

लाभ के पदों संबंधी संयुक्त समिति

(सत्रहवीं लोक सभा)

तीसरा प्रतिवेदन

30.07.2021 को लोक सभा में प्रस्तुत किया गया

30.07.2021 को राज्य सभा के पटल पर रखा गया



सत्यमेव जयते

लोकसभा सचिवालय

नई दिल्ली

जुलाई, 2021 / शिवण, 1943 (शक)

मूल्य: _____

विषय सूची

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प्रतिवेदन

राजस्थान राज्य सरकार द्वारा केंद्रीय/जिला जेलों के लिए गठित समितियों, बोर्डों और जिला स्तर समितियों में संसद सदस्यों की नियुक्ति/नामांकन।

परिशिष्ट

- I. लाभ के पदों संबंधी संयुक्त समिति (सत्रहवीं लोक सभा) की सोमवार, 15 मार्च, 2021 को हुई आठवीं बैठक के कार्यवाही सारांश का सार। 79
- II. लाभ के पदों संबंधी संयुक्त समिति (सत्रहवीं लोक सभा) की गुरुवार, 24 जून, 2021 को हुई छठी बैठक के कार्यवाही सारांश का सार। 81

लाभ के पदों संबंधी संयुक्त समिति की संरचना

(सत्रहवीं लोक सभा)

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सदस्य

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2. श्री बैन्नी बेहनन
3. श्री विनोद लखमशी चावड़ा
4. श्री विजय कुमार हांसदाक
5. डॉ. मनोज राजोरिया
6. श्रीमती अपराजिता सारंगी
7. श्री महेन्द्र सिंह सोलंकी
8. श्री तेजस्वी सूर्या
9. श्री बालाशौरी वल्लभनेनी
10. श्री श्याम सिंह यादव

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11. डॉ. सस्मित पात्रा
12. श्री महेश पोद्दार
13. श्री वि. विजयसाई रेड्डी
14. सुश्री दोला सेन
15. श्री हरद्वार दुबे

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| 1. श्रीमती सुमन अरोड़ा | - | संयुक्त सचिव |
| 2. श्री मनीष कुमार रेवारी | - | अपर निदेशक |
| 3. श्रीमती मंजिन्दर पुब्बी | - | अवर सचिव |
| 4. श्री कुन्दन कुमार | - | समिति अधिकारी |

* राज्य सभा समाचार भाग - II दिनांक 12.02.2021 (पैरा सं. 60610) के द्वारा श्री के. केशव राव के कार्यकाल की समाप्ति पर समिति का सदस्य मनोनीत।

(iii)

प्राक्कथन

में, लाभ के पदों संबंधी संयुक्त समिति का सभापति, समिति द्वारा प्राधिकृत किए जाने पर समिति की ओर से समिति का यह तीसरा प्रतिवेदन प्रस्तुत करता हूँ।

2. समिति ने 15 मार्च, 2021 को हुई अपनी बैठक में यह विचार करने हेतु कि राजस्थान राज्य द्वारा केंद्रीय/जिला जेलों के लिए गठित समितियों, बोर्डों और जिला स्तरीय समितियों के कार्यकाल, संरचना, प्रकृति, कार्यकरण आदि की इस दृष्टि से जांच की है कि भारत के संविधान के अनुच्छेद 102(1)(क) के अंतर्गत क्या लोक सभा सदस्यों का उनमें मनोनयन किए जाने से वे 'लाभ के पद' की दृष्टि से संसद सदस्य बने रहने से निरहित हो जाएंगे।
3. समिति ने गुरुवार, 24 जून, 2021 को हुई अपनी बैठक में इस प्रतिवेदन पर विचार करने के पश्चात् इसे स्वीकार कर लिया है।
4. समिति इसमें शामिल मुद्दों की व्यापक जांच हेतु समिति द्वारा मांगी गई सूचना प्रदान करने के लिए विधि और न्याय मंत्रालय (विधायी विभाग और विधि कार्य विभाग) को धन्यवाद देती है।
5. समिति द्वारा विचारित विषय के संबंध में उसके द्वारा की गई टिप्पणियों/सिफारिशों को इस प्रतिवेदन के अंत में मोटे अक्षरों में दिया गया है।

नई दिल्ली:

5 जुलाई, 2021

14 आषाढ़, 1943 (शक)

डॉ. सत्य पाल सिंह
सभापति,
लाभ के पदों संबंधी संयुक्त समिति

प्रतिवेदन

राजस्थान राज्य सरकार द्वारा केन्द्रीय/जिला कारागारों के लिए गठित समितियों, बोर्डों और जिला स्तरीय समितियों में संसद सदस्यों की नियुक्ति/नाम-निर्देशन के संबंध में।

केन्द्रीय/जिला कारागारों के लिए गठित की जाने वाली समितियों/सलाहकार बोर्डों में लोक सभा के सदस्यों के नाम-निर्देशन के लिए लोक सभा के माननीय अध्यक्ष से सहमति प्राप्त करने के संबंध में राजस्थान राज्य सरकार के पत्र सं. एफ15(2) संसद/2015 दिनांक 18 अगस्त, 2015 के माध्यम से एक प्रस्ताव प्राप्त हुआ था (अनुबंध-I)।

2. चूंकि उक्त अनुरोध के साथ प्राप्त सूचना 'लाभ के पद' की दृष्टि से इस मामले की समुचित जांच के लिए अपर्याप्त पाई गई थी इसलिए राजस्थान राज्य सरकार से इस सचिवालय के पत्र सं. 21/2/2(13)/2015/सी-II दिनांक 15 सितम्बर, 2015 के माध्यम से यह अनुरोध किया था कि इस मामले से संबंधित सभी विवरण प्रस्तुत करें।

3. राजस्थान राज्य सरकार ने अपने पत्र एफ.सं. पी 6(1) जीआरआईएच/केएआरए/1999 पार्ट दिनांक 20 सितम्बर, 2018 (अनुबंध-II) के द्वारा यह बताया है कि कारागार संबंधी सलाहकार बोर्ड एक स्थायी निकाय है। उसने यह बताया है कि राजस्थान कारागार (दंडादेश को कम करना) नियम, 2006 के नियम 3 के अनुसार सलाहकार बोर्ड का गठन किया जाता है। नियम 3(1) के अनुसार, पात्र कैदियों के दंडादेश को इन नियमों के अनुसार कम करने और उन्हें समयपूर्व रिहा करने हेतु सरकार को अनुशंसा करने के लिए प्रत्येक केन्द्रीय जेल और जिला जेल में एक सलाहकार बोर्ड का गठन किया जाएगा। समिति एक परामर्शी निकाय है और इसके कृत्य नियमानुसार दंडादेश को कम करने संबंधी मामले की संवीक्षा/विश्लेषण करना और सरकार को सलाह देना है। समिति में सदस्य के रूप में संसद सदस्य की भूमिका सलाहकार प्रकृति की होती है। समिति को कार्यकारी शक्तियां प्राप्त हैं। समिति को निधियों के संवितरण, भूमि के आबंटन आदि से संबंधित कोई शक्तियां प्राप्त नहीं हैं। उसे नियुक्ति/पद से हटाने की शक्ति प्राप्त नहीं है और वह संरक्षण के जरिए इन शक्तियों का प्रयोग नहीं कर सकती है।

4. राज्य सरकार ने यह भी बताया है कि सलाहकार बोर्ड में गैर-सरकारी सदस्य के रूप में संसद सदस्य का कार्यकाल दो वर्ष का होगा, किंतु राज्य सरकार इस कार्यकाल को एक वर्ष या उससे कम अवधि के लिए बढ़ा सकेगी। प्रश्न सूची [5(ख)] के उत्तर में यह बताया गया है कि सरकार पद पर नियुक्त करने और पद से हटाने और पद संबंधी कार्यनिष्पादन और कृत्यों पर अपना नियंत्रण रखती है।

5. बोर्ड/समिति में सदस्य के रूप में संसद सदस्यों को कोई बैठक शुल्क, दैनिक भत्ता, यात्रा भत्ता, मकान किराया भत्ता, प्रतिकरात्मक भत्ता, मानदेय आदि का भुगतान नहीं किया जाता है और इस संबंध में कोई सुविधाएं नहीं दी जाती है, न ही दिए जाने का कोई प्रस्ताव है। राज्य सरकार द्वारा बोर्ड/समिति में संसद सदस्य के सदस्य के रूप में नाम-निर्देशन/नियुक्ति राजस्थान कारागार (दंडादेश को कम करना) नियम, 2006 के नियम 3(2)(ग) के द्वारा की जाती है (अनुबंध-III)। ये नियम कारागार अधिनियम, 1894 (1894IX) की धारा 59 के खंडों 5 और 27 के अधीन बनाए गए हैं (अनुबंध-IV)। तथापि राजस्थान कारागार (दंडादेश को कम करना) नियम, 2006 में सलाहकार बोर्ड से गैर-सरकारी सदस्य को निरहता से छूट देने का उपबंध नहीं है।

6. भारत के संविधान के अनुच्छेद 102(1)(क) के उपबंध के अनुसार:-

"कोई व्यक्ति संसद के किसी सदन के सदस्य के रूप में चुने जाने के लिए और सदस्य होने के लिए निरर्हित होगा--

यदि वह भारत सरकार के या किसी राज्य की सरकार के अधीन ऐसे पद को छोड़कर, जिसको धारण करने वाले का निरर्हित न होना संसद ने विधि द्वारा घोषित किया है, कोई लाभ का पद धारण करता है।"

7. संसद ने पद निर्धारण हेतु संसद (निरर्हता निवारण) अधिनियम, 1959 नामक एक कानून पारित किया है जो पद धारक को उसकी संसद सदस्यता से निरर्हित नहीं करेगा (अनुबंध-V)। इस अधिनियम में यह भी उपबंध किया गया है कि किसी भी कानूनी निकाय अथवा अकानूनी निकाय का अध्यक्ष अथवा निदेशक अथवा सदस्य यदि प्रतिकरात्मक भत्ते के अलावा अन्य किसी पारिश्रमिक का हकदार नहीं है, तो वह संसद सदस्य चुने जाने अथवा संसद सदस्य बने रहने से निरर्हित नहीं होगा। उक्त अधिनियम की धारा 2(क) के अंतर्गत "प्रतिकरात्मक भत्ता" से धन की वह राशि अभिप्रेत है जो किसी पद के धारक को, उस पद के कृत्यों के पालन में उसके द्वारा उपगत किसी प्रवहण भत्ते, गृह भाटक भत्ते या यात्रा भत्ते के रूप में संदेय किसी व्यय की प्रतिपूर्ति करने के लिए उसे समर्थ बनाने के प्रयोजन के लिए दैनिक भत्ते (जो भत्ता उस दैनिक भत्ते की रकम से अधिक न होगा जिसके लिए कोई संसद सदस्य, (संसद सदस्य वेतन, भत्ता और पेंशन अधिनियम, 1954 के अधीन) हकदार है।"

8. अनुच्छेद 102(1)(क) में अभिव्यक्त "सरकार के अधीन कोई लाभ का पद धारण करता है" सटीक व्याख्या कहीं नहीं की गई है। तथापि, लाभ के पदों संबंधी संयुक्त समिति यह निर्धारित करने के लिए कि क्या यह पद संसद सदस्य के रूप में चुने जाने अथवा संसद सदस्य बने रहने के लिए पद धारक को निरर्हित करता है अथवा नहीं, निम्नलिखित मानदंडों का अनुपालन करती है-

(एक) क्या सरकार पद पर नियुक्ति या पद से हटाने और पद के कार्यनिष्पादन और कृत्यों पर अपना नियंत्रण रखती है;

(दो) क्या पदधारक संसद (निरर्हता निवारण) अधिनियम, 1959 की धारा 2(क) में यथा परिभाषित 'प्रतिकरात्मक भत्ते' के अलावा अन्य कोई पारिश्रमिक प्राप्त करता है;

(तीन) क्या वह निकाय, जिसमें वह पद है उसके पास कार्यकारी, वैधानिक अथवा न्यायिक शक्तियां हैं अथवा उसे निधि के संवितरण, भूमि के आबंटन, लाइसेंस जारी करने आदि की शक्तियां दी गई हैं अथवा वह नियुक्ति, छात्रवृत्ति प्रदान करने आदि की शक्तियां देता है; तथा

(चार) क्या वह निकाय जिसमें यह पद है, धारक को प्रश्रय के द्वारा अपना प्रभाव अथवा शक्ति के उपयोग का अधिकार देता है।

9. अतः, राजस्थान राज्य सरकार द्वारा प्रस्तुत जानकारी के अनुसार संदर्भाधीन समिति एक परामर्शी निकाय है और इसके कृत्य दंडादेश को कम करने संबंधी मामले की संवीक्षा/विश्लेषण करके नियमानुसार सरकार को सलाह देना है। समिति के पास कार्यकारी शक्तियां हैं। सलाहकार बोर्ड में गैर-

सरकारी सदस्य के रूप में संसद सदस्य का कार्यकाल दो वर्ष का होता है किंतु राज्य सरकार इसकी अवधि एक वर्ष या उससे कम के लिए बढ़ा सकेगी। राज्य सरकार का पद पर नियुक्ति और पद से हटाने तथा पद के कार्यनिष्पादन और कृत्यों पर भी नियंत्रण होता है।

10. समिति ने विधि और न्याय मंत्रालय (विधि कार्य और विधायी विभाग) से लिखित में राय मांगी थी। विधि कार्य विभाग ने डीवाई सं. 329232/एलएस/2019 दिनांक 18.4.2019 (अनुबंध-VI) के द्वारा अपनी लिखित टिप्पणियां दे दी हैं जो निम्नवत् हैं:-

"3.....लोक सभा सचिवालय द्वारा अपेक्षित मुद्दों के उत्तर में, राजस्थान सरकार ने स्पष्ट किया है कि समिति में माननीय सांसदों की भूमिका पूर्णतः सलाहकार प्रकृति की है और समिति संरक्षण के माध्यम से अपना प्रभाव नहीं जमाएगी अथवा शक्तियों का प्रयोग नहीं करेगी। आगे ध्यान देने वाली बात यह है कि 2006 के नियम के अधीन किसी भी प्रकार के पारिश्रमिक के भुगतान के संबंध में कोई प्रावधान नहीं है संपूर्ण नियमों को पढ़ने और राज्य सरकार के उत्तर से यह प्रतीत होता है कि सलाहकार बोर्ड के सदस्यों को सलाहकार बोर्ड के सदस्य के रूप में किसी पारिश्रमिक का भुगतान नहीं किया जाता है।

4.जहां तक निरर्हता का संबंध है, संसद (निरर्हता निवारण) अधिनियम, 1959 की धारा 3(i) में यह उपबंध किया गया है कि खंड (ज) के अधीन शामिल निकाय से इतर किसी कानूनी अथवा अकानूनी निकाय के अध्यक्ष, निदेशक अथवा सदस्य के पद को संसद सदस्य के रूप में यदि ऐसे पद का धारक प्रतिकरात्मक भत्ते के अलावा किसी अन्य पारिश्रमिक के हकदार नहीं हैं तो वे निरर्हित नहीं होंगे। इस तत्काल मामले में ऐसा प्रतीत नहीं होता कि सलाहकार बोर्ड के सदस्यों को पारिश्रमिक मिला है। उपरोक्त के मद्देनजर ऐसी समितियों में माननीय सांसदों के नाम-निर्देशन से भारत के संविधान के अनुच्छेद 102(1)(क) के अधीन माननीय संसद सदस्य सभा की सदस्यता से निरर्हित नहीं होगा।"

11. विधि और न्याय मंत्रालय (विधायी विभाग) ने का.ज्ञा.एफ.सं.17(2)/2019 एलईजी-III दिनांक 14.9.2019 के द्वारा अपनी टिप्पणियां दे दी हैं, (अनुबंध VII) उनमें से कुछ संगत अंश निम्नवत् हैं:-

8. क्रम सं. 5(घ) के प्रश्न के उत्तर में और राजस्थान कारागार (दंडादेश को कम करना) नियम, 2006, जिसके अधीन यह सलाहकार बोर्ड गठित किया गया है, को पढ़ने के पश्चात् यह स्पष्ट हो गया है कि उक्त बोर्ड के कृत्य पूर्णतः परामर्शी प्रकृति के हैं। हालांकि, जहां तक सलाहकार बोर्ड की शक्तियों का संबंध है, राज्य सरकार ने विशेष रूप से यह बताया है कि सलाहकार बोर्ड कार्यकारी शक्तियों का उपयोग करते हैं। इसके अलावा राजस्थान राज्य सरकार ने क्रम सं. 5(ख) के प्रश्न के उत्तर में यह स्वीकार किया है कि राज्य सरकार पद पर नियुक्ति और पद से हटाने और पद के कार्यनिष्पादन और कृत्यों पर अपने नियंत्रण के अधिकार का उपयोग करती है। इस संबंध में यह उल्लेखनीय है कि राजस्थान कारागार (दंडादेश को कम करना) नियम, 2006 राज्य सरकार को गैर-सरकारी सदस्य की अवधि को एक वर्ष अथवा उससे कम के लिए बढ़ा सकता है। तथापि, प्रश्नों की सूची के उत्तर और राजस्थान कारागार (दंडादेश को कम करना) नियम, 2006 के अवलोकन से यह स्पष्ट है कि सलाहकार बोर्ड के गैर-सरकारी सदस्य किसी भी पारिश्रमिक, भत्ते, मानदेय आदि के हकदार नहीं हैं।

9. इस संबंध में, यह भी बता दें कि व्यक्ति द्वारा धारण किया गया पद सरकार के अधीन लाभ का पद है, लाभ के पदों संबंधी संयुक्त समिति ने 7 मई, 1984 को लोक सभा में प्रस्तुत अपने दसवें प्रतिवेदन (सातवीं लोक सभा) में निम्नलिखित मार्गदर्शक सिद्धांत निर्धारित किए हैं:-

"यह पता करने के लिए कि क्या व्यक्ति द्वारा धारण किया गया पद लाभ का पद है न्यायालय द्वारा दिए गए निर्णयों में विस्तृत मानक निर्धारित किए गए हैं। यदि सरकार पद से संबंधित कार्यनिष्पादन और कृत्य के आधार पर पद पर नियुक्ति और पदच्युत करने संबंधी नियंत्रण के अधिकार का प्रयोग करती है और पारिश्रमिक या वित्तीय लाभ, चाहे वह मूर्त अथवा अमूर्त प्रकृति का हो, उस पद के माध्यम से प्राप्त होता है चाहे पद धारक ने उतने समय के लिए वस्तुतः ऐसा पारिश्रमिक अथवा लाभ प्राप्त किया अथवा नहीं, वह पद सरकार के अधीन लाभ का पद माना जाएगा। अन्यथा, संविधान के तहत यथा परिकल्पित निरर्हता को लागू करने का उद्देश्य निरर्थक हो जाएगा। विधानमंडल के सदस्य के रूप में किसी भी पद की पेशकश करने के लिए दिशानिर्देश तत्व प्रथम मूल सिद्धांत होना चाहिए।

उपरोक्त स्थिति को ध्यान में रखते हुए लाभ के पदों संबंधी संयुक्त समिति इस प्रश्न के संबंध में कि संसद सदस्य के रूप में चुने जाने और संसद सदस्य बने रहने के लिए कोई व्यक्ति कौन से पद से निरर्हित होगा और कौन से पद से वह निरर्हित नहीं होगा समितियों, आयोगों आदि के परीक्षण के लिए निम्नलिखित मानकों का अनुपालन कर रही है:-

(एक) क्या पद धारक संसद (निरर्हता निवारण) अधिनियम, 1959 की धारा 2(क) में यथा परिभाषित 'प्रतिकरात्मक भत्ते' के अलावा बैठक शुल्क, मानदेय, वेतन, आदि जैसे कोई पारिश्रमिक प्राप्त करता है;

[इस प्रकार सिद्धांत यह है कि यदि कोई सदस्य अपनी जेब से खर्च की गई वास्तविक राशि की प्रतिपूर्ति से अधिक राशि प्राप्त नहीं करता है और इससे उसे कोई वित्तीय लाभ नहीं होता है तो यह निरर्हता के दायरे में नहीं आएगा।]

(दो) क्या वह निकाय जिसके तहत वह पद धारण किए हुए हैं को कार्यकारी, कानूनी अथवा न्यायिक शक्तियां प्राप्त हैं अथवा क्या वह निधियों के संवितरण, भूमि के आबंटन, लाइसेंस जारी करने, आदि की शक्तियां प्रदान करता है अथवा नियुक्ति, छात्रवृत्ति प्रदान करने, आदि की शक्तियां देता है; और

(तीन) क्या वह निकाय जिसमें वह पद है, धारक को संरक्षण के द्वारा अपना प्रभाव जमाने अथवा शक्तियों का प्रयोग करने का अधिकार देता है।

यदि उपरोक्त में से किसी का भी उत्तर सकारात्मक है तो प्रश्नगत पद निरर्हित होगा।

10. इस परिप्रेक्ष्य में, यह उल्लेखनीय है कि इस प्रश्न के निर्धारण हेतु जो उच्चतम न्यायालय के समक्ष इस तरह के अनगिनत मामलों में आए, उच्चतम न्यायालय ने शिवमूर्ति स्वामी इनामदार बनाम संगन्ना अन्दनप्पा (1971) 3 एससीसी 870 के मामले में निम्नलिखित कसौटी को निर्धारित किया है:-

- (क) क्या सरकार नियुक्ति करती है;
- (ख) क्या सरकार के पास पद धारक को हटाने अथवा पदच्युत करने का अधिकार है;
- (ग) क्या सरकार पारिश्रमिक का भुगतान करती है;
- (घ) क्या पद धारक के कृत्य सरकारी हैं अथवा क्या वह सरकार के लिए कार्य करता है; और
- (ङ.) क्या सरकार उन कृत्यों के कार्यनिष्पादन पर अपने नियंत्रण के अधिकार का प्रयोग करती है।

उच्चतम न्यायालय द्वारा अनेक मामलों में बाद में दिए गए निर्णय में उपरोक्त कसौटियों को दोहराया गया है। तत्कालीन मामले में यह निर्धारित करने हेतु कि क्या राजस्थान कारागार (दंडादेश को कम करना) नियम, 2006 के नियम 3 के अधीन गठित सलाहकार बोर्ड के सदस्य के रूप में संसद सदस्य का नाम-निर्देशन किया गया है, उपरोक्त कसौटी को लागू करते हुए यह स्पष्ट है कि इस तत्कालीन मामले में उच्चतम न्यायालय द्वारा निर्धारित कसौटियों में से खंड (क), (ख) और (ङ.) लागू होंगे। इसके अलावा उपरोक्त पैरा 9 में उल्लिखित समिति द्वारा अनुपालन किए जा रहे दिशानिर्देश भी लागू होंगे।

11. मामले के सभी पहलुओं पर विचार करने के पश्चात्, विभाग का विचार है कि राजस्थान राज्य सरकार की केन्द्रीय/जिला जेलों के लिए गठित सलाहकार बोर्ड में संसद सदस्य के नाम-निर्देशन के संबंध में 'लाभ के पद' की दृष्टि से निरर्हता हो सकती है।"

12. यह देखा जा सकता है कि वर्तमान मामले में दोनों विभागों की सलाह अलग-अलग है। इस मामले में विधि मामले और विधायी विभाग के दोनों विभागों द्वारा व्यक्त किए गए विरोधाभासी विचारों के मद्देनजर जहां पहले विभाग का विचार था कि ऐसे सलाहकार बोर्ड में संसद सदस्य के नाम-निर्देशन से वह सदन की सदस्यता से निरर्हित नहीं होगा जबकि दूसरे विभाग का विचार था कि सलाहकार बोर्ड में संसद सदस्य का नाम-निर्देशन 'लाभ के पद' की दृष्टि से निरर्हित हो सकता है, और इस मामले को समिति के विचारार्थ प्रस्तुत करने की आवश्यकता है।

13. यह मामला समिति की दिनांक 20.11.2019 को हुई बैठक में समिति के समक्ष उसके विचारार्थ रखा गया था जिसमें विधि और न्याय मंत्रालय के दोनों विभागों के प्रतिनिधियों का मौखिक साक्ष्य लिया गया। दोनों विभागों द्वारा व्यक्त विरोधाभासी विचारों के मद्देनजर, समिति ने विधायी विभाग को इस मामले पर पुनः विचार करने तथा अपना सुविचारित मत संगत न्यायालयीन आदेशों और विधि की दृष्टि के आधार पर प्रस्तुत करने का निदेश दिया था ताकि समिति निश्चयात्मक निर्णय पर पहुंच सके।

14. तदुपरांत, इसके प्रत्युत्तर में विधायी विभाग ने अपने का.ज्ञा. एफ.सं.17(2)/2019-एलईजी III दिनांक 29.11.2019 (अनुबंध-VIII) के माध्यम से इस मामले पर अपनी राय निम्न रूप से प्रस्तुत की है:-

"2. इस संबंध में यह उल्लेखनीय है कि इस मामले की, विद्यमान कानूनी प्रावधानों के आलोक में पुनः जांच की गई है। इस संबंध में संसद निरर्हता निवारण अधिनियम, 1959 (1959 का 10) की धारा 3 का खंड (झ), खंड (ज) में यथा उल्लिखित किसी ऐसे निकाय से इतर किसी कानूनी अथवा अकानूनी निकाय में अध्यक्ष, निदेशक अथवा सदस्य के पद से छूट देता है, यदि ऐसे पद का धारक प्रतिकरात्मक भत्ते से इतर अन्य किसी पारिश्रमिक का हकदार नहीं है। यह छूट अधिनियम की अनुसूची के भाग-एक में विनिर्दिष्ट निकाय के अध्यक्ष और सचिव और अधिनियम की अनुसूची के भाग-दो में विनिर्दिष्ट निकायों में अध्यक्ष और सचिव पर लागू नहीं होती। इसके अलावा राजस्थान राज्य सरकार द्वारा केन्द्रीय/जिला जेलों के लिए गठित जिला स्तरीय समिति इस अधिनियम की अनुसूची में विनिर्दिष्ट नहीं है।

3. उपरोक्त उपबंधों के आलोक में, संसद सदस्य का राजस्थान राज्य सरकार की केन्द्रीय/जिला जेलों के लिए गठित जिला स्तरीय समिति में नाम-निर्देशन पर 'लाभ का पद' की दृष्टि से निरर्हता लागू नहीं होती है।"

15. इस संबंध में लाभ के पदों संबंधी संयुक्त समिति ने विधि और न्याय मंत्रालय (विधि कार्य विभाग और विधायी विभाग) के प्रतिनिधियों को सोमवार, 15 मार्च, 2021 को मौखिक साक्ष्य लेने के लिए बुलाया था। संयुक्त सचिव और कानूनी सलाहकार (विधि कार्य विभाग) ने यह बताया है कि:-

"..... नियमों में प्रतिकरात्मक भत्तों अथवा अन्य किन्हीं भत्तों का उपबंध नहीं है। अतः विधान सभा सदस्य अथवा संसद सदस्य विशेष, जो भी मामला हो, द्वारा दी गई सेवाओं के एवज में किसी पारिश्रमिक/लाभ को लेकर पूर्णतः चुप्पी साधी गयी है। यह इस बात को दर्शाता है कि इस बोर्ड विशेष में नामनिर्देशन किए जाने से सदस्य की सदस्यता निरर्हित नहीं होगी क्योंकि सबसे पहला मानदंड यह है कि सदस्य को बैठक शुल्क अथवा अन्य भत्तों के रूप में कुछ पारिश्रमिक प्राप्त हो। चूंकि इस संबंध में पूर्णतः चुप्पी साधी गयी है। इससे यह माना जा सकता है कि संसद सदस्य केवल 1954 के अधिनियम, जिसमें संसद सदस्यों के वेतन, भत्तों और पेंशन का उपबंध किया गया है, में यथा उल्लिखित वेतन और भत्ते प्राप्त करने का ही पात्र है। अतः यह इस विशेष जांच का निष्कर्ष और सार यही है।

राज्य सरकार ने समिति सचिवालय द्वारा दी गई प्रश्नावली का भी उत्तर दिया है। उसने भी यह कहा है कि समिति के कृत्य पूर्णतः सलाहकार प्रकृति के हैं।

समिति के कृत्य सलाहकार प्रकृति के होने, किसी भी तरह के पारिश्रमिक के प्राप्त न होने पर नियम में एक विशेष उपबंध किया गया है जिसमें यह कहा गया है कि समिति की सिफारिशों मानने के लिए सरकार बाध्य नहीं है। सरकार सिफारिशों को रद्द करने के लिए स्वतंत्र है। ऐसे में सदस्य, जो इस समिति का एक हिस्सा है, द्वारा अपनी शक्तियों का प्रभाव डालने का प्रश्न ही नहीं उठता है। यदि हम इस सम्मानीय समिति की पूर्व सिफारिशों अथवा उच्चतम न्यायालय के निर्णयों के आधार पर भी जांच करें तो हम यह पाएंगे कि धारा 3(1) के अधीन कोई भी सदस्य किसी भी तरह निरर्हित नहीं होगा क्योंकि हमें समिति की सिफारिशों अथवा उच्चतम न्यायालय के निर्णय को लागू करने से पूर्व सांविधिक उपबंधों का अनुपालन

करना होता है। जब सांविधिक उपबंध सर्वथा स्पष्ट हों तो उच्चतम न्यायालय के निर्णय के अनुपालन की आवश्यकता नहीं है।

16. सचिव, विधायी विभाग ने बताया है कि:

“..... चूंकि उपबंधों का संदर्भ देकर कारागार अधिनियम, 1894 के तहत नियम बनाए गए हैं। धारा 3, नियम 3 में सलाहकार बोर्ड के गठन की बात कही गयी है। यहां दो बातें हैं- सरकार को सिफारिश करने के लिए प्रत्येक केंद्रीय कारागार और जिला कारागार के लिए एक सलाहकार बोर्ड गठित किया जाएगा। अतः यह कार्य पूर्णतः सलाहकार प्रकृति का है। यह तो केवल एक निकाय की तरह है जो इस बात का पता लगाने के लिए गठित किया गया है कि कैदियों की समय पूर्व रिहाई अथवा अन्यथा किसी और हेतु सिफारिश की जाए या नहीं। इस बात का निर्धारण करने हेतु एक तय मानदंड है। सिफारिश कर दी गई है। पूरे घटनाक्रम पर विचार करते हुए सरकार सिफारिश को स्वीकार कर भी सकती है और अस्वीकार भी कर सकती है। अतः इसमें कोई शक नहीं है कि निकाय सांविधिक प्रकृति का है और इसकी भूमिका मात्र सिफारिश करने भर की है।

जहां तक भत्तांश का संबंध है, यह विधि कार्य विभाग ने पहले ही स्पष्ट कर दिया है कि इसमें ऐसा कुछ भी प्रतीत नहीं होता है जो निरर्हता से बचाव की परिधि में आता हो। मैं समझता हूं कि हम पहले ही अपनी राय दे चुके हैं कि जहां तक विधिक मामलों का संबंध है, यह 'पद लाभ के पद' की परिभाषा के अंतर्गत नहीं आएगा। विधि कार्य विभाग के साथ वैचारिक मतभेद था जो अब नहीं रहा।

टिप्पणियां/ सिफारिशें

17. समिति नोट करती है कि केंद्रीय/ जिला कारागार संबंधी सलाहकार बोर्ड एक स्थायी निकाय है जिसका गठन राजस्थान कारागार (दंडादेश को कम करना) नियम, 2006 के नियम 3 के अनुसार किया जाता है। नियम 3(1) के अनुसार सलाहकार बोर्ड का गठन प्रत्येक केंद्रीय कारागार और जिला कारागार के लिए किया जाएगा ताकि इन नियमों के अनुसार पात्र कैदियों के दंडादेश को कम करने और समय पूर्व उनको रिहा करने हेतु सरकार को सिफारिश की जा सके। ऐसी समिति/ बोर्ड सलाहकार प्रकृति के होते हैं क्योंकि इनका कार्य नियमानुसार दंडादेश को कम करने से जुड़े मामले की संवीक्षा करना/ उनका विश्लेषण करना तथा सरकार को सलाह देना होता है। समिति में सदस्य के रूप में संसद सदस्य की भूमिका सलाहकार प्रकृति की होती है। समिति/ बोर्ड कार्यकारी शक्तियों का इस्तेमाल करते हैं किंतु उनके पास निधि के संवितरण, भूमि के आबंटन आदि का कोई अधिकार नहीं होता है, उनके पास नियुक्ति/ पद से हटाने का भी कोई अधिकार नहीं होता है और उनके पास संरक्षण के जरिये इन शक्तियों का प्रयोग नहीं कर सकती है। सलाहकार बोर्ड के गैर-सरकारी सदस्य के रूप में संसद सदस्य का कार्यकाल दो वर्षों का होता है, किंतु राज्य सरकार इस अवधि को एक वर्ष तक या इससे कम समय तक बढ़ा भी सकती है। नियुक्ति करने और पद से हटाने तथा पद के कार्यनिष्पादन और पद से जुड़े कार्यों पर सरकार का नियंत्रण होता है।

18. मंत्रालय (विधायी विभाग और विधि कार्य विभाग) द्वारा व्यक्त मत इस बात के साथ-साथ यह रेखांकित करता है कि विद्यमान सांविधिक प्रावधानों के अनुसार केंद्रीय/ जिला कारागारों हेतु राजस्थान राज्य सरकार द्वारा गठित जिला स्तरीय समिति में किसी संसद सदस्य का मनोनयन 'लाभ के पद' की परिभाषा के अंतर्गत नहीं आता है और इस प्रकार वह "लाभ का पद" के दृष्टिकोण से निरर्हित नहीं हो सकता है।

19. उपर्युक्त स्थिति के मद्देनजर और मौखिक साक्ष्य के दौरान विचार-विमर्श के बाद समिति यह पाती है कि केंद्रीय/जिला कारागारों हेतु राजस्थान सरकार द्वारा गठित समितियों/ बोर्डों से संसद (निरर्हता निवारण) अधिनियम, 1959 की धारा 3(1) के संदर्भ में और राजस्थान कारागार (दंड को कम करना) नियम, 2006 तथा संसद सदस्य वेतन, भत्ता और पेंशन अधिनियम, 1954 में अंतर्विष्ट प्रावधानों के अनुसार लाभ के पद की दृष्टि से सदस्यता निरर्हित नहीं होगी। इस प्रकार

समिति को केंद्रीय/जिला कारागारों हेतु राजस्थान सरकार द्वारा गठित समितियों/ बोर्डों में लोक सभा सदस्य के मनोनयन किए जाने पर कोई आपत्ति नहीं है।

नई दिल्ली:

२५.०५.२०२१

०३ ई.प्र.दि.१९४३(शक)

डा. सत्यपाल सिंह
सभापति,
लाभ के पदों संबंधी संयुक्त समिति

Government of Rajasthan

Department of Parliamentary Affairs

Sl. No. F. 15(2) Parliament / 2015

Jairam Dated 18

To,

The Deputy ~~Secretary~~ Secretary

Lok Sabha Secretariat

Parliament House,

New Delhi - 110001

Subject: Regarding ~~procedure~~ for ~~nominating~~ ^{the} Members of Parliament to ^{the} committees, ^{or} boards and district level committees ^{or} by the state governments ^{regarding}

Ref: - Home (Group-12) Department's D.O. no. 1

Home - 12 / Pensions / 99 Part Dated 2

Sir,

With reference to the letter received
Please find enclosed herewith the

Received
on 08/09/15
\$ 17:30 hrs.

letter referred ~~above~~ received from the Deputy Secretary, Home (Group-12) Department on the above mentioned subject ^{as stated above, I am able to state that} alongwith the desired information and it is submitted that this ^{regarding seeking con-} has received proposals to obtain approval from Hon. Speaker, Loka Sabha for nominating the following Members of Parliament to the advisory boards to be constituted for Central district ^{Jails} ~~prisons~~ :-

Sl. No.	Advisory Board	Name of the Hon. Member of Parliament
1	Central Jail Prison, Bikaner	Shri Arjun Meghwar Hon. MP, B.
2	Central Jail Prison, Udaipur	Shri Arjun Lal Meena Hon. MP, Udaipur
3	District Jail, Chittorgarh	Shri Chandraprakash Hon. MP, Chit.
4	District Jail, Jhunjhunu	Shrimati Santosh A. Hon. MP, Jhunj.

Therefore, it is requested to obtain the
Consent of the hon. Speaker, ^{Lok Sabha} regarding the paper
received from the administrative department
and apprise this department of the same at
the earliest.

Yours sincerely

Enclosed: As above

Adl-
Senior Deputy
Secretary to the G

राजस्थान सरकार

गृह (गुप-12) विभाग

SLNO. P. 6(1) GRIM-12/CARA/1999 Part

क्रमांक प. 6(1) गृह-12/कारा/1999 पार्ट

जयपुर,

दिनांक: 20 SEP 2015

अवर सचिव,

लोक सभा सचिवालय,

कमेटी ब्रॉच-II

(Joint Committee on Offices of Profit),

पार्लियामेन्ट हाउस एनेक्स,

नई दिल्ली-110001

विषय:- Appointment/nomination of Members of Parliament to the
Committees boards and district level Committees constituted
by the State Government – regarding.

संदर्भ:- आपका पत्रांक 21/2/2(13)/2015/CII दिनांक 04.12.2015

महोदय,

उपरोक्त विषयान्तर्गत संदर्भित पत्र के क्रम में लिस्ट्स ऑफ़: पॉइन्ट्स के सम्बन्ध
में चाही गई सूचना विभाग द्वारा बिन्दुवार तैयार कर आवश्यक कार्यवाही हेतु संलग्न कर
प्रेषित है।

संलग्न : उपरोक्तानुसार।

भवदीय,

(कैलाश चन्द)

शासन उप सचिव,

Received
18/10/15
A

Reply of the list of points required by The Secretariat of Lok Sabha New Delhi.

S.No./point no.	Description of Points	Reply	others
1	✓ Please state whether the "Advisory Boards of central/District Jails of Bikaner, Udaipur, Chittorgarh and Jhunjhunu are a standing or an Adhoc body.	Advisory board of these jails is a <u>standing</u> body. ①	
2	Please furnish details of the Committee indicating the number of officials and non-officials in the body.	The Committee of advisory board is furnished according to The Rule 3 of The Rajasthan Prisons (Short. of Sent.) 2006.	The copy of Rule 3 is enclosed.
3	Please give in detail the powers and functions of The Committee.	Committee is advisory body and its functions are to scrutinize analyze the case of shortening of sentences and send advise to Government as per Rules	The Copy of The Rajasthan Prisons (Short. of Sent.) Rules 2006.
4	✓ Whether the functions of the Committee are <u>purely advisory</u> in nature.	<u>Yes.</u>	
5	Please furnish details with respect to the following:- ✓ (A) The term of the Member of Parliament as chairperson/Co-chairperson as (non official member) in the Committee. ✓ (B) Whether the Government exercise <u>control over the appointment to end removal from the office and over the performance and functions of the office.</u> (C) The Qualifications for Membership; and ✓ (D) <u>The role of the Member of Parliament a Member in the Committee.</u>	(A) A non-official member of an advisory board shall be appointed for a period of Two years <u>but the Government may extend the period by 1 year or less.</u> ✓ (B) <u>Yes.</u> (C) Preferably Members of the State Legislature or Parliament <u>nominated by the Government</u> (D) <u>Advisory</u>	Rule 4 is enclosed.

<p>6</p>	<p>Please also give a specific reply to each of the following:-</p> <p>✓ (A) Whether the Committee exercise executive, legislative or judicial powers.</p> <p>(B) Whether the Committee confers powers of disbursement of funds, allotment of lands, etc;</p> <p>✓ (C) Whether it would have powers of appointment/removal; and</p> <p>✓ (D) Whether the Committee would influence or power by way of patronage.</p>	<p>(A) <u>Executive powers.</u></p> <p>(B) <u>No.</u></p> <p>(C) <u>No.</u></p> <p>(D) <u>No.</u></p>	
<p>7</p>	<p>✓ (A) Please indicate the details of expenses payable to the Member of Parliament as member of the Committee specifying the actual rates of payment with break-up of sitting fee, daily allowances, travelling allowance house rent allowance, compensatory allowance, honorarium, etc.</p> <p>✓ (B) Please specify the facilities, other than the remuneration given or proposed to be given to the Member of Parliament as a member of the Committee.</p> <p>✓ (C) Please state whether the allowances payable to the Member of Parliament as Member of the Committee are covered under the Compensatory Allowance defined in Section 2(a) of Parliament (Prevention of Disqualification) Act, 1959.</p>	<p>(A) <u>No.</u></p> <p>(B) <u>No.</u></p> <p>(C) <u>No.</u></p>	
<p>8</p>	<p>Please furnish any information which the Government of Rajasthan wish to furnish on the subject.</p>		<p>Considered at the Government level.</p>

GOVERNMENT OF RAJASTHAN
Home (Gr. XII Department)

No.F.6 (1) H-12/Jail-2002

Jaipur, Dated 17.1 .2007

NOTIFICATION

In exercise of the powers conferred by clause (5) and clause (27) of section 59 of the prisons Act 1894 (IX of 1894) of the Central Legislature as adapted to Rajasthan and of all other powers enabling it in that behalf, the Government of Rajasthan hereby makes the following Rules, namely:-

1. **Short title and commencement.** (1) These rules may be called the Rajasthan Prisons (Shortening of Sentences) Rules, 2006.

(2) They shall come into force at once.

2. **Definition.** - In these rules unless the context otherwise requires;

(a) "Act" means the Prisons Act, 1894 (Central Act IX of 1894);

(b) Government means the Government of Rajasthan;

(c) "habitual criminal" means a prisoner liable to be classified as such under the rules for the time being in force: made under the Act;

(d) "premature release" means a release of a prisoner without completing his judicially ordained sentence as a result of shortening of sentence;

(e) "Shortening of Sentence" means the reduction of that period of sentence of a prisoner which he has to serve in the prison upon a judicially pronounced sentence as a matter of grace on the part of the State and as a recognition of his good behaviour in the prison.

3. **Constitution of Advisory Board-----** (1) Advisory Board shall be constituted for every Central Jail and District Jail to recommend to the Government for shortening of sentences and premature release of eligible prisoners in accordance with these rules.

(2) Advisory Board for the Central Jails located at Divisional Headquarter shall be constituted as follows:-

(a) Divisional Commissioner concerned Chairman

(b) District and Sessions Judge within whose jurisdiction the Central Jail is situate. Member

(c) Two non-officials, preferably members of the State Legislature or Parliament nominated by the Government Members

(d) Superintendent of the Central Jail concerned Member-Secretary

(3) Advisory Boards for all other Central Jails and District Jails ('A' & 'B' Class) shall be constituted as follows:-

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- (a) District Magistrate of the District in which the concerned Jail is situate. Chairman
- (b) Judicial Officer next in seniority to the District and Sessions Judge within whose jurisdiction the Central Jail or District Jail is situate. Member
- (c) Two non-officials, preferably local members of the State Legislature or Parliament nominated by the Government. Members
- (d) Superintendent or Deputy Superintendent in charge of the concerned Central or District Jail. Member-Secretary

✓ 4. **Terms of office of non-official members of the Advisory Board.** - A non-official member of an Advisory Board shall be appointed for a period of two years but the Government may further extend the period by one year or less.

5. **Meetings of Advisory Board.** - The meeting of an Advisory Board shall be convened by the Member-secretary at least twice a year in respect of a Central Jail or the District Jail concerned, as the case may be, on such date and at such venue as may be appointed for the purpose by the Chairman of the Advisory Board, normally in the months of January and July every year or on such other dates as the Chairman may appoint.

6. **Quorum.** - The quorum for the meeting of Advisory Board shall be three including Chairman.

✓ 7. **Scrutiny by the Advisory Board.** - Before recommending shortening of sentences or premature release of prisoners, the Advisory Board shall examine the following matters in full and accurate details:-

- (i) Circumstances under which offence was committed and the punishment was awarded by the court;
- (ii) Details of the prisoner's previous history and character in district where the prisoner was resident;
- (iii) Prisoner's conduct in the Prison and the result of imprisonment already undergone by him;
- (iv) Whether the prisoner has been reformed and is fit to be rehabilitated in the society without any difficulty;
- (v) Opinion of the District Magistrate and the Superintendent of Police of the districts in which the prisoner was convicted and was resident, as to what is likely to be the impact of the prisoner's premature release with special reference to the following points :
 - (a) the reaction in the locality;
 - (b) the feelings of the relatives of the victim or victim of the offence;

- (c) whether the life of the accused himself will be safe;
- (d) any other information material to the case of the prisoner; and
- (e) whether the prisoner can be released without any risk to the society; //

8. Prisoners eligibility for consideration by the advisory Board.-

(1) The Advisor Board may consider the cases of the following type of prisoners only: -

- (i) a prisoner undergoing a substantive sentence of five years or over, and who has completed two thirds of imprisonment, including remission;
- (ii) a prisoner sentenced to imprisonment for life or for more than 14 years, and who has served 2/3rd of his sentence excluding remission or 13 years 4 months of imprisonment including remission) whichever is less. The period of imprisonment shall include sentence in default of payment of fine, if the same has not been paid;
- (iii) Prisoners awarded sentences by Court-Martial who have served two-third of their sentences including the period of remissions;
- (iv) Prisoners suffering from fatal diseases like cancer, AIDS, or infectious diseases, such as leprosy; provided their disease is likely to be dangerous to other prisoners and conditions prescribed in rule 7 are fulfilled;
- (v) Prisoners who are completely blind or handicapped and are wholly dependent on others for their daily routine work;
- (vi) Prisoners who have attained the age of 70 years in case of male prisoners and 65 years in case of women prisoners and who have completed at least one third of their sentence, and in whose case no public interest is likely to be served by keeping them in prison, provided they are serving sentences for their first and only conviction.

(2) Notwithstanding anything in sub-rule (1)

- (i) a prisoner who has been sentenced-to imprisonment for life for an offence for which death penalty is one of the punishment provided by law or who has been sentenced. to death but his sentence has been commuted under Section 433 of Code of Criminal Procedure, 1973, into one of imprisonment for life, shall be considered only after he has served 14 years of actual imprisonment excluding remission but including the period of detention spent during enquiry, investigation or trial, on the condition that such a prisoner shall also have to earn a minimum of 4 years of remission in order to be eligible for consideration.
- (ii) prisoners sentenced to imprisonment for life under Sections 304 B, 376, 396, 467, and 489 'D of the Indian Penal Code may be considered for premature release only after completion of 14 years of actual imprisonment (with the period undergone during trial), on the condition that such a prisoner shall also have to earn a minimum of 4 years of remission in order to be eligible for consideration.

Explanation:- For the purpose of this rule, remission shall mean only that part of the remission which is actually earned by a prisoner in accordance with the provisions of the Jail Manual but shall not include any special remission that may be awarded to prisoners in general to mark the occasion of some events like Independence Day, Republic Day, Centenary Celebrations of National Leaders, visit of some dignitaries to jail, etc.

9. Prisoners not eligible for consideration by the Advisory Board.-

Notwithstanding anything in these Rules, the Advisory Board shall not consider the cases of following types of prisoners: -

- (1). Prisoners convicted of forgery or any offence against the State involving violence;
Explanation- For this purpose an offence punishable under sections 466, 468, 469 and section 471 to 474 of the Indian Penal Code shall be deemed to be a variation of the offence of forgery.
- (2) Prisoners convicted of offences punishable under Sections 366, 366A, 366B, 372, 373, 498B, and 498C of Indian Penal Code;
- (3)Prisoners who are habitual criminals, meaning thereby having three or more convictions, all of which are of such a nature as to justify their classification as habitual criminals;
- (4) Prisoners detained under any Preventive Detention Law;
- (5). Prisoners convicted under Terrorist and Disruptive Activities (Prevention) Act, 1987 (Central Act 28 of 1987);
- (6). Prisoners convicted under Narcotic Drugs and Psychotropic Substances Act 1985(Central Act 61 of 1985); and
- (7) Prisoners convicted under the Prevention of Terrorism Act, 2002 (Central Act 15 of 2002).

10. Procedure. - In order that all necessary information might be placed before the Advisory Board, the following procedure shall be adopted:-

- (i)The Secretary of the Advisory Board shall collect full particulars regarding each prisoner eligible for consideration by the Board before the date appointed for the meeting of the Board and shall place full accurate details regarding the prisoner's previous history and character, judgment of the sentencing court depicting circumstances in which the offence or offences were committed and sentences were awarded, his prison record together with the report of the District magistrate and the District Superintendent of Police of the district containing information whether the prisoner is considered fit for premature release etc, before the Board. Any other information required by the Advisory Board shall also be made available from the recorded the prison.
- (ii) Before coming to a decision in each case whether a prisoner is fit for release without any danger to himself and the community at large, the Advisory Board shall carefully scrutinize and consider the judgment of the court, reports of the police and the District Magistrate concerned on the conduct and character of the prisoner recommended for release, any conditions to be prescribed in case of release and the prisoner's conduct and behavior in the prison. Only the prisoner whose conduct has been exemplary in the prison should deserve the consideration of the Advisory Board.
- (iii) Report about physical and mental conditions of prisoner fit for release shall be obtained by the secretary of the Advisory Board from the Medical Officer in-charge of the prison concerned and the same be placed before the Board for consideration for final recommendation is made to the Government.
- (iv) The Advisory Board shall then submit its recommendations with full history of each case along with relevant papers in form-1 to the Government.

(v) In case of a prisoner convicted by Court-Martial the prisoner's antecedents need not ordinarily be inquired into and it will be sufficient to enquire about his behavior in prison.

11. Conditions for release. - The Advisory board may recommend release of a prisoner conditionally or unconditionally whenever a prisoner is to be released prematurely. Stringent conditions shall be imposed on a prisoner recommended to be released conditionally if so accepted by the Government, and the prisoner so recommended for release shall be made to enter into a bond in Form-2.

12. Consideration by Government. - (1) On receipt of the proceedings of the Advisory Board, and any other relevant paper the Government may order release of a prisoner in cases for which, having regard to all the circumstances of the case, it considers that the prisoner may be released without any harm or danger to the society and the victim and his family. The Government may, if so advised seek more information from any other source it deems fit in order to reach a considered decision.

(2) Government may accept or reject of a recommendation for the release a prisoner

Provided that while issuing an Order of rejection in respect of a recommendation of premature release by an Advisory Board, it shall be sufficient for the Government to state in the said Order, that the matter has been considered in detail and the Order has been passed after taking all the relevant aspects into account.

(3) In case of a prisoner sentenced by Court-Martial the Government shall forward its recommendations to the Government of India for necessary orders.

W // **13. Overriding effect.** - In case of an inconsistency between these Rules and provisions in any other Rules made under the Act, the provisions these Rules shall prevail and have overriding effect.

14. Repeal and savings.- The Rajasthan Prisons (Shortening of Sentences) Rules-1958; and rule 135 of Part XXV and rules 136-152 of Part XXVI of the Prison Rules, 1951 are hereby repealed. All action taken under the said rules shall so far as they are consistent with these Rules, be deemed to have been passed or taken under these Rules.

THE PRISONS ACT, 1894

(XX of 1894)

An Act to amend the law relating to Prisons

Whereas it is expedient to amend the law relating to prisons in India except the territories which immediately before the 1st November, 1956, were comprised in Part B States other than the Madhya Bharat and Sironj regions of the State of Madhya Pradesh; and to provide rules for the regulation of such prisons; it is hereby enacted as follows:—

CHAPTER I—PRELIMINARY

1. (1) This Act may be called the Prisons Act, 1894. This Act shall come into force on the first day of July, 1954.
- (2) It extends to the whole of India, except the territories which immediately before the 1st November, 1956, were comprised in Part B States other than the Madhya Bharat and Sironj regions of the State of Madhya Pradesh.
- (3) It shall come into force on the first day of July, 1954.
- (4) Omitted.
2. Repealed by Act 1 of 1938.
3. In this Act,
 - (A) "Prison" means any jail or place used permanently or temporarily under the general or special orders of the State Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include
 - (a) any place for the confinement of prisoners who are exclusively in the custody of the police;
 - (b) any place specially appointed by the State Government under section 541 of the Code of Criminal Procedure, 1882; or
 - (c) any place which has been declared by the State Government by general or special order, to be a labourery; and
 - (B) "Criminal prisoner" means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial.

Amended by Madhya Pradesh Act No. 40 of 1961.

(1) By Madhya Pradesh Second Extension of Laws Act, 1961 (No. 40 of 1961).

- (3) "Convicted criminal prisoner" means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of Chapter VIII of the Code of Criminal Procedure, 1882 or under the Prisoners Act, 1871.
- (4) "Civil prisoner" means any prisoner who is not a criminal prisoner.
- (5) "Remission system" means the rules for the time being in force regulating the award of marks to, and the consequent shortening of sentences of prisoners in jails.
- (6) "History-ticket" means the ticket exhibiting such information as is required in respect of each prisoner by this Act or the rules thereunder.
- (7) "Inspector General" means the Inspector General of Prisons.
- (8) "Medical Subordinate" means an Assistant Surgeon, Apothecary or qualified Hospital Assistant, and
- (9) "Prohibited article" means an article the introduction or removal of which into or out of a prison is prohibited by any rule made under this Act.

CHAPTER II—MAINTENANCE AND OFFICERS OF PRISONS

Accommodation for prisoners.

4. The State Government shall provide, for the prisoners in the territories under such Government, accommodation in prisons constructed and regulated in such manner as to comply with the provisions of this Act in respect of the separation of prisoners.

Inspector General.

5. An Inspector General shall be appointed for the territories subject to each State Government, and shall exercise, subject to the orders of the State Government, the general control and superintendence of all prisons situated in the territories under such Government.

Officers of Prisons.

6. For every prison there shall be a Superintendent, a Medical Officer (who may also be the Superintendent), a Medical Subordinate, a Jailor and such other officers as the State Government thinks necessary.

Provided that the State Government of Madhya Pradesh may, declare by order in writing that in any prison specified in the order the office of Jailer shall be held by the person appointed to be Superintendent.

7. Whenever it appears to the Inspector General that the number of prisoners in any prison is greater than conveniently or safely be kept therein, and it is not convenient to transfer the excess number to some other prison,

Temporary accommodation for prisoners

or whenever from the outbreak of epidemic disease within any prison, or for any other reason, it is desirable to provide for the temporary shelter and safe custody of any prisoners,

provision shall be made by such officer and in such manner as the State Government may direct, for the shelter and safe custody in temporary prisons of so many of the prisoners as cannot be conveniently or safely kept in the prison.

CHAPTER III.—DUTIES OF OFFICERS GENERALLY.

8. All officers of a prison shall obey the directions of the Superintendent; all officers subordinate to the Jailer shall perform such duties as may be imposed on them by the Jailer with the sanction of the Superintendent or be prescribed by rules under section 59.

Control and duties of officers of prisons

9. No officer of a prison shall sell or let, nor shall any person in trust for employed by him sell or let, or derive any benefit from selling or letting, any article to any prisoner or have any money or other business dealings directly or indirectly with any prisoner.

Officers not to have business dealings with prisoners

10. No officer of a prison shall, nor shall any person in trust for or employed by him have any interest direct or indirect in any contract for the supply of the prison; nor shall he derive any benefit, directly or indirectly, from the sell or purchase of any article on behalf of the prison or belonging to a prisoner.

Officers not to be interested in prison contracts

Superintendent

11. (1) Subject to the orders of the Inspector General the Superintendent shall manage the prison in all matters relating to discipline, labour, expenditure, punishment and control.

Superintendent

(2) Subject to such general or special directions as may be given by the State Government the Superintendent of a prison other than a central prison or a prison situated in a presidency town shall obey all orders not inconsistent with

this Act or any rule thereunder which may be given respecting the prison by the District Magistrate, and shall report to the Inspector General all such orders and the action taken thereon.

Records to be kept by Superintendent. 12. The Superintendent shall keep, or cause to be kept, the following records:

- (1) a register of prisoners admitted;
- (2) a book showing when each prisoner is to be released;
- (3) a punishment book for the entry of the punishments inflicted on prisoners for prison offences;
- (4) a visitor's book for the entry of any observations made by the visitors concerning any matters connected with the administration of the prison;
- (5) a record of the money and other articles taken from prisoners; and all such other records as may be prescribed by rules under section 59.

Medical Officer

Duties of Medical Officer. 13. Subject to the control of the Superintendent, the Medical Officer shall have charge of the sanitary administration of the prison and shall perform such duties as may be prescribed by rules made by the State Government under section 59.

Medical Officer to report to Superintendent. 14. Whenever the Medical Officer has reason to believe that the mind of a prisoner is, or is likely to be, seriously affected by the discipline or treatment to which he is subjected, the Medical Officer shall report the case in writing to the Superintendent, together with such observations as he may think proper.

Such reports, with the orders of the Superintendent thereon, shall forthwith be sent to the Inspector General for information.

Report on death of prisoner. 15. On the death of any prisoner, the Medical Officer shall forthwith record in a register the following particulars as far as they can be ascertained, namely:

- (1) the day on which the deceased first complained of illness or was observed to be ill;
- (2) the labour, if any, on which he was engaged on that day;
- (3) the state of his diet on that day;
- (4) the day on which he was admitted to hospital;
- (5) the day on which the Medical Officer was first informed of the illness.

- (6) the nature of the disease;
 - (7) when the deceased was last seen before his death by the Medical Officer or Medical Subordinate;
 - (8) when the prisoner died; and
 - (9) (in cases where a post-mortem examination is made) an account of the appearance after death, together with any special remarks that appear to the Medical Officer to be required.
16. (1) The jailor shall reside in the prison unless the Jailor Superintendent permits him in writing to reside elsewhere.
- (2) The jailor shall not without the Inspector General's sanction in writing be concerned in any other employment.
17. Upon the death of a prisoner, the jailor shall ^{give notice of death of prisoner.} give immediate notice thereof to the Superintendent and the Medical Subordinate.
18. The jailor shall be responsible for the safe custody ^{Responsibility of} of the records to be kept under section 12, for the commitment warrants and all other documents committed to his care and for the money and other articles taken from prisoners.
19. The jailor shall not be absent from the prison for ^{Jailor to be present at night} more than one night without permission in writing from the Superintendent, but, if absent without leave for a night from unavoidable necessity, he shall immediately report the fact and the cause of it to the Superintendent.
20. Where a Deputy Jailor or Assistant Jailor is appointed ^{Power of Deputy and Assistant Jailor} to a prison, he shall, subject to the orders of the Superintendent, be empowered to perform any of the duties, and be subject to all the responsibilities of a jailor under this Act or any rule thereunder.

Subordinate Officers

21. The officer acting as gate-keeper, or any other officer ^{Duties of gate-keeper} of the prison, may examine anything carried in or out of the prison, and may stop and search or cause to be searched any person suspected of bringing any prohibited article into, or out of the prison, or of carrying out any property belonging to the prison, and, if any such article or property be found, shall give immediate notice thereof to the jailor.
22. Officers subordinate to the jailor shall not be absent ^{Subordinate officer not to be absent without leave} from the prison without leave from the Superintendent or from the jailor.

Convict officers. 23. Prisoners who have been appointed as officers of prisons shall be deemed to be public servants within the meaning of the Indian Penal Code.

CHAPTER IV—ADMISSION, REMOVAL AND DISCHARGE OF PRISONERS

Prisoners to be examined on admission. 24. Whenever a prisoner is admitted into prison, he shall be searched, and all weapons and prohibited articles shall be taken from him.

(2) Every criminal prisoner shall also, as soon as possible after admission, be examined under the general or special orders of the Medical Officer, who shall enter or cause to be entered in a book, to be kept by the Jailor a record of the state of the prisoner's health, and of any wounds or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment and any observations which the Medical Officer thinks fit to add.

(3) In the case of female prisoners, the general and special orders shall be carried out by the matron under the general or special orders of the Medical Officer.

Effects of prisoners. 25. All money or other articles in respect of which no order of a competent Court has been made, and which may, with proper authority be brought into the prison by any criminal prisoner or sent to the prison for his use, shall be placed in the custody of the Jailor.

Removal and discharge of prisoners. 26. All prisoners, previously to being removed to any other prison, shall be examined by the Medical Officer.

(2) No prisoner shall be removed from one prison to another unless the Medical Officer certifies that the prisoner is free from any illness rendering him unfit for removal.

(3) No prisoner shall be discharged or sent out of the prison if labouring under any form of contagious disease, or until, in the opinion of the Medical Officer, such discharge is safe.

CHAPTER V—DISCIPLINE OF PRISONERS

Separation of prisoners. 27. The provisions of this Act with respect to the separation of prisoners are as follows:

(1) In a prison containing female as well as male prisoners, the females shall be kept in a separate building, or separate part of the same building, in such manner as to prevent their

meeting, or conversing or holding any intercourse with the male prisoners.

(2) in a prison where male prisoners under the age of twenty one are confined, means shall be provided for separating them altogether from the other prisoners, and for separating those of them who have arrived at the age of puberty from those who have not.

(3) unconvicted criminal prisoners, shall be kept apart from convicted criminal prisoners, and

(4) civil prisoners shall be kept apart from criminal prisoners.

28. Subject to the requirements of the last foregoing section convicted criminal prisoners may be confined either in association or individually in cells or partly in one way and partly in the other.

Association and segregation of prisoners.

29. No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison, and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical Officer or Medical Subordinate.

Solitary confinement.

30. Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by order of the jailor and all articles shall be taken from him which the jailor deems it dangerous or inexpedient to leave in his possession.

Prisoners under sentence of death.

(2) Every such prisoner shall be confined in a cell apart from all other prisoners and shall be placed by day and by night under the charge of a guard.

CHAPTER VI - FOOD, CLOTHING AND BEDDING OF CIVIL UNCONVICTED CRIMINAL PRISONERS

31. A civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources, at proper hours, food, clothing, bedding or other necessaries, but subject to examination and to such rules as may be approved by the Inspector General.

Maintenance of certain prisoners from private sources.

32. No part of any food, clothing, bedding or other necessaries belonging to any civil or unconvicted criminal prisoner shall be given, hired or sold to any other prisoner, and any prisoner transgressing the provisions of this section shall lose the privilege of purchasing food or receiving it from private sources, for such time as the Superintendent thinks proper.

Regulation on transfer of food and clothing between certain prisoners.

Supply of clothing and bedding to civil and unconvicted criminal prisoners.

31. Every civil prisoner and unconvicted criminal prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.

(2) When any civil prisoner has been committed to prison in execution of a decree in favour of a private person, such person, or his representative, shall, within forty-eight hours after the receipt by him of a demand in writing, pay to the Superintendent the cost of the clothing and bedding so supplied to the prisoner, and in default of such payment the prisoner may be released.

CHAPTER VII - EMPLOYMENT OF PRISONERS

Employment of civil prisoners.

34. Civil prisoners may, with the Superintendent's permission, work and follow any trade or profession.

(2) Civil prisoners having their own implements and not maintained at the expense of the prison, shall be allowed to retain the tools of their earnings; but the earnings of such as are furnished with implements or are maintained at the expense of the prison, shall be subject to a deduction to be determined by the Superintendent for the use of implements and the cost of maintenance.

Employment of criminal prisoners.

35. No criminal prisoner sentenced to labour, or employed on labour, shall, except on an emergency with the sanction in writing of the Superintendent, be kept to labour for more than nine hours in any one day.

(2) The Medical Officer shall from time to time examine the labouring prisoners while they are employed, and shall if necessary make a record of any cases he may be recorded upon. In the case of any prisoner employed on labour the weight of such prisoner at the time.

(3) When the Medical Officer is of opinion that the health of any prisoner suffers from employment of any kind or class of labour, such prisoner shall not be employed on that labour but shall be placed on such other kind or class of labour as the Medical Officer may consider suited for him.

Employment of criminal prisoners sentenced to simple imprisonment.

36. Provisions shall be made by the Superintendent for the employment (so long as they so desire) of all criminal prisoners sentenced to simple imprisonment, but no prisoner who is sentenced to simple imprisonment shall be punished for neglect of work, excepting by extra detention in the scale of diet as may be maintained by the rules of the prison in the case of neglect of work by such prisoner.

CHAPTER VIII—HEALTH OF PRISONERS

37. The names of prisoners desiring to see the Medical Subordinate or appearing out of health in mind or body shall, without delay, be reported by the officer in immediate charge of such prisoners to the Jailer. Sick prisoners.

(2) The Jailer shall without delay, call the attention of the Medical Subordinate to any prisoner or group to see him or who is ill, or whose state of mind or body appears to require attention, and shall carry into effect all written directions given by the Medical Officer or Medical Subordinate respecting the alteration of the discipline or treatment of any such prisoner.

38. All directions given by the Medical Officer or Medical Subordinate in relation to any prisoner, with the exception of orders for the supply of medicines or directions relating to such matters as are carried into effect by the Medical Officer himself or under his superintendence, shall be entered day by day in the prisoner's history ticket or in such other record as the State Government may by rule direct, and the Jailer shall make an entry in its proper place stating in respect of each direction the fact of its having been or not having been complied with, accompanied by such observations, if any, as the Jailer thinks fit to make and the date of the entry. Record of directions of Medical Officer.

Hospital

39. In every prison a hospital or proper place for the reception of sick prisoners shall be provided. Hospital.

39-A. The Superintendent may if in his opinion a prisoner requires special treatment in a hospital outside the prison or in any asylum as defined in the Indian Lunacy Act, 1912 (No. 2 of 1912) send him or cause him to be sent to such hospital or asylum, subject to the provisions contained in regard to the prisoner executing such treatment and also to such other conditions, if any, as the State Government may prescribe. Power of Superintendent to send a prisoner to hospital for special treatment.

(2) The period spent by the prisoner for such treatment in the hospital or asylum or in going thereto or returning therefrom shall be deemed to be part of the period of his detention in the prison.

Explanation I.—Nothing contained in this section shall be deemed to affect the operation of section 30 of the Prisoners Act, 1900.

sons' Act, 1894 (No. 9 of 1894) (hereinafter referred to as the Principal Act), shall to the State of Madhya Pradesh, be amended in the manner hereinafter provided.

Amendment of Central Act No. 9 of 1894 in its application to the State of Madhya Pradesh.

Section 36 of the Principal Act, the following section shall be inserted, namely :-

Insertion of new Section 36-A.

The prisoners shall be paid wages for the employment provided to them at such rate as may be prescribed from time to time. The amount of fifty per cent. of the total amount of wages earned by the prisoner in a month shall be kept and deposited in a separate common fund which shall be exclusively used for the payment of compensation to the deserving victims or his family of the offence the commission of which entailed the sentence of imprisonment to the prisoner. The account of the fund shall be maintained by the Superintendent of Jail in such form and in such manner as may be prescribed. The rate of compensation to be paid to the victims shall be fixed by a committee consisting of such persons as may be prescribed."

Creation of fund for compensation.

अधिनियम को पढ़ने-संशोधन के विना
इसके द्वारा करने के लिए अनुमति
रजिस्ट्रार-एन एच भाषाशास्त्र एम.पी.-2
उम्लु. पी. 1505/2000.



पंजी क्र.सं.क. भद्रपुरा डिप्टी
एम. पी. 108/भद्रपुरा 2000

मध्यप्रदेश राजपत्र (असाधारण) प्राधिकार से प्रकाशित

क्रमांक 4]

भोपाल, सांघवा, दिनांक 3 जनवरी 2000—पीय 13, शक 1921

विधि और विधायी कार्य विभाग

भोपाल, दिनांक 3 जनवरी 2000

क्र. 92-इन्फोम अ (प्र.)—मध्यप्रदेश विधान सभा का निम्नलिखित अधिनियम, जिस पर दिनांक 29 दिसम्बर 1999 को राज्यपाल की अनुमति प्राप्त हो चुकी है, एतद्वारा सर्वसाधारण वही जानकारी के सिधे प्रकाशित किया जाता है.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
आर. के. मिटीके, जतिरिक्त सचिव.

मध्यप्रदेश अधिनियम
क्रमांक 1 मन् २०००.

कारागार (मध्यप्रदेश संशोधन) अधिनियम, १९९९.

[दिनांक २९ दिसम्बर, १९९९ को राज्यपाल की अनुमति प्राप्त हुई; अनुमति "मध्यप्रदेश राजपत्र (असाधारण)" में दिनांक ३ जनवरी, २००० को प्रथम बार प्रकाशित की गई.]

कारागार अधिनियम, १८९४ को मध्यप्रदेश राज्य को लागू हुए रूप में और संशोधित करने हेतु अधिनियम.

भारत गणराज्य के पचासवें वर्ष में मध्यप्रदेश विधान-मण्डल द्वारा निम्नलिखित रूप में यह अधिनियमित हो:—

१. इस अधिनियम का संक्षिप्त नाम कारागार (मध्यप्रदेश संशोधन) अधिनियम, १९९९ है.

संक्षिप्त नाम.

मध्यप्रदेश राज्य को लागू हुए रूप में केन्द्रीय अधिनियम, 1999 का सं. 1 का संशोधन

2. मध्यप्रदेश राज्य को लागू हुए रूप में केन्द्रीय अधिनियम, 1999 (1999 का सं. 1) (जो इसमें इसके पश्चात् मूल अधिनियम के नाम से निर्दिष्ट है) को इसमें इसके पश्चात् उपरोक्त रीति में संशोधित किया जाए

नई धारा 35-क का अंतःस्थापन

3. मूल अधिनियम को धारा 35 के पश्चात् निम्नलिखित धारा अंतःस्थापित की जाए अर्थात् :-

प्रतिकर के लिए निधि का गठन

"35-क. यदि कोई व्यक्ति को उच्च उपस्थान कराए गए नियोजन के लिए मजदूरी का भुगतान ऐसी दर पर किया जाएगा जैसी कि समय-समय पर निर्दिष्ट की जाए, जन्मो द्वारा एक मास में उपरोक्त की गई मजदूरी की मूल रकम पर पचास प्रतिशत प्रति एक मूल्य सामान्य निधि में रखी और जमा की जाएगी जिसका कि अन्ततः उपयोग उक्त अधिनियम के धारणा 35-क के अन्तर्गत उनके परिवार को प्रतिकर दिए जाने में ही किया जाएगा जिसके कि किए जाने के कारण वह बन्दी को कारावास से दंडाट्ट किया गया है। निधि का लेखा खेत के अधीनक द्वारा एक प्रत्येक और ऐसी रीति में निर्धारित किया जाएगा जो कि विहित की जाए, पीड़ितों को भुगतान किए जाने वाले प्रतिकर को दर एक समिति द्वारा नियंत्रित की जाएगी जो ऐसे व्यक्तियों से मिलकर बनेगी जो कि विहित किए जाएं"

भाषण, दिनांक 3 जनवरी 2000

क्र. 25-इक्कीस-अ (प्र.)- भारत के संविधान के अनुच्छेद 348 के खण्ड (3) के अनुसरण में, मध्यप्रदेश (मध्यप्रदेश संशोधन अधिनियम, 1999 (क्रमांक 1 सन् 2000) का अंतिम अनुवाद राजपत्र के प्रतिकर से गतद्वारा प्रकाशित किया जाता है।

मध्यप्रदेश के राजपत्र के नाम से इसे आदेशानुसार,
आर. के. सिन्हा, आधिकारिक सचिव

MADHYA PRADESH ACT

No. 1 of 2000

THE PRISONS (MADHYA PRADESH AMENDMENT) ACT, 1999.

[Received the assent of the Governor on the 29th December, 1999; assent first published in the Madhya Pradesh Gazette (Extra-ordinary) dated 3rd January, 2000.]

An Act further to amend the Prisons Act, 1894, in its application in the State of Madhya Pradesh.

Be it enacted by the Madhya Pradesh Legislature in the Fiftieth Year of the Republic of India as follows :-

Short title.

1. This Act may be called the Prisons (Madhya Pradesh Amendment) Act, 1999.

(No. 1 of 1900) in cases to which that section applies.

Explanation II.—In this section, prisoner means a convicted criminal prisoner.

Punishment for escape or attempt to escape from hospital or asylum.

39-B. If any prisoner dealt with under section 39-A escape or attempts to escape from the hospital or asylum to which he has been sent or when going thereto or returning therefrom, he shall be punished with imprisonment for a term which may extend to two years, or with fine or, with both.

(2) Such punishment shall be in addition to the punishment for which the prisoner was liable for the offence of which he was already convicted.

Provisions applicable to bonds referred to in section 39-A.

39-C. The provisions of Chapter XXII of the Code of Criminal Procedure, 1898 (No. 7 of 1898) shall, so far as may be, apply to the bonds referred to in section 39-A.

CHAPTER IX—VISITS TO PRISONERS

Visits to Civil and uncaptured criminal prisoners.

40. Due provision shall be made for the admission at proper times and under proper restrictions into every prison of persons with whom civil or uncaptured criminal prisoners may desire to communicate, care being taken that so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other person.

Search of visitors.

41. The Jailor may demand the name and address of any visitor to a prisoner and when the Jailor has any ground for suspicion may search any visitor or cause him to be searched, but the search shall not be made in the presence of any prisoner or of another visitor.

(2) In case of any such visitor refusing to permit himself to be searched, the Jailor may deny him admission, and the grounds of such proceeding with the particulars thereof shall be entered in such record as the State Government may direct.

CHAPTER X—OFFENCES IN RELATION TO PRISONS

Penalty for introduction or removal of prohibited articles into or from prison and communication with prisoners.

42. Whoever, contrary to any rule under section 59 introduces or removes or attempts by any means whatever to introduce or remove into or from any prison or supplies or attempts to supply to any prisoner outside the limits of a prison, any prohibited article

and every officer of a prison who contrary to any such knowingly suffers any such articles to be introduced in to or

removed from any prison, to be possessed by any prisoner, or to be supplied to any prisoner outside the limits of a prison.

and whoever, contrary to any such rule, communicates or attempts to communicate with any prisoner,

and whoever abets any offence made punishable by this section.

Shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

43. When any person, in the presence of any officer of a prison, commits any offence specified in the last foregoing section, and refuses on demand of such officer to state his name and residence or gives a false or misleading name, such officer knows, or has reason to believe, to be false, such officer may arrest him, and shall, without unnecessary delay, make him over to a police officer, and thereupon such police officer shall proceed as if the offence had been committed in his presence.

Power to arrest for offence under section 42.

44. The Superintendent shall cause to be affixed in a conspicuous place outside the prison a notice in English and Hindi in Devanagari script setting forth the offences mentioned under section 42 and the penalties incurred by their commission.

Publication of notices.

CHAPTER XI - PRISON OFFENCES

45. The following acts are declared to be prison offences when committed by a prisoner:

- (1) such wilful disobedience to any regulation of the prison as shall have been declared to be made under section 39 to be a prison offence;
- (2) any assault or use of criminal force;
- (3) the use of insulting or threatening language;
- (4) immoral or indecent or disorderly conduct;
- (5) wilfully disabling himself from labour;
- (6) contumacious refusal to work;
- (7) filing, cutting, altering or removing handcuffs, fetters or bars without due authority;
- (8) wilful absence or negligence at work by any prisoner sentenced to rigorous imprisonment.

Sub-section 45. Section 45 of Act No. 10 of 1949.

- (9) wilful mismanagement of work by any prisoner sentenced to rigorous imprisonment;
- (10) wilful damage to prison property;
- (11) tempering with or defacing history tickets, records or documents;
- (12) receiving, possessing or transferring any prohibited articles;
- (13) feigning illness;
- (14) wilfully bringing a false accusation against any officer or prisoner;
- (15) admitting or refusing to report, as soon as it comes to his knowledge, the occurrence of any fire, any plot or conspiracy, any escape, attempt or preparation to escape, and any strike or preparation for attack upon any prisoner or official; and
- (16) conspiring to escape, or to assist in escaping or to commit any other of the offences aforesaid.

Punishment of such offences

40. The Superintendent may examine any person touching any such offence, and determine thereupon, and punish such offence by—

- (1) a formal warning;

Explanation—A formal warning shall mean a warning personally addressed to a prisoner by the Superintendent, and recorded in the punishment book and on the prisoner's history ticket.

- (2) change of labour to some more arduous or severe form for such period as may be prescribed by rules made by the State Government;
- (3) hard labour for a period not exceeding seven days in the case of convicted criminal prisoners not sentenced to rigorous imprisonment;
- (4) such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rules made by the State Government;
- (5) the substitution of guany or other coarse fabric for clothing (if other material not being woollen) for a period which shall not exceed three months;
- (6) imposition of handcuffs of such pattern and weight in such manner and for such period as may be prescribed by rules made by the State Government;
- (7) imposition of fetters of such pattern and weight in such manner and for such period, as may be prescribed by rules made by the State Government.

- (8) separate confinement for any period not exceeding three months.

Explanation.—Separate confinement means such confinement with or without labour as secludes a prisoner from communication with, but not from sight of other prisoners, and allows him not less than one hour's exercise per diem and to have his meals in association with one or more other prisoners.

- (9) Penal diet—i.e. restriction of diet in such manner and subject to such conditions regarding labour as may be prescribed by the State Government.

Provided that such restriction of diet shall in no case be applied to a prisoner for more than ninety-six consecutive hours and shall not be repeated except for a fresh offence not more than after an interval of one week.

- (10) cellular confinement for any period not exceeding fourteen days.

Provided that after each period of cellular confinement an interval of not less duration than such period must elapse before the prisoner is again sentenced to cellular or solitary confinement.

Explanation.—Cellular confinement means such confinement with or without labour as entirely secludes a prisoner from communication with, but not from sight of, other prisoners.

- (11) Penal diet as defined in clause (9) combined with cellular confinement.

- (12) Omitted.

Provided that nothing in this section shall render any female or civil prisoner liable to the imposition of any form of handcuffs or fetters.

17. (1) Any two of the punishments enumerated in the last foregoing section may be awarded for any such offence in combination, subject to the following exceptions, namely:—

Plurality of punishment under section 60.

- (1) corporal warning shall not be combined with any other punishment except loss of privileges under clause (4) of this section;
- (2) penal diet shall not be combined with change of labour under clause (2) of this section, nor shall

¹ Omitted by Mysore (Amendment) Act, 1961.

any additional period of penal diet awarded singly be combined with any period of penal diet awarded in combination with cellular confinement;

- (3) cellular confinement shall not be combined with separate confinement, so as to prolong the total period of seclusion in which the prisoner shall be liable;
- (4) Omitted.
- (5) no punishment will be combined with any other punishment in contravention of rules made by the State Government.

(2) No punishment shall be awarded for any such offence so as to combine with the punishment awarded for any other such offence, two or the punishments which may not be awarded in combination for any such offence.

Award of punishment under sections 46 and 47.

48. (f) The Superintendent shall have power to award any of the punishments enumerated in the two last foregoing sections, subject, in the case of separate confinement for a period exceeding one month, to the previous confirmation of the Inspector-General.

(2) No officer subordinate to the Superintendent shall have power to award any punishment whatever.

Punishment to be in accordance with foregoing sections.

49. Except by order of a Court of Justice, no punishment other than the punishments specified in the foregoing sections shall be inflicted on any prisoner, and no punishment shall be inflicted on any prisoner otherwise than in accordance with the provisions of those sections.

Medical Officer to certify in cases of prisoners for punishment.

50. (1) No punishment of penal diet, either singly or in combination, or of change of labor under section 49, clause (2) shall be executed until the prisoner to whom such punishment has been awarded has been examined by the Medical Officer, who, if he considers the prisoner fit to undergo the punishment, shall certify accordingly in the appropriate column of the punishment book prescribed in section 17.

(2) If he considers the prisoner unfit to undergo the punishment, he shall in like manner record his opinion in writing and shall state whether the prisoner is absolutely unfit for punishment of the kind awarded, or whether he considers any description necessary.

Amended by Madhya Pradesh Second Extension of Laws Act, 1951. Substituted by Madhya Pradesh Act, No. 43, of 1961.

(3) In the latter case he shall state what extent of punishment he thinks the prisoner can undergo without injury to his health.

51. (1) In the punishment book prescribed in section 49, there shall be recorded, in respect of every punishment inflicted, the prisoner's name, register number and the class (whether habitual or not) to which he belongs, the prison offence of which he was guilty, the date on which such prison offence was committed, the number of previous prison offences recorded against the prisoner, and the date of his last prison offence, the punishment awarded, and the date of infliction.

Entries in punishment book.

(2) In the case of every serious prison offence, the names of the witnesses proving the offence shall be recorded.

(3) Against the entries relating to each punishment the Jailor and Superintendent shall affix their initials as evidence of the correctness of the entries.

52. (1) If any prisoner is guilty of any offence against prison discipline which, by reason of his having frequently committed such offences, or otherwise in the opinion of the Superintendent, is not adequately punishable by the infliction of any punishment which he has power under this Act to award, the Superintendent may forward such prisoner to the Court of any Magistrate of the first class having jurisdiction, together with a statement of the circumstances, and such Magistrate shall thereupon inquire into and try the charge so brought against the prisoner, and upon conviction may sentence him to imprisonment which may extend to one year, in addition to any term for which such prisoner is undergoing imprisonment, when he committed such offence, or may sentence him to any of the punishments enumerated in section 46.

Provision for removal of habitual offenders.

(2) Both the provisions omitted.

53. Omitted.

54. (1) Every Jailor or officer of a prison subordinate to him who shall be guilty of any violation of duty or official breach or neglect of any rule or regulation or order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice in writing of his intention, for the period of two months, or who shall wilfully neglect any leave granted to him, or who shall engage without authority in any employment other than his prison duty, or who shall be guilty of

Offence of prison subordinate.

constable, shall be liable on conviction, to a fine not exceeding two hundred rupees, or to imprisonment for a period not exceeding three months or to both.

(2) Omitted.

CHAPTER XII—MISCELLANEOUS

Extra-mural custody, control and employment of prisoners.

55. A prisoner, when being taken to or from any prison in which he may be lawfully confined, or whenever he is working outside or is otherwise beyond the limits of any such prison in or under the lawful custody or control of a prison officer belonging to such prison, shall be deemed to be in prison and shall be subject to all the same incidents as if he were actually in prison.

Confinement in cells.

56. Whenever the Superintendent considers it necessary (with reference either to the state of prison or the character of the prisoners) for the safe custody of any prisoners that they should be confined in cells he may subject to such rules and instructions as may be laid down by the Inspector General with the sanction of the State Government, so confine them.

Confinement of prisoners under sentence of transportation in cells.

57. (1) Prisoners under sentence of transportation may be subject to any rules made under section 49 be confined in fetters for the first three months after admission to prison.

(2) Should the Superintendent consider it necessary, either for the safe custody of the prisoner himself or for any other reason, that fetters should be retained on any such prisoner for more than three months, he shall apply to the Inspector General for sanction to that retention for the period for which he considers that retention necessary and the Inspector General may sanction such retention accordingly.

Prisoners not to be bound by handcuffs except under necessity.

58. No prisoner shall be put in bonds or under mechanical restraint by the jailor or his own authority, except in case of urgent necessity in which case notice thereof shall be forthwith given to the Superintendent.

Power to make rules.

59. The State Government may make rules consistent with this Act—

(1) defining the acts which shall constitute prison offences

(2) determining the classification of prison offences into serious and minor offences.

- (3) fixing the punishments admissible under this Act which shall be available for commission of prison offences or classes thereof;
- (4) declaring the circumstances in which acts constituting both a prison offence and an offence under the Indian Penal Code (Act 45 of 1860), may or may not be dealt with as a prison offence;
- (5) for the award of marks and the shortening of sentences;
- (6) regulating the use of arms against any prisoner or body of prisoners in the case of an outbreak or attempt to escape;
- (7) defining the circumstances and regulating the conditions under which prisoners in danger of death may be released;
- (8) for the classification of prisons, and description and construction of wards, cells and other parts of a prison;
- (9) for the regulation by numbers, length or character of sentences or otherwise of the prisoners to be confined in each class of prisons;
- (10) for the Government of prisons and for the appointment of all officers appointed under this Act;
- (11) as to the food, bedding and clothing of criminal prisoners and of civil prisoners maintained otherwise than at their own cost;
- (12) for the employment, instruction and control of convicts within or without prisons;
- (13) for defining acts the introduction or removal of which into or out of prisons without the authority is prohibited;
- (14) for classifying and prescribing the forms of labour and regulating the periods of rest from labour;
- (15) for regulating the disposal of the proceeds of the employment of prisoners;
- (16) for regulating the communication letters of prisoners sentenced to transportation;
- (17) for the classification and the separation of prisoners;
- (18) for regulating the confinement of convicted criminal prisoners under section 28.

- (19) for the preparation and maintenance of history tickets;
- (20) for the selection and appointment of prisoners as officers of prisons;
- (21) for rewards for good conduct;
- (22) for regulating the transfer of prisoners whose terms of transportation or imprisonment is about to expire, subject, however, to the consent of the State Government of any other state to which the prisoner is to be transferred;
- (23) for the treatment, transfer and disposal of criminal lunatics or recovered criminal lunatics confined in prisons;
- (24) for regulating the transmission of appeals and petitions from prisoners and their communications with their friends;
- (25) for the appointment and conduct of visitors of prisons;
- (26) for extending any or all of the provisions of this Act and of the rules thereunder to Subsidiary Jails or special places of confinement appointed under section 541 of the Code of Criminal Procedure, 1882, and to the officers employed, and the prisoners confined therein;
- (27) in regard to the admission, custody, employment, dieting, treatment and release of prisoners; and
- (28) generally for carrying in effect the purposes of this Act.

Power of Local Government to make rules.

60. Omitted.

Exhibition of copies of rules.

61. Copies of rules under section 59 so far as they affect the Government of prisons, shall be exhibited, both in English and in Hindi in Devnagiri script, in some conspicuous place and to which all persons employed within a prison have access.

Exercise of powers of Superintendent and Medical Officer.

62. All or any of the powers and duties conferred and imposed by this Act on a Superintendent or Medical Officer may in his absence be exercised and performed by such other officer as the State Government may appoint in this behalf either by name or by his official designation.

* Omitted by the Government of India (Adoption of Indian Laws Order, 1957) amended by Madhya Pradesh Act No. 40 of 1961.

THE SCHEDULE

Provisions repealed

(Repealed by the Repealing Act, 1 of 1938), 2 and Sch.

Type your text
ANNEXURE - I

*
THE PARLIAMENT (PREVENTION OF DISQUALIFICATION) ACT, 1959
(10 OF 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.
[4th April, 1959.]
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 [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;

² [(aa) the office of a Leader of the Opposition in Parliament;]

³ [(ab) the office of Deputy Chairman, Planning Commission;]

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

⁵ [(ad) the office of the Chairperson of the National Advisory Council constituted by the Government of India in the Cabinet Secretariat vide Order No. 631/2/12004-Cab., dated the 31st May, 2004;]

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

⁷ [(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);

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

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

(iv) 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;

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).
7. Ins. by Act 54 of 1993, s. 3 (w.e.f. 27-8-1993).
8. Subs. by Act 28 of 2013, s. 2 (w.e.f. 19-2-2014).

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(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;

[(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 lambaradar, maiguzar, patel, deshmuks 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.]

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

[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).]

[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. Subs. by Act 54 of 1993, s. 3, for cl (i) (w.e.f. 15-7-1993).

2. Ins. by Act 31 of 2005, s. 12 (w.e.f. 4-4-1959).

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

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

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

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

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THE SCHEDULE

[See section 3(f)]

PART I

BODIES UNDER THE CENTRAL GOVERNMENT

(Chairman not covered u/s 3(i))

- 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 *** Limited.
- Board of Directors of the Heavy Electrical *** Limited.
- Board of Directors of the Hindustan Cables *** Limited.
- Board of Directors of the Hindustan Insecticides *** Limited.
- Board of Directors of the Hindustan Machine Tools *** Limited.
- Board of Directors of the Hindustan Shipyard Limited.
- Board of Directors of the [Hindustan Chemicals and Fertilizers Limited].
- Board of Directors of the National Coal Development Corporation (Private) Limited.
- Board of Directors of the National [Industrial] Development Corporation *** Limited.
- Board of Directors of the National Instruments *** Limited.
- Board of Directors of the National Small Industries Corporation *** Limited.
- Board of Directors of the Neyveli Lignite Corporation (Private) Limited.
- Board of Directors of the Sindri Fertilizers and Chemicals *** Limited.
- Board of Directors of the State Trading Corporation of India *** 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).
- 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).

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 "Nagpur Fertilizers and Chemicals (Private) Limited".
 3. Ins. by s. 3 and the Second Schedule, *ibid*.

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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 *Narsinggirji* 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.

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

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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.

[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.
² [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.

[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.

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.

1. Subs. by the Madras State (Alteration of Name) (Adaptation of Laws on Union Subjects) Order, 1970, for "Madras" (w.e.f. 1-1-1969).
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 (39 of 1988).

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 (51 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 15 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 druggist 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 Khwaja Sahab 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.

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Indian Central Tobacco Committee.
 Indian Lac Cass Committee constituted under section 4 of the Indian Lac Cass 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 1939 F.
 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.
 Bodh 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.

[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.

³ [TABLE
 [See section 3(k)]

S.No. (1)	Name of the Body (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.

1. Subs. By the Madras State (Alteration of Name) (Adaptation of Laws on Union Subjects) Order, 1970, for "Madras" (w.e.f. 14.1.1959).
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)
4.	The Indian Statistical Institute, Calcutta.
5.	The West Bengal Handicrafts Development Corporation Limited.
6.	The West Bengal Small Industries Development Corporation Limited.
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 Tirupati 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.
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.

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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 Prema 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.]

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विधि और न्याय मंत्रालय / Ministry of Law & Justice

विधि कार्य विभाग / Department of Legal Affairs

Subject: Appointment/nomination of Member of Parliament to the Committees, Boards and District Level Committees constituted for Central/District Jails by the State Government of Rajasthan.

Lok Sabha Secretariat vide OM No. 21/2/2(13)/2015/CII dated 4th April, 2019 has sought our comments in the matter of appointment/nomination of Member of Parliament to the Committees, Boards and District Level Committees constituted for Central/District Jails by the State Government of Rajasthan. The issue for our opinion is, as to whether, the nomination of Hon'ble MP to such Committees would attract the disqualification from membership of the House under Article 102(1)(a) of the Constitution of India.

2. As per the documents received from Lok Sabha Secretariat, it is seen that, in exercise of powers conferred by clause (5) and clause (27) of Section 59 of the Prisons Act, 1894, the Government of Rajasthan made the Rajasthan Prisons (Shortening of Sentences) Rules, 2006 vide notification dated 17.01.2007, wherein, the provision for constitution of Advisory Board was mandated for every Central Jail and District Jail to recommend the Government for shortening of sentences and premature release of eligible prisoners. It is noted that Rule 3 of the said Rules provides the constitution of Advisory Board as per which, two non official members would preferably be the members of the State Legislature or Parliament as nominated by the Government.

3. It is noted that in reply to the points required by the Secretariat of Loksabha, the Government of Rajasthan has clarified that the role of Hon'ble MPs in the Committee is purely advisory in nature and the Committee would not influence or power by way of patronage. It is further noted that there is no provision regarding payment of any remuneration under the Rules of 2006 and it appears from the collective reading of the Rules and reply of the State Government that no remuneration is paid to the Members of Advisory Board.

4. So far as the disqualification is concerned, Sec. 3(i) of the Parliament (Prevention of Disqualification) Act, 1959, provides that the office of Chairman, Director or Member of any statutory or non-statutory body other than body covered under clause (h), is not disqualified from being a Member of Parliament, if the holder of such office is not entitled to any remuneration other than compensatory allowance. In the instant matter, there does not appear to any remuneration to the Members of Advisory Board. In view of above, the nomination of Hon'ble MPs to such Committees may not attract the disqualification from membership of the House under Article 102(1)(a) of the Constitution of India.

May kindly see.



(Arpit Anant Mishra)
Asst. Legal Adviser
Date: 18.04.2019

JS & LA (Dr. Rajiv Mani)

ALA (AAM)

24/4/19

RMA
18/4/19

विधि और न्याय
Dept. of Legal Affairs

Di. No. 329232/LS/19
Date: 22/04/2019

Lok Sabha Secretariat

Received
21/4/19

Adv B

LOK SABHA SECRETARIAT

FAX: 23010756

(Committee Branch - II)
(Joint Committee on Offices of Profit)

PARLIAMENT HOUSE ANNEXE
NEW DELHI-110001

No.21/2/2(13)/2015/CII

329232/LS/19
05/4/19

Room No.013, PHA Extn.
Building, New Delhi-110001

Dated 04 April, 2019

OFFICE MEMORANDUM

Subject: - Appointment/nomination of Member of Parliament to the Committees, Boards and District Level Committees constituted for Central/District Jails by the State Government of Rajasthan.

The undersigned is directed to forward herewith copies of the Letter dated 18.08.2015 as received from senior Deputy Secretary to the State Government of Rajasthan, and replies to the list of points and other documents received vide letter dated 20 September, 2018 for ready reference.

2. The Ministry of Law and Justice (Department of Legal Affairs) is kindly requested to furnish their written opinion in the matter so as to enable the Secretariat take decision from the angle of office of profit.
3. The receipt of this communication may please be acknowledged.
4. This may kindly be treated as Most Urgent.

J.S. (Dr. B.M.)

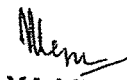


5/4/19
TO

R
8/4/19

A2A
(AAM)

The Ministry of Law and Justice
(Department of Legal Affairs)
(Shri Alok Srivastava, Secretary)
Government of India,
Shastri Bhawan, 'A'-Wing
4th Floor, "A" Wing, Shastri Bhawan,
New Delhi-110001



(MAYA LINGGI)

ADDITIONAL DIRECTOR

Ph. No. 23035478/5713

Email: committee-br2@sansad.nic.in

राजस्थान सरकार
संसदीय कार्य विभाग

जयपुर, दिनांक 8/8/15

क्रमांक: प0 15(2)संसद/2015

प्रेषित:- उप सचिव,
लोकसभा सचिवालय,
पार्लियामेंट हाऊस,
नई दिल्ली-110001

विषय:- राज्य सरकार द्वारा गठित समितियों अथवा मण्डलों में एवं जिला स्तरीय समितियों में मा0 सांसदों के मनोनयन की प्रक्रिया बाबत।

संदर्भ:- गृह (ग्रुप-12) विभाग की अशा.टीप सं. प. 6(1)गृह-12/कारा/99 पार्ट दिनांक 2 जून, 2015

महोदय,

उपर्युक्त विषयान्तर्गत उप शासन सचिव, गृह (ग्रुप-12) विभाग से प्राप्त उक्त संदर्भित पत्र मय वांछित सूचना सहित संलग्नक की छायाप्रति संलग्न कर निदेशानुसार निवेदन है कि केन्द्रीय/जिला कारागृहों के लिए गठित सलाहकार मण्डलों में निम्नांकित माननीय सांसदों को सदस्य के रूप में मनोनयन हेतु मा0 अध्यक्ष महोदय, लोकसभा की सहमति प्राप्त करने हेतु इस विभाग को प्रस्ताव प्राप्त हुए हैं:-

क्र.सं.	सलाहकार मण्डल	मान0 सदस्य, लोकसभा का नाम
1	केन्द्रीय कारागृह, बीकानेर	श्री अर्जुन मेघवाल, मा0 सांसद, बीकानेर
2	केन्द्रीय कारागृह, उदयपुर	श्री अजुनलाल मीणा, मा0 सांसद, उदयपुर ग्रामीण
3	जिला कारागृह, चित्तौडगढ़	श्री चंद्रप्रकाश जोशी, मा0 सांसद, चित्तौडगढ़
4	जिला कारागृह, झुन्झुनू	श्रीमती संतोष अहलावत, मा0 सांसद, झुन्झुनू

अतः प्रशासनिक विभाग से प्राप्त प्रस्ताव को मा0 अध्यक्ष महोदय के समक्ष रखे जाने के साथ ही उनकी सहमति से यथा-शीघ्र इस विभाग को अवगत कराने का कष्ट करें।

संलग्न: उपरोक्तानुसार।

भवदीय,

वरिष्ठ उप शासन सचिव

प्रतिलिपि:-

- 1- उप शासन सचिव, गृह (ग्रुप-12) विभाग की अशा.टीप सं. प. 6(1)गृह-12/कारा/99 पार्ट दिनांक 2 जून, 2015 के संदर्भ में सूचनार्थ प्रेषित है।
- 2- रक्षित पत्रावली।

वरिष्ठ उप शासन सचिव

विषय: राज्य सरकार द्वारा गठित समितियों अथवा मण्डलों में एवं जिला स्तरीय समितियों में मा० सांसदों के मनोनयन की प्रक्रिया बाबत।

उपरोक्त विषयान्तर्गत निवेदन है कि मान० मुख्यमंत्री महोदय द्वारा निम्न केन्द्रीय/जिला कारागृहों के लिए गठित सलाहकार मण्डलों में मा० लोकसभा सदस्यों को बतौर गैर सरकारी सदस्य के मनोनयन संबंधी आदेश जारी किये जाने हेतु सहमति प्रदान की गई है :-

क्र. सं.	सलाहकार मण्डल	मा० सदस्य, लोकसभा का नाम
1.	केन्द्रीय कारागृह, बीकानेर	श्री अर्जुन गेधवाल, सांसद, बीकानेर
2.	केन्द्रीय कारागृह, उदयपुर	श्री अर्जुनलाल गीणा, सांसद, उदयपुर ग्रामीण
3.	जिला कारागृह, चित्तौड़गढ़	श्री वंदरप्रकाश जोशी, सांसद, चित्तौड़गढ़
4.	जिला कारागृह, झुंझुनु	श्रीमती संतोष अहलावत, सांसद, झुंझुनु

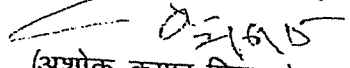
अतः आपके परिपत्र क्रमांक: प.15(12)संसद/95 दिनांक 10.05.2000 के क्रम में माननीय सांसदों को सलाहकार मण्डलों में मनोनयन हेतु मान० लोकसभा अध्यक्ष महोदय की अनुमति प्राप्त है हेतु निम्नानुसार सूचना प्रेषित की जा रही है :-

(i)	Name of the Committee/ Board/Corporation/Parishad etc. Please specify the nature of the Committee if it is <u>ad-hoc</u> in nature	समिति का नाम दण्डित बंदियों की समयपूर्व रिहाई पर विचार हेतु सलाहकार मण्डल केन्द्रीय/जिला कारागृह है।
(ii)	Act, Rule, or Order, under which the Committee/Board/ Corporation/Parishad, etc. was constituted enclosing a copy thereof.	राजस्थान प्रिजन्स (शार्टनिंग ऑफ सेन्टेन्सेज) रूल्स, 2006 के नियम 3, 4 के तहत गठन किया जाता है एवं सलाहकार मण्डल का गठन कारागृहों में सजा भुगत रहे दण्डित बंदियों की समयपूर्व रिहाई पर विचार हेतु किया जाना है।
(iii)	Composition of the Committee/Board/ Corporation/parishad etc. indicating the number of officials and non-officials and whether the Chairman and Secretary are officials or non-officials. Please state	1. जिला कलेक्टर - अध्यक्ष 2. जिला एवं सत्र न्यायाधीश - सदस्य के अधीन वरिष्ठतम न्यायिक अधिकारी 3. दौ गैर सरकारी सदस्य - सदस्य (स्थानीय विधायक एवं सांसद सदस्य को प्राथमिकता) 4. अधीक्षक/उपाधीक्षक, केन्द्रीय/जिला कारागृह - सदस्य सचिव

	specifically the position regarding nomination of MPs.	
(iv)	The term of office of the members of the Committee/ Board/Corporation/Parishad, etc.	सलाहकार मण्डल में गैर सरकारी सदस्यों के मनोनयन की अवधि 2 वर्ष के लिये है जिसे बाद में 1 वर्ष तक के लिये और बढ़ाया जा सकता है।
(v)	The remuneration payable to the members of the Committee/ Board/ Corporation etc. including pay, traveling allowance, daily allowance, compensatory allowance, sitting fee, and other facilities available etc. indicating the actual rates of payment	निल।
(vi)	Mode of appointment /removal of members.	मनोनयन से
(vii)	Qualifications for membership/ Chairmanship.	निल
(viii)	Detailed functions of the Committee/ Board/Corporation etc. Stating, inter-alia :-	
(i)	Whether it performs executive, legislative, or judicial functions and whether it has financial powers.	नही
(ii)	Whether it confers powers of disbursement of funds, allotment of lands, issue of license etc.	नही
(iii)	Whether it gives powers of appointment, grant of <i>scholarship etc</i>	नही

(iv)	Whether the Committee is purely advisory in nature.	जी हाँ
(v)	Whether it is an advisory committee wielding influence or power by way of patronage	नहीं
(ix)	Capital structure, shareholding, annual turnover of the Company etc. in case the body is a public undertaking	निल

अतः उक्त सलाहकार मण्डल केन्द्रीय/जिला कारागृह में माननीय सांसदों के मनोनयन की अनुमति माननीय अध्यक्ष महोदय लोकसभा, नई दिल्ली से प्राप्त कर भिजवाने का कष्ट करे।


(अशोक कुमार मित्तल)
उप शासन सचिव

संलग्न : उपरोक्तानुसार।

वरिष्ठ शासन उप सचिव,

संसदीय कार्य विभाग

अशा.टीप सं. प.6(1)गृह-12/कारा/99 पार्ट

जयपुर, दिनांक

2 JUN 2015

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पैरा 289/एन के क्रम में केन्द्रीय एवं जिला कारागारों के लिये गठित सलाहकार बोर्डों में गैर शासकीय सदस्यों का मनोनयन निम्न प्रकार किया जाता है :-

क्र.स.	नाम कारागृह	मनोनीत गैर सरकारी सदस्य का नाम
1	अजमेर	श्री सुरेश सिंह रावत, विधायक, पुष्कर श्री भागीरथ चौधरी, विधायक, किशनगढ़
2	अलवर	श्री मास्टर मामन सिंह यादव, विधायक, तिजारा श्री ज्ञानदेव आड़ुजा, विधायक, रामगढ़
3	बांसवाड़ा	श्री धनसिंह रावत, विधायक, बांसवाड़ा श्री भीमा भाई, विधायक, कुशलगढ़
4	बारां	श्री ललित कुमार, विधायक, किशनगंज श्री प्रतापसिंह, विधायक छबड़ा
5	बाड़मेर	श्री कैलाश चौधरी, विधायक, बायतु श्री कानसिंह कोटडी, पूर्व विधायक
6	भरतपुर	श्री जगत सिंह, विधायक, कामा श्री विजय बंसल, विधायक, भरतपुर
7	भीलवाड़ा	श्री विट्ठल शंकर अवरथी, विधायक, भीलवाड़ा श्री रामलाल गुर्जर, विधायक, आरिन्द
8	बीकानेर	श्री अर्जुन मेघवाल, सांसद, बीकानेर डॉ. विश्वनाथ, विधायक, खाजुवाला
9	बूंदी	श्री अशोक डोगरा, विधायक, बूंदी डॉ. नाथूलाल गुर्जर पूर्व विधायक
10	चित्तौड़गढ़	श्री गौतम कुमार, विधायक, बडीसादडी श्री चंद्र प्रकाश जोशी, सांसद, चित्तौड़गढ़
11	चूरु	श्री खेमाराग, विधायक, सूरजगढ़ श्रीमती कमला कस्वा, पूर्व विधायक
12	दौरा	श्रीमती अलका सिंह, विधायक, बांदीकुई श्री राम किशोर मीणा, पूर्व विधायक
13	धौलपुर	श्री रविन्द्र बोहरा, पूर्व विधायक श्रीमती रानी सिलोटिया, विधायक, बसेडी
14	झुंजरपुर	श्री सुशील कटारा, विधायक, चौरासी श्री गोपी मीणा, विधायक, आसपुर
15	गंगानगर	श्री रामप्रसाद कासनिया, पूर्व विधायक श्री राजेन्द्र भादू, विधायक, सूरतगढ़
16	हनुमानगढ़	श्री अभिषेक मटोरिया, विधायक, नौहर श्रीमती द्रोपदी, विधायक, पीलीबंगा
17	जयपुर	श्री राव राजेन्द्र सिंह, विधायक, शाहपुरा श्री मोहन लाल गुप्ता, विधायक, किशनपील
18	जैसलमेर	श्री जितेन्द्र सिंह, पूर्व विधायक श्री छोटू सिंह, विधायक, जैसलमेर
19	जालौर	श्री शंकर सिंह राजपुरोहित, विधायक, आहौर श्रीमती अमृता मेघवाल, विधायक, जालौर
20	झालावाड़	श्री नरेन्द्र नागर, विधायक, खानपुर श्री रामचन्द्र, विधायक, डंग

21	शुङ्गु	श्री सुन्दर लाल, विधायक, पिलानी
		श्रीमती सतोष अहलावत, सांसद
22	जोधपुर	श्री भैराराम सियोल, विधायक, औरिया
		श्रीमती कमसा मेघवाल, विधायक भोपालगढ़
23	करौली	श्रीमती रोहिणी कुमारी, पूर्व विधायक
		श्रीमती राजकुमारी, विधायक, हिन्दोल
24	कोटा	श्री संदीप शर्मा, विधायक, कोटा दक्षिण
		श्री विद्या शंकर नंदवाना, विधायक पीपल्दा
25	भागौर	डॉ. मंजू बाधमार, विधायक, जायल
		श्री सुखराम, विधायक, मेडता
26	पाली	श्री मदन राठौड़, विधायक, सुभेरपुर
		श्री ज्ञानचंद पारख, विधायक, पाली
27	प्रतापगढ़	श्री गौतम लाल, विधायक, धारीवाड
		श्री अशोक नवलखा, पूर्व विधायक
28	राजसमंद	श्री सुरेन्द्र सिंह राठौड़, विधायक, कुम्भलगढ़
		श्री हरिसिंह रावत, विधायक, भीम
29	सवाईमाधोपुर	राजकुमारी दिया कुमारी, विधायक, सवाईमाधोपुर
		श्री जितेन्द्र गोठवाल, विधायक, खंडार
30	सीकर	श्री गोरधन, विधायक, धोद
		श्री बशीधर, विधायक, खण्डेला
31	शिराडी	श्रीमती तारा भण्डारी, पूर्व विधायक
		श्री जगसीराम, विधायक, रेवधर
32	टोंक	श्री अजीत सिंह, विधायक, टोंक
		श्री कन्हैया लाल, विधायक, मालपुरा
33	उदयपुर	श्री फूल सिंह भीणा, विधायक, उदयपुर ग्रामीण
		श्री अर्जुन लाल भीणा, सांसद

W 8/18/15
(वसुन्धरा राजे)
मुख्यमंत्री

अतिरिक्त मुख्य सचिव, गृह

63473/PCS/15
26.5.2015

May pl. check on the
procedure prescribed for
issue of orders relating to
public representatives such as
MPs / MLAs etc. to such boards
& ensure that we follow this
in full.

26/5/15
A. Mukhopadhaya
ACS, Home
25/15

अति-आवश्यक / तत्काल

राजस्थान सरकार

गृह (ग्रुप-12) विभाग

क्रमांक प. 6(1)गृह-12/कारा/1999 पार्ट

जयपुर, दिनांक: 04.12.2015

अवर सचिव,
लोक सभा सचिवालय,
कमेटी ब्रॉच-II
(Joint Committee on Offices of Profit),
पार्लियामेन्ट हाउस एनेक्स,
नई दिल्ली-110001

विषय:- Appointment/nomination of Members of Parliament to the
Committees boards and district level Committees constituted
by the State Government – regarding.

संदर्भ:- आपका पत्रांक 21/2/2(13)/2015/CII दिनांक 04.12.2015

महोदय,

उपरोक्त विषयान्तर्गत संदर्भित पत्र के क्रम में लिस्ट्स ऑफ पॉइन्ट्स के सम्बन्ध
में चाही गई सूचना विभाग द्वारा बिन्दुवार तैयार कर आवश्यक कार्यवाही हेतु संलग्न कर
प्रेषित है।

संलग्न : उपरोक्तानुसार।

भवदीय,

(कैलाश चन्द)

शासन उप सचिव,

Reply of the list of points required by The Secretariat of Loksabha New Delhi.

S.No./point no.	Description of Points	Reply	others
1	Please state whether the "Advisory Boards of central/District Jails of Bikaner, Udaipur, Chittorgarh and Jhunjhunu are a standing or an Adhoc body.	Advisory board of these jails is a <u>standing</u> body.	
2	Please furnish details of the Committee indicating the number of officials and non-officials in the body.	The Committee of advisory board is furnished according to The Rule 3 of The Rajasthan Prisons (Short. of Sent.) 2006.	The copy of Rule 3 is enclosed.
3	Please give in detail the powers and functions of The Committee.	Committee is advisory body and its functions are to scrutinize analyze the case of shortening of sentences and <u>send advise to Government as per Rules</u>	The Copy of The Rajasthan Prisons (Short. of Sent.) Rules 2006.
4	Whether the functions of the Committee are <u>purely advisory</u> in nature.	Yes. ✓	
5	Please furnish details with respect to the following:- (A) The term of the Member of Parliament as chairperson/Co-chairperson as (non official member) in the Committee. (B) Whether the Government exercise control over the appointment to end removal from the office and over the performance and functions of the office. (C) The Qualifications for Membership; and (D) The role of the Member of Parliament a Member in the Committee.	(A) A non-official member of an advisory board shall be appointed for a period of Two years <u>but the Government may extend the period by 1 year or less.</u> (B) Yes. ✓ (C) Preferably Members of the State Legislature or Parliament <u>nominated by the Government</u> (D) <u>Advisory</u> ✓	Rule 4 is enclosed.

6	<p>Please also give a specific reply to each of the following:-</p> <p>(A) Whether the Committee exercise executive, legislative or judicial powers.</p> <p>(B) Whether the Committee confers powers of disbursement of funds, allotment of lands, etc;</p> <p>(C) Whether it would have powers of appointment/removal; and</p> <p>(D) Whether the Committee would influence or power by way of patronage.</p>	<p>(A) <u>Executive powers.</u></p> <p>(B) <u>No.</u></p> <p>(C) <u>No.</u></p> <p>(D) <u>No.</u></p>	
7	<p>(A) Please indicate the details of expenses payable to the Member of Parliament as member of the Committee specifying the actual rates of payment with break-up of sitting fee, daily allowances, travelling allowance house rent allowance, compensatory allowance, honorarium, etc.</p> <p>(B) Please specify the facilities, other than the remuneration given or proposed to be given to the Member of Parliament as a member of the Committee.</p> <p>(C) Please state whether the allowances payable to the Member of Parliament as Member of the Committee are covered under the Compensatory Allowance defined in Section 2(a) of Parliament (Prevention of Disqualification) Act, 1959.</p>	<p>(A) <u>No.</u></p> <p>(B) <u>No.</u></p> <p>(C) <u>No.</u></p>	
8	<p>Please furnish any information which the Government of Rajasthan wish to furnish on the subject.</p>		<p>Considered at the Government level.</p>

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GOVERNMENT OF RAJASTHAN
Home (Gr. XII Department)

No.F.6 (1) H-12/Jail-2002

Jaipur, Dated 17.1 .2007

NOTIFICATION

In exercise of the powers conferred by clause (5) and clause (27) of section 59 of the prisons Act 1894 (IX of 1894) of the Central Legislature as adapted to Rajasthan and of all other powers enabling it in that behalf, the Government of Rajasthan hereby makes the following Rules, namely:-

1. **Short title and commencement.** (1) These rules may be called the Rajasthan Prisons (Shortening of Sentences) Rules, 2006.

(2) They shall come into force at once.

2. **Definition.** - In these rules unless the context otherwise requires;

(a) "Act" means the Prisons Act, 1894 (Central Act IX of 1894);

(b) Government means the Government of Rajasthan;

(c) "habitual criminal" means a prisoner liable to be classified as such under the rules for the time being in force: made under the Act;

(d) "premature release" means a release of a prisoner without completing his judicially ordained sentence as a result of shortening of sentence;

(e) "Shortening of Sentence" means the reduction of that period of sentence of a prisoner which he has to serve in the prison upon a judicially pronounced sentence as a matter of grace on the part of the State and as a recognition of his good behaviour in the prison.

✓ 3. **Constitution of Advisory Board**----- (1) Advisory Board shall be constituted for every Central Jail and District Jail to recommend to the Government for shortening of sentences and premature release of eligible prisoners in accordance with these rules.

(2) Advisory Board for the Central Jails located at Divisional Headquarter shall be constituted as follows:-

(a) Divisional Commissioner concerned Chairman

(b) District and Sessions Judge within whose jurisdiction the Central Jail is situate. Member

(c) Two non-officials, preferably Members
members of the State Legislature or
Parliament nominated by the Government

(d) Superintendent of the Central Jail concerned Member-Secretary

(3) Advisory Boards for all other Central Jails and District Jails ('A' & 'B' Class) shall be constituted as follows:-

C.S

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- (a) District Magistrate of the District in which the concerned Jail is situate. Chairman
- (b) Judicial Officer next in seniority to the District and Sessions Judge within whose jurisdiction the Central Jail or District Jail is situate. Member
- (c) Two non-officials, preferably local members of the State Legislature or Parliament nominated by the Government Members
- (d) Superintendent or Deputy Superintendent in charge of the concerned Central or District Jail. Member-Secretary

✓ 4. **Terms of office of non-official members of the Advisory Board.** - A non-official member of an Advisory Board shall be appointed for a period of two years but the Government may further extend the period by one year or less.

5. **Meetings of Advisory Board.** - The meeting of an Advisory Board shall be convened by the Member-secretary at least twice a year in respect of a Central Jail or the District Jail concerned, as the case may be, on such date and at such venue as may be appointed for the purpose by the Chairman of the Advisory Board, normally in the months of January and July every year or on such other dates as the Chairman may appoint.

6. **Quorum.** - The quorum for the meeting of Advisory Board shall be three including Chairman.

✓ 7. **Scrutiny by the Advisory Board.** - Before recommending shortening of sentences or premature release of prisoners, the Advisory Board shall examine the following matters in full and accurate details:-

- (i) Circumstances under which offence was committed and the punishment was awarded by the court;
- (ii) Details of the prisoner's previous history and character in district where the prisoner was resident;
- (iii) Prisoner's conduct in the Prison and the result of imprisonment already undergone by him;
- (iv) Whether the prisoner has been reformed and is fit to be rehabilitated in the society without any difficulty;
- (v) Opinion of the District Magistrate and the Superintendent of Police of the districts in which the prisoner was convicted and was resident, as to what is likely to be the impact of the prisoner's premature release with special reference to the following points :
 - (a) the reaction in the locality;
 - (b) the feelings of the relatives of the victim or victim of the offence;

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- (c) whether the life of the accused himself will be safe;
- (d) any other information material to the case of the prisoner; and
- (e) whether the prisoner can be released without any risk to the society;

8. Prisoners eligibility for consideration by the advisory Board.-

- (1) The Advisor Board may consider the cases of the following type of prisoners only:-
- (i) a prisoner undergoing a substantive sentence of five years or over, and who has completed two thirds of imprisonment, including remission;
 - (ii) a prisoner sentenced to imprisonment for life or for more than 14 years, and who has served 2/3rd of his sentence excluding remission or 13 years 4 months of imprisonment including remission) whichever is less. The period of imprisonment shall include sentence in default of payment of fine, if the same has not been paid;
 - (iii) Prisoners awarded sentences by Court-Martial who have served two-third of their sentences including the period of remissions;
 - (iv) Prisoners suffering from fatal diseases like cancer, AIDS, or infectious diseases, such as leprosy; provided their disease is likely to be dangerous to other prisoners and conditions prescribed in rule 7 are fulfilled;
 - (v) Prisoners who are completely blind or handicapped and are wholly dependent on others for their daily routine work;
 - (vi) Prisoners who have attained the age of 70 years in case of male prisoners and 65 years in case of women prisoners and who have completed at least one third of their sentence, and in whose case no public interest is likely to be served by keeping them in prison, provided they are serving sentences for their first and only conviction.

(2) Notwithstanding anything in sub-rule (1)

- (i) a prisoner who has been sentenced to imprisonment for life for an offence for which death penalty is one of the punishment provided by law or who has been sentenced to death but his sentence has been commuted under Section 433 of Code of Criminal Procedure, 1973, into one of imprisonment for life, shall be considered only after he has served 14 years of actual imprisonment excluding remission but including the period of detention spent during enquiry, investigation or trial, on the condition that such a prisoner shall also have to earn a minimum of 4 years of remission in order to be eligible for consideration.
- (ii) prisoners sentenced to imprisonment for life under Sections 304 B, 376, 396, 467, and 489 'D' of the Indian Penal Code may be considered for premature release only after completion of 14 years of actual imprisonment (with the period undergone during trial), on the condition that such a prisoner shall also have to earn a minimum of 4 years of remission in order to be eligible for consideration.

Explanation:- For the purpose of this rule, remission shall mean only that part of the remission which is actually earned by a prisoner in accordance with the provisions of the Jail Manual but shall not include any special remission that may be awarded to prisoners in general to mark the occasion of some events like Independence Day, Republic Day, Centenary Celebrations of National Leaders, visit of some dignitaries to jail, etc.

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9. Prisoners not eligible for consideration by the Advisory Board.-

Notwithstanding anything in these Rules, the Advisory Board shall not consider the cases of following types of prisoners: -

(1). Prisoners convicted of forgery or any offence against the State involving violence;

Explanation- For this purpose an offence punishable under sections 466, 468, 469 and section 471 to 474 of the Indian Penal Code shall be deemed to be a variation of the offence of forgery.

(2) Prisoners convicted of offences punishable under Sections 366, 366A, 366B, 372, 373, 498B, and 498C of Indian Penal Code;

(3) Prisoners who are habitual criminals, meaning thereby having three or more convictions, all of which are of such a nature as to justify their classification as habitual criminals;

(4) Prisoners detained under any Preventive Detention Law;

(5). Prisoners convicted under Terrorist and Disruptive Activities (Prevention) Act, 1987 (Central Act 28 of 1987);

(6). Prisoners convicted under Narcotic Drugs and Psychotropic Substances Act 1985 (Central Act 61 of 1985); and

(7) Prisoners convicted under the Prevention of Terrorism Act, 2002 (Central Act 15 of 2002).

10. **Procedure.** - In order that all necessary information might be placed before the Advisory Board, the following procedure shall be adopted:-

(i) The Secretary of the Advisory Board shall collect full particulars regarding each prisoner eligible for consideration by the Board before the date appointed for the meeting of the Board and shall place full accurate details regarding the prisoner's previous history and character, judgment of the sentencing court depicting circumstances in which the offence or offences were committed and sentences were awarded, his prison record together with the report of the District magistrate and the District Superintendent of Police of the district containing information whether the prisoner is considered fit for premature release etc, before the Board. Any other information required by the Advisory Board shall also be made available from the recorded the prison.

(ii) Before coming to a decision in each case whether a prisoner is fit for release without any danger to himself and the community at large, the Advisory Board shall carefully scrutinize and consider the judgment of the court, reports of the police and the District Magistrate concerned on the conduct and character of the prisoner recommended for release, any conditions to be prescribed in case of release and the prisoner's conduct and behavior in the prison. Only the prisoner whose conduct has been exemplary in the prison should deserve the consideration of the Advisory Board.

(iii) Report about physical and mental conditions of prisoner fit for release shall be obtained by the secretary of the Advisory Board from the Medical Officer in-charge of the prison concerned and the same be placed before the Board for consideration for final recommendation is made to the Government.

(iv) The Advisory Board shall then submit its recommendations with full history of each case along with relevant papers in form-1 to the Government.

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(v) In case of a prisoner convicted by Court-Martial the prisoner's antecedents need not ordinarily be inquired into and it will be sufficient to enquire about his behavior in prison.

11. Conditions for release. - The Advisory board may recommend release of a prisoner conditionally or unconditionally whenever a prisoner is to be released prematurely. Stringent conditions shall be imposed on a prisoner recommended to be released conditionally if so accepted by the Government, and the prisoner so recommended for release shall be made to enter into a bond in Form-2.

12. Consideration by Government. - (1) On receipt of the proceedings of the Advisory Board, and any other relevant paper the Government may order release of a prisoner in cases for which, having regard to all the circumstances of the case, it considers that the prisoner may be released without any harm or danger to the society and the victim and his family. The Government may, if so advised seek more information from any other source it deems fit in order to reach a considered decision.

(2) Government may accept or reject of a recommendation for the release a prisoner

Provided that while issuing an Order of rejection in respect of a recommendation of premature release by an Advisory Board, it shall be sufficient for the Government to state in the said Order, that the matter has been considered in detail and the Order has been passed after taking all the relevant aspects into account.

(3) In case of a prisoner sentenced by Court-Martial the Government shall forward its recommendations to the Government of India for necessary orders.

13. Overriding effect. - In case of an inconsistency between these Rules and provisions in any other Rules made under the Act, the provisions these Rules shall prevail and have overriding effect.

14. Repeal and savings.- The Rajasthan Prisons (Shortening of Sentences) Rules-1958; and rule 135 of Part XXV and rules 136-152 of Part XXVI of the Prison Rules, 1951 are hereby repealed. All action taken under the said rules shall so far as they are consistent with these Rules, be deemed to have been passed or taken under these Rules.

F.No.17(2)/2019-Leg.III
Government of India
Ministry of Law and Justice
Legislative Department

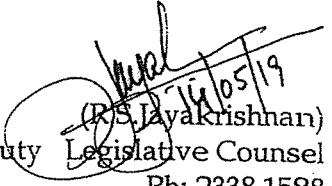
Shastri Bhawan, New Delhi
Dated the 14th May, 2019

OFFICE MEMORANDUM

Subject: Appointment/nomination of Member of Parliament to the Committees, Boards and District Level Committees constituted for Central/District jails by the State Government of Rajasthan.

The undersigned is directed to refer to the Lok Sabha Secretariat OM. No. 21/2/2(13)/2015/C.II dated the 4th April, 2019 on the subject mentioned above and to forward herewith the written opinion of the Legislative Department in the above mentioned case.

Encl:A/a


(R.S. Jayakrishnan)
Deputy Legislative Counsel
Ph: 2338 1588

The Lok Sabha Secretariat
Committee Branch-II
{Joint Committee on Offices of Profit }
[Kind Attn: Smt. Maya Lingi, Additional Director]
Room No. 13, PHA Extension Building
New Delhi. 110 001

Received
14/5/19

Comments of the Legislative Department

Subject: Appointment/nomination of Member of Parliament to the Committees, Boards and District Level Committees constituted for Central/District jails by the State Government of Rajasthan.

Lok Sabha Secretariat vide OM. No. 21/2/2(13)/2015/CII dated the 4th April, 2019 has forwarded copies of letter dated 18.8.2015 received from Senior Deputy Secretary to the State Government of Rajasthan and reply to the list of points and other documents received vide letter dated the 20th September, 2018 in connection with examination of appointment/nomination of Member of Parliament to the Committees, Boards and District Level Committees constituted for Central/District Jails by the State Government of Rajasthan from the angle of office of profit.

2. The question under consideration is whether the appointment/nomination of Member of Parliament to the Committees, Boards and District Level Committees constituted for Central/District Jails by the State Government of Rajasthan would attract disqualification from membership of the House under 'office of profit' under sub-clause (a) of clause (1) of article 102 of the Constitution.
3. On going through the documents received from Lok Sabha Secretariat, it is seen that the Advisory Board of Central District Jails of Bikaner, Udaipur, Chittorgarh and Jhunjhunu is a standing body constituted under rule 3 of the Rajasthan Prisons (Shortening of Sentences) Rules, 2006. As per sub-section (1) of rule 3 of the said rules, Advisory Board shall be constituted for every Central Jail and District Jail to recommend to the Government for shortening of sentences and premature release of eligible prisoners in accordance with the rules. Further clause (c) of sub-rule (2) of rule 3 of the said rules provides that the Board shall consists of two non-officials, preferably members of the State Legislature or Parliament nominated by the Government.
4. As per the reply given to the list of points issued by the Lok Sabha Secretariat, to the query at serial number 4 regarding the functions of the Advisory Board, the State Government has replied that the functions are purely advisory in nature.

5. With regard to the query at serial number 5 (A) in the list points regarding the term of members of Parliament in the Advisory Board, the State Government has replied that as per rule 4 of the Rajasthan Prisons (Shortening of Sentences) Rules, 2006, a non-official member of an Advisory Board shall be appointed for a period of two years. However as per the said rule, the State Government may extend the period by one year or less. Against the query at serial number 5 (B) of the list of points as to whether the Government exercises control over the appointment to and removal of the members from the office and over the performance and functions of the office, the reply of the State Government is affirmative. Further with regard to the query at serial number 5 (D) in the list of points with regard to the role of the Member of Parliament in the Advisory Board, the State Government has replied that the role of a Member of Parliament is advisory in nature.

6. Further, with regard to the query at serial number 6 (A) in the list of points as to whether the Advisory Board exercise executive, legislative or judicial powers, the State Government has replied that the Advisory Board exercise executive powers. Against the queries at serial numbers 6(B), (C) and (D) in the list of points regarding the power of disbursement of funds, powers of appointment/ removal and as to whether the Advisory Board would influence power by way of patronage, the Government of Rajasthan has replied in negative.

7. Besides these, with regard to the query at serial number 7(A) of the list of points regarding allowances, honorarium etc., 7(B) regarding facilities, remuneration given or proposed to be given to the Member of Parliament as a member of the Advisory Board and query at 7 (C) in the list of points as to whether the allowances payable to the Member of Parliament as member of the Advisory Board are covered under the compensatory allowance defined in clause (a) of section 2 of the Parliament (Prevention of Disqualification) Act, 1959 (10 of 1959), the reply of the State Government to those queries is in negative. Besides these, against query at serial number 8 in the list of points requesting the State Government to furnish any information on the subject, it is stated that the same is considered at the Government level.

8. In the light of the above mentioned reply to the list of points given against serial number 5 (D) and going through the Rajasthan Prisons (Shortening of Sentences) Rules, 2006 under which the Advisory Board is constituted, it is clear that the functions of the said Board are purely advisory in nature. However, with regard to the powers of the Advisory Board are concerned, the State Government has specifically replied that the Advisory Board exercise executive powers. Further, the State Government of Rajasthan in its reply to the list of points at serial number 5 (B) has also admitted that the State Government exercise control over the appointment and removal of the member from the office and over the performance and functions of the office. In this regard, it is noteworthy to mention that rule 4 of the Rajasthan Prisons (Shortening of Sentences) Rules, 2006 also empowers the State Government to extend the period of a non-official member for a period of one year or less. However, on going through the reply to the list of points and the Rajasthan Prisons (Shortening of Sentences) Rules, 2006, it is clear that a non-official member of the Advisory Board is not entitled to any remuneration, allowances, honorarium etc.

9. In this regard, it may be mentioned that in order to determine whether an office held by a person is an office of profit under the Government, the Joint Committee on Offices of Profit, in their Tenth Report (Seventh Lok Sabha), presented to Lok Sabha on 7th May, 1984 laid down the following guiding principles (copy at flag 'X'):-

"The broad criteria for the determination of the question whether an office held by a person is an office of profit have 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 an office of profit under the Government. Otherwise, the object of imposition of the disqualifications as envisaged in the Constitution will become frustrated. This first basic principle should be the guiding factor in offering positions to a member of the Legislature."

Keeping the above position in view, the Joint Committee on Offices of Profit have been following the under noted criteria to test the Committees, Commissions, etc. for deciding the question 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 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 disqualification]

(ii) whether the body in which an office is held, exercises executive, legislative or judicial powers or confers power 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 is held wields influence by way of patronage.

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

10. In this context, it may be mentioned that for determining such question, which has come up before the Supreme Court in umpteen cases, the Apex Court has lay down the following tests in the case of Shivamurthy Swami Inamdar Vs. Sanganna Andanappa (1971) 3 SCC 870:-

(a) whether the Government makes the appointment;

(b) whether the Government has the right to remove or dismiss the holder;

(c) whether the Government pays the remuneration;

(d) whether the functions of the holder are and does he perform them for the Government; and

(e) whether the Government exercises any control over the performance of those functions.

The above tests have been reiterated by the Supreme Court in series of cases decided by it subsequently. While applying the above mentioned test on the instant case to determine as to whether the nomination of a Member of Parliament as member to the Advisory Board constituted under rule 3 of the Rajasthan Prisons (Shortening of Sentences) Rules, 2006, it is evident the instant case may attract clauses (a), (b) and (e) of the tests laid down by the Apex Court. Further, it may also attract the guidelines followed by the Committee mentioned at paragraph 9 above.

11. Having considered all aspects of the matter, this Department is of the view that the nomination of a Member of Parliament to the Advisory Board constituted for Central/District Jails of the State Government of Rajasthan may attract disqualification from the angle of 'office of profit'.

Flag 'x'

ANNEXURE

JOINT COMMITTEE ON OFFICES
OF PROFIT

TENTH REPORT

(SEVENTH LOK SABHA)

ON

THE DRAFT PARLIAMENT (PREVENTION OF
DISQUALIFICATION) AMENDMENT BILL, 1983



Presented to Lok Sabha on 7th May, 1984

Laid in Rajya Sabha on 7th May, 1984

LOK SABHA SECRETARIAT
NEW DELHI

May, 1984 (Saka 1906 (Saka))

X

GENERAL RECOMMENDATIONS/GUIDELINES

10.1 The Joint Committee on Offices of Profit on 26th October, 1959 heard the views of representatives of the Ministry of Law, Justice and Company Affairs (Legislative Department as well as Department of Legal Affairs) on the question whether the principles followed by the Joint Committee on Offices of Profit for deciding various offices for granting exemption from disqualification or excluding them from such exemption, could be incorporated in the Parliament (Prevention of Disqualification) Act, 1959 through an amending Bill.

10.2 On being asked in that regard, the Secretary of the Department of Legal Affairs stated that it might not be permissible under Article 102 (1) (a) of the Constitution to enumerate the principles and the guidelines on the basis of which an office of profit was to be determined in the Act. However, technically it would be open to Parliament to lay down principles and guidelines by saying that "if a person is found to be holding an office which satisfies certain principles and guidelines, then the holder of that particular office will stand disqualified". But that might give rise to many practical complications and difficulties. First, that might 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, would itself be a point of dispute or form part of that dispute. Secondly, there would be an increase in the 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, because any number of election petitions could be filed then on the basis that a particular person was not disqualified as his case was not covered by the guidelines which were proposed to be laid down. The Secretary, Legislative Department also submitted that leaving aside the case of purely advisory bodies, there were bound to be some powers of an executive nature whenever a member became a member of the Executive Committee of a body however insignificant the nature of powers might be. If a provision to that effect was made in any amending Bill, the exemption itself which was the

... behind enacting the task of de... a member, would... and would... the case with legi... type of such... issue fairly clo... exemption of the ne... on Offices of P... accepted an off... disqualification: With re... if he held a... patronage; it... of judicial decisio... terms of pecunia... not disqualify.

10.3 The Committee of disqualification a... constitution is that a... government by accepti... compromise his independ... the executive so that... duties to their ele... personal gain. They... interest.

10.4 The broad cri... office held by a pers... pronouncements. If the... and dismissal from the... and in case the... tangible in nature, fi... of the time being ac... office should be held to... object of impositio... tion will become, fro... the guiding factor in...

10.5 Keeping the... Profit have heard

GUIDELINES

profit on 26th October, 1959. Ministry of Law, Justice and... as Department of Legal... flowed by the Joint Commis... for granting exemption... exemption, could be in... (Act, 1959 through

secretary of the Department of... ole under Article 102 (1) a... id the guidelines on the ba... ined in the Act. However... down principles and guide... o be holding an office whic... e holder of that particula... : give rise to many practi... open flood gates of dispu... er the holder of any partic... d fall within the guidelines... or form part of that dispu... ences under Article 102 (1) a... s rise in the election petiti... mission, because any num... basis that a particular perso... by the guidelines which... Legislative Department... ly advisory bodies, there... whenever a member... dy however insignificant... at effect was made... exemption itself which

purpose behind enacting the 1959 Act. So, with a view to make the provision workable, the task of defining the type of executive power, which was to disqualify a member, would have to be taken up. The law would also become very uncertain and would lead to an increase of election petitions. Same case the exact type of such powers which would disqualify, had to be specified making the issue fairly cloudy. He also stated that the work of advice on the exemption of the nature of the office had been entrusted to the Joint Committee on Offices of Profit since a member was entitled to know before he had accepted an office as to whether acceptance of it would lead him to disqualification. With regard to the guidelines that a member would be disqualified if he held an office where he was in a position to wield influence or distribute patronage, the representatives of the Ministry maintained that the trend of judicial decisions had been to equate profit in terms of money or assets in terms of pecuniary gain. Mere patronage under Article 102 (1) (a) would not disqualify.

10.3. The Committee feel that the basic principle underlying the imposition of disqualification under articles 102 (1) (a) and 191 (1) (3) of the Constitution is that a member of the Legislature should not be indebted to Government by accepting an 'office of profit' under the Government and thus compromise his independence. The Legislature should be kept independent of the executive so that the members would be free to carry out fearlessly their duties to their electorate and not be influenced by any consideration of personal gain. They should not be in the risk of conflict between duty and self interest.

10.4. 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 at 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 disqualifications as envisaged in the Constitution will become frustrated. This first basic principle (para 10.3) should be the prime factor in offering positions to a member of the Legislature.

In 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 question as to which of the offices

should, disqualify and which should not disqualify a person 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 is held wields influence or power by way of patronage.

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

11.1 The Joint Commission might revise (Section) Amendment Bill Committee as early as should be introduced before the Bill so introduced Parliament as was the fact

NEW DELHI;
27th April, 1984
Vaisakha 7, 1906-5

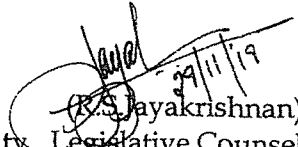
Shastri Bhawan, New Delhi
Dated the 29th November, 2019

OFFICE MEMORANDUM

Subject: Appointment/nomination of Member of Parliament to the Committees, Boards and District Level Committees constituted for Central/District jails by the State Government of Rajasthan-reg

The undersigned is directed to refer to the Lok Sabha Secretariat OM NO. 21/2/2(13)/2015/CII dated the 25th November, 2019 on the subject cited above requesting this Department to give a comprehensive opinion/advice on the matter.

2. In this regard, it may be mentioned that the matter has been re-examined in this Department in the light of extant legal provisions. In this regard, clause (i) of section 3 of the Parliament Prevention of Disqualification Act, 1959 (10 of 1959) exempts 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. This exemption is not available to the chairman of bodies specified in Part I of the Schedule to the Act and chairman and secretary to the bodies specified in Part II of the Schedule to the Act. Further, the District Level Committee constituted for Central/District Jail by the State Government of Rajasthan is not specified in the Schedule to the Act.
3. In the light of the above provisions, the nomination of a Member of Parliament to the District Level Committee constituted for Central/District Jails of the State Government of Rajasthan may not attract disqualification from the angle of "office of profit".
4. This issues with the approval of the competent authority.


(B.S. Jayakrishnan)
Deputy Legislative Counsel
Ph: 2338 1588

The Lok Sabha Secretariat
Committee Branch-II
{Joint Committee on Offices of Profit }
[Attn: Shri Munish Kumar Rewari, Additional Director]
G-013, Parliament House Annexe Extension Building
New Delhi. 110 001

गोपनीय

लाभ के पदों संबंधी संयुक्त समिति (सत्रहवीं लोक सभा) की 15 मार्च, 2021 को हुई सातवीं बैठक के कार्यवाही सारांश का सार

समिति की बैठक सोमवार, 15 मार्च, 2021 को 1500 बजे से 1545 बजे तक समिति कम्परा सं. '3', प्रथम तल, ब्लॉक 'ए', संसदीय सौध विस्तार भवन, नई दिल्ली में हुई।

उपस्थित

डॉ. सत्यपाल सिंह

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सभापति

सदस्य

लोक सभा

2. श्री विजय कुमार हांसदाक
3. डॉ. मनोज राजोरिया
4. श्रीमती अपराजिता सारंगी
5. श्री महेन्द्र सिंह सोलंकी

राज्य सभा

6. डॉ. सष्मित पात्रा
7. श्री महेश पोद्दार
8. श्री हरद्वार दुबे

सचिवालय

1. श्रीमती सुमन अरोडा - संयुक्त सचिव
2. श्री आर.के. चौधरी - अवर सचिव

2. सर्वप्रथम, सभापति महोदय ने समिति की बैठक में सदस्यों का स्वागत किया और फिर उन्हें बैठक की कार्यसूची से अवगत कराया।

3. XX XX XX XX

4. XX XX XX XX.

5. उसके बाद, समिति ने ज्ञापन सं. 3, तीसरा एजेंडा अपने विचारार्थ लिया जो राजस्थान राज्य सरकार द्वारा केन्द्रीय/जिला जेलों हेतु गठित समितियों, बोर्डों और जिला स्तरीय समितियों में संसद सदस्यों की नियुक्ति/मनोनयन के संबंध में है। विधि और न्याय मंत्रालय (विधायी विभाग और विधि कार्य विभाग) के प्रतिनिधियों ने यह बताया है कि इन बोर्डों/समितियों का गठन राजस्थान कारागार (सजा को कम करना) नियम, 2006 के नियम 3 के अंतर्गत किया गया था, जो कारागार अधिनियम, 1894 के उपबंधों के

अंतर्गत बनाया गया था। चूंकि, मूलतः इन समितियों में संसद सदस्य की भूमिका सलाहकार प्रकृति की होती है और समितियां केवल सरकार को जेल की सजा कम करने और पात्र कैदियों को समय से पूर्व रिहा करने की सिफारिश करती है। इसलिए माननीय संसद सदस्यों का उनमें मनोनयन किए जाने से उनकी संसद सदस्यता निरर्हित नहीं होगी।

समिति ने विधि और न्याय मंत्रालय द्वारा व्यक्त राय पर सर्वसम्मति से सहमति व्यक्त कर दी और प्रारूप ज्ञापन संख्या 3 को अनुमोदित कर दिया है।

6. XX XX XX XX

तत्पश्चात्, समिति की बैठक स्थगित हुई।

गोपनीय

लाभ के पदों संबंधी संयुक्त समिति (17वीं लोक सभा) की गुरुवार, 24 जून, 2021 को हुई आठवीं बैठक का कार्यवाही सारांश।

समिति की बैठक गुरुवार, 24 जून, 2021 को 1100 बजे से 1130 बजे तक समिति कक्ष '1', ब्लॉक 'ए', भूतल, संसदीय सौध विस्तार भवन, नई दिल्ली में हुई।

उपस्थित

डॉ. सत्य पाल सिंह - सभापति

सदस्य

लोकसभा

2. श्री बैन्नी बेहनन
3. डॉ. मनोज राजोरिया
4. श्री श्याम सिंह यादव

राज्य सभा

5. डॉ. सस्मित पात्रा
6. श्री वी. विजयसाई रेड्डी
7. सुश्री दोला सेन
8. श्री हरद्वार दुबे

सचिवालय

1. श्रीमती सुमन अरोड़ा - संयुक्त सचिव
2. श्री मुनीष कुमार रेवाड़ी - अपर निदेशक
3. श्रीमती मनजिन्दर पब्बी - अवर सचिव
4. श्री कुंदन कुमार - समिति अधिकारी

2. प्रारंभ में, सभापति ने समिति की बैठक में सदस्यों का स्वागत किया और उन्हें "राजस्थान राज्य सरकार द्वारा केंद्रीय/जिला जेलों के लिए गठित समिति, बोर्डों और जिला स्तरीय समितियों में संसद सदस्यों की नियुक्ति/नामांकन के संबंध में प्रारूप रिपोर्ट पर विचार करने और उसे अपनाने संबंधी कार्यसूची के बारे में अवगत कराया"।

3. समिति ने प्रारूप रिपोर्ट पर विचार किया और सर्वसम्मति से बिना किसी संशोधन के उसे अपनाया। तत्पश्चात, समिति ने सर्वसम्मति से सुझाव दिया कि नामकरण में परिवर्तन से संबंधित इस आशय का एक पत्र गृह मंत्रालय, भारत सरकार को जारी किया जाना चाहिए कि 'जेल' शब्द को 'सुधार गृह' से बदल दिया जाए और जेल विभाग को सभी राज्यों में सुधार सेवा विभाग के रूप में फिर से नाम दिया जाए। तब समिति ने 'लाभ के पद' की अभिव्यक्ति को परिभाषित करने के लिए भारत के संविधान में संशोधन के लिए प्रारूप विधेयक की जांच के संबंध में समिति के अध्ययन दौर की संभावना पर विचार किया।

4. तत्पश्चात, समिति की बैठक स्थगित हुई।
