departments of the Government of India, in a phased manner, to undertake their evidence for the purpose. In pursuance of the decision of the Committee, the Committee called the representatives of the Ministry of Coal on 31 March, 2015 to tender evidence before the Committee in connection with review of the Committees/Boards/Organisations etc. under the administrative domain of the Ministry. The representatives of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) were also called to remain present throughout the sitting of the Committee.

1.24 This Report contains chapter pertaining to various Bodies/offices etc. under the administrative control of the Ministry of Coal. The detailed analysis along with Observations/Recommendations of the Joint Committee are stipulated at the end of the Chapter. The Joint Committee expect the Ministry of Law and Justice to undertake an exercise to draft a Bill enumerating clearly the Bodies/offices which would disqualify Members of Parliament, Bodies/ offices for which exemption need to be granted and Bodies/offices which would not incur disqualification of Members of Parliament, in the light of the Observations/Recommendations of the Joint Committee.

Chapter II

The Ministry of Law and Justice

2.1 Initiating the process of the scrutiny of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959 the Secretary of the Ministry of Law and Justice during the sitting of the Committee, held on 31.03.2015, briefed as under:

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

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

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

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

In this regard, a number of hon. Committees were constituted. All these Committees made recommendations on the basis of which from time to time many amendments have been carried out. It is not that we are the only country where such provision exists. Even in the US, there is a provision that if anybody holds an office of profit, he shall not become a Member of the House of Representatives. So, such provision also exists in other countries. The reason is that is envisaged under the constitutional provisions by the founding fathers of the Constitution that our Members of Parliament be independent of the Government. The Government should not have any control over the Parliament and representation of the people. To ensure this, the provision has been made and it has been left to the Parliament to decide about the offices which would constitute office of profit or not.

It was not provided in the Constitution as to what would constitute office of profit, neither in the Act of 1959 nor in the Representation of People Act. Nowhere is it provided what would constitute what would be the definition of office of profit. But it has been left exclusively with the Parliament to decide and enact a law.

Further, it envisaged three things- first one, there must be an office. Second, there is a control of the Government and third, there is some pecuniary benefit. A number of judgements have been pronounced since the Act came into existence and on the basis of those judgements what emerges has been very nicely summarised by none else than Shri P.D.T. Achary, former Secretary General of Lok Sabha. He has summarised perhaps all the judgments in one paragraph as to what are the elements we should look for before we decide on any office whether it would constitute office of profit or not. If i may be permitted, i will just read that paragraph. That is a very small paragraph. This is from Chapter VI of the book „Pradice and Procedure of Parliament“ by Shri P.D.T. Achary. The relevant paragraph goes like this:

“It has also been held by the Supreme Court that all the determinative factors need not be conjointly present. The critical circumstances, not the total factors, prove decisive. A practical view, not pedantic basket of tests, should guide in arriving at a sensible conclusion.”
“The Supreme Court, in several decisions, has laid down the tests for finding out whether an office in question is an office under a Government and whether it is an office of profit.”

he has enumerated the tests as follows:

“those tests are whether the Government makes the appointment, whether the Government has the right to remove or dismiss the holder, whether the Government pays the remuneration, what are the functions of the holder, does he perform them for the Government, and does the Government exercise any control over the performance of those functions.”

These are the five questions which he has summarised on the basis of the judgements and these five questions, if answered in the affirmative constitute an office of profit. These are the five questions to be answered if you look at an office which he has summarised from the so many judgements he has covered in his book in this chapter. If the answer for these questions is a „No“, it is not an office of profit. He has very nicely summarised it in this chapter.

Why was a necessity felt to keep a provision in the Constitution? If we wade through the chapter and the background under which these provisions came into being, it was felt necessary that there are a number of statutory bodies, a number of non-statutory bodies where hon. Members of Parliament can guide the Executive and guidance given to the Executive will enable the people at large in formulating or taking any decision. It was considered necessary that in those bodies let Members of Parliament participate and guide the Executive in taking those decisions but at the same time it was appropriate to make a provision so that the Members of Parliament in no way come under the control of the Government. So, there is a balance which has to be harmonised or maintained and that has been left very eloquently with the Parliamentarians only; no authority has been envisaged under the Constitution to decide as to what constitutes and what does not constitute that. But it has been left with the Members of Parliament and it is for the Parliament to examine the offices whether those offices are useful, where the representation of the Members of Parliament in those offices are useful for guiding and providing guidance for the benefit of taking policy decisions. All this has been left to the Parliament meaning thereby that the Constitution though provides for disqualification with certain objections but a law permitting through parliamentary legislation to examine certain offices where representation is a must. This is the background and the circumstances. In this background whatever suggestions come, if they require any amendments, we are available in the Legislative Department because the subject matter of

office of profit as regards legislation is the concern of the Legislation Department. We are always available at your service.”

2.2 In this context, the Secretary of the Ministry of Law and Justice also added as under:

“.....Section 3 says that it is hereby declared that none of the following offices in so far as they relate to the office under the Government of India shall disqualify the holder from such and such. None of the following offices is plain and simple way of writing things and anybody can know the import of the provision. But when we sail through the clauses like (i), this not for the first time it is said. At the time when the bill was introduced particularly on this clause it was mentioned in the Statement of Objects and Reasons that this was the most controversial item in the entire Bill as it raised the question of desirability of appending a schedule to the bill enumerating the committees members of which would entail disqualification. The Committee have given their most careful thought to the question and have come to the conclusion that law on the subject of disqualification of Members of Parliament should be clear and unambiguous.

The Committee, therefore, decided that on the model of the British House of Commons Disqualification Act, 1957, the bill should contain a Schedule which should enumerate the Committee whose membership should disqualify, the Committee have accordingly attached a Schedule to the Bill, the Part I of which enumerates the committee’s membership of which would entail disqualification and Part II of the Committee in which the office of Chairman, Secretary or member of the Standing or the Executive Committee would entail disqualification but not the office of the member only. So, from the beginning this clause (i) was considered as a controversial item. We can, if we are given directions, try to make an attempt and come with a simplified form that clause which makes it easier to understand.”

2.3 When the Committee pointed out that this is a legislative defect, the Secretary of the Ministry of Law and Justice responded as under:

“Sir, I will not call it exactly a legislative defect because Parliament when enacted, then we have no right to say anything on this.”

Chapter-III

Ministry of Coal

Coal India Limited

3.1 Coal India Limited (CIL) as an organised state owned coal mining corporate entity came into being in November 1975 with the Government taking over private coal mines with a total of five subsidiary companies. Of these, five subsidiaries four were coal producing companies and the fifth was mine planning and consultancy company. CIL is an apex body with 7 wholly owned coal producing subsidiaries and one mine planning and consultancy company spread over 8 provincial states of India. They are as follows:

Eastern Coalfields Limited (ECL), Sanctoria, West Bengal.

Bharat Coking Coal Limited (BCCL), Dhanbad, Jharkhand.

Central Coalfields Limited (CCL), Ranchi, Jharkhand.

South Eastern Coalfields Limited (SECL), Chattisgarh.

Western Coalfields Limited (WCL), Nagpur, Maharashtra.

Northern Coalfields Limited (NCL), Singrauli, Madhya Pradesh.

Mahanadi Coalfields Limited (MCL), Sambalpur, Orissa.

Central Mine Planning and Design Institute Limited (CMPDIL), Ranchi, Jharkhand.

3.2 As per the Act, the Chairman, Directors or members of the bodies are disqualified from becoming a MP, if they are entitled for any remuneration other than the compensatory allowance. In case of scheduled entities, the Chairman even when not entitled for any remuneration is disqualified from becoming a MP.

3.3 As such the above provision is applicable in respect of

- a. CMD, Functional Directors and Official part time Directors (nominee of Government), as they are entitled for remuneration.
- b. Independent Directors, as they are paid sitting fee for attending the meetings of the Board/Committees, which is considered as „remuneration“ under the provisions of Companies Act, 2013.

Because of the above, the members of the Board of Directors of CIL are not entitled to become a MP.

3.4 There was reorganisation in 1986 whereby, Northern Coalfields Limited (NCL), Singrauli (Madhya Pradesh) was formed from mines falling under the command area of CCL. Later South Eastern Coalfields Limited (SECL), Bilaspur, Chattisgarh was carved out from the mines of Central Coalfields Limited and a few mines under WCL. That makes a total of seven subsidiary companies-six coal producing and CMPDIL.

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

3.5 Neyveli Lignite Corporation Limited (NLC) was incorporated under the Companies Act, 1956 as a „Private“ Limited company on 14.11.1956.

Pursuant to the decision of the Board of Directors at the meeting held on 21 April, 1959, an Extra-ordinary General Meeting was held on 15 July, 1959 inter-alia to consider and approve the deletion of the word „private“ occurring in the name of the company in terms of notification No.GSR 1234 dated 30.12.1958 of the then Department of Company Law Administration, Ministry of Commerce and Industry, Government of India, New Delhi.

Further to the decision of the shareholders at the above meeting, the Registrar of Companies issued a certificate dated 13.07.1959 for the change of name from „Neyveli Lignite Corporation Private Limited“ to Neyveli Lignite Corporation Limited.

NLC is listed in the Schedule to the Act under Part I as 'Neyveli Lignite Corporation (Private) Limited'.

Members of the Board of Directors of NLC are not entitled to become a MP.

Coal Board

3.6 The Coal Mines (Conservation and Safety) Act was enacted by the Parliament on 4 March 1952 to provide for the conservation of coal and for safety in coal mines.

Coal Board was established under Section 4 of the Act which comprised of Chairman and other members not exceeding six in number. Section 5 of the Act mentions about functions of the Board for effectively dealing with problems relating to safety in coal mines or conservation of coal and matters connected therewith or incidental thereto. In exercise of the powers conferred under Section 17 of the Coal Mines (Conservation & Safety) Act, 1952, the Central Government is empowered to make rules. Accordingly, the Coal Mines Conservation & Safety Rules 1954 were

notified on 25 September 1954. The power of Board, penalties to be imposed, dealing with coal samples for analysis, orders for stowing for conservation, washing, opening and reopening of coal mines, closure of coalmines, grant of assistance for stowing, protective measures, research etc. were provided in Chapter 6 of the Rules.

The Coal Mines (Conservation and Safety) Act was enacted when the industry was mostly in the private sector, However, after nationalization of coalmines, the Coal Board was no longer found necessary since most of the functions of the Coal Board was discharged by the Public Sector Undertakings established for developing the nationalized coalmines. Accordingly, the abolition of Coal Board and enactment of Coal Mines (Conservation & Development) Act 1974 was legislated in August, 1974. Under Chapter III of the Act dissolution of the Coal Board and transfer of employees thereof was incorporated under Sections 12, 13, 14, 15 and 16. Most of the employees of the erstwhile Coal Board were absorbed by Coal India Limited/subsidiary companies.

Coal Mines Labour Housing Board

3.7 Coal Mines Labour Welfare Fund Act 1947 (Act of 1947) was enacted on 18 April, 1947 replacing the Coal Mines Labour Welfare Fund Ordinance, 1944, to make better provision for financing measures for promoting the welfare of labour employed in the Coal Mining Industry including Housing and the provision of dispensary services and for such purpose to constitute a fund from imposition of Cess. Under Section 6 of this Act, provided that the Central Government shall constitute a Coal Mines Labour Housing Board to prepare and carry out schemes finances from the Housing account of the fund for provision of suitable Housing accommodation for Labour employed in coal mining industry.

Further the Act of 1947 was repealed by another legislation entitled The Coal Mines Labour Welfare (Repeal) Act, 1986 (No.27 of 1986) of Parliament on 23 May, 1986. As required under sub-section (2) of section (1) of this Repealing Act, 1 October, 86 was notified as the appointed date from which provision of the repeal Act shall come into force. As a consequence of notification, the Coal Mines Welfare Organisation ceased to function from 1 October, 1986.

Section 3 of the Coal Mines Labour Welfare fund (Repeal) Act, 1986 states that Coal Mines Labour Housing Board shall stand dissolved from the said date. As such there is no Office of Profit existing now.

3.8 In response to a question about its present status, the Ministry stated that NLC is a listed company under the Companies Act and as such name of the company is to be deleted from the Schedule of the Act of 1959.

3.9 On being asked by the Committee as to whether the Ministry has ever visualised to associate Members of Parliament in implementation/monitoring various centrally Sponsored/Central schemes; including Statutory and Non-Statutory bodies, the Ministry replied in writing as under:

"Hon'ble Standing Committee on Coal and Steel for "Review of Performance of Provident Fund Organisation (CMPFO)" in its 41st report has observed that the Committee have been apprised that besides the Chairman & ex-officio CMPF Commissioner, other three persons can be appointed by Central Government as Members of Board of Trustees (the Board) and desired that the Ministry should consider them to be members of the Board.

The Government had replied when draft notification for incorporating the name of MP was sent for vetting to Legislative Department, M/o Law and Justice, that in detailed composition of the Board, there was no mention of MP. Further, D/o Legal Affairs have observed that there appears to be no legal bar in considering a Member of Parliament (MP) as a Trustee and advised to bring a suitable amendment in the relevant section."

3.10 In response to a question about the present status of nominating MPs on the Bodies, the Ministry in its reply in writing stated as under:

"At present, there is no Member of Parliament (MP) in that capacity as member of Board of Trustees."

3.11 The Ministry also informed the Committee in writing as under:

"Coal Mines Provident Fund Org (CMPFO) has its Board of Trustees (BOT) under the Chairmanship of Secretary (Coal). The members of this Board are the officers either from Central govt./ State govt. /PSUs or the representatives of Coal workers who are paid TA/DA only for attending the meeting of aforesaid Board from time to time. Hence, the Parliament (Prevention of Disqualification) Act, 1959 per se, is not applicable to CMPFO.

Copy of Section 3A of Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 which provides for constitution of Board of Trustees is enclosed as **Annexure II.**"

3.12 On being asked by the Committee to make presentation, the Secretary of the Ministry of Coal and Steel briefed the Committee as under:

“Sir, as of now, there are four organisations concerning Ministry of Coal that were included in the Schedule, Section 3(1) of Parliament (Prevention of Disqualification) Act, 1959. Of these three, the Board of Directors of National Coal Development Corporation Limited, Board of Directors of Neyveli Lignite Corporation, Coal Board established under Section 4 of the Coal Mines Conservation and Safety Act, 1952, Coal Mines Labour Housing Board constituted under Section 6 of the Coal Mines Labour Welfare Fund Act, 1947 have been mentioned. Except Neyveli Lignite Corporation, the other 3 are defunct in the sense that they are no more in existence. I thought I should inform the hon. Members of the Committee where it stands now.”

3.13 On being asked by the Committee as to whether, consequent upon the repealing of the aforesaid Act, the Ministry had taken up the matter for deletion of the above entries from the Parliament (Prevention of Disqualification) Act, 1959 and if so, the details thereof, the Secretary of the Ministry stated as under:

“I must confess that I am not aware of this step being taken. But I will cross-check and come back to the Committee.”

3.14 When the Committee observed that amendment has to be carried out and the word “private” has to be removed, the Secretary of the Ministry responded as under:

“The word “private” will be removed. We will do the necessary ground work.”

3.15 On being enquired by the Committee as to whether Member of Parliament are members of Board of NLC, the Secretary of the Ministry replied as under:

“For the time being there is no Member. But besides CMD, Directors could be the members if they are not getting any remuneration.”

3.16 When the Committee pointed out it has been deliberately kept in the exemption clause and it should be amended accordingly, the Secretary of the Ministry stated as under:

“Absolutely. We will accordingly send a formal proposal to the Ministry of Law with in a week.”

Observations/Recommendations

Board of Directors of National Coal Development Corporation Limited/Coal Board/ Coal Mines Labour Housing Board

3.17 The Committee note that there are four organisations concerning Ministry of Coal that were included in Part I of the Schedule to the Parliament (Prevention of Disqualification) Act, 1959. These are Board of Directors of National Coal Development Corporation Limited, Board of Directors of Neyveli Lignite Corporation, Coal Board established under Section 4 of the Coal Mines Conservation and Safety Act, 1952 and Coal Mines Labour Housing Board constituted under Section 6 of the Coal Mines Labour Welfare Fund Act, 1947. According to the Ministry, except Neyveli Lignite Corporation, the other three do not exist. In view of the submission of the Ministry, the Committee recommend that the action may be initiated by the Ministry to delete the entries of the aforesaid three entities from the Schedule of the Parliament (Prevention of Disqualification) Act, 1959.

Neyvelli Lignite Corporation Ltd.:

3.18 Neyveli Lignite Corporation Limited (NLC) was incorporated under the Companies Act, 1956 as a 'Private' Limited company on 14.11.1956. In 1959, the name of 'Neyveli Lignite Corporation Private Limited' was changed to Neyveli Lignite Corporation Limited. On 13 July 1959. However, the word 'Private' still continues along with the name. The Committee, therefore, recommend that action may be initiated to omit the word 'Private' from Neyveli Lignite Corporation Private Limited. According to the Ministry, the members of the Board of Directors of NLC are disqualified as for being a Member of Parliament on the same analogy as explained in the context of CIL. The Committee, therefore, recommend that the name of NLC may be appropriately listed in the Schedule to the Parliament (Prevention of Disqualification) Act of 1959.

Coal India Limited

3.19 Coal India Limited (CIL) is an apex body with seven wholly owned coal producing subsidiaries and one mine planning and consultancy company spread over 8 provincial states of India. This corporate entity came into being in November 1975. The Ministry has informed that CMD, Functional Directors and official part time Directors (nominee of Government) are entitled for

remuneration and Independent Directors are paid sitting fee for attending the meetings of the Board/Committees, which is considered as 'remuneration' under the provisions of Companies Act, 2013. Therefore, according to the Ministry, the members of the Board of Directors of CIL are disqualified, as for being a Member of Parliament. In view of foregoing, the Committee recommend that the name of CIL may be appropriately listed in the Schedule to the Parliament (Prevention of Disqualification) Act of 1959.

Coal Mines Provident Fund Organisation

3.20 The Committee note that Coal Mines Provident Fund Org (CMPFO) has its Board of Trustees (BOT) under the Chairmanship of Secretary (Coal). The members of this Board are the officers either from Central govt./ State govt. /PSUs or the representatives of Coal workers who are paid TA/DA only for attending the meeting of aforesaid Board from time to time. Hence, the Parliament (Prevention of Disqualification) Act, 1959 per se, is not applicable to CMPFO. However, the Standing Committee on Coal and Steel in its 41st Report on "Review of Performance of Provident Fund Organisation (CMPFO)" had desired that the Ministry should consider Members of Parliament to be members of the Board. According to the Ministry, the Department of Legal Affairs had observed that there appears to be no legal bar in considering a Member of Parliament (MP) as a Trustee and advised to bring a suitable amendment in the relevant section. Notwithstanding the position stated above, the Committee are of the view that if Members of Parliament are made as members of the Trustee, then appropriate provision may also be made in the relevant Section of Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 and keeping in view the Parliament (Prevention of Disqualification) Act, 1959 so that Members of Parliament do not incur disqualification.

NEW DELHI
28 July, 2016
06 Sravana, 1938 Saka

Dr. SATYAPAL SINGH
Chairperson
Joint Committee on Offices of Profit

**EXTRACTS OF MINUTES OF THE THIRD SITTING OF
THE JOINT COMMITTEE ON OFFICES OF PROFIT (SIXTEENTH LOK SABHA)
HELD ON 31 MARCH, 2015**

The Committee met on Tuesday, 31 March, 2015 from 1430 hrs to 1700 hrs. in Committee Room No.'E', Parliament House Annexe, New Delhi.

PRESENT

Shri P.P. Chaudhary - Chairperson

MEMBERS

LOK SABHA

2. Shri Bhagwant Maan
3. Shri Arjun Ram Meghwal
4. Prof. Saugata Roy
5. Dr. Satya Pal Singh
6. Smt. Supriya Sule

RAJYA SABHA

7. Shri Dilipbhai Pandya
8. Shri Sukhendu Sekhar Roy
9. Shri K.C. Tyagi

SECRETARIAT

1. Shri R.S. Kambo - Joint Secretary
2. Shri Shiv Kumar - Director
3. Smt. Maya Lingi - Additional Director

REPRESENTATIVES OF THE MINISTRIES

MINISTRY OF LAW AND JUSTICE(LEGISLATIVE DEPARTMENT)

1. Dr. Sanjay Singh - Secretary
2. Dr. Ms. Mukulita Viyayawargiya - Joint Secretary and
Legislative Counsel.

(DEPRATMENT OF LEGAL AFFAIRS)

1. Shri D. Bhardwaj - Joint Secretary & Legal Adviser
2. Shri Mahendra Khandelwal - Addl. Government Advocate

MINISTRY OF COMMERCE & INDUSTRY

(DEPARTMENT OF COMMERCE)

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MINISTRY OF CIVIL AVIATION

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MINISTRY OF COAL

1. Shri Anil Swarup Secretary
2. Shri A.K. Dubey Addl. Secretary
3. Shri A.K. Bhalla Addl. Secretary
4. Shri Shailesh Kumar Singh Joint Secretary
5. Shri Vivek Bharadwaj Joint Secretary
6. Shri D.N. Prasad Advisory (Projects) (JS Rank)
7. Shri V. Pedanna Director
8. Shri S. Bhattacharya CMD, CIL
9. Shri Surinder Mohan CMD, NIC
10. Shri Rakesh Kumar Director, NIC

MINISTRY OF EXTERNAL AFFAIRS

* * * * *

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee and briefly apprised them about the agenda of the meeting i.e oral evidence of the representatives of the Ministries of Commerce & Industry (Department of Commerce), Civil Aviation, Coal, External Affairs and Law and Justice (Department of Legal Affairs and Legislative Department) - in connection with Review of Committees/Boards/Organisations, etc. referred to in Schedules to the Parliament (Prevention of Disqualification) Act, 1959, as amended from time to time. The Chairperson, then, discussed the provisions of the Parliament (Prevention of Disqualification) Act, 1959 with Members of the Committee. The Members actively participated in discussion and thereafter the committee stressed the imperative need to review the Schedules thoroughly - for making the provisions of the Act unambiguous.

3. * * * * *

4. At the outset, the Chairperson welcomed the representatives of the Ministries to the sitting of the Committee and apprised them in details about the purpose of this oral evidence.

5. Thereafter, the representative of the Ministry of Law & Justice (Legislative Department) briefed the Committee about the brief history of the concept of 'Office of Profit' and background and circumstances under which Parliament (Prevention of Disqualification) Act, 1959 got enacted. The Committee were apprised that what would constitute an 'Office of Profit' has not been provided in Constitution neither in the Act of 1959 nor in the Representation of People Act. Certain criteria have evolved on the basis of the various judgments pronounced by various Courts. A provision debarring holder of a "Office of Profit to become a Member of Parliament has been kept in the Constitution to keep Members of Parliament independent of the Government and the Government should not have any control over the Parliament and peoples' representatives. However, the witness stated that it has been left to the Parliament to decide about the offices, which, would constitute office of profit or not. The witness further stated that the idea behind granting exemption from angle of 'Office of Profit' by enacting the Parliament (Prevention of Disqualification) Act, 1959 is that association of Member of Parliament to certain Bodies/Committees would provide guidance to the Executive in taking policy

decisions. About the institutional mechanism that exists to review the nature, character and composition of the Bodies referred to in the Act, the witness stated that after constitution of the Committee, Ministries and State Governments were asked to review the Bodies included in the Schedules and suggest for inclusion of new Bodies or omission from the Schedules. About the background and justification for including Bodies like Dalit Sena, Bahujan Prerna Charitable Trust, Uttar Pradesh Co-operative Bank Limited, etc. in the exempted category, the representative of Legislative Department stated that after going through the relevant files, proper reply to this will be submitted to the Committee. Thereafter the Hon'ble Chairperson asked the witness to also furnish written response to the questionnaire being sent by the Committee in the matter .

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14. Thereafter, the representatives of the Ministry of Coal were ushered in.

15. The Chairperson welcomed the representatives of the Ministry of Coal and apprised them about the purpose of this oral evidence.

16. The representatives of the Ministry of Coal stated that out of four bodies namely Board of Directors of the National Coal Development Corporation (Private) Limited, Board of Directors of the Neyveli Lignite Corporation (Private) Limited, Coal Board & Coal Mines Labour Housing Board - mentioned in the Schedules to the Parliament (Prevention of Disqualification) Act, 1959, three have become defunct and only Neyveli Lignite Corporation is in existence at present. On the question as to whether the Ministry of Coal did take up the matter for deletion of the aforesaid entries from the said Act, the witness made a submission that after cross - checking, the information in this regard will be submitted to the Committee. The witness also submitted that at present there is no Member of Parliament on the Board of Directors of Neyveli Lignite Corporation.

17. Thereafter, the Hon'ble Chairperson thanked the representatives of Ministry of Coal.

18. The representatives of Ministry of Coal then withdrew.

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

The Committee then adjourned.

**MINUTES OF THE THIRTIETH SITTING OF
THE JOINT COMMITTEE ON OFFICES OF PROFIT (SIXTEENTH LOK SABHA)
HELD ON 11 MAY, 2016**

The Committee met on Wednesday, 11 May, 2016 from 1500 hrs to 1600 hrs. in Chairperson's Room No. 135, First Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri P.P. Chaudhary - Chairperson

MEMBERS

LOK SABHA

2. Smt. Meenakshi Lekhi
3. Shri Bhagwant Maan
4. Shri Arjun Ram Meghwal
5. Prof. Saugata Roy
6. Dr. Satya Pal Singh
7. Smt. Supriya Sule

RAJYA SABHA

8. Shri Dilipbhai Pandya

SECRETARIAT

1. Shri U.B.S. Negi - 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. Thereafter, the Committee considered the draft Sixth, Seventh and Eighth Report concerning with the review of Schedule to the Parliament (Prevention of Disqualification) Act, 1959 in respect of Bodies under the administrative domain of (I)

The Ministry of Civil Aviation; (II)The Ministry of External Affairs and (III) The Ministry of Coal.

4. The Committee considered and adopted the draft Sixth, Seventh and Eighth Report without any modification.

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

The Committee then adjourned.