

JOINT COMMITTEE ON OFFICES OF PROFIT

FIRST REPORT (ELEVENTH LOK SABHA)



*Presented to Lok Sabha on 13 May, 1997
Laid in Rajya Sabha on 13 May, 1997*

**LOK SABHA SECRETARIAT
NEW DELHI**

*May, 1997/Vaisakha, 1919 (S)
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**JOINT COMMITTEE ON OFFICES OF PROFIT
(ELEVENTH LOK SABHA)**

COMPOSITION OF THE COMMITTEE

Shrimati Geeta Mukherjee

—Chairperson

MEMBERS

Lok Sabha

2. Shri Bhimrao Vishnuji Badade
3. Shri Pankaj Chaudhary
4. Shri P. Namgyal
5. Shri Prahlad Singh Patel
6. Shri A. Raja
7. Shri I.G. Sanadi
8. Rajkumari Ratna Singh
9. Shri Lal Babu Yadav
10. Shri Mahaboob Zahedi

Rajya Sabha

11. Shri Gaya Singh
12. Shri Bhagaban Majhi
13. Shri Sitaram Kesari
14. Dr. Naunihal Singh
15. Shri Virendra Kataria

SECRETARIAT

- | | |
|-----------------------|-------------------------------|
| 1. Shri. A.K. Pandey | — <i>Additional Secretary</i> |
| 2. Shri J.P. Ratnesh | — <i>Joint Secretary</i> |
| 3. Shri Ram Autar Ram | — <i>Director</i> |
| 4. Shri P.L. Chawla | — <i>Assistant Director</i> |

REPORT OF THE JOINT COMMITTEE

INTRODUCTION

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

2. The motion for constitution of the Joint Committee on Offices of Profit (Eleventh Lok Sabha) was moved in Lok Sabha by Shri Ramakant D. Khalap, Minister of Law, Justice and Company Affairs on 12 July, 1996 (Appendix I).

3. The Rajya Sabha concurred in the said motion on the 2nd August, 1996 (Appendix II). The message from Rajya Sabha communicating the names of members of Rajya Sabha elected to the Joint Committee was reported to Lok Sabha on 3 September, 1996 (Appendix III).

4. The names of members of Lok Sabha elected to the Joint Committee were published in the Lok Sabha Bulletin Part II dated 19 July, 1996 and the names of members of Rajya Sabha communicating the names of members of Rajya Sabha elected to the Joint Committee were published in the Rajya Sabha Bulletin Part II dated 30 August, 1996.

5. According to the motion adopted by Lok Sabha, the main function of the Joint Committee is to examine the composition and character of Committees, Corporations, Boards etc. constituted from time to time, membership of which should disqualify a person for being, chosen as, and for being a member of either House of Parliament under Article 102 of the Constitution and to recommend in relation to the Committees, Corporations, Boards etc. examined, as to which offices should disqualify for membership of the Houses of Parliament.

6. The Committee held *three sittings* on 24 October, 19 December, 1996 and 14 March, 1997. Minutes of these sittings form part of the report and are at Appendix IV.

7. The Committee considered 5 Memoranda regarding the Composition, Character, functions, etc. of Committees/Boards/Bodies/Corporations constituted by the State Governments/Central Governments and the emoluments and allowances payable to their members and non-official Directors.

8. Detailed information about the Committees/Boards/Corporations etc. given in the aforesaid Memoranda was furnished by the State Governments on requests made by Lok Sabha Secretariat.

9. The Committee considered and adopted this Report on 6 May, 1997.

10. The Committee wish to express their thanks to the Ministries/ Departments of the State Governments for furnishing the information desired by the Committee.

NEW DELHI;
May, 1997

Vaisakha, 1919 (Saka)

GEETA MUKHERJEE
Chairperson,
Joint Committee on Offices of Profit.

I

NOMINATION OF MEMBERS OF PARLIAMENT TO STATE BODIES

Appointment of Shri Bhim Dahal, Member of Parliament as Political Secretary to the Chief Minister, Government of Sikkim.

1.1 The Committee considered the requests of the Government of Sikkim and Shri Bhim Dahal, Member of Lok Sabha regarding his proposed appointment as Political Secretary to the Chief Minister, Government of Sikkim.

1.2 The Committee note that prior to his recent election to the Lok Sabha, Shri Bhim Dahal was a Political and Personal Secretary to the Chief Minister of Sikkim. He had resigned from the post before contesting the election. Now, the Chief Minister had again appointed him to work voluntarily without any financial benefit as his Political Secretary. Except for a Government vehicle he will not accept any pecuniary benefit. He will not claim TA from Lok Sabha Secretariat for the Journeys performed by him from and to Gangtok-Bagdogra and tours around his constituency i.e. Sikkim.

1.3 Further, according to Notification by the Government of Sikkim, Shri Bhim Dahal, MP, has been appointed as Political Secretary to the Chief Minister in a purely honorary capacity. He shall not be paid any pay and allowances or any emoluments whatsoever. However, he shall be provided with transport facility for his road journeys from and to Bagdogra and for tours conducted within the State in connection with his honorary assignments.

1.4 The member has requested the hon'ble Speaker to grant his formal approval for his above appointment. The matter has been referred by the Speaker to the Joint Committee on Offices of Profit for their consideration. Therefore, the main question is whether holding the office of political secretary to the Chief Minister of Sikkim by the member of Parliament amounts to holding an office of profit under the Government which would disqualify him under Article 102(1) (a) of the Constitution for being a member of Parliament.

1.5 In this connection, the Committee note the following criteria laid down by the Joint Committee on Offices of Profit in their Tenth Report

(Seventh Lok Sabha) to decide the question as to which of the offices should disqualify a person for being chosen as, and for being, a Member of Parliament:—

“10.3 The Committee feel that the basic principle underlying the imposition of disqualification under articles 102 (1) (a) and 191 (1) (a) 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 member would be free to carry out fearlessly their duties to their electorate and not to be influenced by any consideration of personal gain. They should not run 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 for the time being actually receives such remuneration or gain or not, the office should be held to be an office of profit under the Government. Otherwise, the object of imposition of the disqualifications as envisaged in the Constitution will become frustrated. This first basic principle (para 10.3) should be the guiding factor in offering positions to a member of the Legislature.”

1.6. The Committee note the case of Shri R. Mohanaragam, a Member of Rajya Sabha, who had to vacate his seat in Parliament for holding the post of Special Representative of Tamil Nadu as he was getting some benefits like use of staff car, occupation of Tamil Nadu House and use of a telephone. In this case also the Member was not entitled to draw any salary or honorarium or any pecuniary benefit from that post. The Election Commission nevertheless declared it an ‘office of profit under the Government’ as prior to the appointment of the concerned M.P. against the post in an honorary capacity the post of special Representative carried a salary which was actually attached to the post.

1.7. The Committee also note that in another judgement, the Bombay High Court has held that in order that an office may be an ‘office of profit’, it is not necessary that the holder of the office should actually make a profit out of it. It is enough if the office is capable of yielding a profit, or in other words, is one for which the person holding it may reasonably be expected to make a profit out of it. (Deo Rao Laxman V. Keshav Laxman — 13 ELR pp. 343—344).

1.8. The Committee further note that the Committee, at their sitting held on 7 October, 1988 considered a similar request of Shri Karma Tenzing Topden, Member of Rajya Sabha regarding his nomination as Tourism Adviser to the Government of Sikkim on a purely honorary basis without any fee, allowances, etc. He would have been entitled to reimbursement of actual expenditure incurred by him on discharge of his functions as Adviser. Services of a driver alongwith a car and petrol was to be provided to him. In that case the Committee recommended that the facilities offered would give the holder a status symbol and prestige which was not ordinarily enjoyed by a member of Parliament.

As Adviser, he would be performing various functions on behalf of the State Government and the office would be directly under the control of State Government. As such it should be treated as an office of profit under Government.

1.9. The Committee felt that a Political Secretary to Chief Minister, Shri Bhim Dahal may wield certain powers and exercise these powers on behalf of Chief Minister of State Government and his office would be directly under the control of the State Government. Ethically also it would not be desirable that Shri Bhim Dahal, who was holding the post of Political Secretary to Chief Minister prior to his election, should be allowed to hold the same post as Member of Parliament even though in an honorary capacity.

1.10. In view of above, the Committee therefore, recommended that Shri Dahal should not be allowed to accept the post of Political Secretary to Chief Minister, Government of Sikkim.

Nomination of Shri Ashok Gehlot, Member Lok Sabha and Shri Ramdas Aggarwal, Member, Rajya Sabha as non-official members to the State Population Standing Council, Rajasthan.

1.11. The Committee considered the request of the State Government of Rajasthan seeking approval of the Hon'ble Speaker/Chairman, Rajya Sabha in regard to nomination of Shri Ashok Gehlot, Member, Lok Sabha and Shri Ramdas Aggarwal, Member, Rajya Sabha as non-official members to the State Population Standing Council, Rajasthan.

1.12. The Committee note from the information furnished by the Govt. of Rajasthan that the non-official members of State Population Standing Council, Rajasthan are not paid any allowances, fee, remuneration etc.

1.13. The Committee also note that the main functions of the Council are to review the various family welfare programmes in the State and to provide guidelines for implementation of the programme effectively and thus advisory in nature.

1.14. Keeping in view Section 3 (h) of the Parliament (Prevention of Disqualification) Act, 1959 which has declared certain offices, functions of which are advisory in nature, not to disqualify the holder thereof for being chosen as, or for being, a Member of Parliament, subject to the condition

that the amount of TA/DA provided to the non-official members of the Council should not exceed the 'compensatory allowance' as defined in Section 2(a) of the said Act.

1.15 The Committee recommend to exempt non-official members (including Members of Parliament) of the said Council from disqualification for being chosen as, or for being, Members of Parliament.

Nomination of Smt. Divya Singh, Member, Lok Sabha and Shri Kanak Mal Katara, Member, Rajya Sabha as non-official members of the Committee for Planning, Implementation and Co-ordination of 20-Point Programme at State Level, Rajasthan.

1.16 The Committee considered the request of the State Government of Rajasthan seeking approval of the Hon'ble Speaker, Lok Sabha/Chairman, Rajya Sabha for nomination of Smt. Divya Singh, Member, Lok Sabha and Shri Kanak Mal Katara, Member, Rajya Sabha as non-official members of Committee for Planning, Implementation and Co-ordination of 20-Point Programme at State Level.

1.17 The Committee note from the information furnished by the State Government of Rajasthan that the non-official members (Members of Parliament) of the Committee for Planning, Implementation and Co-ordination of 20-Point Programme at State level are not paid any remuneration.

1.18 The Committee also note that the main function of the Committee is to review the progress of the 20-Point Programme at State level. It has no executive legislative or judicial functions and has no financial powers. Thus, the Committee find that the Committee is an advisory body.

1.19 Keeping in view Section 3(h) of the Parliament (Prevention of Disqualification) Act, 1959 which has declared certain offices, functions of which are advisory in nature, not to disqualify the holder thereof for being chosen as, or for being a Member of Parliament, subject to the condition that the amount of TA/DA provided to the non-official members of the Committee should not exceed the 'compensatory allowance' as defined in section 2(a) of the said act, the Committee recommend to exempt non-official members (including Members of Parliament) of the said Committee from disqualification for being chosen as, or for being, Members of Parliament.

Whether holding the post of a Professor in S.R.A. College, Ferozabad, Uttar Pradesh, constitutes an office of profit—query from Shri Ompal Singh 'Nidar', MP.

1.20 The Committee considered the request of Prof. Ompal Singh 'Nidar', Member (Lok Sabha) enquiring whether holding the post of a Professor in S.R.A. College, Ferozabad (U.P.) which is a private college aided by the Govt. of Uttar Pradesh constitutes an office of profit and

whether he is entitled to draw salary as a College Professor and also as a Member of Parliament simultancously.

1.21 In this connection, the State Government of Uttar Pradesh were requested to furnish the following information:—

- (i) the details of grants-in-aid received by the College from the Government or any other source and whether the expenditure of the College is in any way controlled by the Government;
- (ii) Authority in which the powers of appointment and dismissal/ removal etc. of a Professor of the College is vested and whether the State Government have any say in the matter;
- (iii) whether the relevant Act or Rules/Bye-laws made thereunder by the State Government permit a Professor on his election as a Member of Parliament to draw salary and allowances from two sources at a time; and
- (iv) The term and mode of appointment of Prof. Ompal Singh 'Nidar', M.P. as a Professor of the College in question and the salary and other allowances drawn by him presently.

1.22 The State Government of Uttar Pradesh have furnished the following information:—

- I.it is worth mentioning that S.R.A. College, Ferozabad is a private institution aided by State Government. The salary is given under 'Payment of salary' head, from the grants received from the State Government, to the principal, teachers and extra teaching staff working against the sanctioned posts. In this way, the salary is provided from the State-Exchequer to the teachers and non-teaching Staff deputed/working in the said college.
- II. The power of appointment, removing and terminating of teachers rests with the Management subject to ratification by the Vice Chancellor of the University. But it is worth mentioning that the selection process in regard to appointment is completed by the Uttar Pradesh Higher Education Services Commission.
- III. In regard to payment of salary etc. to the Hon'ble Member of Lok Sabha the following provision exists in the U.P. State University Rules:—
 - (i) a teacher of the University who is a member of Parliament or State Legislature shall not, throughout the term of his membership, hold any administrative or remunerative office in the University;
 - (ii) if a teacher of the University is holding any administrative or remunerative office in the University from before the date of his election or nomination as a Member of Parliament or the State Legislature, then he shall cease to hold such office with effect from

the date of such election or nomination or with effect from the commencement of these Statutes, whichever is later;

(iii) a teacher of the University who is elected or nominated to Parliament or the State Legislature, shall not be required to resign or to take leave from the University for the duration of his membership or, except as provided by Statute 15.11 for attending the meeting of any House or Committee thereof.

Explanation—The membership of any authority or body of the University or the Deanship of a faculty or the Principalship of any college shall not be deemed to be an administrative or remunerative office for the purpose of this Statute.

15.11 The Executive Council shall fix a minimum number of days during which such teacher shall be available in the University for his academic duties:

Provided that where a teacher of the University is not so available because of the sessions of the Parliament or the State Legislature, he shall be treated on such leave, as may be due to him, and if no leave is due, then on leave without pay.

Alongwith the above provisions, the following provisions exist in para 16.12 of the rules regarding teaching staff of the college.

16.12 The provisions of Statutes 15.12 to 15.22 relating to the Leave Rules of teachers of the University shall be applicable to the teachers of an affiliated college with the substitution of the words 'Management' and 'Principal' for the words 'Executive Council' and 'Vice-Chancellor' respectively.

- IV. According to the information available in the Directorate Shri Ompal Singh Nidar is working in the scale of pay of Rs. 3700—5700 as Reader of Political Science in the S.R.A. College, Ferozabad. Shri Nidar was appointed in the above college on 19.7.1971 and he is drawing basic salary of Rs. 4700/- per month. He is a permanent Reader."

1.23 In this connection, the Committee perused the following judgement of the Election Tribunal, Nagpur in the case of Krishnappa, V. Narayan Singh and others where it has been held as under:—

"A person serving as a teacher in a grant-in-aid School does not hold an office of profit under Government merely because the School receives grant from the Government for payment of a portion of the dearness allowances and the pay of the teacher. The most important

test for determining whether an office is under the Government is whether the power of appointment and dismissal rests in the Government.”

(1953 ELR Vol. VII P. 294)

1.24 In this connection, the Committee also noted that the Joint Committee on Offices of Profit (Eighth Lok Sabha) had recommended in their Seventh Report that “Prof. (Smt.) Chandra Bhanu Devi, M.P., in her capacity as the lecturer of a non-Government College, was not holding an ‘Office of profit under the Government’ as according to the Principal of the college, the Vice-Chancellor was the competent authority to appoint and dismiss a lecturer and the Government has nothing to do with it.”

1.25 The Committee further note that in the present case the power of appointment and removal or dismissal rests with the Management of the College with the ratification by the Vice-Chancellor of the University.

1.26 In view of above, the Committee recommended that Shri Ompal Singh ‘Nidar’, M.P. in his capacity as a Professor in a Private College, aided by the State Government, is not holding an ‘office of profit under the Government’ and hence does not incur disqualification for being a member of Parliament and can draw salary as such member. So far as the question whether he can draw the salary as a college Professor also simultaneously, it is for the University and the College to consider and take a decision under the Uttar Pradesh University Rules.

Nomination of Shri K. D. Sultanpuri, Member, Lok Sabha and Shri Sushil Barongpa, Member, Rajya Sabha as non-official members of State Level/District Level Vigilance and Monitoring Committee, Himachal Pradesh.

1.27 The Committee considered the request of the State Government of Himachal Pradesh seeking approval of the Hon’ble Speaker, Lok Sabha/Chairman, Rajya Sabha for nomination of Shri K. D. Sultanpuri, Member, Lok Sabha and Shri Sushil Barongpa, Member, Rajya Sabha as non-official members of State Level/ District Level Vigilance and Monitoring Committee, Himachal Pradesh.

1.28 The Committee note from the information furnished by the State Government of Himachal Pradesh that the non-official members of the State Level Vigilance and Monitoring Committee shall be paid TA/DA as per rules of the State Government. The payment of TA/DA is covered by the ‘compensatory allowance’ as defined in section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.

1.29 The Committee also note that the main functions of the Vigilance and Monitoring Committee are to review the implementations of the Provisions of act, relief and rehabilitation facilities provided to the victims and other connected matters. Thus, the Committee find that the functions of the Committee are advisory in nature.

1.30 Keeping in view section 3(h) of the Parliament (Prevention of Disqualification) Act, 1959 which has declared certain offices of profit not to disqualify the holder thereof for being chosen as, or for being, a member of Parliament, subject to the condition that the amount of TA/DA provided to the non-official members of the Committee should not exceed the 'compensatory allowance' as defined in section 2(a) of the said Act. **The Committee recommend to exempt the non-official members (including Members of Parliament) of the said Committee from disqualification for being chosen as, or for being, Members of Parliament.**

Calling of information from Members of Parliament regarding holding of Office of Profit under the Government.

1.31 The Committee considered the matter regarding calling of information from Members of Parliament regarding holding of office of profit under the Government.

1.32 The Committee note that according to Article 102(1), a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament, if he holds any Office of Profit under the Government of India or any State, other than an office declared by Parliament by law not to disqualify its holders.

1.33 The Committee find that the expression "holds any office of profit under the Government" occurring in Articles 102 (1)(a) and 191(1)(a) has nowhere been defined precisely. Its scope has, therefore, to be gathered from the pronouncements on the subject made from time to time by Courts, Election Commission, etc.

1.34 The Committee also note that there have been cases where Members have been nominated to some Committees or Bodies the appointments on which could be construed to constitute an office of profit within the meaning of article 102(1)(a) and result in, a Member being disqualified from membership of the House. In order to avoid contingencies of this nature, the Parliamentary Joint Committee on Offices of Profit at their sitting held on 15 July, 1988 had decided that all the Ministries of Government of India and the State Governments might be requested to obtain approval of the Speaker, Lok Sabha or the Chairman, Rajya Sabha as the case may be, before nominating any Member of Parliament to any Government Committee/Body. Since then all the Ministries of Government of India, Chief Secretaries of the State Governments and Administrators of Union Territories are requested to furnish for the consideration of this Committee relevant information in respect of Government Committees (which include Commissions, Boards, etc.) constituted by them. But there are so many Government Committees/bodies on which the Members of Parliament are the office bearers like Chairman, Director, Members etc. and the concerned Central/State Governments do not furnish the information about their nomination and seek approval of the Speaker. Members are also not

aware of the fact whether the office which they are holding is an office of profit or not.

1.35 In view of above, the Committee are of the view that a booklet containing the detailed guidelines regarding the "Office of profit" may be prepared for the information of Members and after approval of Speaker, Lok Sabha, it may be circulated to them through their Parliamentary Parties. The Members might also be requested through their Party Leaders to bring the facts before the Joint Committee on Offices of Profit about their nomination on a Government Committee/Body, and have the permission of the Speaker, Lok Sabha or the Chairman, Rajya Sabha, as the case may be, before accepting any office in any Government Committee/Body, so that the Committee may examine and advise the Member to avoid a situation where the question of disqualification for being a Member of Parliament might arise due to holding of 'Office of Profit' under the Government. The Committee also desired that the copies of the booklet may also be circulated to the presiding officers of all the State Legislative Assemblies/Councils and Chief Secretaries of all the States.

II

INCURRING OF DISQUALIFICATION BY NON-OFFICIAL MEMBERS OF CENTRAL BODIES

Central Purchase Advisory Council (Ministry of Commerce, Department of Supply)

2.1 The Committee note from the information furnished by Ministry of Commerce (Department of Supply) that the non-official members (including Members of Parliament) of Central Purchase Advisory Council are entitled to get TA/DA for attending its meetings in accordance with the provisions of the Salary, Allowances and Pensions of Members of Parliament Act, 1954 as amended from time to time and the rules made thereunder which are covered by the 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.

2.2 The Committee also note that the main functions of the Council are to advise the Government on general policy and procedural matters relating to Central Purchase Organisation as well as on development of Industries through Government in placing procurement of essential requirements achieving maximum possible utilisation of domestic resources and maintaining close and continuous touch with the Industry, and therefore, the functions of the Council are advisory in nature.

2.3 Keeping in view Section 3(h) of the Parliament (Prevention of Disqualification) Act, 1959 which has declared certain offices of profit not to disqualify the holder thereof for being chosen as, or for being, a member of Parliament, subject to the condition that the amount of TA/DA provided to the non-official members of the Committee should not exceed the 'compensatory allowance' as defined in Section 2(a) of the said Act, the Committee recommend to exempt non-official members (including Members of Parliament) of the said Council from disqualification for being chosen as, or for being, Members of Parliament.

Evaluation Advisory Committee of Programme Evaluation Organisation — Planning Commission (Plan Coordination Division)

2.4 The Committee note from the information furnished by the Planning Commission (Plan Coordination Division) that the non-official members (including Members of Parliament, if nominated) of Evaluation Advisory Committee will be paid TA/DA as admissible to Grade-I Officer of the Central Government by the Planning Commission which are covered by

the 'compensatory allowance' as defined in section 2(a) of the Parliament (Prevention of Disqualification) Act, 1952.

2.5 The Committee further note that the main functions of the Committee are to give general guidelines for the studies to be taken up, methodologies to be adopted and linkages to be established with evaluation, research and academic institutions by the Programme Evaluations Organisations. The Committee find that the functions are advisory in nature.

2.6 Keeping in view Section 3(h) of the Parliament (Prevention of Disqualification) Act, 1959 which has declared certain offices of profit not to disqualify the holder thereof for being chosen as, or for being, a member of Parliament, subject to the condition that the amount of TA/DA provided to the non-official members of the Committee should not exceed the 'compensatory allowance' as defined in section 2(a) of the said Act. **The Committee recommend to exempt non-official members (including Members of Parliament, if nominated) of the Evaluation Advisory Committee from disqualification for being chosen as, or for being, Members of Parliament.**

Board of Directors of Life Insurance Corporation of India (Ministry of Finance, Department of Economic Affairs)

2.7 The Committee note from the information furnished by the Ministry of Finance (Department of Economic Affairs) that the non-official members (Members of Parliament, if nominated) of the Board of Directors of the Life Insurance Corporation of India are paid Rs. 200/- for each meeting of the Corporation and Rs. 100/- for the each meeting of any Committee constituted by the corporation. Besides this, they are also paid DA (Halting) for food and incidental charges as admissible to a highest grade officer. Hotel Tariff is fixed as 'a Hotel other than 5 star' These sums exceed the 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.

2.8 The Committee also note that the main function performed by the Board of Directors of the Corporation is that it is responsible for overall policies of the Corporation and exercise both executive and financial powers.

2.9 In this connection, attention of the Committee are drawn to its own recommendation made in Tenth Report (Seventh Lok Sabha) presented to Lok Sabha on 7 May, 1984, that if 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 scholarship, etc. then the office in question will entail disqualification.

2.10. The Committee, keeping in view of the said recommendation, recommend that the non-official members (including Members of Parliament, if nominated) of the Board of Directors of the said Corporation may not be exempted from disqualification for being chosen as, or for being, Members of Parliament.

NEW DELHI;
May 1997

Vaisakha, 1919 (S)

GEETA MUKHERJEE
Chairperson,
Joint Committee on Offices of Profit.

APPENDIX I

(Vide para 2 of the Report)

Motion in Lok Sabha for the Constitution of the Joint Committee on Offices of Profit

“That a Joint Committee of the Houses to be called the Joint Committee on Offices of Profit be constituted consisting of fifteen members, ten from this House and five from the Rajya Sabha, who shall be elected from amongst the members of each house in accordance with the system of proportional representation by means of the single transferable vote:

That the functions of the Joint Committee shall be—

- (i) to examine the composition and character of all existing “committees” other than those examined by the Joint Committee to which the Parliament (Prevention of Disqualification) Bill, 1957 was referred and all “committees” that may hereafter be constituted, membership of which may disqualify a person for being chosen as, and for being, a member of either house of the Parliament under Article 102 of the Constitution;**
- (ii) to recommend in relation to the “committees” examined by it what offices should disqualify and what offices should not disqualify;**
- (iii) to scrutinise from time to time the Schedule to the Parliament (Prevention of Disqualification) Act, 1959, and to recommend any amendments in the said Schedule, whether by way of addition, omission or otherwise.**

That the Joint Committee shall, from time to time, report to both Houses of Parliament in respect of all or any of the aforesaid matters;

That the members of the Joint Committee shall hold office for the duration of the present Lok Sabha;

That in order to constitute a sitting of the Joint Committee, the quorum shall be one-third of the total number of members of the Committee;

That in other respects, the rules of procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

That this House recommends to the Rajya Sabha that the Rajya Sabha do join in the said Joint Committee and to communicate to this House the names of the members to be appointed by the Rajya Sabha to the Joint Committee.”

APPENDIX II

(Vide para 3 of the report)

Motion in Rajya Sabha on the 2nd August, 1996

“That this House concurs in the recommendation of the Lok Sabha that a Joint Committee of the Houses to be called the Joint Committee on Offices of Profit be constituted for the purposes set out in the motion adopted by the Lok Sabha at its sitting held on the 12th July, 1996, and resolves that this House do join the said Joint Committee and proceed to elect, in accordance with the system of proportional representation by means of the single transferable vote, five members from among the members of the House to serve on the said Joint Committee.”

APPENDIX III

(Vide para 3 of the Report)

Message from Rajya Sabha which was Reported to Lok Sabha on the 30th August, 1996

SECRETARY-GENERAL: Sir, I have to report the following message received from the Secretary-General of Rajya Sabha:

I am directed to inform the Lok Sabha that the Rajya Sabha at its sitting held on Friday, the 22nd August, 1996 adopted the following motion in regard to the Joint Committee on Offices of Profit:-

“That this House concurs in the recommendation of the Lok Sabha that a Joint Committee of the Houses to be called the Joint Committee on Offices of Profit be constituted for the purposes set out in the motion adopted by the Lok Sabha at its sitting held on the 12th July, 1996, and resolves that this House do join the said Joint Committee and proceed to elect, in accordance with the System of proportional representation by means of the single transferable vote, five members from among the members of the House to serve on the said Joint Committee.”

2. I am further to inform the Lok Sabha that in pursuance of the above motion, the following members of the Rajya Sabha have been duly elected to the said Committee:

1. Shri Gaya Singh
2. Shri Bhagaban Majhi
3. Shri Sitaram Kesari
4. Dr. Naunihal Singh
5. Shri Virendra Kataria

APPENDIX IV

(Vide para 6 of the Report)

I

MINUTES OF THE FIRST SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (ELEVENTH LOK SABHA)

The Committee met on Thursday, 24 October, 1996 from 1630 to 1740 hours in Committee Room No. 139, First Floor Parliament House Annexe.

PRESENT

Shrimati Geeta Mukherjee—*Chairperson*

MEMBERS

Lok Sabha

2. Shri Bhimrao Vishnuji Badade
3. Shri P. Namgyal
4. Shri I. G. Sanadi

Rajya Sabha

5. Shri Gaya Singh
6. Shri Bhagaban Majhi
7. Dr. Naunihal Singh
8. Shri Virendra Kataria

SECRETARIAT

Shri J. P. Jain — *Under Secretary*

Shri P. L. Chawla — *Assistant Director*

2. At the outset, the Chairperson welcomed the Members of the Committee and explained them broadly the origin, scope and functions of the Committee (Annexure).

Appointment of Shri Bhim Dahal, Member of Parliament as Political Secretary to the Chief Minister, Government of Sikkim.

(Memorandum No. 1)

3. The Committee considered the requests of the Government of Sikkim and Shri Bhim Dahal, Member of Lok Sabha regarding his proposed appointment as Political Secretary to the Chief Minister, Government of

Sikkim. The Committee noted that prior to his recent election to the Lok Sabha, Shri Bhim Dahal was a Political and Personal Secretary to the Chief Minister of Sikkim. He had resigned from the post before contesting the election. Now the Chief Minister had again appointed him to work voluntarily without any financial benefit as his Political Secretary. Except for a Government vehicle he will not accept any pecuniary benefit. He will not claim TA from Lok Sabha Secretariat for the journeys performed by him from and to Gangtok-Bagdogra and tours around his constituency i.e. Sikkim.

Further, according to Notification by the Government of Sikkim Shri Bhim Dahal, MP, has been appointed as Political Secretary to the Chief Minister in a purely honorary capacity. He shall not be paid any pay and allowances or any emoluments whatsoever. However, he shall be provided with transport facility for his road journeys from and to Bagdogra and for tours conducted within the State in connection with his honorary assignments.

4. In this connection, the Committee noted the following criteria laid down by the Joint Committee on Offices of Profit in their Tenth Report (Seventh Lok Sabha) to decide the question as to which of the offices should disqualify a person for being chosen as, and for being, a Member of Parliament:

“10.3 The Committee feel that the basic principle underlying the imposition of disqualification under articles 102 (1) (a) and 191 (1) (a) 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 member would be free to carry out fearlessly their duties to their electorate and not to be influenced by any consideration of personal gain. They should not run 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 for the time being actually receives such remuneration or gain or not, the office should be held to be an office of profit under the Government. Otherwise, the object of imposition of the disqualifications as

envisaged in the Constitution will become frustrated. This first basic principle (para 10.3) should be the guiding factor in offering positions to a member of the Legislature.”

5. The Committee also noted the case of Shri R. Mohanarangum, a Member of Rajya Sabha, who had to vacate his seat in Parliament for holding the post of Special Representative of Tamil Nadu as he was getting some benefits like use of staff car, occupation of Tamil Nadu House and use of a telephone. In this case also the Member was not entitled to draw any salary or honorarium or any pecuniary benefit from the post. The Election Committee nevertheless declared it an ‘office of profit under the Government’ as prior to the appointment of the concerned M.P. against the post in an honorary capacity the post of special Representative carried a salary which was actually attached to the post.

6. The Committee also noted that in another judgement, the Bombay High Court had held that in order than an office may be an ‘office of profit’, it was not necessary that the holder of the office should actually make a profit out of it. It was enough if the office was capable of yielding a profit, or in other words, was one for which the person holding it may reasonably be expected to take a profit out of it. (Deo Rao Laxman V. Keshav Laxman—13 F.L.R pp. 343-344).

7. The Committee further noted that the Committee at their sitting held on 7 October, 1988 considered a similar request of Shri Karma Tenzing Topden, Member of Rajya Sabha regarding his nomination as Tourism Adviser to the Government of Sikkim on a purely honorary basis without any fee, allowances, etc. He would have been entitled to reimbursement of actual expenditure incurred by him on discharge of his functions as Adviser. Services of a driver alongwith a car and petrol was to be provided to him. In that case the Committee recommended that the facilities offered would give the holder a status symbol and prestige which was not ordinarily enjoyed by a member of Parliament. As Adviser, he would be performing various functions on behalf of the State Government and the office would be directly under the control of State Government. As such it should be treated as an office of profit under Government.

8. The Committee felt that as a political Secretary to Chief Minister, Shri Bhim Dahal may wield certain powers and exercise these powers on behalf of Chief Minister or State Government and his office would be directly under the control of the State Government ethically also it would not be desirable that Shri Bhim Dahal, who was holding the post of Political Secretary to Chief Minister prior to his election, should be allowed to hold the same post as Member of Parliament even though in an honorary capacity. The Committee therefore, recommended that Shri Dahal should not be allowed to accept the post of Political Secretary to Chief Minister, Government of Sikkim.

Nomination of Shri Ashok Gehlot, Member, Lok Sabha and Shri Ramdas Aggarwal, Member, Rajya Sabha as non-official members to the State Population Standing Council, Rajasthan.

(Memorandum No. 2)

9. The Committee, thereafter, considered the Memorandum No. 2 and noted from the information furnished by the State Government of Rajasthan that the non-official members of State Population Standing Council, Rajasthan were not paid any allowances, fee, remuneration etc.

10. The Committee noted that the main functions of the Council are to review the various family welfare programmes in the State and to provide guidelines for implementation of the programme effectively and thus advisory in nature.

11. Keeping in view Section 3 (h) of the Parliament (Prevention of Disqualification) Act, 1959 which has declared certain office, functions of which are advisory in nature, not to disqualify the holder thereof for being chosen as, or for being, a Member of Parliament, subject to the condition that the amount of TA/DA provided to the non-official members of the Council should not exceed the 'compensatory allowance' as defined in Section 2(a) of the said Act, the Committee recommended to exempt non-official members (including Members of Parliament) of the said Council from disqualification for being chosen as, or for being, Members of Parliament.

12. The members of the Committee desired that the Secretariat may circulate to them the important decisions of the Courts/Tribunals regarding 'office of profit' for their information and clarifications.

The Committee then adjourned.

ADDRESS BY THE CHAIRPERSON, JOINT COMMITTEE ON
OFFICES OF PROFIT (ELEVENTH LOK SABHA) TO THE
MEMBERS OF THE COMMITTEE AT ITS FIRST SITTING TO BE
HELD ON 24 OCTOBER, 1996

Friends,

It gives me great pleasure to welcome you all to this first sitting of the Joint Committee on Offices of Profit of the Eleventh Lok Sabha. Before I proceed to deal with the functions of this Committee, I should like to explain to you the 'concept of office of profit' and the background for constituting this Joint Committee.

2. The concept of disqualifying a holder of office of profit under the Government for being chosen as, and for being, a member of Legislature originated from the need in democratic Government to limit the control and influence of the Executive over the Legislature by means of an undue proportion of office holders being members of the Legislature. In all democracies, including the United Kingdom and U.S.A., holders of office under the Government as a rule, are disqualified for being members of Legislatures. In India, this principle is embodied in Article 102 (1) (a) and 191 (a) of the Constitution in regard to the Members of Parliament and the State Legislatures respectively. Article 102(1)(a) of the Constitution reads as under:—

"102(1) A person shall be disqualified for being a member of either House of Parliament—

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

3. The expression "holds any office of profit under the Government" occurring in Articles 102(1)(a) and 191(1)(a) has nowhere been defined precisely. Its scope has, therefore, to be gathered from the pronouncements on the subject made from time to time by the Courts, Election Tribunals, etc. As a general rule for the purpose of determining whether an office constitutes an office of profit under Government, it has to be seen whether Government have the power to appoint a person to that office and remove him from that office.

4. The Bhargava Committee, which was appointed by the Speaker in 1954 had recommended that "ordinarily Members of Parliament should be encouraged to serve on such Committee which are of an advisory character

and represent the local or popular point of view in a manner which will effectively influence the officials' point of view. Members of Parliament by virtue of their membership are in a position to say and represent certain matters with some authority and confidence, and their views are likely to go a long way influencing the view point of officials. But it is at the same time felt that consistent with the above view expressed, Members of Parliament should not be permitted to serve on Committees, Commissions etc. which jeopardise their independence or which will place them in a position of power or influence or in a position where they receive some patronage from Government or are themselves in a position to distribute patronage."

5. The Parliament (Prevention of Disqualification) Act, 1959 specifies the offices of profit under the Government which do not disqualify the holders thereof for being chosen as, or for being Members of Parliament. The Act also enumerates the offices specified in the Schedule to the Act which are not exempt from disqualification. The Act, however, needs to be updated.

6. In pursuance of an assurance given in Lok Sabha during discussion on Parliament (Prevention of Disqualification) Bill on 2nd December, 1958, a motion was moved in the House on 3rd August, 1959 for the constitution of a Joint Committee on Offices of Profit. The first Joint Committee on Offices of Profit was thus constituted in August, 1959 for the duration of the remaining period of Second Lok Sabha. Since then the Committee has been constituted from time to time after each general election for the duration of the term of the House except during the term of Sixth Lok Sabha when no such Committee was constituted.

7. The functions of the Committee are:

- (i) to examine the composition and character of all existing 'committees' and all 'committees' that may be constituted, membership of which may disqualify a person for being chosen as, and for being, a member of either House of Parliament under Article 102 of the Constitution.
- (ii) to recommend in relation to the 'committee' examined by it to what offices should disqualify and what offices should not disqualify.
- (iii) to scrutinise from time to time the Schedule to the Parliament (Prevention of Disqualification) Act, 1959, and to recommend any amendments in the said Schedule, whether by way of addition, omission or otherwise.

8. Thus, the Committee examine the detailed particulars regarding the composition and character, etc., of the 'committees' constituted by the Ministries/Departments of the Central Government as well as by the State Governments. The Committee also examines various queries received from Members of Parliament pertaining to "Office of Profit" and expresses its opinion in appropriate cases. The Committee, however, does not examine the composition and character of 'committees' which consist wholly of officials or which are constituted for *ad hoc* purposes. Further, during the Third Lok Sabha the Committee decided that the composition and character etc. of the bodies registered under the Societies Registration Act need not generally be examined unless any particular case merited consideration.

9. Sometimes requests are received from the Central/State Govts. seeking Speaker's approval to the nomination of members of Parliament on various Committees/Bodies constituted by them. These requests are placed before the Committee with a view to examine whether the Office of Member/Director/Chairman of the Govt. Body in question constitutes an Office of Profit under the Govt. which would incur disqualification for being a member of Parliament. That is the procedure which is being followed by the Committee so far. But there are so many Govt. Committees on which the Members of Parliament are the Office bearers like Chairman, Director, Members, etc. But the concerned Central/State Govts. do not furnish the information about their nominations and seek approval of the Speaker. Members are also not aware of the fact whether the Office which they are holding is an Office of Profit or not.

To avoid such a peculiar situation, I suggest that all the members of Parliament should bring the facts before the Joint Committee on Offices of Profit about their nominations on a Govt. Committee and have the permission of the Committee before accepting any post in any Govt. Committee/Body. I would like to have a detailed discussion with you on this point and your suggestions are solicited as to how to meet the situation.

10. The work of the Committee is of a continuous nature and it is generally the practice that the work of the Committee left unfinished at the end of its term is taken up by the succeeding Committee at the stage where it was left. However, this Committee has been given a clean slate as the previous Committee has not left any Report or memoranda pending for consideration.

11. I once again welcome you and trust that you will extend your whole-hearted co-operation and assistance in ensuring the smooth and efficient working of the Committee.

Thank you.

II

MINUTES OF THE SECOND SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (ELEVENTH LOK SABHA)

The Committee met on Thursday, 19 December, 1996 from 1530 to 1700 hours, in Chairperson's Room No. 145, Third Floor, Parliament House.

PRESENT

Shrimati Geeta Mukherjee—Chairperson

MEMBERS

Lok Sabha

2. Shri Bhimrao Vishnuji Badade
3. Shri P. Namgyal
4. Shri Prahlad Singh Patel
5. Shri I.G. Sanadi
6. Rajkumari Ratna Singh
7. Shri Lal Babu Yadav
8. Shri Mahaboob Zahedi

Rajya Sabha

9. Shri Virendra Kataria

SECRETARIAT

Shri Ram Autar Ram — *Deputy Secretary*

Shri J.P. Jain — *Under Secretary*

P.L. Chawla — *Assistant Director*

Committee for Planning, Implementation and Co-ordination of 20-Point Programme at State Level, Rajasthan—Proposal to nominate Smt. Divya Singh, Member (Lok Sabha) and Shri Kanak Mal Katara, Member (Rajya Sabha) as non-official Members thereof.

(Memorandum No. 3).

The Committee took up for consideration Memorandum No. 3 and noted from the information furnished by the State Government of Rajasthan that the non-official members (Members of Parliament) of the Committee for Planning, Implementation and Co-ordination of 20-Point Programme at State level were not paid any remuneration.

The Committee also noted that the main function of the Committee is to review the progress of the 20-Point Programme at State level. It has no executive, legislative or judicial functions and has no financial powers. Thus, the Committee found that the Committee is an advisory body.

Keeping in view Section 3(h) of the Parliament (Prevention of Disqualification) Act, 1959 which has declared certain offices, functions of which are advisory in nature, not to disqualify the holder thereof for being chosen as, or for being, a Member of Parliament, subject to the condition that the amount of TA/DA provided to the non-official members of the Committee should not exceed the 'compensatory allowance' as defined in Section 2(a) of the said Act, the Committee recommended to exempt non-official members (including Members of Parliament) of the said Committee from disqualification for being chosen as, or for being, Members of Parliament.

Whether holding the post of a Professor in S.R.A. College, Ferozabad, Uttar Pradesh, constitutes an Office of Profit—query from Prof. Ompal Singh 'Nidar', MP

(Memorandum No. 4).

The Committee then considered Memorandum No. 4 containing the request of Prof. Ompal Singh 'Nidar', Member (Lok Sabha) enquiring whether holding the post of a Professor in S.R.A. College, constituted an office of profit and whether he was entitled to draw salary as a College Professor and also as a Member of Parliament simultaneously. In this connection, the Committee took note of the following judgement of the Election Tribunal, Nagpur in the case of Krishnappa V. Narayan Singh and others where it has been held as under:—

“A person serving as a teacher in a grant-in-aid School does not hold an office of profit under Government merely because the School receives grant from the Government for payment of a portion of the dearness allowances and the pay of the teacher. The most important test for determining whether an office is under the Government is

whether the power of appointment and dismissal rests in the Government.”

(1953 ELR Vol. VII P. 294)

The Committee also perused following information furnished by the State Government of Uttar Pradesh in this connection—

- I. it is worth mentioning that S.R.A. College, Ferozabad is a private institution aided by the State Government. The Salary is given under ‘Payment of Salary’ head, from the grants received from the State Government, to the Principal, Teachers and extra teaching staff working against the sanctioned posts. In this way, the salary is provided from the State Exchequer to the teachers and non-teaching staff deputed/working in the said college.
- II. The power of appointment, removing and terminating of teachers rests with the Management subject to ratification by the Vice Chancellor of the University. But it is worth mentioning that the selection process in regard to appointment is completed by the Uttar Pradesh Higher Education Services.
- III. In regard to payment of salary etc. to the Hon’ble Member of Lok Sabha the following provision exists in the U.P. State University Rules:—

(i) a teacher of the University who is a member of the Parliament or State Legislature shall not, throughout the term of his membership, hold any administrative or remunerative office in the University;

(ii) if a teacher of the University is holding any administrative or remunerative office in the University from before the date of his election or nomination as a member of Parliament or the State Legislature, then he shall cease to hold such office with effect from the date of such election or nomination or with effect from the commencement of these Statutes, whichever is later;

(iii) a teacher of the University who is elected or nominated to Parliament or the State Legislature, shall not be required to resign or to take leave from the University for the duration of his membership or, except as provided by Statute 15.11 for attending the meeting of any House or Committee thereof.

Explanation—The membership of any authority or body of the University or the Deanship of a faculty or the Principalship of any college shall not be deemed to be an administrative or remunerative office for the purpose of this Statute.

15.11. The Executive Council shall fix a minimum number of days during which such teacher shall be available in the University for his academic duties:

Provided that where a teacher of the University is not so available because of the sessions of the Parliament or the State Legislature, he shall be treated on such leave, as may be due to him, and if no leave is due, then on leave without pay.

Alongwith the above provisions, the following provisions exist in para 16.12 of the rules regarding teaching staff of the college.

16.12 The provisions of Statutes 15.12 to 15.22 relating to the Leave Rules of Teachers of the University shall be applicable to the teachers of an affiliated college with the substitution of the words 'Management' and 'Principal' for the words 'Executive Council' and 'Vice-Chancellor' respectively.

- IV. According to the information available in the Directorate Shri Ompal Singh 'Nidar' is working in the Scale of pay of Rs. 3700—5700 as Reader of Political Science in the S.R.A. College, Ferozabad. Shri Nidar was appointed in the above college on 19.7.1971 and he is drawing basic salary of Rs. 4700/- per month. He is a permanent Reader."

In this connection, the Committee also noted that the Joint Committee on Offices of Profit (Eighth Lok Sabha) had recommended in their Seventh Report that "Prof. (Smt.) Chandra Bhanu Devi, M.P., in her capacity as the lecturer of a non-Government College, was not holding an 'office of profit under the Government' as according to the Principal of the college, the Vice-Chancellor was the competent authority to appoint and dismiss as lecturer and the Government has nothing to do with it."

The Committee also took note that in the present case the power of appointment and removal or dismissal rests with the Management of the College with the ratification by the Vice-Chancellor of the University.

In view of above, the Committee recommended that Shri Ompal Singh 'Nidar', M.P. in his capacity as a Professor in a Private College, aided by the State Government, is not holding an 'office of profit under the Government' and hence does not incur disqualification for being a Member of Parliament and can draw salary as such member. So far as the question whether he can draw the salary as a College Professor also simultaneously, it is for the University and the College to consider and take a decision under the Uttar Pradesh University Rules.

Calling of information from Members of Parliament regarding holding of Office of Profit under the Government. — (Memorandum No. 5)

The Committee thereafter considered Memorandum No. 5 regarding calling of information from Members of Parliament regarding holding of office of profit under the Government.

The Committee noted that according to Article 102(1), a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament, if he holds any Office of Profit under the

Government of India or any State, other than an office declared by Parliament by law not to disqualify its holders.

The Committee found that the expression "holds any office of profit under the Government" occurring in Article 102(1) (a) and 191(1) (a) has nowhere been defined precisely. Its scope has, therefore, to be gathered from the pronouncements on the subject made from time to time by Courts, Election Commission etc.

The Committee also noted that there have been cases where Members have been nominated to some Committees or Bodies the appointments on which could be construed to constitute an office of profit within the meaning of article 102(1)(a) and result in a Member being disqualified from membership of the House. In order to avoid contingencies of this nature, the Parliamentary Joint Committee on Offices of Profit at their sitting held on 15 July, 1988 had decided that all the Ministries of Government of India and the State Governments might be requested to obtain approval of the Speaker, Lok Sabha or the Chairman, Rajya Sabha as the case may be, before nominating any Member of Parliament to any Government Committee/Body. Since then all the Ministries of Government of India, Chief Secretaries of the State Governments and Administrators of Union Territories are requested to furnish for the consideration of this Committee relevant information in respect of Government Committees (which include Commissions, Boards etc.) constituted by them. But there are so many Government Committees/Bodies on which the Members of Parliament are the office bearers like Chairman, Director, Members etc. and the concerned Central/State Governments do not furnish the information about their nomination and seek approval of the Speaker. Members are also not aware of the fact whether the office which they are holding is an office of profit or not.

As such, the Committee were of the view that a booklet containing the detailed guidelines regarding the "Office of profit" may be prepared and printed for information of members and it may be circulated to them through their Parliamentary Parties. The Members might also be requested through their Party leaders to bring the facts before the Joint Committee on offices of Profit about their nomination on a Government Committee/Body and have the permission of the Speaker, Lok Sabha or the Chairman, Rajya Sabha, as the case may be, before accepting any Office in any Government Committee/Body, so that the Committee may examine and advise the Member to avoid a situation where the question of disqualification for being a Member of Parliament might arise due to holding of 'Office of Profit' under the Government.

The Committee then adjourned.

III

MINUTES OF THE FOURTH SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (ELEVENTH LOK SABHA)

The Committee met on Friday, 14 March, 1997 from 1500 to 1600 hours, in Committee Room 'E', Basement, Parliament House Annexe.

PRESENT

Shrimati Geeta Mukherjee—*Chairperson*

MEMBERS *Lok Sabha*

2. Shri P. Namgyal

3. Shri A. Raja

Rajya Sabha

4. Shri Bhagaban Majhi

5. Shri Virendra Kataria

SECRETARIAT

1. Shri Ram Autar Ram — *Director*

2. Shri P.L. Chawla — *Assistant Director*

Central Purchase Advisory Council—Ministry of Commerce (Department of Supply)

(Memorandum No. 6)

The Committee took up for consideration Memorandum No. 6 and noted from the information furnished by the Ministry of Commerce (Department of Supply) that the non-official members (including members of Parliament) of Central Purchase Advisory Council were entitled to get TA/DA for attending its meetings in accordance with the provisions of the Salary, Allowances and Pensions of Members of Parliament Act, 1954 as amended from time to time and the rules made thereunder which are covered by the 'compensatory allowance' as defined in Section 2 (a) of the Parliament (Prevention of Disqualification) Act, 1959.

2. The Committee also noted that the main functions of the Council are to advise the Government on general policy and procedural matters relating to Central Purchase Organisation as well as on development of Industries through Government purchases. The Council also advise the Government in placing procurement of essential requirements achieving maximum possible utilisation of domestic resources and maintaining close

and continuous touch with the Industry. Thus, the Committee found that the functions of the Council were advisory in nature.

3. Keeping in view Section 3(h) of the Parliament (Prevention of Disqualification) Act, 1959 which has declared certain offices of profit not to disqualify the holder thereof for being chosen as, or for being, a member of Parliament, subject to the condition that the amount of TA/DA provided to the non-official members of the Committee should not exceed the 'compensatory allowance' as defined in Section 2(a) of the said Act, the Committee recommended to exempt non-official members (including Members of Parliament) of the said Council from disqualification for being chosen as, or for being, Members of Parliament.

The Evaluation Advisory Committee of Programme Evaluation Organisation in Planning Commission (Plan Co-ordination Division)
(Memorandum No. 7)

4. The Committee then considered Memorandum No. 7 and noted from the information furnished by the Planning Commission (Plan Co-ordination Division) that the non-official members (including Members of Parliament, if nominated) of Evaluation Advisory Committee will be paid TA/DA as admissible to Grade-I officer of the Central Government by the Planning Commission which are covered by the Compensatory Allowance as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.

5. The Committee further noted that the main functions of the Committee are to give general guidelines for the studies to be taken up, methodologies to be adopted and linkages to be established with evaluation, research and academic institutions by the Programme Evaluations Organisations. As such, the functions are advisory in nature.

6. Keeping in view Section 3(h) of the Parliament (Prevention of Disqualification) Act, 1959 which has declared certain offices of profit not to disqualify the holder thereof for being chosen as, or for being, a member of Parliament, subject to the condition that the amount of TA/DA provided to the non-official members of the Committee should not exceed the 'compensatory allowance' as defined in Section 2(a) of the said Act. The Committee recommended to exempt non-official members (including Members of Parliament, if nominated) of the Evaluation Advisory Committee from disqualification for being chosen as, or for being, Members of Parliament.

Board of Directors of Life Insurance Corporation of India (Ministry of Finance, Deptt. of Economic Affairs)

(Memorandum No. 8)

7. The Committee, thereafter, considered Memorandum No. 8 and noted from the information furnished by the Ministry of Finance (Department of Economic Affairs) that the non-official members (Members of Parliament, if nominated) of the Board of Directors of the

Life Insurance Corporation of India are paid Rs. 200/- for each meeting of the Corporation and Rs. 100/ for the each meeting of any Committee constituted by the Corporation. Besides this, they are also paid DA (Halting) for food and incidental charges as admissible to a highest grade officer. Hotel Tariff is fixed as 'a Hotel other than 5 star'. These sums exceed the 'compensatory allowance' as defined in Section 2 (a) of the Parliament (Prevention of Disqualification) Act, 1959.

8. The Committee also noted that the main function performed by the Board of Directors of the Corporation is that it is responsible for overall policies of the Corporation and exercise both executive and financial powers.

9. In this connection, attention of the Committee were drawn to its own recommendation made in Tenth Report (Seventh Lok Sabha) presented to Lok Sabha on 7 May, 1984, recommended that if 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 scholarship, etc. then the office in question will entail disqualification.

10. The Committee, keeping in view of the above, recommended that the non-official members (including Members of Parliament, if nominated) of the Board of Directors of the said Corporation might not be exempted from disqualification for being chosen as, or for being, Members of Parliament.

State Level/District Level Vigilance and Monitoring Committee (Himachal Pradesh)—Proposal to nominate Shri K. D. Sultanpuri, Member, Lok Sabha and Shri Sushil Barongpa, Member, Rajya Sabha as non-official members thereof

(Memorandum No. 9)

11. The Committee thereafter, considered Memorandum No. 9 and noted from the information furnished by the State Government of Himachal Pradesh that the non-official members (including Members of Parliament) of the State Level Vigilance and Monitoring Committee, Himachal Pradesh shall be paid TA/DA as per rules of the State Government. The payment of TA/DA is covered by the 'compensatory allowance' as defined in section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959.

12. The Committee further noted that the main functions of the Vigilance and Monitoring Committee are to review the implementations of the Provisions of Act, relief and rehabilitation facilities provided to the victims and other connected matters. The Committee found that the functions of the Committee are advisory in nature.

13. Keeping in view Section 3 (h) of the Parliament (Prevention of Disqualification) Act, 1959 which has declared certain offices of profit not to disqualify the holder thereof for being chosen as, or for being, a

member of Parliament, subject to the condition that the amount of TA/DA provided to the non-official members of the Committee should not exceed the 'compensatory allowance' as defined in section 2(a) of the said Act. The Committee recommended to exempt the non-official members (including Members of Parliament) of the said Committee from disqualification for being chosen as, or for being, Members of Parliament.

14. The Committee thereafter approved the printed booklet entitled 'Office of Profit under the Government—a disqualification for membership of Parliament' and desired that the same might be circulated after the approval of the Hon'ble Speaker to all the Members of Parliament through their Party Leaders, Presiding Officers of all the State Legislative Assemblies/Councils and Chief Secretaries of all the States for their perusal and necessary action.

The Committee then adjourned.

IV

MINUTES OF THE SIXTH SITTING OF THE JOINT COMMITTEE ON OFFICES OF PROFIT (ELEVENTH LOK SABHA)

The Committee met on Tuesday, 6 May, 1997 from 1630 to 1730 hours in Chairperson's Room No. 145, Third Floor, Parliament House, New Delhi.

PRESENT

Smt. Geeta Mukherjee — *Chairperson*

MEMBERS

2. Shri Bhimrao Vishnuji Badade
3. Shri P. Namgyal
4. Shri Prahlad Singh Patel
5. Shri A. Raja
6. Shri Mahaboob Zahedi
7. Shri Gaya Singh

SECRETARIAT

Shri Ram Autar Ram — *Director*

2. The Committee considered and adopted the Draft First Report of the Committee.

3. The Committee authorised the Chairperson and, in her absence, Shri Mahaboob Zahedi, M.P. to present the Report to Lok Sabha on their behalf.

4. The Committee also authorised Dr. Naunihal Singh, M.P. and in his absence Shri Gaya Singh, M.P. to lay the Report on the Table of Rajya Sabha.

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The Committee then adjourned.

* Omitted portion of the Minutes are not covered by this Report.

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