

JOINT COMMITTEE ON OFFICES OF PROFIT

(SIXTEENTH LOK SABHA)

FIRST REPORT

Presented to Lok Sabha on 06.05.2015

Laid in Rajya Sabha on 06.05.2015



**LOK SABHA SECRETARIAT
NEW DELHI**

May, 2015/Vaisakha, 1937(Saka)

Price : _____

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

Shri P.P. Chaudhary

—

Chairperson

**MEMBERS
LOK SABHA**

2. Shri T.G. Venkatesh Babu
3. Adv. Sharad Bansode
4. Smt. Meenakshi Lekhi
5. Shri Bhagwant Maan
6. Shri Arjun Ram Meghwal
7. Shri M.K. Raghavan
8. Prof. Saugata Roy
9. Dr. Satya Pal Singh
10. Smt. Supriya Sule

RAJYA SABHA

11. Shri Naresh Agrawal
12. Shri C.P. Narayanan
13. Shri Dilipbhai Pandya
14. Shri Sukhendu Sekhar Roy
15. Shri K.C. Tyagi

SECRETARIAT

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

INTRODUCTION

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

2. The Committee examined the term, composition, character, functions, etc. of the National Council for Senior Citizens (NCSrC) with a view to consider as to whether the nomination of a Member of Parliament to the Council would attract disqualification from the angle of 'office of profit' under Article 102 (1)(a) of the Constitution of India and the query as to whether a Member of Parliament appearing as Senior Advocate on behalf of State Governments, Central Government, Public Sector Undertakings, Municipal Corporations, Panchayats, Nationalised Banks, Co-operative Banks, Transport Corporations owned by State Government, Corporations owned by States or Central Government, would amount to holding of Office of Profit under the State or Central Governments or not.

3. The Committee considered these issues at their sitting held on 13 February, 2015. The Committee also took evidence of representatives of Ministry of Law and Justice (Legislative Department) at the said sitting - in connection with the Second issue. The Minutes of the sitting form part of the Report and are given at Appendices I and II.

4. The Committee considered and adopted this Report at their sitting held on 30 April, 2015 and the Minutes of the sitting are given at Appendix-III.

5. The Committee wish to express their thanks to the Ministry of Social Justice and Empowerment for written submission as desired by the Committee and the Ministry of Law and Justice (Legislative Department), Government of India, for furnishing the written submission as also for tendering evidence before them.

6. The observations/recommendations made by the Committee in respect of the matters considered by them are given at the end of this Report in bold letters.

P.P. CHAUDHARY

NEW DELHI:

**Chairperson,
Joint Committee on Offices of Profit**

05 May, 2015

15 Vaisakha, 1937 (Saka)

CHAPTER-I

Nomination of the Members of Parliament (Oldest Member of Lok Sabha and Oldest Member of Rajya Sabha) to National Council for Senior Citizens (NCSrC).

1.1 Rajya Sabha Secretariat (Committee Co-ordination Section) vide their I.D.No.7(10)/2013-Coord. dated 14 October, 2013 have requested to place the matter regarding Nomination of the Members of Parliament (Oldest Member of the Lok Sabha and Oldest Member of the Rajya Sabha) to the National Council for Senior Citizens (NCSrC) before the Joint Committee on Offices of Profit for their consideration and recommendation.

1.2 The Ministry of Social Justice and Empowerment were requested to furnish detailed information on certain points relating to powers, functions, remuneration, daily allowance, other facilities, etc. proposed to be provided to the Members and also about the nature of Body. The Ministry have since furnished the requisite information *vide* their O.M. No. 15-40(4)/2010-11/AG-II dated 30 January, 2014. The gist of information furnished by the Ministry of Social Justice and Empowerment is reproduced below:-

CONSTITUTION OF NCSrC

The Central Government adopted a National Policy on Older Persons (NPOP) in January, 1999 and subsequently National Council of Older Persons (NCOP), headed by the Minister of Social Justice and Empowerment was constituted in May, 1999 for a period of five years to advise the Government of India on policies and programmes related to Senior Citizens. The NCOP constituted in 1999 was reconstituted in 2005 which was dissolved in 2011. In view of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, enacted by Parliament in December, 2007, which defines and refers to 'Senior Citizens' and not 'Older persons', the NCOP has been reconstituted and renamed as National Council for Senior Citizens (NCSrC) with the approval of the Prime Minister of India.

COMPOSITION

- Ministry of Social Justice and Empowerment has reconstituted the National Council for Senior Citizens (NCSrC) vide Resolution F.No.15-40(4)/2010-11/AG dated 17.02.2012 with the following composition:-

- I. Union Minister for Social Justice and Empowerment - Chairperson
- II Union Minister of State for Social Justice and Empowerment - Vice Chairperson

III Ex -Officio Members:-

- (1) Secretary, Ministry of Social Justice and Empowerment
- (2) Additional Secretary, Ministry of Social Justice and Empowerment
- (3) Representatives, not below the rank of a Joint Secretary, in the following Ministries/Department:
 - (i) Health and Family Welfare
 - (ii) Department of Pensions and Pensioners Welfare
 - (iii) Ex-Servicemen's Welfare
 - (iv) Railways
 - (v) Consumer Affairs
 - (vi) Labour and Employment
 - (vii) Rural Development
 - (viii) Housing and Urban Poverty Alleviation
 - (ix) Revenue
 - (x) Financial Services
 - (xi) Home Affairs
 - (xii) Legal Affairs
 - (xiii) Justice
 - (xiv) Human Resource Development
 - (xv) Planning Commission
- (4) Representatives of the following Commissions, not below the rank of Joint Secretary:
 - (i) National Human Rights Commission
 - (ii) National Commission for Women

IV. Representatives of State Governments and Union Territory Administrations:-
Representatives of five State Governments (one each from the North, South, East, West and North Eastern Regions) and of one Union Territory, to be nominated by the Central Government, by rotation.

- V. Members of Parliament :-
- (i) Oldest Member of the Lok Sabha
 - (ii) Oldest Member of the Rajya Sabha

VI Five representatives each from the following categories to be nominated by the Central Government, one from each of the five regions, mentioned in IV above:

- (i) Senior Citizen's Associations,
- (ii) Pensioners' Associations;
- (iii) Non-Governmental Organizations working for Senior Citizens;
- (iv) Experts in the field of Ageing and other related areas;

VII. Five senior citizens who have distinguished themselves in various fields to be nominated by the Central Government .

50% of the nominees at VI and VII shall be women.

VIII. Member Secretary-Joint Secretary dealing with the subject of Ageing in the Ministry of Social Justice and Empowerment, Ex-Officio.

Further the Chairperson may nominate any other suitable person as a Special Invitees to the Council, either for an individual meeting or for a specified period.

APPOINTMENT AND REMOVAL :-

Members under Non-official categories will be nominated by the Central Government. There is no provision for removal of a Member.

TENURE

National Council for Senior Citizens (NCSrC) is a permanent body. However, members nominated under Non-official categories shall have tenure of three years and will continue till the nomination of their successors.

FUNCTIONS:-

- The functions of the NCSrC are purely advisory. The NCSrC will advise Central and State Governments on the entire gamut of issues related to welfare of senior citizens and enhancement of their quality of life, with special reference to -

- (i) Policies, programmes and legislative measures;
- (ii) Promotion, of physical and financial security, health and independent and productive living; and
- (iii) Awareness generation and community mobilisation.

REMUNERATION/FACILITIES

T.A/D.A. etc. to non-official members will be admissible as per relevant rules/instructions of the Government of India. The Council will meet at least twice a year. No other facilities/remuneration/allowances will be given to the members.

- The NCSrC does not exercises legislative or judicial powers.
- The Council does not confer powers of disbursement of funds, allotment of land etc.
- The Council does not have powers of appointment/removal.
- The Council does not wield influence or power by way of patronage.

1.3 The Joint Committee on Offices of Profit, consider the following criteria for determining as to whether an office ought or ought not to disqualify the holder thereof for being chosen as, and for being a Member of Parliament:-

- (i) Whether the Government exercise control over the appointment to and removal from the office and over the performance and functions of the office;
- (ii) Whether the holder draws any remuneration other than the 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959;
- (iii) Whether the body in which an office is held, exercises executive, legislative or judicial powers or confers powers of disbursement of funds, allotment of lands, issue of licenses, etc., or gives powers of appointment, grant of scholarships, etc; and
- (iv) Whether the body in which an office is held enables the holder to wield influence or power by way of patronage.

1.4 The Joint Committee on Offices of Profit considered the matter at their sitting held on 13 February, 2015 (APPENDIX-I).

1.5 The Committee note from the information furnished by the Ministry of Social Justice and Empowerment that the National Council for Senior Citizens (NCSrC) is a permanent Body of the Government of India being reconstituted from time to time for the purpose of advising the Central and State Governments on the entire gamut of issues related to the general welfare of Senior Citizens and also about enhancement of their quality of life. The functions of this body are purely advisory in nature. The oldest MPs of both the houses are proposed to be nominated to NCSrC by the Central Government and there also lies no provision for the removal of a Member. Most specifically the Members of Parliament, nominated to the NCSrC can express their views on matters relating to ageing and raise any issue that may concern the Senior Citizens. Member of Parliament nominated to NCSrC does not have powers of disbursement of funds, allotment of land, etc. and as such the Member of this Council cannot wield any influence by way of patronage even. The Members of Parliament nominated as a Members of the body would only be paid TA/DA as per the relevant rules/instructions of the Government of India to attend, the NCSrC meetings. No other facilities/remuneration/allowances will be given to the members. Further the Council does not exercise executive, legislative or judicial powers.

1.6 In view of the foregoings, the Committee observe that the Member(s) of Parliament, if nominated to the National Council for Senior Citizens (NCSrC) constituted by the Ministry of Social Justice and Empowerment may not attract disqualification, for being, a Member of Parliament from the angle of 'office of profit.'

CHAPTER-II

Query of Shri A. Navaneethakrishnan, M.P. (Rajya Sabha) as to whether a Member of Parliament appearing as Senior Advocate on behalf of State Governments, Central Government, Public Sector Undertakings, Municipal Corporations, Panchayats, Nationalised Banks, Co-operative Banks, Transport Corporations owned by State Government, Corporations owned by States or Central Government, would amount to holding of Office of Profit under the State or Central Governments or not.

2.1 Rajya Sabha Secretariat vide their note R.S.S.I.D.No.7(13)/2014 Coord. dated 22 July, 2014 had requested to place the matter regarding a query as to whether a Senior Advocate who is also a Member of Parliament can appear on behalf of State Governments, Central Government, Public Sector Undertakings, Municipal Corporations, Panchayats, Nationalised Banks, Co-operative Banks, Transport Corporations owned by State Government, Corporations owned by States or Central Government, without attracting disqualification from the angle of Office of Profit for consideration of the Joint Committee on Offices of Profit for their recommendation thereon. The aforesaid request was received by Rajya Sabha Secretariat from Shri A. Navanethakrishnan, Member, Rajya Sabha.

2.2 As the aforesaid request did not contain the sufficient information to examine the matter from the angle of 'office of profit'. Therefore in the first instance the Member was requested to provide requisite information on matter. In response thereto Shri Navaneetha Krishnan vide his letter dated 05.09.2014 had briefly stated that there are "no terms and conditions" to engage him a Senior Advocate. He however, further stated that "there is no retainer fee. Fee is fixed as per norms of State/Central Governments, Public Sector Undertaking, Banks, Institutions, etc, for appearances, Conferences and opinions."

2.3 Thereafter Ministry of Law and Justice (Legislative Department) were requested to furnish their unequivocal opinion on the matter. The Committee, then, decided to take oral evidence of the representatives of the Ministry of Law and Justice (Legislative Department) on the issue.

2.4. The Joint Committee on Offices of Profit, consider the following criteria for determining as to whether an office ought or ought not to disqualify the holder thereof for being chosen as, and for being a Member of Parliament:-

- (i) Whether the Government exercise control over the appointment to and removal from the office and over the performance and functions of the office;
- (ii) Whether the holder draws any remuneration other than the 'compensatory allowance' as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959;
- (iii) Whether the body in which an office is held, exercises executive, legislative or judicial powers or confers powers of disbursement of funds, allotment of lands, issue of licenses, etc., or gives powers of appointment, grant of scholarships, etc; and
- (iv) Whether the body in which an office is held enables the holder to wield influence or power by way of patronage.

2.5 The Joint Committee on Offices of Profit considered the matter at their sitting held on 13 February, 2015 (APPENDIX-II).

2.6 The representatives of the Ministry of Law and Justice (Legislative Department) briefed the Committee on the question as to whether "appearing" of a Member of Parliament as 'Senior Advocate' on behalf of Central/State Government, etc. would amount to holding of 'Office of Profit' . The Committee were informed that Central Government and State Governments are at liberty to engage advocates to defend their cases in various Courts. The engagement/appointment of advocates depend upon

terms and conditions, which are governed by various rules and regulations and they differ from State to State. In view of variations in terms of conditions of appointment of advocates, the Committee were further, informed that the Legislative Department had sought for the detailed terms and conditions of appointment of the advocate concerned - so that they were able to give their considered advice to the Committee in the matter.

2.7 Having not convinced with the submissions made by the Ministry of Law the Committee noted that 'Advocate' and 'Senior Advocate' are totally different entity/class of Advocates. As per the provisions of 'the Advocates Act, 1961' [Section 16(1)], the Advocates are categorised into two categories i.e. (i) Other Advocates; and (ii) Senior Advocates. Besides, Senior Advocates forms a separate Category. Further, Section 16 (3) of the Act provides that "Senior Advocates, shall in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe." The Committee, then, also took note of the Bar Council of India Rules (Chapter 1 part 6) which prescribes that a 'Senior Advocate' (a) shall not file a *Vakalatnama* or act in any Court etc. (b) shall not appear without an advocate on Records in the Supreme Court or without an Advocate in any Court or Tribunal. (c) shall not accept instructions to draft pleading or affidavits, advice on evidence or to do any drafting work of an analogous kind in any Court or Tribunal etc. (d) shall not accept directly from a client - any brief or instructions to appear in any Court or Tribunal or before any person or other Authorities in India.

2.8 The Committee after deliberating over the issue at length observed that in the light of the provisions contained in 'the Advocates Act, 1961 to be read with and Bar Council of India Rules a 'Senior Advocate' can not be

engaged and sign Vakalatnama for appearance directly by a Litigant either by a State or Central Government nor by an Undertaking/Institution. Accordingly, the principle of Privity of Contract i.e a contract cannot be enforced by a person/Institution who is not a party to it, is lacking between "Senior Advocate" and Litigant . As such there are no ingredients of 'office' for a 'Senior Advocate' under the Government representing Central/State Government(s), Local Authorities, etc. Therefore, to constitute the "Office of Profit" the establishment & determination of "Office" under the Government is a mandatory condition precedent. The relationship of master and servant does not exist between the Senior Advocate and the Govt./Deptt. or any local Authority - where "Senior Advocate" is merely appearing in Court at the instruction of Advocate on record or Advocate. The appearance by Senior Advocate at the instruction of the Advocate/ Advocate on record does not constitute an office of a permanent nature under the Government; which has an existence independent of the person who filled it. The word "its holder" occurring in Article 102 (i) or 191 (a) of the Constitution of India indicates that there must be an office under the Government - which exists independently of the holder of the office. Therefore, it contemplates existence of "an office" apart from "its holder".

2.9 The Committee also took note of another quite an important and imperative point in the matter that signing of 'Vakalatnama' between Senior Advocate & Govt. is prohibited under the Advocate Act read with Bar Council of India Rules. Hence, there can be no existence of privity of contract between Govt. and Senior Advocate - which is also one of the decisive tests for determining as to whether a person holds any office of profit under the Government. The Committee further observed that several factors which enter into the determination of this question (that is, the Appointing Authority, the Authority vested with power to terminate the appointment, the Authority

which determines the remuneration, the source from which the remuneration is paid, and the Authority vested with power to control the manner in which the duties of the office are discharged and to give directions in that behalf) must all co-exist and each must show subordination to Government and that if one of the elements is absent, the test of a person holding an office under the Government, Union or State, is not satisfied. Since several of these elements are not present in instant case, it must, therefore, be held that "Senior Advocate" appearing at the instructions of Advocate/Advocate on record is not holding the "Office" under the Govt.

2.10. Finally taking into consideration all the above said provisions of the law, the Committee, finally, were of the view that the appearance of a 'Senior Advocate' for Central/State Government(s),etc. does not constitute an 'office of Profit'.

P.P. CHAUDHARY

NEW DELHI:

**Chairperson,
Joint Committee on Offices of Profit**

30 April, 2015
10 Vaisakha, 1937 (Saka)

APPENDIX-I
(Vide para 1.4 of Chapter-I of the Report)

**EXTRACTS OF THE MINUTES OF THE SECOND SITTING OF
THE JOINT COMMITTEE ON OFFICES OF PROFIT (SIXTEENTH LOK SABHA)
HELD ON 13 FEBRUARY, 2015**

The Committee met on Friday, 13 February, 2015 from 1500 hrs to 1615 hrs. in Committee Room No.'B', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri P.P. Chaudhary - Chairperson

MEMBERS

LOK SABHA

2. Shri Arjun Ram Meghwal
3. Shri M.K. Raghavan
4. Prof. Saugata Roy
5. Smt. Meenakshi Lekhi
6. Dr. Satya Pal Singh

RAJYA SABHA

7. Shri C.P. Narayanan
8. Shri Dilipbhai Pandya
9. Shri K.C. Tyagi

SECRETARIAT

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

WITNESSES

**Representatives of Ministry of Law & Justice
(Legislative Department)**

1. Dr. G.N. Raju - Addl. Secretary
2. Dr.M. Vijayawargiya - JS&LC
3. Shri R.S. Jayakrishnan - ALC

At the outset, the Chairperson welcomed the Members to the Second sitting of the Committee, and briefly apprised them of the agenda for the meeting viz. consideration of Memorandum No.2 and Oral evidence of the representatives of Ministry of Law.

2. The Committee, then, proceeded to consider Memorandum No.2 relating to the nomination of the Members of Parliament (Oldest Member of Lok Sabha and Oldest Member of Rajya Sabha) to National Council for Senior Citizens (NCSrC). The matter was discussed in detail. The Committee were of the opinion that the proposed appointment of the Members to the said Committee may not incur disqualification from the angle of 'Office of Profit'. The Committee then adopted the Memorandum.

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The Committee then adjourned.

APPENDIX-II
(Vide para 2.5 of Chapter-II of the Report)

**EXTRACTS OF THE MINUTES OF THE SECOND SITTING OF
THE JOINT COMMITTEE ON OFFICES OF PROFIT (SIXTEENTH LOK SABHA)
HELD ON 13 FEBRUARY, 2015**

The Committee met on Friday, 13 February, 2015 from 1500 hrs to 1615 hrs. in Committee Room No.'B', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri P.P. Chaudhary - Chairperson

MEMBERS
LOK SABHA

2. Shri Arjun Ram Meghwal
3. Shri M.K. Raghavan
4. Prof. Saugata Roy
5. Smt. Meenakshi Lekhi
6. Dr. Satya Pal Singh

RAJYA SABHA

7. Shri C.P. Narayanan
8. Shri Dilipbhai Pandya
9. Shri K.C. Tyagi

SECRETARIAT

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

WITNESSES

Representatives of Ministry of Law & Justice
(Legislative Department)

1. Dr. G.N. Raju - Addl. Secretary
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3. Shri R.S. Jayakrishnan - ALC

At the outset, the Chairperson welcomed the Members to the Second sitting of the Committee, and briefly apprised them of the agenda for the meeting viz. consideration of Memorandum No.2 and Oral evidence of the representatives of Ministry of Law.

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The representatives of the Ministry of Law and Justice (Legislative Department) were thereafter ushered in.

3. Thereafter, the representatives of the Ministry of Law and Justice (Legislative Department) briefed the Committee on the question of Shri Navneethakrishnan, Member of Parliament, as to whether his "appearing" as 'Senior Advocate' on behalf of Central/State Government, Local Authorities, etc. would amount to holding of 'Office of Profit' . It was informed that Central Government and State Governments are at liberty to engage advocates to defend their cases in various Courts. The engagement/appointment of advocates depend upon terms and conditions; which are governed by various rules and regulations and they differ from State to State. Keeping in view, the variations in terms of conditions, the Department of Legal Affairs had been asked by the Legislative Department to give their advice on the matter. In turn, Department of Legal Affairs had asked the Legislative Department to give them the detailed terms and conditions of appointment of the advocate concerned - so that they were able to give their advice.

4. Being not convinced with the submissions made before them, the Committee pointed out that 'Advocate' & 'Senior Advocate' are totally different entities/class of Advocates. As per the provisions of 'the Advocates Act, 1961' [Section 16(1)], the Advocates are categorised into two categories i.e. (i) Other Advocates; and (ii) Senior Advocates. Further, as to the nature of their engagement & appointment by Govt. etc., Advocates can further be subcategorised into three categories (a) Government Advocates - who are appointed by the Government/Department(s) by formal order of

appointment with terms & conditions & they get monthly salary. The appointment is controlled, supervised & is terminable. Such type of appointee are termed as Govt. Counsel i.e. Central Govt. Counsel & State Govt. Counsel. They cannot appear against the Government in other cases. They are also getting monthly salary & other benefits of Govt. Servants as per the terms & conditions of their appointment. The Government entrusts them with cases and they are considered to be holding the "Office of Profit"; (b) The Second category is of Panel Lawyers - Panel Lawyers are appointed by Govt./Department(s) but cannot appear against the concerned Govt./Department which has appointed them, but they can be permitted to appear against all the other Departments of the Government. They cannot be termed as Govt. Counsel & they are not paid monthly salary; (c) The Third category is of merely an Advocate who is appointed by the Government for a particular case only and who is free to appear against all the Departments of the Government except that case. Among these categories, it has to be examined as to which category will hold the angle of Office of Profit. Besides, "Senior Advocates" forms an entirely separate category. Further, Section 16 (3) of the Act provides that "Senior Advocates, shall in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe. The Committee, then, took note of the Bar Council of India Rules (Chapter 1 part 6) which prescribes that a 'Senior Advocate' (a) shall not file a *Vakalatnama* or act in any Court etc. (b) (i) shall not appear without an advocate on Records in the Supreme Court or without an Advocate in any Court or Tribunal. (c) He shall not accept instructions to draft pleading or affidavits, advice on evidence or do any drafting work of an analogous kind in any Court or Tribunal etc. (d) He shall not accept directly from a client any brief or instructions to appear in any Court or Tribunal or before any person or other authorities in India.

5. The Committee, after deliberating over the issue came to the conclusion that in the light of the provisions contained in 'the Advocates Act, 1961 to be read with Bar Council of India Rules, a 'Senior Advocate' cannot be engaged for appearance directly by Litigant either by a State or Central Government nor by an Undertaking/Institution. Accordingly, the principle of Privity of Contract is lacking between "Senior Advocate" & Litigant. As such there are no ingredients of 'office' for a 'Senior Advocate' representing Central/State Government(s), Local Authorities etc. Therefore, to constitute the "Office of Profit" the establishment & determination of "Office" is mandatory condition precedent. The relationship of master and servant does not exist between the Senior Advocate and the Govt./Deptt. or any local authority where "Senior Advocate" is merely appearing in Court at the instruction of Advocate on record or Advocate. The appearance by Senior Advocate at the instruction of the Advocate/ Advocate on record is not an office of a permanent nature, which has an existence independent of the person who filled it. The word "its holder" occurring in Article 102 (i) or 191 (a) of the Constitution of India indicates that there must be an office which exists independently of the holder of the office. Therefore, it contemplates existence of an office apart from its holder. The Govt./Deptt. do not have any control & supervision over Senior Advocate. In Smt. Kanta Kathuria v. Sh. Manak Chand Surana (1969 (3) sec 268), the Supreme Court held that the Special Government Pleader appointed by Govt. to assist the Govt.

Advocate does not hold an office of profit despite the fact that there was a privity of contract between Govt. and Special Govt. Pleader as his appearance can only be on the basis of 'Vakalatnama' to be signed between Govt. & Special Govt. Pleader. For appearance by Senior Advocate, the signing of 'Vakalatnama' between Senior Advocate & Govt. is prohibited under the Advocate Act read with Bar Council of India Rules. Hence, there is no existence of privity of contract between Govt. and Senior

Advocate. "The decisive test for determining whether a person holds any office of profit under the Government is the test of appointment. It is not incorrect to say that the several factors which enter into the determination of this question (that is, the appointing authority, the authority vested with power to terminate the appointment, the authority which determines the remuneration, the source from which the remuneration is paid, and the authority vested with power to control the manner in which the duties of the office are discharged and to give directions in that behalf) must all co-exist and each must show subordination to Government and that if one of the elements is absent, the test of a person holding an office under the Government, Union or State, is not satisfied." Therefore, the several elements, the power to

- (a) appoint,
- (b) dismiss,
- (c) control,
- (d) give direction as to the manner in which the duties of the office are to be performed &
- (e) determine a question of remuneration

all are not present in this case. Hence, it must be held that "Senior Advocate" putting appearance at the instructions of Advocate/Advocate on record must be held that he is not holding the "Office" under the Govt.

6. Taking into consideration the above quoted provision of the law, the Committee finally were of the view that the engagement of a 'Senior Advocate' for Central/State Government(s),etc. does not constitute 'office of Profit'.

7. The Witnesses then withdrew.

8. A Verbatim record of the sitting has been kept.

The Committee then adjourned.

**EXTRACTS OF THE MINUTES OF THE FIFTH SITTING OF
THE JOINT COMMITTEE ON OFFICES OF PROFIT (SIXTEENTH LOK SABHA)
HELD ON 30 APRIL, 2015**

The Committee met on Thursday, 30 April, 2015 from 1500 to 1530 hrs. in Chairperson's Room (No.135), First Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri P.P. Chaudhary - Chairperson

MEMBERS

LOK SABHA

2. Shri T.G. Venkatesh Babu
3. Smt. Meenakshi Lekhi
4. Prof. Saugata Roy
5. Dr. Satya Pal Singh
6. Smt. Supriya Sule

RAJYA SABHA

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

SECRETARIAT

1. Shri R.S. Kambo - Joint Secretary
2. Shri Shiv Kumar - Director

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

3. Then the Committee took-up for consideration the draft First Report - consisting of following two Chapters :-

Chapter - I Nomination of the Members of Parliament (Oldest Member of Lok Sabha and Oldest Member of Rajya Sabha) to National Council for Senior Citizens (NCSrC).

Chapter-II Query of Shri A. Navaneethakrishnan, M.P. (Rajya Sabha) as to whether a Member of Parliament appearing as Senior Advocate on behalf of State Governments, Central Government, Public Sector Undertakings, Municipal Corporations, Panchayats, Nationalised Banks, Co-operative Banks, Transport Corporations owned by State Government, Corporations owned by States or Central Government, would amount to holding of Office of Profit under the State or Central Governments or not.

4. The Committee considered and adopted the Chapter-I without any amendment. The Committee then proceeded to consider Chapter II and adopted the same without any amendment.

5. The Committee authorized the Chairperson to finalize the Report and present the same to the Parliament in the current Budget Session, 2015.

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The committee, then adjourned.

