

# Joint Committee to Examine the Constitutional and Legal Position Relating to Office of Profit

(FOURTEENTH LOK SABHA)

## Report



LOK SABHA SECRETARIAT

NEW DELHI

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# REPORT

## CHAPTER I

### INTRODUCTORY

The Parliament (Prevention of Disqualification) Amendment Bill, 2006 was assented to by the President on the 18th August, 2006. While reconsidering the Parliament (Prevention of Disqualification) Amendment Bill, 2006 by the Lok Sabha on 31st July, 2006 an assurance was given on the floor of the House that the various points raised in the message of the Hon'ble President will be examined by the Joint Committee of both the Houses of Parliament. Accordingly, the Hon'ble Minister of Law and Justice moved a motion in Lok Sabha on 17 August, 2006 for constitution of a joint Committee to examine the constitutional and legal position relating to office of profit. The motion was adopted by Lok Sabha on the same day *i.e.* on 17 August, 2006. The motion provided for inclusion of the following members of Lok Sabha:—

1. Shri V. Kishore Chandra S. Deo
2. Shri Santosh Gangwar
3. Dr. Satyanarayan Jatiya
4. Shri Raghunath Jha
5. Shri A. Krishnaswamy
6. Shri Madhusudan Mistry
7. Shri Mohammad Salim
8. Shri Iqbal Ahmed Saradgi
9. Shri Rajesh Verma
10. Prof. Ram Gopal Yadav

2. The motion regarding appointment of the Committee was concurred in by Rajya Sabha on 18 August, 2006 and included the following members of Rajya Sabha:—

1. Shri Virendra Bhatia
2. Shri Arun Jaitley
3. Shri Ram Jethmalani
4. Dr. Abhishek Manu Singhvi
5. Shri Sitaram Yechury

3. Hon'ble Speaker appointed Shri Iqbal Ahmed Saradgi as Chairman of the Committee.

4. Thus, a Committee of 15 members of Parliament (10 from Lok Sabha and 5 from Rajya Sabha) was constituted as Joint Committee to examine the constitutional and legal position

relating to office of profit with the following terms of reference:—

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

5. The Committee were expected to present a report to Parliament by the first day of last week of Winter Session 2006. But the Committee had to seek five extensions (on 12.12.06, 14.05.07, 07.09.07, 29.11.07 and 30.04.08) of time for presentation of the report.

6. At their first sitting held on 14 September, 2006 the Committee held discussion among themselves regarding the concept of office of profit and deliberated upon the broad procedures to be adopted by the Committee for its working. The Committee also decided to issue *press communiqué* inviting suggestions/views in the form of memoranda from constitutional/legal experts, academicians, law institutes, bar councils, public bodies or individuals. In response, the Committee received 57 memoranda (**Appendix-II**). The Committee also decided to seek the views of all Parliamentary Parties/Groups, and State Governments on the subject. The Committee were also given a briefing by the representatives from the Ministry of Law and Justice (Legislative Department).

7. At their sitting held on 19 October, 2006 the Committee took stock of the action taken in pursuance of the decisions taken by the Committee at their first sitting and shortlisted the names of experts who might be asked to appear before the Committee for oral evidence. The Committee also held discussion with the representatives of Ministry of Law and Justice (Legislative Department) and sought certain clarification and material.

8. At their third sitting held on 17.11.06, the Committee heard the views of constitutional and legal experts : Shri Fali S. Nariman, Senior Advocate and Shri Rustom S. Gae, former Law Secretary, Government of India on matter under reference to the Committee.

9. At their fourth sitting held on 1 December, 2006 the Committee heard views/suggestions of Sarvashri Rajeev Dhavan and Harish N. Salve, both Senior Advocates.

10. At their sitting held on 20 March, 2007 the Committee heard the views of the representatives of Ministry of Home Affairs, NCT of Delhi and Union Territory of Puducherry.

11. At their sitting held on 9 May, 2007 the Committee held discussion and decided to seek extension of time for presentation of their report till the first day of last week of Monsoon Session, 2007. The motion for extension of time for presentation of the report was moved on 14.5.2007 which was adopted by the House on the same day.

12. At their sitting held on 23 August, 2007 the Committee heard the views of the representatives of the State Government of Gujarat on the terms of reference of the JPC.

13. At their sitting held on 5 September, 2007 the Committee decided to seek extension of time for presentation of the report till the first day of the last week of the Winter Session, 2007. The motion was moved in and adopted by the House on 07.09.2007.

14. At their sitting held on 31 October, 2007 the Committee heard the views of the representatives of Governments of North Eastern States on matters under reference of the JPC.

15. The Committee heard the views of the representatives of State Government of Rajasthan at their sitting held on 27.11.07. The Committee also proposed to seek extension of time for presentation of their report till the last day of the Budget Session, 2008. The motion for extension of time for presentation of the report was moved on 29.11.07 which was adopted by the House on the same day.

16. At their sitting held on 28 April, 2008 the Committee heard the views of representatives of State Government of Uttar Pradesh. The Committee also decided to seek extension of time for presentation of the report till the last day of Monsoon Session, 2008.

17. At their sitting held on 5 June, 2008 the Committee heard the views of State Governments of Orissa and Chhattisgarh. Similarly, at their sittings held on 20 August and 9 September, 2008 the Committee heard the views of State Governments of Madhya Pradesh and Kerala respectively.

18. The Committee undertook study visits to Mumbai and Bangalore (17 to 19 January, 07), Kolkata and Chennai ( 8 and 9 February, 07) Chandigarh and Shimla (25 to 27 June, 07), Patna (on 08.02.08) and Hyderabad (on 31.07.08) and held informal discussions with the representatives of respective State Governments.

## CHAPTER II

### ORIGIN AND CONCEPT OF OFFICE OF PROFIT IN INDIA

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

2. The concept of disqualifying the holder of an office has developed as a necessary and inseparable part of a democratic government. The Government of India Act, 1935, made a clear and precise statement in this direction. Sub-section (1) of section 26 of the Government of India Act, 1935 provided disqualification for membership of the Federal Legislature which read as follows:-

“26.(1) A person shall be disqualified for being chosen as, and for being, a member of either Chamber-

(a) If he holds any office of profit under the Crown in India, other than an office declared by Act of the Federal Legislature not to disqualify its holder.

.....”

3. Similarly sub-section (1) of section 69 of the said Act provided disqualification of membership of a Provincial Legislative Assembly or Legislative Council which read as follows:-

“(1) A person shall be disqualified for being chosen as and for being a member of either Chamber-

(a) If he holds any office of profit under the Crown in India, other than an office declared by Act of the Federal Legislature not to disqualify its holder.

.....”

4. These sections 26(1) (a) and 69 (1) (a) of the Government of India Act, 1935 with consequential changes were taken in the “first draft Constitution of India” prepared by the Constitutional Advisor as Articles 68 and 141. Relevant portion of these Articles is reproduced below:

“(1) A person shall be disqualified for being chosen as, and for being, a member of either House of the Federal Parliament—

(a) if he holds any office of profit under the Federation or any unit other than an office declared by Act of the Federal Parliament not to disqualify its holder.

.....”

5. For the purposes of this section a person shall not be deemed to hold an office of profit under the Federation or any unit by reasons only that he is a Minister either for the Federation or for a Province.”

6. The above draft articles alongwith other draft articles of the Constitution prepared by the Constitutional Advisor were considered by the Drafting Committee chaired by Dr. B. R. Ambedkar at their meetings held between 1947 and 1948 and the same were extensively revised. The Draft Constitution prepared by the Drafting Committee suggested the following Articles on the above subject:

(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

- (a) if he holds any office of profit under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder.
- (b) if he is of unsound mind and stands so declared by a competent court;
- (c) if he is an undischarged insolvent;
- (d) if he is under any acknowledgement of allegiance or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; and
- (e) if he is so disqualified by or under any law made by Parliament.

7. For the purposes of this Article, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reasons only that—

- (a) he is a Minister either for India or for any State for the time being specified in Part II of the First Schedule; or
- (b) he is a Minister for any State for the time being specified in Part III of the First Schedule and he is responsible to the Legislature of the State, or where there are two Houses of the Legislature of the State, to the Lower House of such Legislature and if not less than three-fourths of the members of such Legislature or House, as the case may be, are elected.

8. A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

- (a) if he holds any office of profit under the Government of India or the Government of any State for the time being specified in the First Schedule other than an office declared by the Legislature of the State by Law not to disqualify its holder.
- (b) if he is of unsound mind and stands so declared by a competent court.
- (c) if he is an undischarged insolvent.
- (d) if he is under any acknowledgement of allegiance or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power.
- (e) if he is so disqualified by or under any law made by the Legislature of the State.

9. The above draft Articles as settled by the Drafting Committee were widely circulated to invite comments and suggestions. The Drafting Committee further revised the said articles in the "Revised Draft Constitution November, 1949". The following Articles were suggested:—

(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

- (a) if he holds any office of profit under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder;
- (b) if he is of unsound mind and stands so declared by a competent court;
- (c) if he is an undischarged insolvent;
- (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;
- (e) if he is so disqualified by or under any law made by Parliament.

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

10. The above provisions were discussed in the Constituent Assembly and after discussion the said provisions were adopted as Articles 102 (1) (a) and 191 (1) (a) respectively.

Art. 102(1)(a) of the Constitution of India reads as under:—

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

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

11. The Constitution, however, has not defined what constitutes an office of profit, the holder of which would disqualify a member within the meaning of the said Article. The Parliament has, however, been empowered to declare by law the offices, the holding of which would not disqualify a member. To constitute an 'office of profit' under Art.102(1) (a) of the Constitution, three conditions are to be satisfied—there should be an 'office' to which an appointment is made; it should be an 'office of profit' and the 'office' should be one under the Government.

12. The Parliament and State Legislatures are, however, empowered to exempt any such office entailing disqualification. The Parliament (Prevention of Disqualification) Act, 1959 specifies certain offices, which will not come within the purview of the disqualification, and several offices have been added after enactment of the law. Acts of the respective legislatures prescribe the exemptions of the state legislatures. This rule is founded on the imperative need for neutrality and impartiality in the realm of public service.

13. In pursuance of Article 102 (1) (a), the Parliament had enacted the following Acts for the purposes of declaring offices, the holding of which shall not incur disqualifications for membership of Parliament—

- (a) The Parliament (Prevention of Disqualification) Act, 1950 (XIX of 1950)
- (b) The Parliament (Prevention of Disqualification Act), 1951 (LXVIII of 1951)
- (c) The Prevention of Disqualification (Parliament and Part C State Legislatures) Act, 1953 (1 of 1954)

14. Since none of the above enactments had decided the matter appropriately covering all the necessary aspects of the problems to the satisfaction of all concerned, the Hon'ble Speaker, Lok Sabha in consultation with the Hon'ble Chairman of the Rajya Sabha on the expressed desire of members of various political parties, constituted a Joint Committee under the Chairmanship of Pandit Thakurdas Bhargava, M.P. to study various matters connected with the disqualification of members under Article 102(1)(a) of the Constitution with the following terms of reference:—

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

15. The Joint Committee presented their report to Parliament in November, 1955. In the view of the Bhargava Committee, Members of Parliament should be encouraged to serve on such committees, which are of an advisory character and represent the local or popular point of view, in a manner, which will effectively influence the official point of view. Members of Parliament by virtue of their membership are in a position to say and represent certain matters with some authority and confidence, and their views are likely to go a long way in influencing the view point of officials. But at the same time, it felt that consistent with the above view expressed, Members of Parliament should not be permitted to serve on committees, commissions etc. which jeopardize their independence or which will place them in a position of power or influence or in a position where they receive some patronage from Government or are themselves in a position to distribute patronage. The Committee recommended, among other things, that a Standing Committee of Parliament might be constituted to undertake the work of continuous scrutiny in respect of existing and future office of profit. Accordingly, the Joint Committee on Office of Profit were constituted for the first time in August, 1959 during the 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 were constituted. 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 what offices should disqualify and what offices should not disqualify.
- (iii) to scrutinize from time-to-time the Schedule to the Parliament (Prevention of Disqualification) Act, 1959 and to recommend any amendment in the said schedule, whether by way of addition, omission or otherwise.



16. The Committee examine the detailed particulars regarding the composition, character, etc. of the "committees" constituted by the Ministries/Departments of the Central Government as well as the State Governments. The Committee also examine various queries received from Members of Parliament pertaining to "Office of Profit" and express their opinion in appropriate cases. The Committee, however, do 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.

17. The Committee also decided [(8th Report (8th LS)] that all the Ministries of Government of India and the State Governments might be asked to obtain prior approval of the Speaker, Lok Sabha or Chairman, Rajya Sabha as the case may be before nominating any Member of Parliament to any Government Committee/Body, unless the Act under which such Committee/Body have been set up to provide for appointment of an M.P. or where Members of Parliament are saved from incurring disqualification by the provisions in the relevant Act itself as is the case with the Rubber Board, Coffee Board, Tea Board etc.

18. Proposals received from the Central/State Govts. seeking Speaker's approval for nomination of Members of Parliament on various Committees/Bodies constituted by them are examined by the Committee as to whether the office of Member/Director/Chairman of the Govt. body in question constitute an Office of Profit under the Government which would disqualify the member for being a Member of Parliament. The Committee also examine requests received from Members of Parliament seeking clarification about the Office of Profit under Government and members are apprised of the views of the Committee.

## CHAPTER III

### BACKGROUND ANALYSIS

#### A. First Term of Reference

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

1.1 An office of profit is a term used in a number of national constitutions to refer to executive appointments. A number of countries forbid members of the legislatures from accepting an office of profit under the executive as a means to secure the independence of the legislature and preserve the separation of powers. In all democracies like United States of America and the United Kingdom, the holders of offices under the Government, as a rule are disqualified for being Members of the Legislature. The inherent idea seems to be that the personal and pecuniary interest should not come in the way of discharging their obligations by the legislators. In India, this principle is embodied in Articles 102 (1)(a) and Article 191(1)(a) of the Constitution.

1.2 The principle contained in Art.102 is based on sound public policy of ensuring impartiality and neutrality in the public service and avoidance of conflict between duty and interest of an elected member, enabling him to carry on his duties freely and fearlessly without being subjected to any governmental pressure thereby maintaining purity of the legislature. The provision is undoubtedly designed to protect independence of Members of Parliament. The object of Art.102 (1) (a) is to disqualify a person from the membership of Parliament if he is obliged by the Government for an office of profit which carries profit or benefit and thus compromising his independence.

#### *Constitutional Provisions*

1.3 The expression "office of profit" occurs in the following articles of the Constitution namely:—

Article 18(3)—No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

Article 18(4)—No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument or office of any kind from or under any foreign State.

Article 58(2)—A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Article 66(4) A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation—for the purposes of this article, a person shall not be deemed, to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor of any State or is a Minister either for the Union or for any State.

*Art.102 (1)(a) of the Constitution of India reads as under:—*

*“102(1). A person shall be disqualified for being chosen as and for being a member of either House of Parliament—*

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

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

Article 158(2) The Governor shall not hold any other office of profit.

*Article 191(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—*

*(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder.*

*Explanation : for the purposes of this clause a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.*

1.4 The expression “office of profit” has not been defined in the Constitution or any other statute. It has, therefore, been open to the courts to explain the significance and meaning of this concept. Most of the cases which are arisen under Article 191(1)(a) of the Constitution are only relevant to Article 102(1)(a) of the Constitution as both these provisions are identical, in text and purpose.

1.5 In pursuance of above Articles, the Parliament (Prevention of Disqualification) Act, 1959 (Annexure-I) was enacted by Parliament. The said Act has been amended from time-to-time to include office exempted from disqualification from the purview of office of profit. A list of amendments made *vis a vis* the offices exempted from the purview of office of profit is enclosed (Annexure-II). In pursuance of Article 191(1)(a) of the Constitution, the State Legislatures have enacted their own laws relating to removal of disqualification. A list of State enactments is enclosed (Annexure-III)

1.6 If any question arises as to whether a Member of Parliament has become subject to any of the disqualification laid down in the Constitution including the one whether he is holding an Office of Profit or not, the question is referred for the decision of the President and his decision is final. However, before giving any decision on any such question, Art.103(2) requires the President to consult the Election Commission and the Commission may make such enquiry as it deems fit. It is important to note that in this matter the President does not act on the advice of Council of Ministers.

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

#### Connotation of the word 'office'

1.8 In the usual sense of the word an 'office' means a right to exercise a public or private employment and to take the fees and emoluments there unto belonging\* "In its fullest sense an office embraces the elements of tenure, duration, duties and employments, but the emoluments is not essential to office."\*\* It has also been held that an office is an employment on behalf of Government in any State or public trust and one not merely transient, occasional or incidental.\*\*\*

1.9 According to the @Supreme Court, the following connotation of 'office' given by Justice Rowlatt in *Great Western Railway Company Vs. Baker* can appropriately be applied to the word 'office' in Article 191 of the Constitution.

" ....an office or employment which was a subsisting, permanent, substantive position which has an existence independent from the persons who filled it, which went on and was filled in succession by successive holders; and if you merely had a man who was engaged in whatever terms, to do duties which were assigned to him, his employment to do those duties did not create an office to which those duties were attached. He merely was employed to do certain things and that is an end of it; and there was no office or employment existing in the case as a thing, the so-called office or employment was merely an aggregate of the activities of the particular man for the time being....."

1.10 The words 'its holder' occurring in Article 191 (1) (a) of the Constitution indicate that there must be an office which exists independently of the holder of the office. The very fact that the Legislature has been authorized by Article 191 to declare that an office of profit would not disqualify its holder contemplates the existence of an office apart from its holder.

#### *Connotation of holding an office*

1.11 A person is disqualified for being chosen as a member of Legislature if he holds an office of profit under the Government at the time of filing his nomination paper. The disqualification is not removed on his submitting an unqualified resignation of his office or by ceasing to work but only when the resignation has been accepted by the proper authority prior to the filing of the nomination paper (*Election Tribunal, Beharmpur, in Ram Murty Vs. Sumba Sadar 2, E.L.R., 330*). The disqualification is not removed if the resignation has been accepted by an authority not competent to accept it. In such a case the acceptance of the resignation is invalid and the person submitting his resignation will be disqualified since it must be considered to have continued to hold office. (*Election Tribunal, Rajnandgaon, in Thakur Daoo Singh Vs. Ram Krishna Rathor, 4 E.L.R., p.34*).

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\* Stround's Judicial Dictionary (1953) Ed.

\*\* Webster's New International Dictionary of the English Language (1953), Vol. w

\*\*\* 20 John Rep.492, 7th Ohio State 556

@ Smt. Kanta Kathuria Vs. M. Manak Chand Khurana, E.L.R. Vol.XLIII, p.58

1.12 The disability under Articles 102 and 191 being a constitutional one, it cannot be removed by acceptance of resignation from an office of profit with retrospective effect. (Kamta Prasad Upadhyaya Vs. Sarjoo Prasad Tiwari and others, E.L.R., Vol. XXXV, p.10).

### ***Connotation of 'profit'***

1.13 To define 'profit' is more difficult. It normally connotes any advantage benefit or useful consequence. In India, however, the Election Tribunals/Courts have construed "pecuniary gain" to be an essential ingredient of 'profit'. According to the Election Tribunal, Mangalore in\*\* *Shivarama Karanth Vs. Venkataramana Gowda and others*, 'pecuniary advantage' is an essential element of 'office of profit.' If honour and prestige were sufficient to constitute 'office' then any office under the Government though strictly harmony, would be hit. In the words of the Tribunal,

"We do not consider that the Constitution intended to impose a wholesale ban on every type of office, irrespective of whether any remuneration is attached to it or not. We decline to place such a construction, as we believe, that such an intention does not follow from a reading of the clause."

1.14 In another case (Chander Nath Vs. Kunwar Jaswant Singh),\* it was held that the membership of a District Vitran Committee, which was constituted for the purpose of controlling the distribution of controlled commodities, *i.e.* foodgrains, sugar, cloth, etc. to the people in the district, did not constitute an 'office of profit' as a member did not receive any remuneration either in cash or in kind, even though it was contended that the Committee carried with it a lot of influence.

### ***Judicial Interpretation of Article 102 of the Constitution***

1.15 As already stated the expression "holds any office of profit under the Government" occurring in the Article 102(1) of the Constitution has nowhere been defined precisely. Its meaning has to be gathered from the construction of the words used and pronouncements of judicial tribunals.

1.16 In the case of Guru Gobinda Basu Vs. Sankari Prasad Ghosal. [AIR 1964 SC 254] the Supreme Court pointed out that one of the dominant tests to determine this question would be the location of Powers of appointing and removing authority to or from the office. After reviewing some decisions, the Supreme Court in Guru Gobinda Basu's case observed as follows:

*"It is clear from the aforesaid observations that in Maulana Abdul Shakur's case, (AIR 1958 SC 52) the facts which were held to be decisive were (a) the power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion, and (b) payment from out of Government revenue though it was pointed out that payment from a source other than Government revenues was not always a decisive factor."*

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\* E.L.R. Vol.III, p.147

\*\* E.L.R. Vol.III, p.187

1.17 In another case Pradyut Bardoloi Vs. Swapan Roy [AIR 2001 SC 296], the Supreme Court observed that a variety of situations have come up for the consideration of the court wherein the court was called upon to apply the determinative test so as to find out whether a case of holding an office of profit under the Government was made out or not. The first and foremost question to be asked is whether the Government has power to appoint and remove a person to and from the office? If the answer is in the negative, no further enquiry is called for, the basic determinative test having failed. If the answer is in the affirmative further probe for the remaining ingredients of an office of profit will have to be undertaken. In the Pradyut case, the courts further observed that the inquisitive over-view-eye would finally query that whether on account of holding of such office—would the Government be in a position to so influence him as to interfere with his independence in functioning as a Member of Legislative Assembly or would his holding of the two offices namely one under the Government and the other being Member of Legislative Assembly involve a conflict of interests *inter se*? This is how the issue has to be approached and resolved.

1.18 As referred above, in the Shivamurthy Swami Inamdar etc. Vs. Agadi Sanganna Andanappa [(1971) 3 SC 870] it was observed by the Supreme Court that the Court in several decisions has laid down the tests for finding out whether an office in question is an office under the Government and whether it is an office of profit. Those tests are:—(1) Whether the Government makes the appointment; (2) Whether the Government has the right to remove or dismiss the holder; (3) Whether the Government pays the remuneration; (4) What are the functions of the holder? Does he perform them for the Government; and (5) Does the Government exercise any control over the performance of those functions?

1.19 The proposition of the law laid down in the above cases may indicate that the expression “holds an office of profit under the Government” is settled. But a look at the recent decisions of the Supreme Court reveal that it is not so in all the cases and in all situations. In the recent Supreme Court decision in Shibu Soren Vs. Dayanand Sahay AIR 2001 SC 2583, the Court observed as follows:

*With a view to determine whether the concerned office is an “office of profit” the Court must, however, take a realistic view. Taking a broad or general view, ignoring essential details is not desirable nor is it permissible to take a narrow view by which technicality may overtake reality. It is a rule of interpretation of statutes that the statutory provisions are so construed as to avoid absurdity and to further rather than defeat or frustrate the object of the enactment.*

*While interpreting statutory provisions, Courts have to be mindful of the consequences of disqualifying a candidate for being chosen as, and for being a member of the legislature on the ground of his holding an office of profit under the State or the Central Government, at the relevant time. The Court has to bear in mind that what is at stake is the right to contest an election and to be a member of the legislature indeed a very important right in any democratic set up. A practical view no pedantic basket of tests must, therefore, guide the Courts to arrive at an appropriate conclusion.”*

1.20 In the recent Supreme Court decision in *Jaya Bachchan Vs. Union of India* (2006 5 SCALE 411) the Supreme Court observed that

“the question whether a person holds an office of profit is required to be interpreted in a realistic manner. Nature of the payment must be considered as a matter of substance rather than of form. Nomenclature is not important. In fact mere use of the word ‘honorarium’ cannot take the payment out of the purview of profit, if there is pecuniary gain for the recipient. Thus, if the pecuniary gain is receivable in connection with the office then it becomes an office of profit, irrespective of whether such pecuniary gain is actually received or not.”

1.21 On the basis of the above analysis, according to the Ministry of Law & justice (Legislative Department) it seems that the expression office of profit occurring in Article 102 of the Constitution has assumed a settled expression.

1.22 Under varying circumstances judgments have been delivered by the courts in the past depending upon the peculiarity of each case. The grayness of the area can be gauged from the fact that on a number of occasions, the judgments of the Election Tribunals have been reversed by the High Court and on many other occasions, the Supreme Court has reversed the judgments of the High Courts. Furthermore, even in the Supreme Court, there have been instances when an issue was referred to a five-bench judge, three judges gave one judgment and two judges gave different judgement on the same issue. These facts reflect the complexity involved in interpretation of the term holder of an office of profit under the Government for the purpose of incurring/prevention of disqualification from the membership of legislature. A compilation of some of the decisions of the courts and tribunal is placed at **Annexure IV**.

#### **‘Settled’ Interpretation of the term “office of profit” in Article 102**

1.23 The expressions which assume significance are “office”, “profit” and “under the Government”. In order to bring a case within Article 102 (1)(a) of the Constitution it must first be proved that what was held was an “office”. The word “office” means no more than a position to which certain duties are attached. Thus, if a person does not hold office he is not disqualified even if he is making a profit *e.g.* a lawyer engaged by the Government to appear in a case on its behalf and paid fee by it holds no office and thus is not disqualified to be chosen as, and for being, a Member of Parliament. The word “profit” connotes the idea of pecuniary gain.

1.24 Hence, in deciding any question whether the office really carried any profit, the amount of money receivable by a person by virtue of holding such office becomes material.

1.25 An important expression which occurs in Article 102 (1) (a) of the Constitution is “under the Government”. As discussed earlier the courts have enunciated certain broad criteria for determining whether a particular office could be termed as an office of profit under the Government for the purposes of Article 102 (1) (a) and Article 191 (1) (a) of the Constitution. These are as follows:—

- (a) Whether Government makes the appointment?
- (b) Whether Government has a right to remove or dismiss the holder of office?
- (c) Whether the Government pays the remuneration?

(d) What are the functions of the holder of office? and

(e) Does the Government exercise any control over the performance of those functions?

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

#### **Definition of the term "Office of profit"**

1.27 The Joint Committee to examine the constitutional and legal position relating to office of profit has been mandated to examine in context of settled interpretation of the expression "office of profit" in Article 102 of the Constitution and the underlying principles therein and to suggest a comprehensive definition of office of profit. The Committee invited comments/views from Political Parties/Groups in Parliament, general public/institutions/constitutional and legal experts. The Committee also took up the issue with the Ministry of Law and Justice (Legislative Department) Government of India and all the State Governments/U.Ts. The comments/views so received are summarised in succeeding paragraphs:—

#### **POLITICAL PARTIES IN PARLIAMENT**

1.28 In response to the requests sent to political parties/groups in Parliament for sending their comments in the subject matter, the following views were received by the JPC:—

##### **Indian National Congress**

1.29 The expression "office of profit" has not been defined in the Constitution or in any other Act not because it was impossible to define it but because it was not easy to frame an all embracing definition covering all the different kinds of offices which existed under the Government and those which might be created under it in the times to come. Under the existing legal framework, the only way to exempt the holder of an office which conferred executive, judicial or legislative powers or which entitled the holder to draw any allowances other than compensatory allowance was to exempt such office by making a specific legislative provision to that effect. Accordingly, a comprehensive legislation, namely, the Parliament (Prevention of Disqualification) Act, 1959 was enacted repealing the previous statutes on the subject. The Parliament (Prevention of Disqualification) Act, 1959 has been amended from time to time and the latest amendment to this Act has been carried out *vide* the Parliament (Prevention of Disqualification Amendment) Act, 2006 which received the assent of the President on 18 August, 2006.

##### **Shiv Sena Parliamentary Party**

1.30 The following broad norms might be taken into account in formulating the recommendations of the Committee:—

- (i) the law relating to office of profit should conform to the provisions of Articles 102 and 103 of the Constitution and the decisions of the Supreme Court in relation to these provisions.



- (ii) there should be a clear distinction between an office which was *sui generis* and identifiable with the privileges of the Members of the Parliament as distinct from an office which carried with it the broad contours of executive and financial powers capable of dispensing patronage.
- (iii) The law providing for exemption of members in relation to an office of profit should not become an alibi for extending patronage to Members of Parliament. This would negate the spirit of Articles 102 and 103 of the Constitution.
- (iv) The law on office of profit should be capable of being adopted by the States on uniform basis.

### **Lok Janshakti Party**

1.31 The term 'office of profit' should be defined and the definition should not be exhaustive but inclusive since in view of rapid development in various sectors of the economy, it was not possible to predict participation of the Government in any entity in a particular sector of the economy.

An inclusive definition was also necessary because there was no consensus among the various States on the definition of office of profit and therefore every State Government according to its sweet-will exempted certain offices from the operation of Art. 102 r/w Art.103 to take political mileage.

Certain and definite definition of 'office of profit' would also be in the larger interest of the nation and public at large as it would end chaos and enable every citizen as well as MP to know the law before hand.

The following suggestions have been submitted for consideration of the JPC:—

1. The parliamentarian holding any 'office of profit' but only benefiting to the extent of adjustment of expenses incurred, should be exempted from operation of Art. 102 and 103 or other disqualification on account of holding 'office of profit'.
2. The parliamentarian holding any 'office of profit' should have right to vote and to exercise other administrative/managerial powers or authority as might be invested under the rules of the said office.
3. The parliamentarian should be allowed to hold 'one', 'office of profit' and should be exempted from the operation of Art. 102 r/w Art. 103.
4. Any office in which there was no remuneration, should not be included in the definition of office of profit.

The proposed definition of "office of profit" was as follows:—

- a. any office under the State or the Union Government in which any remuneration was paid and the person should not hold more than one any such office.
- b. Any office under the State or the Union Government which gave the voting power to the member of such office.
- c. Any office under the State or the Union Government which gave the power or authority to make or approve rules for the management, or which gave control over the financial matters.

**Explanation:** Any 'office' in which the 'holder' did not draw any pecuniary or other monetary benefits or allowances, and the person was only reimbursed of his expenses should not be included in the definition of the 'Office of Profit'.

### **Muslim League Kerala State Committee**

1.32 It has been stated that the following tests have to be done to determine whether a person is holding an Office of Profit.

1. The power of the Government to appoint a person in office or to revoke his appointment at its discretion was one of the major factors. But, here again a mere control over the appointment would not be sufficient.
2. The payment of salary to a person holding a particular post was being given out of Government's exchequer was an important factor as well as pecuniary benefit to the holder of Office.
3. The nature and degree of control the Government had over the post for its financial needs and the functional aspect, namely whether the body was discharging any important governmental function or just some function which was merely advisory in character was another factor to be considered.
4. One more test had to be applied to see whether the post was an Office of Profit or not. The test was to see how much the person holding the Office was dependent on the Government or the influence the Government would have on him. In other words, holding an Office would curb his independence to function and to speak without fear or favour as Member of Parliament. If a person holding a post which was advisory in nature and without any executive authority on the functioning of the office he held, should definitely be exempted from the purview of Office of Profit. But any payment of honorarium or even making use of other perks except TA/DA for attending the meeting of the Body/Authority of which he was a Member or Chairman should be avoided.
5. Removal or disqualification from holding the position should specifically be mentioned at the State as well as Central level.

### **General public**

1.33 Some of the important views received from the general public in response to a press communiqué are as follows:—

1.34 Shri Rustam S. Gae, Senior Advocate and former Law Secretary to Government of India appeared before the JPC to tender his views and stated that so long as the exemptive power under Article 102 (1) (a) was exercised reasonably and with due restraint and in a manner which did not drain out the Article of its real content or disregard any constitutional guarantee or mandate, the court would not interfere. (*Bhagwandas V. Haryana AIR 1974 SC 2355*). In the absence of any principle to be applied for creating under it exceptions to disqualification specified in Article 102, the explanation would serve as an aid to the construction of Clause (a) in general and declaring by law of office of profit not to disqualify holders from disqualification in particular. It would, therefore, be useful to follow the example provided by the explanations while enacting the law under Article 102(1) (a) exempting offices from disqualification. Provisions set out in the

explanation or provisions akin thereto would serve as a guide in determining the nature of the law to be enacted under Article.

1.35 Similarly, in response to press communiqué one Shri Sitaram Aggrawal suggested the following definition:—

*the term "office of profit" means and includes holding any position by a Member of Parliament or his/her spouse in Government or its associate bodies or institutions and entitled to there for anything by way of remuneration, whether actually obtained or not. The remuneration may be by way of salary, fee, commission, perquisites, the right to occupy free of rent any premises as a place of residence, or otherwise, and it includes all benefits or advantages having a money value derived from the Government.*

*Explanation: Government means and includes Central Government, State Government, semi-government, public sector undertaking, bodies and institutions established, aided or supported directly or indirectly by Government including through MPLAD fund etc.*

1.36 He had further stated that anything connected with or related to Constitution, whether any clarification of a word, term, etc. or amendment to existing content including definition of "office of profit" in the Constitution could be and should be only by adopting procedure of law for amendment to Constitution under its Article 368.

1.37 Further any office of profit held by any MP, MLA or MLC in contravention of Constitution of India was *ab initio* and no law passed by Parliament or Legislature by simple majority could revalidate the void action or holding of profit by an MP, MLA or MLC retrospectively. Moreover, any declaration of exclusion of office not covered by office of profit would be applicable only prospectively *i.e.* only after declaration as such through Constitution of India.

1.38 Submitting his views to the JPC, Shri Ashoke Kr. Singhi had observed that while defining 'office of profit' under Government under Art. 102(1) our Constitution mandated the State to take multiform public welfare and socio-economic activities involving technical persons.

1.39 Likewise, suggesting definition one Shri Bhanwar Lal Sharma had stated that the term office of profit could be defined in a fair and transparent way in the following manner, which could be made applicable to Members of Parliament/MLAs of all States/UTs:—

*Office of profit* "the office wherein the MP/MLA received additional salary/allowances/honorarium from the Union funds in the Union/State/Union Territories even getting salary/allowances and other facilities from the Union funds which was against the provisions of Article 102(2)."

#### **MINISTRY OF LAW AND JUSTICE (LEGISLATIVE DEPARTMENT) GOVERNMENT OF INDIA**

1.40 The Ministry of Law and Justice were of the view that any comprehensive definition of the term "office of profit" which cast the net so wide that all our citizens with specialities and know-how offering some voluntary services in para-official, statutory or like projects run or directed by the Government or controlled by the State were inhibited from entering elected organs of public administration might be detrimental to the democracy itself. Equally, it was to be seen that Members of Parliament who were willing to offer their services in para-official, statutory body or non-statutory bodies run or directed by the Government should not receive

remuneration apart from the salary as Member of Parliament and reimbursement of reasonable expenses. Thus, it seemed difficult to provide a comprehensive statutory definition of the term "office of profit". However, the Ministry had attempted a tentative definition for consideration by the JPC which was as follows:—

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

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

*(I) "Office of profit" means—*

*Any office—*

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

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

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

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

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

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

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

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

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

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

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

1.41 On being asked whether the proposed definition would be applicable to States also, the Legislative Department in their O.M. (dt. 06.06.08) stated that the tentative definition was proposed to be inserted under article 102 of the Constitution which was applicable in the cases of Members of Parliament only.

1.42 When it was pointed out that according to a legal expert, any definition of 'office of profit' could be introduced only by an amendment to Article 366 of the Constitution which defined the phrases and words used in various provisions of the Constitution, Ministry of Law and Justice (Legislative Department) (O.M. dt. 21.4.08) stated that once the question of bringing in the definition of the term "office of profit" was decided, the question of placement of the same in Article 366 of the Constitution might be settled by them.

## STATE GOVERNMENTS

1.43 Besides inviting their considered views in the matter, the draft definition of the Ministry of Law and Justice (Legislative Department) Government of India was circulated to all the State Governments/Union Territories to elicit their comments whether the 'definition' defined the expression of "office of profit" comprehensively in the context of the underlying constitutional provisions. The views expressed by the State Governments/UTs, were as follows:—

1.44 The State Government of Karnataka were of the view that on the lines of principles laid down in different judgments, a compartmentalized definition of the term, was difficult to arrive at. It had further been stated that Parliament might lay down some comprehensive guidelines to determine the office of profit and rest had to be left to the courts to decide depending on fact of the each case and the merit therein. On the issue of liberal interpretation of concept of office of profit, the State Government was of the opinion that "Liberalized view of including a large number of offices in the "schedules" for being exempted by declaring such office from disqualification:—

- (i) would defeat the purpose of constitutional provision in Articles 102(1) and 191(1), which stipulated its intention that representatives of the people must associate only with the developmental activities and other activities, which had a direct connection with the welfare of the people. The exemption would empower the member to restrict his function to executive, financial or some times judicial function.
- (ii) members appeared incompatible due to physical impossibility of attending in two places due to heavy duties attached to the office.
- (iii) proper scrutiny of implementation of Government's projects might be affected and the intended object of the project would be an utter failure.

Therefore, Parliament could lay down general generic or comprehensive guidelines and rest be left to the State Legislatures to take care about."

1.45 The JPC visited Kolkata to hold discussion with the representatives of State Government of West Bengal to elicit their views. According to the State Government of West Bengal, the Governments should continue to be guided by the provision of Article 102 (1) (a) for Members of Parliament and Article 191 (1) (a) relating to Members of the State Legislatures. Only offices specially exempted by the Parliament or by the State Legislature by law should not disqualify the holder of the office. As regards the provision of disqualification for membership, the State Government observed that the existing constitutional provisions did not disqualify Members of Parliament or State Legislature from holding offices under any local or other authority, which included the State Planning Board, District and Metropolitan Planning Committees, Zila Parishads, Panchayat Samitis, Municipalities, Notified Area Authorities, Development Authorities etc.

1.46 As regards the definition of office of profit the State Government of West Bengal stated that any attempt to define 'office of profit' comprehensively would be extremely difficult because there was every chance of leaving aside offices, which might be created in future. It was their view that the present constitutional position of separately exempting offices from disqualification by law, as provided in Articles 102(1) and 191(1) of the Constitution might continue. On the issue of authority to decide on the disqualification, the State Government opined that while the Governor took decision, the opinion of the Election Commission should not be decisive. They had also submitted that amendment of Articles 103 (2) and 192 (2) should be considered so that the Constitutional Head of the Union or the State Government might take a final reasoned view in consideration of all appropriate legal advice including the opinion of the Election Commission.

1.47 According to the State Government of Tamil Nadu it was for the Courts to explain the significance and meaning of the term 'office of profit' thus the final interpretation rested with the courts and not with the Parliament. It had also been stated that to define the expression 'office of profit', the Constitution had to be amended suitably. As the said term was not specific, it appeared that the framers of the Constitution had not defined the said expression. Further, to prevent disqualification of members from the Board or any other authority for being member of Parliament or Member of Legislative Assembly, a specific provision had to be made in the legislation itself declaring that the holding of such office should not disqualify its holder for being chosen as, and for being a member of either House of Parliament or member of Legislative Assembly, as the case might be. Whether a person held office of profit had to be determined based on the facts and circumstances of each case and considering the relevant statutory provisions.

1.48 During their visit to Patna the Committee held discussions with the representatives of the State Government of Bihar. The Government of Bihar were of the view that the subject matter under discussion did not need any debate if federal character of our governance was at all intended to be preserved. The basic structure of the Constitution had to be preserved by giving the States to formulate their own views in consonance with their concept of unity within federal fabric.

1.49 On the question of feasibility of Definition of 'Office of Profit', a representative of the State Government of Bihar stated that it needed no further elucidation. It must be left at the hands of the popular will of the State else every time it would be kept alive for being handled by the party/parties in power at the Centre. According to them the popular will have no other substitute and could not even be replaced by the judicial pronouncements in the present context. So, it would not be appropriate to exhaustively define "office of profit". At best definition might be illustrative only.

1.50 Similarly while expressing their views, a representative of the State Government of Punjab during discussion with the Committee stated that "Office of Profit" had not been defined under the Constitution. Hence it should be left open to the concerned Legislature to look into it and to take a decision whether a particular post or office held by the member of the Legislative Assembly/Legislative Council should be termed as an office of profit or not. In their view the scheme of the Constitution was in consonance with this spirit as the position with regard to a particular post/office depended upon the peculiar situation and circumstances prevailing in that particular State and could also differ from time to time. According to them while drafting the Constitution, it might not have been found necessary to specify and define the office of profit

and was left open for the concerned Legislature to delve into the situation then prevalent and took a decision thereon in accordance with the constitutional provisions. In the case of State Legislature this power had been specifically provided under Article 191(1) of the Constitution. Therefore, providing for a definition in relation to the office of profit would not be advisable.

1.51 Emphasizing further, a representative of the State Government of Punjab stated that a definition of

“Office of Profit” was not feasible as each State had its own peculiar circumstances. By giving a definition to the expression “Office of Profit” would curtail the freedom which had to be exercised by the Legislature. By providing for a definition all decisions taken by the Legislature in exercise of its constitutional powers would be open to challenge before the Courts, leading to more confusion and uncertainty rather than settling the issue. They again emphasized that there could be some suggestive guidelines to declare an office/post to be an “Office of Profit”. But no definition should be given which would bind or curtail the powers/discretion of the Legislature, as there were different circumstances and situations in different States, upon which only the Legislature of that State would be in a position to take a decision thereon.

1.52 In a written reply, the State Government of Himachal Pradesh furnished the following definition of ‘office of profit’

Office of profit means an office:—

- (i) (a) which carries with it certain emoluments or the order of appointment and state that the person appointed is entitled to certain emoluments even if the holder chooses not to receive/draw such emoluments; and
- (b) which is capable of yielding a profit or pecuniary gain and not whether the person actually obtained a monetary gain

**Explanation:** For removal of doubts it is clarified that if “pecuniary gain is receivable” in connection with the office, then it becomes an office of profit, irrespective of whether such pecuniary gain is actually received or not.

- (ii) the payment of honorarium, in addition to daily allowances in the nature of compensatory allowances, rent free accommodation and Chauffeur driven car at State expense, are clearly in the nature of remuneration and a source of pecuniary gain and hence constitute an office of profit. In other words if the office carries with it, or entitles the holder to, any pecuniary gain other than the office will be an office of profit for the purpose of Article 102 (1) (a) and Article 191 (1) (a) of the Constitution.

1.53 On being pointed out that the definition attempted by the Government of Himachal Pradesh evidently took into account only one of the aspects *viz.* pecuniary gain and did not address the other criteria involved, a representative of the State Government of Himachal Pradesh during discussions with the JPC at Shimla stated that in such case the definition of expression office of profit circulated to them by JPC was comprehensive in the context of underlying constitutional principles. However, the State of Himachal Pradesh had some reservation on the draft clause (1A) proposed to be inserted after existing clause (1) of Article 102 of the Constitution. According to them the manner in which the proposed clause had been drafted, it

had the effect of giving unrestricted discretion to the Legislators to continue in office notwithstanding occurrence of disqualification if he did not resign. In the opinion of the State Government on the face of express provisions of Articles 103 and 192 of the Constitution of India there was no need to insert the proposed clause (1 A).

1.54 They further added that the expression office of profit under the Government in Article 102 (1) and 191 (1) of the Constitution was wider than the expression post or service under the Government because while the relationship of master and servant was essential for the application of Article 309 to 314, there was no need for any such relationship for attracting Article 102 (1) (a) or Article 191 (1) (a). According to them the object of these Articles was to maintain the independence of Members of Legislature from any sort of Government control or influence. Therefore, when Government had a say in the matter of appointment or removal of a person, he should not be allowed to sit in the Legislature, even though by such appointment, the relationship of master and servant was not constituted between such person and the Government. Thus while defining the expression the "office of profit" under the Government this factor had been kept in view in order to prevent disqualification. The expression offices of profit was a technical expression and took in its fold different categories, all of which would not be possible to exhaust by Legislation. Thus keeping in view the existing provisions of the Constitution and the interpretation given by the Apex Court from time to time on expression office of profit under the Government, a well-considered Legislation was required in order to avoid unhealthy situations.

1.55 The JPC during their study visit to Chandigarh held informal discussions with the representatives of State Government of Haryana. The representatives of State Government of Haryana were of the view that the exercise of such legislative powers of exemption of offices should be left entirely to the wisdom of respective Legislatures. If any deviation in law was made in this regard then it was likely to impair the legislative competence of the Legislature and was bound to curtail the legislative powers of the States, which was against the principle of federation as envisaged in the Constitution. Therefore, it should be left to the wisdom of the Legislature to exempt any office of profit for the said purpose. It had further been stated that framers of the Constitution envisaged that there might be certain offices under the Government to which appointment might be made of persons having special qualifications or experience in certain fields and whose service as a member of Parliament and State legislature might also be of value in public interest. Therefore, in the Constitution plenary powers had been given to Parliament and State Legislature as the case might be, to exempt such offices from the purview of the dis-qualificatory provisions relating to their Houses under Articles 102(1)(a) and 191(1)(a).

1.56 They were further of the view that in case it was considered necessary to define the office of profit then it should be defined in the light of the judgments delivered by the Hon'ble Supreme Court. It should be added therein that an office of profit was an office, which was capable of yielding a profit or pecuniary gain including honorarium. Therefore, holding an office under the Government would be one to which some pay, salary, emoluments, remuneration or non-compensatory allowance was attached.

1.57 A representative of the State Government of Gujarat appeared before the JPC to tender views on the subject under consideration of the JPC and stated that it was not possible to make an exhaustive definition of the term "office of profit" which could be made applicable to each of the States and Union Territories and it seemed that it was not necessary too because it would be proper for each of the State and Union Territory to consider which office amounts to



“office of Profit” separately. According to them whether a particular post was office of profit within the meaning of Articles 102 and 191 of the Constitution of India, could be decided on case-to-case basis considering the nature of the post and the guidelines and criteria laid down by the Supreme Court of India as it was ultimately the court to determine the application of those tests to a particular situation, nor was there any scope to bar the jurisdiction of the Court.

1.58 Considering the vastness and diverse needs of the States, in their written reply submitted to the JPC, the State Government of Madhya Pradesh had also stated that being a federal democratic country it should be left to the States to frame their own laws relating to office of profit. According to them one central law relating to prevention of disqualification of Members of States legislature might not be able to address the requirements of all the States. During evidence before the JPC, a representative of the State Government reiterated that it might not be feasible to draw up a comprehensive enough definition to cover all the situations prevalent in all the States of the Union.

1.59 According to Government of Rajasthan the term ‘office of profit’ had been used in various Articles of Constitution like Articles 58, 64, 102, 191 etc. and was germane to determine the eligibility of holder of various constitutional offices and, therefore, the term should have a reasonably clear and exhaustive criteria so as to enable one to determine as to which office was or was not an office of profit. A prior determination of the meaning of term would definitely remove the uncertainty. Therefore, the State Government of Rajasthan was in favour of developing a generic definition that might serve an ultimate guide in determining as to whether an office was or was not an office of profit.

1.60 Simultaneously, the State Government of Rajasthan was also of the view that in democratic nations the question as to what should be the law (including the value judgment) had to be decided by the representative of the people and what was the law was to be decided by the Court. Therefore, what factors would bring an office within the purview of ‘office of profit’ might be and should be decided by the representatives of people and the decision as to whether the given factors existed in a particular office should be left to the courts. The State Government had neither attempted any definition nor commented upon the draft definition that was presented to them except for suggesting incorporation of several posts/offices in the Part-II of the exemption which should not be deemed to hold office of profit under the Government.

1.61 On the question of amending the Constitution and making it obligatory for the State Legislatures to be guided by such principles as Parliament may by law provide in regard to the matter, a representative of the State Government of Rajasthan stated that constitutional amendment should be directed to achieve two objectives. First amendment should define the term ‘office of profit’ and secondly it should lay down the principles, which might be followed by the States while exempting office of profit under Article 191. These principles might comprise the general elements of the offices holding of which would derogate the position or efficiency of a member as representative of people.

1.62 Similarly, the State Government of Kerala was of the view that some workable definition should be evolved avoiding much scope for judicial intervention, at the same time leaving to the concerned legislatures to decide the disqualifications through enactments.

1.63 On the other hand the State Governments of Goa and Assam were of the view that there was no necessity to define the term “office of profit” under Articles 102(1)(a) and 191(1)(a) of

the Constitution of India as the said term had been defined by the Hon'ble Supreme Court in its various judgments on the subject delivered from time to time and the same was binding by virtue of Article 141 of the Constitution of India.

1.64 According to Government of Arunachal Pradesh membership of Legislature in certain bodies, committees and offices pertaining to developmental activities for the welfare of the people was essential. However, such Bodies, committees and offices should be of advisory character and membership thereof should not carry any remuneration except the actual expenditure, which might have to be incurred in discharging their duties. The Members of Legislature being peoples representatives should have their basic right to guide in the field of various development activities for the welfare of the people for which their membership in various committees, bodies, were felt essential. Accordingly, a definition of the 'office of profit' as well as comprehensive criteria was required to be evolved for their application to all States and UTs.

1.65 Towards this end, the Government of Arunachal Pradesh had found the definition of office of Profit, which was circulated to them, to be comprehensive, just and fair for uniform application to all States and UTs.

1.66 The State Government of Manipur had stated that in their State different ethnic mix of population and different tribes had their political aspirations and each tribe expected their leaders to represent them in Government. Therefore, the State Government of Manipur would like to have its own definition under its own Act and would continue thereunder.

1.67 In the view of the State Government of Sikkim the issue of office of profit should be governed as per the laws that would be framed or were being framed by different State Governments and Union Parliament from time to time based on their requirement. It had further been stated that office of profit should be legally supported on the matter of specific law made by them. It had also been stated that each State should evolve its own legal basis without being governed by any uniform law although on principle there might be uniformity.

1.68 On defining the term 'office of profit' the State Government of Tripura were of the view that a comprehensive definition of "office of profit" be included in the Constitution and the authority of the State Legislature to make laws relating to the members of State Legislature should remain. The proposal for amending the Constitution to bring about a comprehensive definition of office of profit for uniform application to all States was most needed. However the State Government of Tripura were of the considered view that the power of the State Legislature to make laws in respect of the members of State Legislature under Article 191 of the Constitution should remain with the States to enable them to meet the peculiar requirements of their States.

1.69 Agreeing with the draft definition sent to them, the Government of Tripura had stated that it defined the expression of 'office of profit' comprehensively in the context of the underlying constitutional principles.

1.70 While replying to queries made by the JPC State Government of Meghalaya provided a definition stating that "Office of profit means any office where pecuniary benefits or remunerations whether in the form of salary or honorarium whatever might be called, was paid for holding such office/post but will not include any office/post which was declared not to disqualify the holder of such office/post by law made by Parliament or the Legislature of the State/Union Territories."

1.71 The State Government of Mizoram had endorsed the draft definition sent to them by JPC and had further advised that the expression *viz.* “a Minister either for the Union or for such a State” occurring in clause (II) of the Explanation-I may be replaced by the expression *viz.* “a Minister either for the Union under article 75 or for such a State under article 164 of the Constitution, so that those who had been assigned the rank or status of Minister may be kept outside.”

1.72 Contrary to the views expressed by State Government of Mizoram, the State Government of Nagaland had stated that suggested definition did not define the ‘Office of Profit’ comprehensively. According to them, the definition of ‘Office of Profit’ in the proposed Article was same as the definition of ‘remunerative political post’ provided in Article 361B. In their view there was no need to define both remuneration and salary in Explanation II. The proposed sub-clause (1A) in the proposed Article would defeat the constitutional purpose of punishing holders of Office of Profit. Accordingly, the State Government of Nagaland had suggested that Articles 102(1) and 191(1) might be rewarded as follows:—

**“102. Disqualifications for membership.—**(1) A person shall be disqualified for being a member of either House of Parliament,—

(a) if he holds any remunerative political post;

*Explanation:* (1) “remunerative political post” shall have the same meaning assigned to it in Article 361B.

(2) For the purposes of this clause a person shall not be deemed to hold a remunerative political post by reason only that,—

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

(ii) as a Minister or a Parliamentary Secretary, he holds any other remunerative political post in *ex officio* capacity; and

(iii) he holds any office in the affairs of either House of Parliament.

Provided that no remunerative political post shall be deemed as such within the meaning assigned to it under Article 361B, if the salary or remuneration, as compensatory in nature, payable in respect of that remunerative political post or posts together, exceeds ten per cent of the total emoluments paid to a person as a Minister or a Parliamentary Secretary or a member per month, as the case may be.”

1.73 As regards the coinage of the Constitutional term “remunerative political post” and “office of Profit”, the State Government of Nagaland in a written reply sent to the JPC stated as under :—

“the Government of Nagaland infers that the Union Government while drafting the Constitutional law, sought to deliberately avoid the using of the term “office of profit” in article 361 B for the reason that when the explanations to Articles 102(1) and 191(1) exempt offices of “Ministers” from being as offices of profit, it would be contradictory to include them while framing article 361B. The Union Ministry might have been in search of a different terminology which includes the office of “Minister” as a prohibited post.

1.74 That being the inference, the Government of Nagaland feels that but for the following three substantial differences, both the terms are substitutable :

- (1) "office of profit" excludes "Ministers" while "Remunerative Political Post" includes "Ministers";
- (2) Articles 102(1)(a) and 191(1)(a) provides powers to Union and State Legislatures to exempt certain offices from being deemed as offices of profit, while article 361B does not provide such power; and
- (3) Articles 102(1)(a) and 191(1)(a) apply to both sitting members and contesting candidates while article 361B applies only to members of Legislatures disqualified under the Tenth Schedule.

Almost all the tests laid down by courts to identify an office of profit have already been laid down in article 361B for identification of a remunerative political post. Indeed, a partial definition (of office of profit) is available in article 361B. Government of Nagaland continues to believe that the term "remunerative political post" is not far different from the term "office of profit". It also believes that the term is quite avoidable and the contents of article 361 B should appropriately be incorporated into the Tenth Schedule of the Constitution itself (without using the words "remunerative political post")

The Committee were further informed that there was no office in the executive realm that did not involve exercise of power or influence and, therefore, only "pecuniary benefits" were the only true tests to identify an office as office of profit. Profit is thus quantifiable by remuneration and as given in the model article of the Government of Nagaland, profit should be limited to 10% of the remuneration of the Minister or a Member, as the case may be. The other subjective tests whether the office involved any exercise of power or influence should not be gone through and all office holders (including member of legislatures) in the Government must be subjected to specific accountability tests."

1.75 Notwithstanding above the State Government of Nagaland were of the view that as anti-defection law was in place which strictly organized the House on party lines and thereby the Government, any presumption that the office of profit would act as a lure for members to cross floor was simply anachronistic. Might be before the advent of the anti-defection law, the presumption would have matured into a fact. The idea of office of profit itself had thus become outdated warranting removal from the Constitution.

1.76 Similarly, in a written reply the State Government of Uttarakhand were of the opinion that a comprehensive definition of 'office of profit' should be introduced. However, in the proposed amendment in Explanation II "After Clause (1), the following Clause.....subject to the disqualification" should not be inserted otherwise the very purpose of clause (a) of Articles 102(1) and 191(1) would be defeated.

1.77 In the view of the State Government of Uttar Pradesh it might not be feasible to have a workable definition of the "office of profit" because of various factors involved in it. The tests enunciated by the Hon'ble Supreme Court might be applied in different situations and an opinion might be formed accordingly. The tests for determining whether an office was an "office of profit" or not might be different in different situations and therefore, a blanket definition might not be workable or exhaustive. Instead of having a blanket definition, it would be better to evolve general principles and tests in this regard.

1.78 Giving suggestion on the draft definition, they were of the view that the draft definition of the expression of "office of profit" appeared to be relevant and comprehensive but it could not be said to be exhaustive. There might be occasions when the draft definition might not cover the situation. Hence along with such a definition scope might be left to further examine the expression of "office of profit", if a need so arose.

1.79 The Government of Uttar Pradesh were further of the view that the doubts should be cleared conclusively about the expression of "office of profit" so that the representatives of public did not have to face uncertainty about it.

1.80 The JPC visited Mumbai to hold informal discussion with the representatives of State Government of Maharashtra. The views of the State Government have also been considered elsewhere in the report.

1.81 According to State Government of Chhattisgarh "office of profit" means an office held, under Government of India or Government of any State, by a person in any committee or statutory body constituted or framed under any law, or by resolution, notification or direction of the Government of India or State Government and for which salary or remuneration was payable *in lieu of* discharging the duty, and included a body subordinate to State Government having effective control over the body for its functioning. But it should not include the post held *ex-officio* or any temporary office established or constituted for enquiry or examination not of permanent character.

"Explanation : Remuneration or salary does not include the traveling facility like providing vehicle with driver and allowance, infrastructure facility for office like furniture, computer, stationery, staff, electricity, telephone or others and fixed honorarium compensatory in nature."

1.82 While expressing their views, the State Government of Orissa in a written reply had stated "it is necessary to define the expression 'office of profit' in unambiguous terms. The definition should first spell out the meaning of the word 'office' and then proceed to explain the expression 'office of profit'." They were of the view that doubts were sometimes expressed whether a Minister holding certain positions in an *ex-officio* capacity outside the Government Departments could be disqualified on the grounds of holding an office of profit. The new definition should clearly state that all positions held by a Minister in his *ex-officio* capacity with or without remuneration should be excluded from the purview of the office of profit since by virtue of being a Minister he was already holding an office of profit under the scheme of things of the parliamentary system of democracy.

1.83 As far as MLAs/MPs other than the Ministers were concerned, the law should clearly state whether they could be appointed as Heads or Members of Statutory Bodies with or without remuneration. It should also clarify whether reimbursement of expenditure incurred by MLA/MP for attending meetings and duties of bodies where they were nominated, as Members would amount to holding office of profit. If reimbursement of such expenditure was not to be treated as holding an office of profit, reasonableness of the extent to which such reimbursement was to be permitted might also clearly be defined. Any legislation should not only address the issue in letter but also in spirit.

1.84 A statement showing the synopsis of comments of the State Governments in the context of settled interpretation of the expression "office of profit" in Article 102 of the Constitution and the underlying constitutional principles therein, and suggesting a comprehensive definition of "office of profit" (first term of reference) is enclosed at Annexure V.

## Institutions

1.85 During their study visit to Kolkata, the JPC also held informal discussions with the representatives of Council for Political Studies, Kolkata. In regard to definition of the term of office of profit, a representative of the Council suggested that by way of constitutional amendment, a new paragraph with the following lines be added to the explanation following Article 102 (1) and Article 191 (1):

"An office, that is, a substantive position independent of its incumbent, under the Union or State Government or any public body under the authority of any of these Governments, carrying any emolument, honorarium or allowance shall be deemed to be an office of profit. However, compensatory allowances attached to such office for meeting the expenses actually incurred for travel, board, lodging and conveyance shall not make it an office of profit."

1.86 They further stated that "the context of other Articles in which the term 'office of profit' had been used was completely different from one another. So a general definition was not desirable. According to the Council the suggested change might be restricted only to Article 102 (1) and Article 191 (1)."

1.87 Further, there were a large number of offices in the Union and State Governments, which did not find a mention either in the Schedule or Table annexed to the Parliament (Prevention of Disqualification) Act, 1959. Uncertainty would also prevail about the offices that might be enacted in future.

1.88 During their study visit to Bangalore, the JPC, besides holding discussions with the representatives of State Government of Karnataka, held discussion with the representatives of National Law School, Bangalore to elicit their views on matters under reference of the JPC. While deliberating with the Committee, a representative of the University stated that the aspects *viz.* compulsion of coalition Governments both at the Centre as well as in the States, various local factors/conditions which vary from State to State and private interest of legislators should be taken into account while evolving definition/generic criteria on office of profit.

1.89 Explaining various issues of offices of profit, a representative of the University, stated that the office of profit disqualification sought to maintain two constitutional principles: (i) the separation of power between the legislature and the executive and (ii) the prevention of the possibility of a conflict between duty and interest for an individual who had to perform the role of the legislator and a member of the executive. The explanation to Articles 102 and 191 created an exception to the blanket application of the separation of powers principle by allowing for Ministerial offices to be exempted from the office of profit disqualification to accommodate the Westminster Parliamentary model of Government. Therefore, they had stated that no further definition was necessary and the Parliament might by law include only such offices which were ministerial in character but not in nomenclature. While such an approach did not eliminate ambiguity entirely, when combined with an institutional mechanism that applied these principles in a definitive fashion, a greater degree of clarity could be achieved in this area of law.

1.90 They had further stated, “the essential feature of an office is that it must exist independent of its holder. However, even if there be no such independent existence, the court may still use a purposive interpretation and hold that on specific facts of the case, the candidate in substance held an ‘office of profit’.”

1.91 Further submitting their suggestion in regard to definition of office of profit given by the Ministry, a representative of the University stated that definition attempted to crystallize the legal decisions on that issue by putting together criteria to help legislators, the designated authority and the courts to determine offices which might lead to disqualification. Those criteria identified by the court in specific cases, however, were neither complete nor consistently applied. The courts had persistently held that the cases were to be determined on a case-to-case basis where different weights were attached to these criteria to arrive at a cumulative assessment of whether an office was an office of profit.

1.92 The Law School were further of the view that a more elaborate definition of the office of profit was likely to result in more disputes and arguments about the meaning or phrases used in the definition. Such an approach of a criteria definition was misconceived and to that extent the proposed definition was unlikely to resolve the problems and concerns raised.

1.93 In regard to application of definition restricted to Articles 102 and 191, a representative of the University stated that a uniform definition for the term ‘office of profit’ to apply to the entire Constitution by including it in Article 366 would be problematic and hence not desirable. Further making a definition of ‘office of profit’ evolved in context of Article 19, applicable to Article 18 would be to confuse differing policy objectives. The latter sought primarily to ensure that persons under the Government were immune from foreign influence of any kind. Problems of over-inclusion and under-inclusion might arise as a result of applying the same definition across the Constitution, regardless of specific context.

1.94 On the issue of opportunity for resignation the School was of the view that the Committee might propose to allow a 2 months moratorium period after the constitution of a new House to those elected members who held office of profit to resign these offices. A recommendation to shift the effective date for the assessment of disqualification under the office of profit category from nomination date to adapt 2 months after the constitution of the House might provide all prospective candidates to contest elections and ensure that no unnecessary disqualification took place.

### **Constitutional and legal experts**

1.95 On the issue of defining the term “office” or “office of profit”—Shri Fali S. Nariman, Senior Advocate submitted before the Committee ‘I am of the view that to attempt a definition universally applicable to each and every case as it arises is just not feasible. I do not think that the draft definition suggested in the list of points which may be used by the Joint Parliamentary Committee would cover all possible cases that could conceivably arise in future. I am of the opinion that each case must be left to be judged in the light of relevant provisions of the statute in question establishing or creating the “office” and in the light of its own peculiar facts; always keeping in view the overall object of enacting Article 102(1) (a) and Article 191 (1)(a) which is that there should not be seen to be any conflict between the duties and interests of an elected member. In other words, these Articles are designed to ensure that Parliament and State Legislatures do not have Members who receive from the Executive largesse or benefits in any form—and who

may on that account be perceived as being under its obligation, and thus, become amenable to its influence, whilst discharging important legislature functions. ....This purposive interpretation of Articles 102 (1)(a) and 191 (1)(a) has received acceptance from the Courts ever since the Constitution was enacted—right up to the leading case of *Shibu Soren Vs. Dayanand Sahaay*. Any new approach to these Articles would create unnecessary confusion in settled law.’

1.96 For overcoming the imbroglios related to the issues, his views were as follows:—

“I would recommend the insertion of a specific provision in the Constitution to the following effect *viz.* that a person shall not be disqualified for being chosen as, and for being a Member of either of House of Parliament or of a State legislature, only because that person holds an office under the Government of India or the Government of any State, whether it be an office or office of profit or not, so long as that person does not in fact receive or enjoy any benefit. Whatsoever, monetary or otherwise, in connection with the holding of that office.”

1.97 Shri Nariman further opined that—

“it should also be clarified in a sub-clause inserted in article 103 (and in corresponding provision article 192) that where a person holds any office (whether an office of profit or otherwise) under the Government of India or the Government of any State, and a question arises as to whether that person has or has not received, or has or has not enjoyed a benefit (monetary or otherwise) in connection with the holding of that office, the burden of proving that he or she has not received or enjoyed any benefit with reference to that office shall be on the person who holds that office.”

The above should be in addition to the existing prevention of disqualification law as enacted and as amended.

1.98 According to Shri Nariman provisions, as suggested above would enable responsible Members of Parliament and responsible Members of State Legislature to freely perform additional public duties that might be entrusted to them by Central or State Government authorities from time to time without any possible risk arising out of a conflict of interest. In other words, it would enable the Centre and the State (in the course of their ever increasing welfare activities) to avail of the services of public-spirited Members of Parliament (and of State Legislatures), without fear of it being perceived by the public as the exercise of some form of control by the Centre (or the State) over its elected representatives in legislative bodies.

1.99 As regards proposed definition, Shri Harish Salve, Senior Advocate had put forth his views to the Committee as follows :

“The proposed definition of Office of Profit, I find, would be incompatible with the constitutional philosophy underlying Article 102. That is for two reasons. Sir, we are now getting into very grey areas. It will defeat certainty because it excludes very bodies which are wholly or partly owned and the holder of an office which is capable of exercising legislative, judicial and quasi-judicial powers. Again, what is legislative power and power of legislative character is a very nebulous concept. Price fixation is legislative in character and framing of policy is also legislative in character. What is quasi-judicial power? Anybody who has the power to hire and fire an employee exercises quasi-judicial power. The principle of fairness today has been extended to such an extent by the Supreme Court that quasi-judicial power is, again, a very



nebulous concept. If the whole idea is to bring certainty in the law, bringing in these will bring in more uncertainty in the law.

Secondly, these kinds of exclusions are uncalled-for. A perception of conflict arises not because of the nature of powers you exercise. The perception of conflict arises because you are earning a profit from the Government; you are earning an income or gain from the Government, and you are now holding that Government accountable for it. This is the perceived conflict. How does it matter what powers you exercise? I think that, even conceptually, these qualifications are totally uncalled-for.

As far as the definition of profit is concerned, I do not see any reason for it not applying across the board. I am asking this because the basic philosophy is the same, namely, preventing conflict. If the definition comes in, then it is much better if it governs all these Articles that are quoted, namely, 18, 58, 59, 64, 66, and 102, and puts all of them on par.”

1.100 On the issue of identifying an office of profit one of the suggestions, given by Shri Harish Salve, Senior Advocate, had been to classify the agencies and bodies into the following four categories keeping in view the nature of functions and activities being performed by them:—

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

1.101 He had suggested that a list of ‘other bodies’ at (iv) above, had to be prepared by a designated committee which would decide as to which post/office could be exempted or debarred for its holder for being chosen as and for being a member of either House of Parliament. For the offices under Sl.No. (i) to (iii) above, his suggestion appeared to be that those categories of offices should not be included in the exempted list.

1.102 On incorporation of an enabling provision in the Constitution for an elected Member of Parliament to exercise an option to resign from an office in the event of the office he was holding was determined to be an “office of profit” under the Government without losing his membership of the House, Shri Salve during evidence before the JPC stated as under :—

“...Once you have a list, of course, the person knows if he is joining a prohibited category. But if he is not in the list and you add something to the list, then you must give him a chance that within 3-4 months he should choose whatever is appropriate and whichever he wants to continue.”

1.103 The thrust of his argument in favour of having such a clause was that it made perfect sense to have such provision, as after having done all the hard work in getting elected to Parliament or State Legislature the members should not find themselves on the wrong side of the law simply on account of holding some office/post which otherwise were perfectly alright until

they got elected but subsequently turned out to be office of profit under the intense glare of legal scrutiny rendering them disqualified from being chosen as or being a member of the legislature. And they could not do anything about it. In this connection the Committee also wondered why only membership had to be sacrificed, especially when they had been elected by the people, and not the office/post which was the root cause of the problem.

1.104 In his submission before the JPC Shri Rajeev Dhavan, Senior Advocate had stated that the power of exemption must follow a rigorous procedure to ensure that it was not misused. Any appointment must be for the public interest, and under conditions of transparency and accountability. He had proposed that :—

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

1.105 Shri Dhavan had also introduced a concept whereby a distinction had been made between ‘being chosen as’ and ‘for being’ a member of the legislature. According to this view currently, article 102 and 191 envisaged an absolute disqualification, *i.e.* all offices of profit must be given up before the election. However, this absolute disqualification was too wide and unnecessary. According to him there was a distinction between two fundamental principles as to why the ‘office of profit’ concept was created. Broadly, these prohibitions applied to legislators (a) to prevent undue influence during elections; and (b) to avoid a ‘conflict of interest’ after elections. For this reasons, he had proposed that (i) the question of undue influence be dealt with under the applicable electoral law on the basis of which ‘office of profit’ holders must resign all their posts before filing their nominations for elections; and (ii) avoiding the problems posed by conflict of interest could be resolved by an elected legislator resigning his remaining offices of profit after the elections. On the basis of this distinction there might be:—

- (a) offices that must be given up before an election;  
[such persons (civil servant under Articles 310 and 311 and members of Judiciary), must resign their office before becoming candidate in an election. This was in order to ensure that (1) undue advantage in the electoral process was avoided; and (2) conflict of interest was eliminated in so far as process of election was concerned] and;
- (b) offices (under Article 12 institutions or bodies and legislators or some other legislative body or Panchayat) that must be given up after an election but before taking oath as a member of the legislature.

1.106 For this purpose Articles 102 and 191 would require to be amended to categorize disqualifications into those for ‘being chosen as’ and for ‘being’ a Member of the Legislature.

The question of a uniform approach to the States was resolved if amendments were made to corresponding Articles in the 'Constitution', for both the Centre and the States. Statutorily this would mean that Section 9A and 10 of the Representation of People Act, 1951 (which provides an absolute disqualification for persons holding government contracts or an officer of a government company), would have to be repealed. However, the parliamentary scrutiny was necessary which could be achieved in the following two ways:—

- “(i) At the beginning of every Parliament, a full declaration must be made by all MPs/MLAs. The list of offices held by MPs/MLAs could then be scrutinized by the Joint Parliamentary Committee on the basis of the three criteria mentioned above, after which it could determine whether Parliament should validate those offices.
- (ii) Thereafter, if the Government made any appointment of a legislator to an office, it must be referred to the Joint Parliamentary Committee. The findings of the Committee, although recommendatory, must be taken into account in the final determination by the Election Commission if a question arose under Article 103.”

1.107 The Committee pointed out that the Committee had been mandated to suggest a comprehensive definition of the office of profit in the context of settled interpretation of the expression in Article 102 of the Constitution. It had to take the constitutional scheme as it was. It was not authorized to interpret how Article 103 should be changed. It could not even make distinctions between pre-election disqualification and post election disqualification because Article 102 was committed to that. The same disqualification applied and that was the settled aspect of the matter. Any deviation on that count had to be through constitutional amendment only. Shri Dhavan however was of the opinion that on the basis of a reading of part (ii) of the terms of reference, it did not restrict the Committee to merely defining an office of profit within the framework of constitutional provisions as they stood but were wider in scope.

1.108 In a written reply to the JPC, Shri K.K.Venugopal, Senior Advocate had stated that any definition of 'Office of Profit' could be introduced only by an amendment to Article 366 of the Constitution as Article 366 defined the phrases and words used in various provisions of the Constitution. Parliament would not be having free hand to pass a law by giving its own interpretation to any word or phrase. The Courts had already examined and analyzed the phrase 'Office of Profit' and had given its own interpretation.

1.109 If an amendment was brought about to the Constitution defining the phrase 'office of profit' in Article 366, an appropriate definition would be:

“ 'Office of profit' means an office which exists independent of the holder and here the remuneration, compensation and perquisites, by whatever name called, would give to the holder of the office some pecuniary gain other than compensation covering out of pocket expenses such as stay, travel and daily allowances.”

1.110 Shri P.P. Rao, Senior Advocate, Supreme Court of India in a written reply submitted to the JPC had suggested “there is no need to unsettle the settled law in this area. If Parliament feels that certain offices should be exempted from the operation of provisions of Article 102(1) (a) and Article 191(1)(a), it is open to Parliament to enact a law for this purpose so long as the principle underlying the disqualification is maintained. However, the validity of such a law would be subject to judicial review on the ground that it is unreasonable and arbitrary or amounts to colorable exercise of power.”

1.111 According to Dr. Mahendra P. Singh, former professor Head & Dean, Faculty of Law, University of Delhi, the best solution of the problem lies in adding a definition/explanation of "office of profit" next to the existing explanation in Articles 102 and 191 on the following lines:

Suggested definition: office of profit is an office which provides any pecuniary gain to its holder other than the meeting out of actual expenses incurred in or utilization of any facilities for the performance of the duties of that office.

By way of precaution a further explanation may be added to the following effect:

For the purpose of this clause a person holds an office under the Government of India or the Government of any State if such appointment is made by the President of India or the Government of the State as the case may be.

1.112 **Shri J.S. Verma, Former Chief Justice of India** in a written reply had forwarded his views as under:—

- “(i) The underlying constitutional principle debarring the holder of an ‘office of profit’, ‘under the Government’ from being a member of Parliament is to insulate the legislature from executive influence and to prevent any conflict of interest in the member must guide the interpretation of the express ‘office of profit’. The evolution of the generic and comprehensive criteria which are just, fair and reasonable for uniform application would then emerge from such a meaning.
- (ii) In India, a unified judiciary with the Supreme Court at the apex level ensures a uniform standard and meaning of the rule of law throughout the country. Hence, there would be no scope for conflicting interpretations of the meaning of ‘office of profit’ after evolution of a generic and comprehensive criteria emerging from it.
- (iii) The difficulty arises because of the ambiguity created by the latter part of sub-clause (a) of clause (1) of Art. 102—‘other than an office declared by Parliament by law not to disqualify its holder’. The provision while so empowering the Parliament to create exceptions to the disqualification prescribed in the first part, it does not specify the principle to be applied in creating exceptions to the general rule. That being so, the principle governing the exercise of power by the Parliament has to be deduced on the basis of general rules of interpretation, reading the provision as a whole and bearing in mind the avowed object. Any interpretation, which renders the provision otiose by the second part neutralizing the first part, has to be rejected. An interpretation, which empowers the Parliament to destroy the disqualification relating to a basic feature, has to be rejected. If the amending power of the Parliament under Art. 368 cannot destroy a basic feature of the Constitution; it cannot be so done by a law enacted under Art. 102(1) (a).
- (iv) In the case of ambiguity, a construction that results in absurdity or anomaly, or which renders the provision otiose has to be rejected and preference must be given to that construction which avoids that result. This is a settled rule of interpretation of statutes. To a Constitution, which enacts principles for application at all times, this rule has greater application to avoid erosion of a constituent principle. ‘Absurdity’ in this context is ‘something which would be absurd with reference to the other words of the statute as to amount to repugnance’. If two views are possible, one, which

results in an anomaly and the other not, it is the latter view which must be taken. A statute must be read as a whole and one part of it should be construed with reference to the other parts so as to make a consistent enactment of the whole statute. It cannot be assumed that the enactment had 'given with one hand what it took away with the other'. These are settled rules of construction. The law enacted by the Parliament under Art.102(1)(a) must be subject to this inherent limitation.

- (v) The Explanation to clause (1) of Art.102, which exempts the Ministers from disqualification, is relevant as an aid to construction.
- (vi) An Explanation may also serve as a proviso to carve out an exception from the general rule in the main enacting provision. This is the purpose served by the Explanation to clause (1) of Art. 102, and it is an integral aid to the construction of the whole sub-clause (a) in Art. 102.
- (vii) It follows, that the second part of sub-clause (a) in Art. 102 empowers the Parliament to make law exempting offices of profit under the Government like that only of a Minister, and no others. Every office of profit exempted by the law will have to satisfy the generic test for its validity. Such a construction alone makes sense of the provision read as a whole. This is also in accord with the nature of our polity.

1.113 In a written response Shri R.R. Singh retired professor, Delhi University had stated that the elected representatives of the people by upholding constitutional norms, in letter and spirit, should confine themselves mainly to legislative functions and continuous interaction with citizen on national issues. Other offices (including OoP) should be left to the charge of citizens of eminence based on an evolved criterion.

### **Opinion of Attorney General**

1.114 In view of the issues discussed in the foregoing paragraphs, the moot point was whether a comprehensive definition of the term "office of profit" could be given on the basis of constitutional provisions and judicial pronouncements made so far. Opinion of Attorney General was sought by the Ministry of Law & Justice (Legislative Department) in this regard way back in 1994.

1.115 In his reply (dt. 26.10.94) Attorney General opined against laying down any particular criteria defining office of profit as the judgments of the Courts were enough guidelines to determine whether a particular office was an office of profit or not and a workable definition did not appear to be feasible. The Attorney General reiterated (on 04.05.2006) his views on expression of "office of profit" and stated:—

"My opinion was sought on the aforesaid proposal in 1994. I had opined against laying down any particular criteria defining 'office of profit' as the judgments of the court were enough guidelines to determine whether a particular office is an office of profit or not and a workable definition did not appear to be feasible vide my opinion dated 26.10.1994. No statutory explanation was, therefore, added. Though a long time has passed and I have re-looked at the entire matter, I have not been able to persuade myself to change my earlier opinion."

## **B. Second Term of Reference**

**to recommend, in relation to “office of profit”, the evolution of generic and comprehensive criteria which are just, fair and reasonable and can be applied to all States and Union Territories.**

[Since the issues of uniform principles/common criteria and evolving a definition on ‘office of profit’ are interwind and are not mutually exclusive, it is felt that the discussions made under heading A on first term of reference of the JPC should be read with discussions made hereunder to have a better understanding and appreciation of the subject.]

2.1 A large number of Boards, Committees and authorities are set up for carrying out or supervising the myriads of activities undertaken by the Government. It is a principle accepted by all democratic governments that the representatives of the people should be increasingly associated with such activities, which have a bearing on the welfare of the people. The participation of the representatives of the people in the developmental activities makes them more focused and result oriented. Legislatures, therefore, while creating statutory bodies make provisions for the representation of legislators on them. But, innumerable bodies other than these statutory bodies also come to be formed in exercise of the executive powers of the Government for specific purposes. The legislators are sought to be nominated to such bodies.

2.2 In view of the Ministry of Law & justice (Legislative Department) as a matter of strict constitutional position, the power so far as Members of Parliament are concerned is with Parliament and power so far as Members of State Legislatures are concerned is with the respective State Legislatures. According to the constitutional position, Parliament and the State Legislatures have the plenary authority within their allotted fields of jurisdiction under the Constitution as it stands today to enforce any uniformity. A State is free to adopt whatever policy it likes. It is only through persuasion or discussion that it would be possible within the existing framework to achieve some degree of uniformity in this field.

2.3 Under Article 191 of the Constitution, most States have enacted their own respective statutes exempting certain posts from disqualification. The States have followed the approach in the Central statute by specifying the exempted offices in the Act and the Schedule accompanying it. An analysis of the trends of exemption by the States reveals no definite pattern except for the fact that selection of offices of profit qualifying for exemption has been ad hoc and devoid of principled consideration. It has been seen that some Boards/Corporations/Bodies have been given exemption in some States like the Fishery Boards, Haj Committee or other such boards but similar bodies have not been given exemptions in other States.

### **Uniform criteria and applicability to States**

2.4 A large number of offices under the Government has been exempted from disqualification by several States Removal/Prevention of Disqualification Acts, without taking into consideration their nature of duties or remuneration and that a view has been held that the only feasible method would be to amend the Constitution and make it obligatory for the States Legislatures to be guided by such principles that Parliament may by law provide in regard to the matter. The Joint Committee on Offices of Profit (JCOP) were of the view that if the real spirit of Articles 102 and 191 of the Constitution is to be maintained sacrosanct, the enabling exemption provision should be kept within its bounds and restricted in its scope both in regard to the areas of operation and legislative competence. Otherwise, the object of the imposition of the

disqualifications as envisaged will become frustrated. The JCOP, therefore, urged (9th Report-7th LS) the Ministry of Law, Justice and Company Affairs to take necessary steps for bringing legislation to evolve uniform principles in regard to disqualification for holding office of profit under articles 102(1) and 191 (1) of the Constitution in consultation with the Central Government, State Governments and Union Territory Administrations, in the light of the recommendations/observations made in their report. The then Ministry of Law, Justice and Company Affairs invited the comments of the State Governments/Union Territories on the recommendations made by the JCOP. As per replies furnished by the Ministry of Law, Justice and Company Affairs (*vide* O.M. 17(9)/2006-Leg.III dated 28.12.06) five States (*i.e.* the States of Assam, Goa, Kerala, Karnataka and Madhya Pradesh) were in favour of having a legislation evolving uniform principles. Eight States (*i.e.* the States of Andhra Pradesh, Haryana, Meghalaya, Mizoram, Orissa, Rajasthan, Sikkim and Uttar Pradesh) were not in favour of legislation adopting uniform principles. No specific comments were received by them from other State Governments. In view of lack of consensus, the Ministry of Law, Justice and Company Affairs did not reportedly pursue the matter. The States/Union Territory-wise views reportedly received (as on 01.04.92) by the Ministry of Law, Justice & Company Affairs and furnished to the JPC were as under:—

- |    |                          |   |
|----|--------------------------|---|
| 1. | <b>Andhra Pradesh</b>    | The State Government should continue to retain the power of declaring a holder of particular office not to disqualify as envisaged in Article 191(1)(a) of Constitution of India. Thus, there does not appear to be need for any uniformity in the legislation concerning disqualification.   |
| 2. | <b>Arunachal Pradesh</b> | No views.   |
| 3. | <b>Assam</b>             | Agree on the condition that all the provisions of the Assam State Legislature Members (Removal of Disqualification) Act, 1950 should be incorporated in the proposed legislation.   |
| 4. | <b>Goa</b>               | In favour.  |
| 5. | <b>Haryana</b>           | It is not essential to have the law in question in the State in consonance with the law of the Parliament. The legislature is competent to frame such law under the provisions of Article 191(1) of the Constitution.   |
| 6. | <b>Jammu and Kashmir</b> | The practice of Ministers being Chairman of Public Sector Undertakings have been found to be not affecting incumbents to disqualification. Also, the State Government would be willing to amend its law on the subject (the J&K) Legislative (Prevention of Disqualification) Act, 1962 keeping in view any uniform policy that may be evolved for the rest of the country. |
| 7. | <b>Karnataka</b>         | The view of the Committee are reasonable and may be accepted.   |

- |     |                         |  |
|-----|-------------------------|--|
| 8.  | <b>Kerala</b>           | The State Government have accepted the guidelines suggested by the Joint committee for Members of Legislature and have decided to amend the Kerala Legislative Assembly (Removal of Disqualification) Act, 1951 accordingly.                             |
| 9.  | <b>Madhya Pradesh</b>   | Agrees with the views of the Joint Committee regarding uniform principles in regard to disqualification.   |
| 10. | <b>Meghalaya</b>        | Not in favour of uniformity as the local conditions vary to a considerable extent. In case a uniform policy is to be laid down the matter should be discussed in depth by all the legislatures.  |
| 11. | <b>Mizoram</b>          | The Government of Mizoram is not in favour of delegating power entirely to Parliament and is inclined to maintain status quo in this regard as at present.   |
| 12. | <b>Orissa</b>           | The State Government would prefer a law regarding disqualification under Article 191 (1)(e) and not a separate law on the subject.   |
| 13. | <b>Punjab</b>           | The issue involved have political overtones. The views of the State Government in correct perspective could be sent after the revival of legislature and installation of popular Government.   |
| 14. | <b>Rajasthan</b>        | It should be left to the State Governments to take appropriate action to adopt the principles which the Parliament by law provide.   |
| 15. | <b>Sikkim</b>           | The power given to the State Legislature under Article 191 (a) of the Constitution to declare what are not Offices of Profit are the exclusive domain of the State Legislature and it is not open to tamper with that power.                             |
| 16. | <b>Tripura</b>          | The Government of India may frame general guidelines regarding uniformity in the principles to be followed by Parliament and State Legislature regarding disqualification. The State Government will take appropriate decision in the matter thereafter. |
| 17. | <b>Uttar Pradesh</b>    | Not in favour.   |
| 18. | <b>Himachal Pradesh</b> | The comments are not received.   |

2.5 Now the Joint Committee to examine the constitutional and legal position relating to office of profit has also been mandated to suggest evolution of generic and comprehensive criteria which are just, fair and reasonable and can be applied to all States and Union Territories. The JPC took up the issue with the State Governments/UTs besides the political parties/groups in Parliament and other legal/constitutional experts and invited their considered views in the matter.



## STATE GOVERNMENTS

2.6 The views of the State Governments are brought out in succeeding paragraphs.

2.7 The State Government of Karnataka were of the view that it would be better to evolve a generic and comprehensive criteria to define 'office of profit' which could be applied uniformly to all the States and Union Territories. They had also stated that the criteria laid down by the apex court in *Jaya Bachchan Vs. Union of India* could settle the matter to decide whether an office was an 'office of profit' or not. The decision pronounced in the above case read as under:—

“for deciding the question as to whether one is holding an office of profit or not, what is relevant is whether the office is capable of yielding a profit or pecuniary gain and not whether the person actually obtained a monetary gain. If the pecuniary gain 'is receivable' in connection with the office then it becomes an office of profit irrespective of whether such pecuniary gain is actually received or not. If the office carries with it, or entitles the holder to, any pecuniary gain other than reimbursement of out of pocket actual expenses, then the office will be an office of profit for the purpose of Article 102 (1) (a).”

2.8 They had further added that being a cumbersome process to update from time to time the Schedule to the Parliament (Prevention of Disqualification) Act, 1959 to define certain offices which could be exempted from considering in terms of office of profit, it would be better to lay down general criteria to spell out whether an office was an office of profit or not and if need be Articles 102(1) and 191(1) of the Constitution be amended suitably to incorporate the uniform principles. The law relating to office of profit could not be different from State to State.

2.9 The State Government of Maharashtra were of the view that it would be more appropriate to have in relation to the "office of profit" a generic and comprehensive criteria which were just fair and reasonable and could be applied to all States and Union Territories on the lines of the recent ruling of the Supreme Court as laid down in *Jaya Bachchan's* case. As regards, generic and comprehensive criteria which could be applied to States, the State Government were of the view that "the holder of any office of the Government of India or the Government of the State which was capable of yielding a profit or a pecuniary gain, whether the person holding the office actually obtained a monetary gain or not, should be disqualified for being chosen as, or for being a Member of Parliament or Member of the State Legislature.”

2.10 The Committee pointed out that a large number of offices under the Government had been exempted from disqualification by several State Removal/Prevention of Disqualification Acts, without taking into consideration their nature of duties or remuneration and that a view had been held that the only feasible method would be to amend the Constitution and made it obligatory for the State Legislatures to be guided by such principles as Parliament might by law provide in regard to the matter. In a written response to this point, the State Government had stated that it was difficult to agree with the opinion and that it was equally difficult to suggest any method by which the objective of uniform application to States, of criteria regarding disqualification in relation to "office of profit" could be achieved. However, during discussion with the JPC, the representatives of the State Government of Maharashtra agreed that the only method by which uniform application of the criteria regarding disqualification to all States could be achieved was by a Constitutional amendment.

2.11 During discussion with the State Government of West Bengal at Kolkata, a representative of the State Government stated that in the absence of any definition of the term 'office of profit' it would be extremely difficult to define generic and comprehensive criteria for such offices. It was their view that holding a whole-time office remunerated either by salary or fees should disqualify the holder of that office and offices specifically exempted by law should continue, as prescribed in the Constitution, since Articles 102 (1)(a) and 191(1)(a) contemplate exemption of offices individually by name.

2.12 According to them offices were to be specifically exempted by law under the Constitution. Since there had to be separate laws for Members of Parliament and Members of State Legislature, it was obvious that there could be no one to one correspondence between the lists of exempted posts. However, the State Government had no objection for evolution of uniform principles after wide discussion.

2.13 On being asked whether there was any criteria, other than restriction on holding whole time office and remuneration, being followed by the State Government in granting general exemption from disqualification to the offices under the Central Government, a representative of the State Government stated that there was no criteria (other than restrictions on holding whole-time office and remuneration) that had been followed in granting general exemption from disqualification other than those specified in Section 2 (i) (a), (b), (c) and (d) of the West Bengal Legislature (Removal of Disqualification) Act, 1952.

2.14 On being pointed out that a view had been held that the only feasible method would be to amend the Constitution and made it obligatory for the State Legislatures to be guided by such principles as Parliament might by law provide in regard to the matter, a representative of the State Government of West Bengal stated that they did not agree with the said view and opined that the State Legislature should have a free hand to legislate in accordance with specific provisions of Article 191 of the Constitution. However, in their view it was difficult to evolve uniform criteria because each State frames its own legislation taking into account the local conditions.

2.15 During their interaction with the JPC, the representatives of State Government of Bihar did not agree on evolution of uniform principle. They were also of the view that what offices should not disqualify must be left within the domain of the State Legislature and no ways and means be devised to put any vertical cap in the name of uniform application to States of criteria regarding disqualification in relation to office of profit

2.16 The Committee also visited Chandigarh and Shimla and held discussion with the representatives of State Government of Punjab, Himachal Pradesh and Haryana on matters under reference of the JPC. The Committee were informed that the Government of Punjab were not in favour of evolving a uniform principle in regard to disqualification from holding Office of Profit under Articles 102(1) and 191(1) of the Constitution. However, they were of the view that there should be some guiding principles which could be suggestive in nature for declaring a particular post or office to be an office of profit and it should be left open ultimately to the Legislature to decide in its wisdom and in exercise of its powers conferred on it under the Constitution to determine whether any office/post is an 'Office of Profit' or not taking all relevant facts into consideration and in case if it was decided that there should be guidelines and principles for declaring a post/office as an Office of Profit, then the only feasible method would be to amend the Constitution.

2.17 According to Government of Himachal Pradesh, taking into account the following suggestion a comprehensive criteria had to be laid down for constituting office of profit without compromising with the object sought to be achieved by the provisions of Article 191 (1) (a) and Article 102 (1) (a) :—

- “1. An office will be an office of profit which is capable of yielding profit or a pecuniary gain.*
- 2. The holding of office must be under the Central or State Government and State or Central Government must have power of appointment and removal from office.*
- 3. The office is attached with some pay, salary, emolument, remuneration or non-compensatory allowance.*
- 4. The source of pecuniary gain must be at State expense.*
- 5. If the pecuniary gain is receivable in connection with the office then it will be an office of profit irrespective whether such pecuniary gain is received or not.*
- 6. If there is re-imbusement of money other than spent from pocket/actual expenses it will be an office of profit. Where the holder of office exercises executive and financial powers and is in a position to wield influence and patronage then the holder of office will fall within the ambit of office of profit irrespective of the facts he is getting only compensatory allowance.”*

2.18 Thus if a Member of a body got only compensatory allowance and body exercised merely an advisory functions then no disqualification would arise. But if the allowances given were more than compensatory allowance and/or the body exercised executive and financial powers and was in a position to wield influence or patronage, then its membership could not be excluded from disqualification. That was the only interpretation, which could be placed by applying the test for determining the office of profit. The JPC might evolve a uniform criteria to be applicable in all States because the existing provisions of the enactments in question could not pass the true test of the law laid down by the Hon'ble Supreme Court from time to time while interpreting the provisions of Articles 102 (1) and 191 (1) of the Constitution. It was, therefore, necessary to reduce the risk of conflict between the duty and interest amongst members of the Legislature so as to ensure that the concerned Legislature did not come under an obligation of the executive, on account of receiving pecuniary gain or profit, which might render him amenable to influence of executive while discharging his obligation as a Legislature.

2.19 Adding further a representative of the State Government of Himachal Pradesh stated that they were in agreement with the opinion of the JPC that the only feasible method was to amend the Constitution and make it obligatory for the State Legislature to be guided by such principles as Parliament might by law provide in regard to the matter.

2.20 The State Government of Haryana were of the view that being a Federal System of Governance in the country and in order to preserve and protect this structure, there was no need to evolve uniform principles. The exemption of offices might vary from State to State depending upon varieties of needs and circumstances in each State.

2.21 The State Government of Chhattisgarh were of the view that office of profit from which a person might be saved from disqualification should be provided in the schedule post-wise and

class of post-wise declaring with its applicability to all States and Union Territories leaving no exception so that it should be applicable uniformly to all States leaving no room for ambiguity. But such office of profit held by a person should not be more than three at any point of time.

2.22 Normally a person should not be appointed to any office or post declared by law not to disqualify, if he holds three or more offices of profit as *ex-officio* at any point of time.

2.23 The State Governments of Assam, Madhya Pradesh, Gujarat, Manipur and Nagaland were not in favour of evolving any uniform criteria which could be made applicable to all States and Union Territories primarily due to the fact that evolving common criteria would be detrimental to the concept of federalism as envisaged in our Constitution to enable each State to draw its own criteria depending on its own needs including political aspirations and needs of the society.

2.24 On the issue of evolving criteria the State Government of Nagaland were of the view that there was no office in the executive realms which did not involve exercise of power or influence. Again on uniform application of criteria, they were of the view that such uniform principles could be evolved by Parliament only for members of Parliament and not for the members of the State Legislature, as Parliament did not have the legislative competency in view of provisions in article 191(1) of the Constitution. Subsequently, however, on a specific query whether the Parliament had the competency under Article 368 to amend the article 191(1) without effecting suitable legislations for incorporating in so far as office of profit was concerned, the State Government of Nagaland stated that it was possible but having a uniform definition would be difficult.

2.25 On the other hand, though the State Governments of Andhra Pradesh, Arunachal Pradesh, Kerala, Mizoram, Rajasthan, Tamil Nadu, Tripura, Uttaranchal, West Bengal, Meghalaya and Sikkim were broadly in favour of evolving a uniform criteria keeping in view the local conditions of each State and other required elements involved in deciding an office of profit, they had not furnished any concrete suggestion in this regard.

2.26 A statement showing the comments of the State Governments (as received by the JPC) in regard to evolution of generic and comprehensive criteria, which are just fair and reasonable and can be applied to all States and Union Territories, (second term of reference) is at Annexure VI.

#### **Ministry of Law and Justice (Legislative Department)**

2.27 The Ministry of Law and Justice (Legislative Department) opined that without amendment of the Constitution, statutory uniform principles could not be evolved. The uniform principles might be evolved by the JPC, which might be conveyed to the State Governments for their guidance.

2.28 Further the Legislative Department had stated (O.M. dtd. 21.4.08) that technically it would be open to Parliament to lay down principles and guidelines by saying that "if a person is found to be holding an office which satisfies certain principles and guidelines, then the holder of that particular office will stand disqualified." But that might give rise to many practical complications and difficulties. First, that might open flood gates of disputes because the determination of the fact as to whether the holder of any particular office other than the office of profit would fall within the guidelines or principles, would itself be a point of dispute or form

part of that dispute. Secondly, there would be an increase in the reference under Article 103 of the Constitution virtually leading to an enormous rise in the election petitions to be decided by the President and Election Commission, because any number of petitions could be filed then on the basis that a particular person was not disqualified as his case was not covered by the guidelines which were proposed to be laid down. With regard to the guidelines that a member would be disqualified if he held an office where he was in a position to wield influence or distribute patronage, the Ministry were of the view that the trend of Judicial decisions had been to equate profit in terms of money or assess in terms of pecuniary gain. Mere patronage under Articles 102 (1) (a) and 191 (1) would not disqualify.

2.29 The Legislative Department were also of the view (O.M. dtd. 6.6.08) that our constitutional scheme recognized federal structure and the States were free to express their views within the constitutional framework. Our Constitution distributed legislative powers between the Centre and States.

2.30 On being asked to elaborate the possible way to overcome the problem if the States were not in favour of uniform criteria being followed by all States, the Legislative Department in their O.M. (dtd. 6.6.08) stated that this problem could be overcome by suitably amending the Constitution on the lines of the Constitution (Forty Second Amendment) Act, 1976. By the Constitution (42nd Amendment) Act, 1976, Article 102(1)(a) of the Constitution was substituted by a new article whereby the Parliament was given power to declare offices which will disqualify its holder. The power was given to the Parliament in respect of membership of Parliament as well as of the State Legislature. As the provisions of Article 102 (1)(a) as substituted by the Constitution 42nd Amendment were repealed by the Constitution 44th Amendment Act, 1978, the traditional exemption route had been followed so far.

## **Institutions**

2.31 During their study visit to Bangalore, the JPC also held discussions with the representatives of National Law School, Bangalore on the terms of the reference of the Committee. On being asked about the evolution of uniform criteria applicable to all States/UTs, a representative of the University stated that to achieve uniformity among all State legislations and the Central legislation, Article 191 be amended to include a principled definition of the office of profit which might be identical to an explanation to Article 102. These definitions would exemplify the present explanation to these Articles and would allow the States to make laws that specify analogous offices, which might not named to be Minister.

## **Constitutional/legal experts**

2.32 Expressing his views on the issue, Shri K.K.Venugopal, Senior Advocate in a written reply had stated that the purpose of disqualifying a Member of Parliament/Legislature holding an office of profit was to prevent the conflict between duty and interest so that the Member could function independently and free of any sub-servience to the Government. If a liberal view was given to the concept of "office of Profit", it would defeat the purpose and would make the Article 75 (1A) ineffective. Therefore, the Member of Parliament/Legislature should be given additional function attached to any other office on the basis of his background qualifications and experience and should not result in any pecuniary gain.

## Joint Committee on Office of Profit (JCOP)

2.33 The Joint Committee on Office of profit (JCOP) under the Chairmanship of Shri Chandrabhushan Singh, M.P. also submitted a memorandum to the JPC which is reproduced as under:—

As far back as in 1984, the Joint Committee on Offices of Profit felt the need to evolve uniform principles in regard to disqualification for holding office of profit under Articles 102 (1) and 191 (1) of the Constitution. After examining the matter in detail, the Committee had noted in their 9th Report (7th Lok Sabha) that members of State and Union Territory Legislatures had been appointed on various Corporations/Boards/Committees etc. set up by the State Governments and the Union Territory Administrations which enjoy wide and excessive powers. By virtue of the provisions contained in most of the State Removal/Prevention of Disqualifications Acts, the members of State/Union Territory Legislatures were exempted from disqualification inspite of holding offices of profit whereas in view of the guidelines followed by the Joint Committee on Offices of Profit, Members of Parliament, if appointed on those Corporations/Boards/Committees etc. would incur disqualification by virtue of such bodies exercising excessive executive, financial or judicial powers or members' being entitled to draw remuneration more than the 'compensatory allowance' as defined in Section 2 (a) of the Parliament (Prevention of Disqualification) Act, 1959. The Committee strongly felt the need for evolving of uniform principles in regard to disqualification for membership under articles 102 (1) (a) and 191 (1) (a) of the Constitution, and the only feasible method could be to amend the Constitution and make it obligatory for the State Legislatures to be guided by such principles as Parliament may by law provide in regard to the matter. Alternatively, as the State Legislatures are plenary authorities within their allocated spheres, the Committee would like to recommend to the State Legislatures to take appropriate action to adopt the principles evolved by the Joint Committee on Offices of Profit. The Committee were also of the view that the objectives proposed to be served by the Constitutional Amendment could also be achieved to some extent by making a law to that effect by Parliament under Article 191 (1) (e) of the Constitution, whereby it could be provided that holders of offices which enjoy executive, financial judicial/quasi judicial powers or which would place them in a position where they could receive some patronage from Government or are themselves in a position to distribute patronage or are entitled to any remuneration other than the compensatory allowance, as defined in Section 2 (a) of the Parliament (Prevention of Disqualification) Act, 1959, would incur disqualification. The Committee recommended that exemption from disqualifying holder of an office of profit should be so restricted as to cover only those offices held by members in Corporations/Boards/Committees etc. directly constituted and controlled by the Legislature. The members appointed to Corporations, Boards, Committees etc. whether controlled by Government directly or by statutory or non-statutory agencies created by State, should not enjoy any such exemption. The Committee were of the opinion that free exercise of legislative powers given under article 191 (1) (a) of the Constitution without circumspection or restraint, had greatly undermined the independent functioning of the members of the Legislature in many parts of the country. Offer of blandishment to members through their appointment to various offices of profit in certain corporations/undertakings/boards etc. constituted by the State Governments and exempting those offices from disqualification by legislative enactment without great care were being resorted to freely and increasingly in recent times. The Committee were of the view that if the real spirit of articles 102 and 191

of the Constitution was to be maintained sacrosanct, the enabling exemption provisions should be kept within its bounds and restricted in its scope both in regard to the areas of operation and legislative competence. Otherwise, the object of the imposition of the disqualification as envisaged in the Constitution would become frustrated. The Committee, therefore, urged the Ministry of Law, Justice and Company Affairs to take necessary steps for bringing legislation to evolve uniform principles in regard to disqualification for holding offices of profit under articles 102 (1) and 191 (1) of the Constitution, in consultation with the Central Government, State Governments and Union Territory Administrations, in the light of the recommendations / observations contained in the Report, at an early date. The Ministry of Law and Justice reportedly did not pursue the matter due to lack of consensus among the State/Union Territories. Thus, there is an urgent need for evolving definition of Offices of Profit which should be based on uniform principles.

2.34 On the question of uniform criteria/principle it may be pertinent to mention here that in order to determine whether an office held by a person is an office of profit under the Government, the Joint Committee on Office of Profit, in their Tenth Report (7th Lok Sabha), presented to Lok Sabha on 7 May, 1984 laid down the following guiding principles:

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

2.35 Keeping the above position in view, the Joint Committee on Offices of Profit have been following the under-noted criteria to test the Committees, Commissions, etc. for deciding the question as to which of the offices should disqualify and which should not disqualify a person for being chosen as, and for being a Member of Parliament:—

- (i) Whether the holder draws any remuneration like sitting fee, honorarium, salary, etc. *i.e.* remuneration other than the ‘compensatory allowance’ as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959;  
*(the principle thus is that if a member draws not more than what is required to cover the actual out of pocket expenses and does not give him pecuniary benefit, it will not act as a disqualification).*
- (ii) Whether the body in which an office is held, exercises executive, legislative or judicial powers or confers powers of disbursement of funds, allotment of lands, issue of licenses, etc. or gives powers of appointment, grant of scholarships, etc. and ;
- (iii) Whether the body in which an office is held wields influence or power by way of patronage.

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

2.36 The Committee generally applies two tests in deciding whether a member of a body ought to be exempted from disqualification *i.e.* (a) the emoluments and allowances attached to the members; and (b) the nature and function of the body.

2.37 If a member of a body gets only compensatory allowance and the body exercises merely an advisory function, then no disqualification would arise. But if the allowances given are more than compensatory allowances and/or the body exercise executive and financial powers and is in a position to wield influence and patronage, then its membership would not be exempted from disqualification.

2.38 Based on the recommendations of the Joint Committee, exemptions have been made by adding certain offices to the list from time to time.

### **Administrative Reforms Commission**

2.39 It may be pertinent to mention here that the Hon'ble President of India had set up Second Administrative Reforms Commission (in 2005) under the Chairmanship of Shri Veerappa Moily to prepare a detailed report for revamping the public administration system. The Commission submitted their Fourth Report titled 'Ethics in Governance' in January, 2007 which *inter-alia* include the recommendation of the Commission on 'office of profit'. The relevant extracts are as under:—

2.6.5 there is need to re-examine the definition of office of profit. Articles 102 and 191 of the Constitution relating to office of profit have been violated in spirit over the years even when the letter is adhered to. As a result, the legislatures kept on expanding the list of exemptions from disqualification under Articles 102 and 191. For instance, the Act 10 of 1959 listed scores of offices in the exemption from disqualification under Article 102. There does not appear to be a clear rationale to such a list, except perhaps the expediency to protect holders of certain offices from time to time. Similar laws have been enacted by State Legislature under Article 191, exempting hundreds of offices from disqualification for the State Legislature. Each time a legislator is appointed by the executive to an office, which might be, classified an office of profit, a law is enacted including that office in the list of exempted categories.

2.6.6 Often, the crude criterion applied is whether or not the office carries a remuneration. In the process, the real distinction of whether executive authority is exercised in terms of decision making or direct involvement in deployment of public funds is often lost sight of. The Supreme Court's clarification about the appointment and removal being in the hands of the executive branch of Government does not help either, because many appointments made may be in advisory capacities.

2.6.9 Therefore it seems necessary to sharply define office of profit to ensure clearer separation of powers. Legislators who are not Ministers often do have significant expertise from their own personal or professional background. In addition, their experience in public service gives them unique insights and understanding of public policy. Such expertise and insights would be valuable inputs to the executive in policy making. Therefore, Committees and Commissions of a purely advisory nature can be constituted with legislators. The mere fact of such positions carrying certain remuneration and other perks does not make them executive offices. The Constitution recognized that holding of such offices in expert and



advisory bodies does not violate separation of powers and left it to Parliament and State Legislatures to exempt such non-executive offices from disqualification. But appointment in statutory or non-statutory executive authorities with direct decision making powers and day-to-day control of field personnel, or positions on the governing boards of public sector undertakings or as Government nominees in private enterprises clearly carry direct executive responsibilities and involve decision making powers. Giving discretionary powers to legislators to sanction or approve public works is clearly an exercise of executive function, whether or not the Government appoints the legislators to a designated office. It is necessary to sharply distinguish executive functions and exercise of executive authority while defining office of profit, irrespective of whether such a role of office carries remuneration and perks.

2.6.10 Given these circumstances, it would be appropriate to amend the law on the following lines:

- All offices in purely advisory bodies where the experience and insights of a legislator would be inputs in governmental policy will not be treated as offices of profit, irrespective of the remuneration and perks associated with such an office.
- All offices involving executive decision making and control of public funds, including positions on the governing boards of public undertakings and statutory and non-statutory authorities directly, deciding policy or managing institutions or authorizing or approving expenditure shall be treated as offices of profit, and no legislator shall hold such offices. (Discretionary funds at the disposal of legislators or the power to determine specific projects and schemes, or select the beneficiaries or authorize expenditure shall constitute discharge of executive functions and will invite disqualification under Articles 102 and 191, irrespective of whether or not a new office is notified and held.)
- If a serving Minister, by virtue of office, is a member or head of certain organizations like the Planning Commission, where close coordination and integration between the Council of Ministers and the organization or authority or committee is vital for the day-to-day functioning of Government, it shall not be treated as office of profit.

### C. Third term of reference

*to examine the feasibility of adoption of system of law relating to prevention of disqualification of members of Parliament as existing in the United Kingdom and considered by the Constitution (Forty-Second Amendment) Act, 1976*

3.1 The concept of office of profit originated in the House of Commons in the sixteenth century when the prolonged absence of member due to their pre-occupation with the duties of the executive was considered to be inconsistent with a seat in Parliament. It was also felt necessary to exclude the executive officers from the membership of the House in order to reduce the influence of the Crown on Parliament. This concept gained greater strength in the following centuries and a large number of offices came to be treated as disqualifying offices in U.K. A number of laws were enacted during this long period listing out the disqualifying offices.

3.2 Thus, the concept of office of profit has a history of more than three centuries during which period it has undergone many changes and is yet far from being precisely understood and defined. The confused state of law in this respect and obsolete character of many of the relevant legal provisions are the legacies of the evolution of this idea through different phases of history in the United Kingdom.

3.3 There are three principal phases in the development of concept of office of profit in the United Kingdom on the basis of which the law on the subject developed in India.

#### **(1) The first phase : The “privilege” phase before 1640**

The attitude of the sixteenth century House of Commons to the question of holding by its Members office under the Crown first appears in a jealous insistence on its own prior claim to their services. In consequence, the criterion which was applied to an office was not the extent to which the Crown could exert its influence, but compatibility with the physical attendance of the holder on the service of the House. This phase of the Common’s attitude to paid office left a permanent mark on the law in the shape of the common law disqualification of judges and clergy; it also affected the position of sheriff and ambassadors.

#### **(2) The Second Phase: “Corruption” phase - from 1660**

In this phase the holding of paid Crown office was made incompatible with the membership of the House of Commons. In this period, the House of Commons enacted two Acts, namely, the Act of settlement, 1701 and the succession to the Crown Act, 1705. The succession to the Crown Act, 1705 re-enacted after the Union with Scotland in 1707, commonly known as the Statute of Anne. Section 24 of that Act provides that no person holding an office or place of profit *under* the crown created since 25th October 1705 should be able to sit in the House of Commons. A similar absolute disqualification is applied to certain named offices and also to persons holding any pension under the Crown. Section 25 of the said Act, however, states that if any person, being a Member, accepts any office of profit *from* the Crown, his election is avoided and a new writ is to issue, but he is capable of being elected again. The apparent conflict between the two sections has been resolved by applying section 25 to old offices *i.e.*, those created before 1705, although it is not so expressly stated. But many other anomalies have arisen in great part as a result of an attempt to draw a distinction between the alternative use of the words “under the Crown” and “from the Crown” in sections 24 and 25 of the said Act.

### (3) The third phase: “the Ministerial responsibilities” phase after 1705.

Although the division into “old” and “new” offices continued to pose many problems in determining the category into which any particular office fell, its force in fostering any nascent theory of separation of powers was soon spent. Neither of the two sections indeed expressed any constitutional distinction between ministerial and other office, yet section 24 by its veto on the capacity of holders of newly created office to sit in the House could have produced a Government the majority of whose members were outside the House.

2. Thus, it is evident that disqualification of certain office holders from membership of House of Commons has existed since the early seventeenth century. These were previously scattered through public and private Acts and the journals of the House. By the year 1940, the confusion about the actual and intended scope and effect of existing disqualifying provisions, together with fears about the effects on Parliamentary democracy of special war-time appointments of Members, led to the appointment of a Select Committee (Herbert Committee).

3. The Herbert Committee looked particularly of the law and practice governing the disqualification of those holding “offices or places of profit under the Crown” and the report (HC 120, 14 October 1941) contained recommendations for legislation to replace earlier statutes. After the war and the reconstruction period, work began in 1949 on drafting a Bill to put the Herbert Committee recommendations into effect. However, there was a serious difficulty in arriving at satisfactory legal expression of some of the concept recommended by the Herbert Committee and it was not until 1955 that a Bill finally went to the House.

4. Progress was difficult and further a Select Committee, Spens Committee was set up in 1956 to reconsider the Bill. The Committee stated that certain offices are incompatible with membership of the House of Commons, some as involving physical impossibilities of simultaneous attendance in two places some because of possible patronage, and other because of conflict of duties. The Spens Committee examined the Bill after second reading and made several recommendations but the revised Bill was not officially enacted until the 1956-57 sessions. Legislation was finally enacted as the House of Commons Disqualification Act, 1959. This was re-enacted in 1975 when offices disqualifying from the Northern Ireland Assembly were separated out and covered by the Northern Ireland Assembly Disqualification Act, 1975.

3.4 There is not as yet any comprehensive statute on the subject in the United Kingdom. But a Bill known as “House of Commons Disqualification Bill” was introduced in the House in 1955. Thus, the major legislation governing disqualification is consolidated in the House of Commons Disqualification Act, 1975. (see Annexure-VII) The main purpose of disqualification is to ensure that Members are fit and proper to sit in the House, are able to carry out their duties and responsibilities free from any undue pressures from other sources. It is to be ensured that an office held by an individual is not adversely affected by his membership of Parliament. Thus where a member holds some publicly funded position, his performance in that position should not be jeopardized by his role as a Member, either on conflict of interest grounds or because the position might require demonstrable political neutrality.

3.5 The House of Commons (Disqualification) Act, 1975 disqualifies a large number of public office holders. It is the single most important legal measure affecting eligibility for parliamentary candidature. It lays down six classes of office holders who are disqualified, namely:—

- (1) Holders of certain judicial offices including High Court and Court of Appeal judges (Law Lords are disqualified already by virtue of being members of the House of Lords)

- (2) Civil servants, whether established or not, and whether full-time or part-time;
- (3) Members of the regular armed forces;
- (4) Full-time police officers;
- (5) Members of the Legislature of any country outside the Commonwealth; and
- (6) Holder of any of the offices listed in Schedules of the Act.

3.6 The Act also limits the number of Ministers who can sit in the House of Commons at a time. The list is set out in Schedule I of the Act and is very lengthy. Regular updates are published. The Act enables the government to add or vary the list from time to time by Parliamentary resolution and an order in Council. The Judicial Committee of the Privy Council has jurisdiction to decide matters in relation to jurisdiction under 1975 Act provided that an election petition is not pending or that the Commons has not made an order directing that the disqualification should be disregarded.

3.7 The law in the United Kingdom in relation to disqualifications however has undergone certain important changes in recent times. These are as follows:

- (i) the enactment of the House of Lords Act, 1999 by which hereditary peers are no longer disqualified from membership of the Commons;
- (ii) the Disqualification Act, 2000 amended the 1975 Act so that members of the legislature in Ireland are not disqualified from being members;
- (iii) the House of Commons (Removal of clergy disqualification) Act, 2001 that removed prohibitions against clergy sitting in the Commons;

3.8 Importantly, there appears to be no criteria in the schedule for what exactly constitutes an office of profit under the Crown. Some recent amendments to Schedule I are as follows:

- (i) Member of the Immigration Services Tribunal inserted by the Immigration and Asylum Act, 1999
- (ii) Adjudicator to Her Majesty's Land Registry inserted by the Land Registration Act, 2002.

3.9 One clear merit of the approach followed in the United Kingdom is that there is no ambiguity surrounding whether or not the holding of a particular office would result in disqualification. If an office is listed in the schedule then it would result in a disqualification, and if it is not listed then it would not. The clarity of the position is also evident by the fact that till date no application has been made to the judicial committee of the Privy Council, which has the jurisdiction to decide matters relating to disqualification under the 1975 Act, in relation to a claim that a person purporting to be a Member of the House is disqualified under the Act.

***Feasibility of adoption of law relating to prevention of disqualification of Members of Parliament as existing in the United Kingdom and considered by the Constitution (Forty Second Amendment) Act, 1976***

3.10 At present we have the Parliament (Prevention of Disqualification) Act, 1959 which declares certain offices of profit under the Government which do not disqualify or which disqualify holders thereof for being chosen as, or for being members of Parliament. The Act contains

5 sections and a schedule, which has two parts containing names of bodies under the Central Government, which disqualify their holders. Section 3 of the Act specifies the offices, which do not disqualify their holders. The Act has been amended from time to time to include offices in the category of exempted offices. Recently in 2006, this Act has been amended to include 55 more bodies in the category of exempted offices. This amendment has been given retrospective effect from 1959 although many bodies which have been so exempted from disqualification through this amendment, did not exist in 1959.

3.11 The Act of 1959 contains a Schedule, which is in two parts, *viz.* Part I and Part II. Part I contains statutory or non-statutory bodies under the Central Government as well as certain State Governments which disqualify the holders of the office of Chairman of these bodies. Part II of the Schedule contains statutory or non-statutory bodies under the Central Government as well as the State Governments of Andhra Pradesh, Bihar, Kerala, Tamil Nadu and Punjab which disqualify the holders of the office of Chairman and Secretary of such bodies.

3.12 These provisions of the Act make it clear that exemption from disqualification in respect of offices specified in Section 3 is available only when the holders are entitled to not more than compensatory allowance. Compensatory allowance has been defined in the Act as "any sum of money payable to the holder of an office by way of daily allowance (which should not exceed the amount of daily allowance of a member of Parliament), any conveyance allowance, house rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office." Compensatory allowance is the key factor in determining whether the holder incurs disqualification or not. Compensatory allowance is treated as an allowance to compensate certain expenditures incurred by the holder of the office in the performance of his duties. However, in the case of offices specified in the Schedule, no such exemption from disqualification is given to the holders of the offices like those of the Chairman and Secretary.

3.13 There are certain basic differences between the Indian Act and the House of Commons Disqualification Act. The House of Commons Act did not adopt the concept of compensatory allowance in the context of office of profit, whereas this allowance is a major factor in the determination of an office of profit in the Indian law. The House of Commons Act specifies the disqualifying offices fairly exhaustively and declares that no other office or place of profit under the Crown shall disqualify the holder for the membership of the House. The Indian law specifies the offices, which disqualify as well as those which do not disqualify. It does not, however, contain any definitive declaration in regard to non-disqualifying offices other than those specified in the Schedule. Further, any office under the Government, which fetches remuneration higher than compensatory allowance, is an office of profit except the offices exempted under the Constitution and the concept of disqualification on the ground of office of profit does not seem to apply to the membership of the House of Lords, which is a House of hereditary peerage. The Indian law applies to both Houses of Indian Parliament and Article 191(1) covers the State Legislatures. The State Legislatures have also enacted laws in this regard.

3.14 Similarly, the Constitution of India exempts all Ministers of the Union Government as well as of the States from disqualification on account of holding an office of profit. The House of Commons law has put a restriction on the number of ministers who can sit and vote in the House.

Section 2 of the House of Commons Act says that not more than ninety-five ministers can sit and vote in the House of Commons at any one time. Others will have to wait till a vacancy arises either by death, resignation or otherwise. But this restriction, as can be seen from the Act, is confined to the entitlement to sit in the House and vote. In other words, those ministers in excess of ninety-five who cannot sit and vote in the House are not disqualified for the membership of the House as such. They remain members of the House.

3.15 The term "office of profit" has not been defined either in the House of Commons Act or the Indian Act. The reason is not clear. No doubt, the law on this subject was very complex in UK until it was consolidated in the twentieth century. But, that by itself is not a reasonable ground for not defining the term. In India too an attempt by way of constitutional amendment was made in 1976 to adopt the procedure being followed in UK.

3.16 In line with the UK procedure as regard disqualification of members on the grounds of holding Office of Profit, Section 19 of the Constitution (Forty Second Amendment) Act, 1976 amended article 102(1) (a) in the following manner:—

19. In article 102 of the Constitution, for sub-clause (a) of clause (1), the following sub-clause shall be substituted, namely:—

(a) if he holds any such office of profit under the Government of India or the Government of any State as is declared by Parliament by law to disqualify its holder.

Similarly, section 32 of the said constitutional amendment amended article 191(1) (a) of the Constitution in the following manner:—

32. In article 191 of the Constitution, for sub-clause (a) of clause (1), the following sub-clause shall be substituted, namely:—

(a) if he holds any such office of profit under the Government of India or the Government of any State specified in the First Schedule as is declared by Parliament by law to disqualify its holder.”

3.17 It may be seen that sections 19 and 32 of the Constitution (Forty-Second Amendment) Act, 1976 aimed to reverse the basis of disqualification by providing that only those offices which are specified by law made by Parliament will disqualify the holder on the lines of the United Kingdom law, namely the House of Commons Disqualification Act, 1975.

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

3.19 Now the JPC have also been mandated to examine and recommend whether the present method of declaring an office of profit which would not disqualify its holders from being a member of a legislature is appropriate or a provision as added by the Constitution (42nd amendment) Act which, may provide that an office which is declared would disqualify its holder would be more appropriate. The Committee deliberated on the issue and invited considered views of State Governments, political parties/groups in Parliament, legal luminaries and general public interested on the subject matter. The JPC received diverse views on the issues, which have been brought out in the succeeding paragraphs.

### **Constitution/legal Experts**

3.20 While deliberating with JPC, Shri Rajeev Dhavan, Senior Advocate was of the view that the United Kingdom, under the House of Commons Disqualification Act, 1975 used the method of 'disqualification' rather than the prevention of disqualification. That meant that apart from the holder of an office which was listed under the Act, no other person was disqualified from being a legislator. An attempt was made to adopt the U.K. approach through the 42nd Amendment Act. In the definition of 'office of profit' suggested, the listing of some offices that would disqualify its holder is in accordance with the UK method of 'disqualification' rather than the 'prevention of disqualification'.

3.21 Shri Harish N. Salve, Senior Advocate, Supreme Court of India during evidence before the JPC was of the view that the UK law might not be adopted in India as there were stark differences between the ground realities of both the countries.

3.22 During his evidence before the JPC, Shri Fali S. Nariman also stated "we should not go by the U.K. procedure for the reason that United Kingdom does not have a written constitution. There, the Parliament is supreme. Not only it is supreme, as said in Keshav Singh's case, it is the High Court of Parliament. So it exercises even judicial power in England. There Courts do not have power to strike down laws of Parliament. They can only declare that these laws will not be operative until Parliament otherwise decides. Whereas in India the Constitution is Supreme. Thus, there should not be a negative list as attempted by Constitution 42nd Amendment Act, 1976 which amended Article 102 and Article 191. The provision regarding disqualification as envisaged by Constitution 42nd Amendment should not be reintroduced."

### **Institutions**

3.23 During course of the discussion with JPC, a representative of the National Law School, Bangalore too had stated that despite its effective functioning in the UK, blindly importing the British approach, without consideration of the relevant practice in this regard, in India would be futile.

3.24 Similarly, a representative of the Council for Political Studies, Kolkata during their discussion with the JPC observed as under:

"we do not approve revival of the changes in Articles 102 and 191 brought out in by the 42nd (Amendment) Act, 1976. Such changes it may be recalled, were perfectly in tune with the attempt by the said Amendment to vest Parliament with unlimited authority. However, a fully sovereign Parliament does not go with the spirit of the Constitution—the spirit that has been reinforced by the Courts's judgement on the unamendability of the basic structure.

He further added that "if Parliament by its Act goes on exempting offices from the bar imposed by Article 102 (1), then it will be an amendability of the basic structure." He further added that "if Parliament by its Act goes on exempting offices from the bar imposed by Article 102 (1) then it will be an unending process. After all, the Parliament at a particular point of time, cannot foresee all the offices that may come up in future."

### **Political Parties in Parliament**

3.25 The Committee also invited comments of the political parties/groups in Parliament in this regard. Some of the views received from the political parties/groups are as under:—

3.26 The National Congress Party were of the view that if a list of disqualifying offices was to be established, it should be done with reference to objective criteria, which could be laid down for uniform application in all the legislative bodies of the country.

3.27 The Rashtriya Janata Dal were of the view that the guiding model for formulating or identifying the concept of 'Office of Profit' for Parliament of India should be the House of Commons Disqualification Act, 1975. According to them a person should be allowed to hold one post and no further change/additions should be allowed in the office of profit already defined. However, in exceptional circumstances only, if amendments were required prior approval of Hon'ble Speaker should be obtained after detailed consideration of the matter by the Committee relating to Office of Profit.

3.28 The RJD had further stated that the House of Commons Act applied only to that House and the concept of disqualification on the ground of office of profit did not seem to apply to the membership of the House of Lords.

### **STATE GOVERNMENTS**

3.29 The Joint Committee invited comments/views of the State Governments/UTs on this issue. The views received from the State Governments are enumerated hereunder.

3.30 The State Government of Tamil Nadu was of the view that as per Section 1 (1) of the House of Commons Disqualification Act, 1975 a person who had held any office described in Schedule I of the Act was disqualified from membership of the House of Commons. However, the power to amend the said Schedule I by order had been conferred on Her Majesty after a resolution was passed in the House of Commons to that effect. That was not the procedure adopted in our country. Only by undertaking a legislation, the schedule which forms part of the Act is amended. Therefore, by undertaking a legislation offices might be declared as offices of profit and that the holder thereof would be disqualified for being chosen as and for being a member of legislature. The Government of Tamil Nadu were thus in favour of adoption of system of law relating to prevention of disqualification of members of Parliament as existing in the United Kingdom and considered by the Constitution (Forty-Second Amendment) Act, 1976.

3.31 While expressing their views before the JPC during their study visit to Bangalore, a representative of the State Government of Karnataka stated that adoption of system as exist in U.K. was only the best possible source at present in view of the fact that:—

- (i) no comprehensive definition of office of profit was possible.
- (ii) The holder was certain to know before hand which offices would disqualify him.
- (iii) If a list of Schedule was provided, a new office could not be included immediately, unless a cumbersome process of amendment was followed.



3.32 Adding further on the issue, a representative of the State Government of Karnataka observed "on account of certainty and clarity it was necessary to reintroduce provision regarding disqualification as envisaged in Constitution 42nd Amendment Act, 1976."

3.33 The State of Himachal Pradesh had no objection for the adoption of system of law relating to Prevention of Disqualification of Members of Parliament as existing in the United Kingdom if such law had stood the judicial scrutiny and had achieved the objective of maintaining the independence of Members of Legislatures from any sort of Government control or influence.

3.34 Similarly, agreeing with the adoption of system of law as existing in UK, the State Government of Haryana was of the view that negative list should be incorporated in the relevant laws by Parliament or State Government as the case might be.

3.35 As regards adoption of system of law as existing in U.K. the State Government of Rajasthan were of the view that U.K. pattern certainly had the benefit of clarity and certainty and adoption of the pattern would be improvement over our existing law. However, the power to declare office of profits under Article 191 should remain with the State Legislature. Similarly, the State Governments of Uttar Pradesh and Uttarakhand were of the view that the provisions regarding disqualification as envisaged by the Constitution (42nd amendment) Act, 1976 might be revived and reintroduced because if a negative list of the office is provided, it would certainly bring about clarity about the expression of office of profit. It would also clear all doubts and it would curtail the scope of liberal interpretation of the term.

3.36 In their written replies the State Governments of Andhra Pradesh, Chhattisgarh, Kerala, and Mizoram were conceptually in favour of reintroduction of the provision regarding disqualification as envisaged by the Constitution (42nd Amendment) Act, 1976.

3.37 On the question of reintroduction of provision regarding disqualification as envisaged in Constitution 42nd Amendment Act, 1976, a representative of the State Government of Maharashtra during study visit of the JPC to Mumbai stated that there was adequate provision in our Constitution and Parliament had also enacted Members of Parliament (Prevention of Disqualification) Act, 2006 which would govern the entire arena. It would, therefore, not be necessary to adopt system of law as existing in U.K. since U.K. did not have a written constitution.

3.38 The State Governments of Assam, Bihar, Gujarat, Punjab, West Bengal, and Tripura did not favour reintroduction of the provisions regarding disqualification as envisaged by the Constitution (42nd Amendment) Act, 1976 primarily due to the fact that power of the State Legislature as envisaged under the Article 191 should not be abrogated by the Parliament especially since it related to a State subject. Similarly, in a written reply the State Government of Nagaland stated that "It will be too late to go back to the Constitution (42nd Amendment) Act, 1976 the provisions of which were substantially overridden by the Constitution (44th Amendment) Act, 1978. It would not be prudent to set the Parliamentary clock back by three decades. The political, social, economic and constitutional relevance of those provisions has simply been rendered comatose by mere afflux of time.

3.39 On the other hand the State Governments of Arunachal Pradesh, Manipur, Meghalaya, Sikkim, Jammu & Kashmir, Goa, Orissa and Jharkhand did not furnish any comments in this regard.

3.40 A synopsis of the views received from the State Governments and UTs in regard to feasibility of adoption of law relating to prevention of disqualification of Members of Parliament as existing in the United Kingdom and considered by the Constitution (Forty-second Amendment) Act, 1976 (third term of reference) is at **Annexure VIII**.

3.41 The Ministry of Law & Justice (Legislative Department) did not offer their view in regard to adoption of system of law relating to prevention of disqualification of Members of Parliament as existing in the United Kingdom and considered by the Constitution (Forty-Second Amendment) Act, 1976.

#### **D. Any other matter incidental to the terms of reference of the JPC**

4.1 Some of the views/comments made by the representatives of various State Governments, experts and the issues that had cropped up during the discussions incidental to the terms of reference of the JPC are as follows:—

- (i) In the opinion of Shri Fali S. Nariman, Senior Advocate and National Law School, Bangalore and a few others, there should not be any retrospective exemption from disqualification of certain offices of profit by legislation.
- (ii) Almost all the State Governments are unanimous in their opinion that there should not be any authority other than those prescribed in the law to determine whether an office is an 'office of profit' or not.
- (iii) There is no Committee similar to the JCOP in Parliament in any State Legislature.
- (iv) Introduction of negative list on the pattern of U.K. law would obviate the need for having a definition of 'office of profit' and evolving of uniform criteria.
- (v) The Constitution (Ninety First) Amendment Act, 2003 has placed a ceiling on Council of Ministers in the Union and the States [Articles 75(1A) and 164 (1A)] and prohibited members being disqualified on grounds of defection from holding any "remunerative political post" till they get re-elected (Article 361 B). The very purpose of the amendment would be defeated if one were to liberally interpret the concept of "office of profit" so as to comprehend within its scope for giving exemption to a very large number of offices from disqualification under Article 102 (1)(a), circumventing the provisions of these Articles. Opinion of the State Governments was invited in this regard. Majority of the States have not disagreed with this, although they want the existing provisions of the Constitution to remain as they are for serving the respective intended purpose.

4.2 A summary of views of State Governments/U.Ts. on issues incidental to the above three terms of the reference is enclosed at **Annexure IX**.

## PART II

### CONCLUSIONS AND RECOMMENDATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Generic Criteria and definition

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

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

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

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

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

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

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

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

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

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

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

**20. The Committee agree with this view in principle.**

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

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

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

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

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

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

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

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

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

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

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

*(1) "Office of profit" means—*

*Any office—*

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) Offices in the judiciary; and
- (ii) Legislators of some other legislative body or Panchayat.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Explanation

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

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

### *Exceptions from disqualification*

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

#### (iii) Opportunity for Resignation

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

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

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

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

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

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

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

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

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

and

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

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

- (i) At the beginning of every Parliament, a full declaration must be made by all MPs/MLAs. The list of offices held by MPs/MLAs could then be scrutinized by the Joint Parliamentary Committee on the basis of the criteria mentioned above, after which it could determine whether Parliament should validate those offices;
- (ii) Thereafter, if the Government made any appointment of a legislator to an office, it must be referred to the Joint Parliamentary Committee. The findings of the Committee, although recommendatory, must be taken into account in the final determination by the Election Commission if a question arose under Article 103.

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

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



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

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

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

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

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

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

*Article 102(1)*

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

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

I. Provided that

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

II. Provided further that

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

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

*Explanation* : For the purposes of this clause

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

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

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

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

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

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

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

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

(e) *"compensatory allowance" means any sum of money payable to the holder of an office by way of daily allowance (such allowance not exceeding the amount of daily allowance to which a member of Parliament is entitled under the [salaries and Allowances and Pensions of Members of Parliament Act, 1954 (30 of 1954)] any conveyance allowance, house rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

78. In this regard, the Committee also note that the reason given by the Ministry of Law & Justice (Legislative Department) for dropping the 42nd Amendment Act, 1976 through 44th Amendment Act, 1978 in the context of office of profit was that it would jeopardize the independence of Members of Legislatures and would enable the Government of the day to 'pack' the legislature with persons who would hold office of profit for continuance in which they would be dependent upon Government.

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

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

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# ANNEXURES

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*Parliament (Prevention of Disqualification) Act, 1959*  
(PART IV.—Law Relating to Removal of Disqualification)

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

<sup>1</sup>[(i) the office of chairman, director or member of any statutory or non-statutory body other than any such body as is referred to in clause (h), if the holder of such office is not entitled to any remuneration other than compensatory allowance, but excluding (i) the office of chairman of any statutory or non-statutory body specified in Part I of the Schedule, (ii) the office of chairman or secretary of any statutory or non-statutory body specified in Part II of the Schedule;]

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

<sup>2</sup>[*Explanation 1*].—For the purposes of this section, the office of <sup>3</sup>[Chairman, Deputy Chairman or Secretary] shall include every office of that description by whatever name called.

<sup>4</sup>[*Explanation 2*].—In clause (aa), the expression “Leader of the Opposition” shall have the meaning assigned to it in the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977 (33 of 1977).

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

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

<sup>1</sup> Subs. by Act 54 of 1993, s. 3, for cl. (i) (*w.e.f.* 19.7.1993).

<sup>2</sup> *Explanation* numbered as *Explanation 1* thereof by Act 33 of 1977, s. 12 (*w.e.f.* 1.11.1977).

<sup>3</sup> Subs. by Act 54 of 1993, s. 3, for certain words (*w.e.f.* 27.8.1993).

<sup>4</sup> Ins. by Act 33 of 1977, s. 12 (*w.e.f.* 1.11.1977).

<sup>5</sup> Ins. by Act 5 of 1999, s. 5.



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

**THE SCHEDULE**  
[See section 3(i)]

PART I  
BODIES UNDER THE CENTRAL GOVERNMENT

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

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

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

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

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

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

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

Board of Directors of the Hindustan Shipyard Limited.

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

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

Board of Directors of the National <sup>3</sup>[Industrial] Development Corporation <sup>4\*\*\*</sup> Limited.

Board of Directors of the National Instruments <sup>4\*\*\*</sup> Limited.

Board of Directors of the National Small Industries Corporation <sup>4\*\*\*</sup> Limited.

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

Board of Directors of the Sindri Fertilizers and Chemicals <sup>4\*\*\*</sup> Limited.

Board of Directors of the State Trading Corporation of India <sup>4\*\*\*</sup> Limited.

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

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

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

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

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

<sup>3</sup> Ins. by s. 3 and the Second Schedule, *ibid.*

<sup>4</sup> The brackets and word "(Private)" omitted by s. 3 and the Second Schedule, *ibid.*

Commissioners for the Port of Calcutta.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Trustees of the Port of Bombay.

Trustees of the Port of Madras.

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

## BODIES UNDER STATE GOVERNMENTS

### Andhra Pradesh

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

Co-operative Agricultural and Marketing Development Fund Committee.

Livestock purchasing Committee.

### Assam

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

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

Assam Text Book Committee.

### Bihar

Mining Board for Coal Mines.

Text Book and Education Literature Committee.

### Bombay

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

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

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

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

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

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

Medical Service Committee under the Employees' State Insurance Scheme.

Pharmaceutical Committee under the Employees' State Insurance Scheme.

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

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

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

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

## Kerala

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

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

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

## Madhya Pradesh

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

Mahakoshal Housing Board.

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

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

Landing and Shipping Fees Committees for Minor Ports.

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

Madras Board of Transport.

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

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

Port Conservancy Boards.

Port Trust Boards of Minor Ports.

State Board of Communications.

Text Books Committee.

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

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

Board of Management of Industrial Concerns.

## Orissa

Appeal Committee under the Board of Secondary Education.

Orissa Board of Communications and Transport.

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

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

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<sup>1</sup> Subs. by the Madras State (Alteration of Name) (Adaptation of Laws on Union Subjects) Order, 1970, for "Madras" (*w.e.f.* 14.1.1969).

<sup>2</sup> Subs., *ibid.*, for "Madras State Electricity Board".

<sup>3</sup> Subs. by the Mysore State (Alteration of Name) (Adaptation of Laws on Union Subjects) Order, 1974, for "Mysore" (*w.e.f.* 1.11.1973).

### **Punjab**

Punjab State National Workers (Relief and Rehabilitation) Board.

### **Rajasthan**

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

Excise Appellate Board, Ajmer.

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

Urban Improvement Board, Jaipur.

### **Uttar Pradesh**

Government Cement Factory Board.

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

Sub-Committee to select books for Educational Expansion Department.

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

### **West Bengal**

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

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

## **BODIES IN UNION TERRITORIES**

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

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

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

## **PART II**

### **BODIES UNDER THE CENTRAL GOVERNMENT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Development Council for Textiles made of wool including woolen yarn, hosiery, carpets and druggest established under section 6 of the Industries (Development and Regulation) Act, 1951 (65 of 1951).

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

Indian Central Arecanut Committee.

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

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

Indian Central Jute Committee.

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

Indian Central Sugarcane Committee.

Indian Central Tobacco Committee.

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

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

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

## **BODIES UNDER STATE GOVERNMENTS**

### **Andhra Pradesh**

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

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

### **Bihar**

Bihar State Board of Religious Trusts.

Bihar Subai Majlis Awqaf.

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

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

### **Kerala**

Administration Committee for Coir Purchase Scheme.

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

Tapioca Market Expansion Board.

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

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

Madras State Wakf Board Constituted under Section 9 of the Wakf Act, 1954 (29 of 1954).

**Punjab**

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

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<sup>1</sup> Subs. by the Madras State (Alteration of Name) (Adaptation of Laws on Union Subjects) Order, 1970, for "Madras" (*w.e.f.* 14.1.1969).

<sup>2</sup> Part III omitted by Act 54 of 1993, s. 4 (*w.e.f.* 19.7.1993).



## ACTS OF PARLIAMENT ON THE OFFICES OF PROFIT

Act	Year	Offices Added
1	2	3
Parliament (Prevention of Disqualification) Act	1959	<ul style="list-style-type: none"> <li>• any office held by a Minister, Minister of State or Deputy Minister for the Union or for any State, whether <i>ex-officio</i>;</li> <li>• or by name;</li> <li>• the office of Chief Whip, Deputy Chief Whip or Whip in Parliament or of a Parliamentary Secretary;</li> <li>• the office of member of any force raised or maintained under the National Cadet Corps Act, 1948 (31 of 1948), the Territorial Army Act, 1948 (56 of 1948), or the Reserve and Auxiliary Air Forces Act, 1952 (62 of 1952);</li> <li>• the office of a member of a Home Guard constituted under any law for the time being in force in any State;</li> <li>• the office of sheriff in the city of Bombay, Calcutta or Madras;</li> <li>• the office of chairman or member of the syndicate senate, executive committee, council or court of a university or any other body connected with a university;</li> <li>• the office of a member of any delegation or mission sent outside India by the Government for any special purpose;</li> <li>• the office of chairman or member of a committee (whether consisting of one or more members), set up temporarily for the purpose of advising the Government or any other authority in respect of any matter of public importance or for the purpose of making an inquiry into, or collecting statistics in respect of, any such matter, if the holder of such office is not entitled to any remuneration other than compensatory allowance;</li> </ul>

1	2	3
Parliament (Prevention of Disqualification) Amendment Act	1977	<ul style="list-style-type: none"> <li>• the office of chairman or member of a committee (whether consisting of one or more members), set up temporarily for the purpose of advising the Government or any other authority in respect of any matter of public importance or for the purpose of making an inquiry into, or collecting statistics in respect of, any such matter, if the holder of such office is not entitled to any remuneration other than compensatory allowance;</li> <li>• the office of chairman, director or member of any statutory or non-statutory body other than any such body as is referred to in clause (h), if the holder of such office is not entitled to any remuneration other than compensatory allowance, but excluding (i) the office of chairman of any statutory or non-statutory body specified in Part I of the Schedule, (ii) the office of chairman or secretary of any statutory or non-statutory body specified in Part II of the Schedule;</li> <li>• the office of village revenue officer, whether called a lambardar, malguzar, patel, desh mukh or by any other name, whose duty is to collect land revenue and who is remunerated by a share of, or commission on, the amount of land revenue collected by him, but who does not discharge any police functions.</li> </ul> <p>(a) the office of a Leader of the Opposition in Parliament;</p> <p>The Amendment also added the Explanation I and II to Section 3 of the Act. Explanation I says that for the purposes of this section, the office of Chairman, Deputy Chairman or Secretary shall include every office of that description by whatever name called. Explanation II says that "Leader of the Opposition" shall have the meaning assigned to it in the Salary and Allowances of Leaders of the Opposition in Parliament Act, 1977.</p>
Parliament (Prevention of Disqualification) Act	1993	<ul style="list-style-type: none"> <li>• The office of the Deputy Chairman, Planning Commission;</li> <li>• The office of the Chairperson of the National Commission for Minorities constituted under Section 3 of the National Commission for Minorities Act, 1992 (19 of 1992);</li> </ul>

1	2	3
Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Act	1998	<ul style="list-style-type: none"> <li>• The office of the Chairperson of the National Commission for the Scheduled Castes and the Scheduled Tribes constituted under Clause (1) of the Article 338 of the Constitution;</li> <li>• The office of Chairperson the National Commission for Women constituted under Section 3 of the National Commission for Women Act, 1990 (20 of 1990)</li> <li>• The office of each leader and deputy leader of a recognized party and recognized group in either House of Parliament.</li> </ul>
Parliament (Prevention of Disqualification) Amendment Act	2006	<ul style="list-style-type: none"> <li>• The office of the Chairperson of the National Advisory Council constituted by the Government of India in the Cabinet Secretariat <i>vide</i> Order No. 631/2/1/2004-Cab., dated the 31st May, 2004;</li> <li>• The office of Chairperson or trustee (by whatever name called) of any trust, whether public or private, not being a body specified in the Schedule;</li> <li>• The office of Chairman, President, Vice-President or Principal Secretary or Secretary of the Governing Body of any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law relating to registration of societies, not being a body specified in the Schedule.</li> <li>• The office of Chairman, Deputy Chairman, Secretary or Member (by whatever name called) in any statutory or non-statutory body specified in the Table (Inserted by the Amendment Act);</li> </ul> <p>The Table</p> <ol style="list-style-type: none"> <li>1. The Tripura Khadi and Village Industries Board, a body constituted under the Tripura Khadi and Village Industries Act, 1966.</li> <li>2. The Uttar Pradesh Development Council.</li> <li>3. The Irrigation and Flood Control Commission, Uttar Pradesh.</li> <li>4. The Indian Statistical Institute, Calcutta.</li> </ol>

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5. The West Bengal Handicrafts Development Corporation Limited.
  6. The West Bengal Small Industries Development Corporation Limited.
  7. The West Bengal Industrial Development Corporation Limited.
  8. The Sriniketan Santiniketan Development Authority, a body constituted under the West Bengal Town and Country (Planning and Development) Act, 1979 (West Bengal Act No. 13 of 1979).
  9. The Haldia Development Authority, a body constituted under the West Bengal Town and Country (Planning and Development) Act, 1979 (West Bengal Act No. 13 of 1979).
  10. The West Bengal Minorities Development and Finance Corporation, a body constituted under the West Bengal Minorities Development and Finance Corporation Act, 1995.
  11. The Hooghly River Bridge Commissioners, constituted under the Hooghly River Bridge Act, 1969 (West Bengal Act No. 36 of 1969).
  12. The Board of Wakf, West Bengal, a body constituted under the Wakf Act, 1995 (43 of 1995).
  13. The State Fisheries Development Corporation Limited, West Bengal.
  14. The West Bengal State Haj Committee, constituted under the Haj Committee Act, 2002 (35 of 2002).
  15. The Asansol Durgapur Development Authority, West Bengal, a body constituted under the West Bengal Town and Country (Planning and Development) Act, 1979 (West Bengal Act No. 13 of 1979).
  16. The West Bengal Pharmaceutical and Phytochemical Development Corporation Limited.
  17. The West Bengal Handloom and Powerloom Development Corporation Limited.
  18. The West Bengal Khadi and Village Industry Board.
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19. The Society for Self-employment for Urban Youth, a society registered under the West Bengal Societies Registration Act, 1961 (West Bengal Act No. 26 of 1961).
  20. The Tirumala Tirupathi Devasthanams Board.
  21. The Agricultural and Processed Food Products Export Development Authority, an authority constituted under section 4 of the Agricultural and Processed Food Products Export Development Authority Act, 1985 (2 of 1986).
  22. The National Agricultural Co-operative Marketing Federation of India Limited (NAFED).
  23. The Indian Farmer Fertilizers Co-operative Limited (IFFCO).
  24. The Krishak Bharati Co-operative Limited (KRIBHCO).
  25. The National Co-operative Consumers Federation of India Limited (NCCF).
  26. The Auroville Foundation established under sub-section (1) of section 10 of the Auroville Foundation Act, 1988 (54 of 1988).
  27. The National Commission of Enterprises in the Unorganised Sector.
  28. The Planning Board (Asiatic Society) established under sub-section (1) of section 8 of the Asiatic Society Act, 1984 (5 of 1984).
  29. The Delhi Rural Development Board.
  30. The Maulana Azad Education Foundation.
  31. The Indira Gandhi National Centre for the Arts.
  32. Dr. Ambedkar Foundation.
  33. The Bihar State Board of Religious Trust, a body constituted under the Bihar Hindu Religious Trust Act, 1950 (Bihar Act No. 1 of 1951).
  34. The Research and Information System for the Non-Aligned and Other Developing Countries.
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35. The Indian Institute of Psychometry.
  36. The Uttar Pradesh Film Development Council.
  37. The Uttar Pradesh Provincial Co-operative Federation.
  38. The Uttar Pradesh Co-operative Federation Limited.
  39. The National Co-operative Union of India.
  40. The Uttar Pradesh Krishi and Gram Vikas Bank.
  41. The Uttar Pradesh Co-operative Bank Limited.
  42. The Indian Council for Cultural Relations.
  43. The Board of Control—A.N. Sinha Institute of Social Studies, Patna.
  44. All India Council for Sports.
  45. The Howrah Improvement Trust.
  46. The Dalit Sena, 12, Janpath, New Delhi.
  47. The Social Justice Trust, 12, Janpath, New Delhi.
  48. The Bahujan Foundation (Charitable Trust), Lucknow, Uttar Pradesh.
  49. The Bahujan Prerna Charitable Trust, Delhi.
  50. The Central Wakf Council, established under section 9 of the Wakf Act, 1995 (43 of 1995).
  51. The Nehru Memorial Museum and Library (NMML).
  52. The Jalianwala Bagh Memorial Trust.
  53. The Haj Committee of India constituted under section 3 of the Haj Committee Act, 2002 (35 of 2002).
  54. The Mallickghat Phoolbazar Parichalan Committee.
  55. The West Bengal Fisheries Corporation Limited.
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LIST OF ENACTMENTS OF STATE LEGISLATURES ON OFFICE OF PROFIT

1. The Andhra Pradesh Payment of Salaries and Pension and Removal of Disqualification Act, 1953.
2. The Arunachal Pradesh Legislature Members (Prevention of Disqualification) Act, 1977.
3. The Assam State Legislatures Members (Removal of Disqualification) Act, 1950.
4. The Bihar Legislature (Removal of Disqualification) Act, 1950.
5. The Delhi (National Capital Territory of) Members of Legislative Assembly (Removal of Disqualification) Act, 1997.
6. The Goa, Daman and Diu Members of the Legislative Assembly (Removal of Disqualification) Act, 1982.
7. The Gujarat Legislative Assembly Members (Removal of Disqualification) Act, 1960.
8. The Haryana State Legislature (Prevention of Disqualification) Act, 1974.
9. The Himachal Pradesh Legislative Assembly Members (Removal of Disqualification) Act, 1971.
10. The Jammu and Kashmir State Legislature (Prevention of Disqualification) Act, 1962.
11. The Karnataka Legislature (Prevention of Disqualification) Act, 1956.
12. The Madhya Pradesh Vidhan Mandal Sadasya Nirhartan Nivaran Adhiniyam, 1967.
13. The Maharashtra Legislature Members (Removal of Disqualification) Act, 1956.
14. The Manipur Legislature (Removal of Disqualification) Act, 1972.
15. The Prevention of Disqualification (Members of the Legislative Assembly of Meghalaya) Act, 1972.
16. The Mizoram Union Territory Legislature Assembly Members (Removal of Disqualification) Act, 1975.
17. The Nagaland State Legislature Members (Removal of Disqualification) Act, 1964.
18. The Orissa Offices of Profit (Removal of Disqualification) Act, 1971.
19. The Pondicherry Member of the Legislative Assembly (Prevention of Disqualification) Act, 1994.

20. The Punjab State Legislature (Prevention of Disqualification) Act, 1952.
21. The Rajasthan Legislative Assembly Members (Removal of Disqualification) Act, 1956.
22. The Sikkim Legislative Assembly Members Removal of Disqualification Act, 1978.
23. The Tamil Nadu Legislature (Prevention of Disqualification) Act, 1967.
24. The Tripura State Legislature Members (Removal of Disqualification) Act, 1972.
25. The Uttar Pradesh State Legislature (Prevention of Disqualification) Act, 1971.
26. The West Bengal Legislature (Removal of Disqualification) Act, 1952.



## COMPILATION OF DECISIONS OF THE COURTS AND TRIBUNALS ON OFFICES OF PROFIT

Sl.No.	Title of Case	Decision of Nature of Office	Test Applied	Authority/Institution
1	2	3	4	5
1.	Hansa Jeevraj Mehta v. Indubhai B. Amin & Ors. (1952 ELR; P. 171)	The office of the Vice Chancellor of University of Baroda, an honorary officer who is appointed by the Government is an office of profit under the Government.	<b>Appointment and removal test:</b> Whether the appointment and removal of a person to an office is vested with the Government irrespective of the fact that his salary is drawn from some source other than the Government?	Election Tribunal, Baroda
2.	Bheru Singh v. Prabhu Dayal Chaubey (1952 ELR Vol. II; p. 325)	'Patel', a person serving under the Government appointed for the performance of duties under the land revenue systems is an office of Profit under the Government.	<b>Appointment and removal test:</b> Whether the appointment and removal is vested with the Government?	Election Tribunal, Indore
3.	Mahendra Sahu v. Dutia Raul & Others (1953 ELR Vol. III; p. 117)	The office of Sarbarkar, <i>i.e.</i> the Revenue Officer, appointed by the State is not an office of profit under the State.	<ul style="list-style-type: none"> <li>i. Whether the Office is heritable?</li> <li>ii. Whether salami is paid on every appointment?</li> <li>iii. Whether the interest in land granted to him is a tenancy interest enjoyed on payment of rent?</li> <li>iv. Whether the source from which he gets his commission is not the general revenues of the State but the collection from tenants from out of which he pays the revenue?</li> </ul>	Election Tribunal, Cuttack
4.	Shivarama Karant v. Venkataramana Gowda & Others (1953 ELR Vol. III; p. 187)	Member of the South Kanara Area Committee appointed under the Madras Hindu Religious and Charitable Endowments Act, 1951, does not hold an office of profit, & is therefore not disqualified.	<b>Compensatory allowance is not a profit:</b> Reimbursement of out-of-pocket expenses does not constitute remuneration and the person receiving it is not holding an office of profit.	Election Tribunal, Bangalore, after acceptance of nomination by Returning Officer
5.	Chandernath v. Kunwar Jaswant Singh & Others (1953 ELR Vol. III, p. 147)	Member of the District Vitran Committee, Bikaner constituted by the Government of Rajasthan for the purpose of distributing the controlled	"Profit" does not necessarily mean any remuneration in cash but it certainly means some kind of advantage or gain which is tangible or which can be perceived.	Election Tribunal, Bikaner

1	2	3	4	5
		commodities such as foodgrains, sugar, cloth etc. is not an office of profit as contemplated by Article 191 of the Constitution of India and as such did not incur any disqualification.		
6.	Lahiri Singh v. Attar Singh & Others (1953 ELR Vol. III; p. 403)	Teacher in a Government School in the State of Pepsu is an office of profit and disqualified under Article 191(1)(a).	So long as the office enables the holder to make profit irrespective of whether he makes it or not, the holder will incur disqualification.	Election Tribunal
7.	Yograj Singh Shankar Singh Parihar v. Sitaram Hirachand Birla & Ors. (1953 ELR Vol. III; p. 439)	Member of the Bombay Legislative Assembly, getting a monthly salary of Rs. 150/-, though holding an office of profit is not holding it under the Government and therefore not disqualified to contest an election since legislators are not subject to the disciplinary powers of the Government.	<b>Appointment and Removal Test:</b> Whether the member of legislature is holding an office of profit under the Government or not should be decided according to whether he is appointed by the Government or whether he can be dismissed by the Government.	Election Tribunal, Bombay
8.	Jagannath v. Pandurang & Ors. (1953 ELR Vol. IV; p. 168)	Patel of village Narioli appointed by an order of the Deputy Commissioner was not in accordance with rules and thus bad in law and hence no question of holding the office arises.	When there was no valid appointment there could not have been any holding of the office and hence there is no office of profit.	Election Tribunal
9.	Vindhya Pradesh Assembly Members (1953 ELR Vol. IV; p. 442)	Office of membership of the District Advisory Council appointed by the Government of Vindhya Pradesh is not an office of profit <i>normally</i> but it is for resident members receiving the same travel allowances and daily allowances as that of the non-members.	Whether compensatory allowance not being a profit becomes profit in the hands of resident members?	Presidential Reference to the Election Commission of India for its opinion
10.	Hari Das v. Hira Singh Pal & Others (1953 ELR Vol. IV; p. 468)	Employee of University of Punjab is not a holder of office of profit under the Government.	<b>Government control and administration test:</b> Whether the Government has any hand in the administration of the University? <b>Appointment and Removal test:</b> The appointments and removals other than those of the Chancellor and Vice Chancellor are made by the University and not by the Government.	Election Tribunal, Himachal Pradesh
11.	Pandit Harish Chandra v. Raja Man Singh & Ors. (ELR 1953; Vol. V; p. 129)	The holder of a Government license is not an office of profit since it is no office at all.	Whether the person was holding any office and the mere fact that he received allowance is not tantamount of holding an office.	Election Tribunal

1	2	3	4	5
12.	Maharaja Anand Chand (1953 ELR Vol. V; p. 197)	Privy purse holder is not an office of profit.	A member of the House becomes subject to disqualification after he is elected as such member.	Presidential Reference to the Election Commission of India for its opinion
13.	Natwar Lal v. Bhartendra Singh and Others [ELR Vol. V; p. 405 (1953)]	An assessor of a sessions court does not hold an office of profit.	<b>Compensatory allowance is not a source of Profit.</b>	Election Tribunal, Kota after rejection by Returning Officer
14.	Hakikatullah v. Nathu Singh and Others (ELR Vol. V; p. 10 1953)	Chairman of a Municipality is an Office of profit.	i. <b>Appointment and removal test, &amp;</b> ii. <b>Government Control and administration test.</b>	Election Tribunal, after rejection by Returning Officer
15.	Bholanath v. Krishna Chandra Gupta (1953 ELR Vol. VI, p. 104)	Office of a member of Legislature is not an office of profit.	i. <b>Appointment and Removal Test</b> ii. <b>Disciplinary action test:</b> Whether a member of Legislature is subject to disciplinary powers of the Government?	Election Tribunal
16.	Gulab Chand Chordia v. Thakur Narain Singh and Others (1953; ELR Vol. VI; p. 397)	An Istimrardar, a holder of a perpetual farm or lease upon grant of a sanad is not an office of profit.	i. Whether he is an appointee of the State? ii. Whether the office carried emoluments payable mostly periodically? iii. Whether the office is for a limited period? iv. Whether it is terminable? v. Whether it is assignable or not? vi. Whether it is heritable or not?	Election Tribunal, Ajmer
17.	Sahi Ram v. Manphool Singh and Others (ELR 1952; Vol. VII; p. 47)	Lambardar's brother is not holding an office of profit though Lambardari is a joint family property.	It is only the holder of the office who will be disqualified under Article 191(1)(a) and not the other members of his family.	Election Tribunal, Rajasthan
18.	Isher Singh v. Manjit Inder Singh and Others (ELR 1953; Vol. VII, p. 90)	An assessor of a court is not an office of profit.	Compensatory allowance is not a source of profit.	Election Tribunal
19.	Krishnappa v. Narayan Singh and Others (ELR 1953; Vol. VIII; p. 294)	A teacher in a grant-in-aid school does not hold an office of profit.	Appointment and removal test was applied.	Election Tribunal, Nagpur

1	2	3	4	5
20.	Govind Malaviya v. Murali Manohar & Others (ELR 1953; Vol. VIII; p. 84)	A lawyer engaged by a Government, but not being paid any retaining fee is not holding an office of profit.	<ul style="list-style-type: none"> <li>i. Whether the relationship of master and servant existed between the lawyer and the Government.</li> <li>ii. Whether the office is of a permanent nature, which has an existence independent of the person who filled it.</li> </ul>	Election Tribunal, Uttar Pradesh
21.	Mahesh Datta v. Muralidhar and Others (1953 ELR Vol. VII; p. 154)	The office of Patel is an office of profit.	Appointment and removal test was applied.	Election Tribunal, Gwalior
22.	Kishen Lal Hamror v. Madan Singh & Others (ELR X, 1954; p. 49)	Assessorship of the Railway Rates Tribunal is not an 'office' and a person who has been appointed as an Assessor is not holding any office.	Whether the person was 'holding' any office?	Election Tribunal
23.	U.D. Deshpande and Others v. State of Hyderabad & Others (ELR Vol. X; p. 203)	The office of a Deputy Minister is not an office of profit.	Remuneration is attached in some way or the other to an office of profit.	Hyderabad High Court
24.	Chikati Parasuram Naidu v. Vyricherla Chandran Chandmany Dev (ELR Vol. XIII; p. 66)	Member of the Railway Users Consultative Committee is not an office of profit.	Out-of-pocket expenses are not profit.	Election Tribunal
25.	Maulana Abdul Shakoor's v. Rikhab Chand and Others (AIR 1958 SC 52); (Supreme Court of India-XIII ELR 149)	Mohatmin (Manager) of the Madrasa Durgah Khwaja Sahib Akbari is not an office of profit under the government.	Appointment and removal test was applied.	Supreme Court after rejection by Election Tribunal
26.	Dr. Deorao Lakshman Anande v. Keshav Lakshman Borkar (ELR Vol. XIII; p. 334)	Insurance Medical Practitioner, appointed under the Employees' State Insurance Act 1948 is an office of profit under the Government.	<ul style="list-style-type: none"> <li>i. Remuneration is attached in some way or the other to an office of profit.</li> <li>ii. Appointment and removal test.</li> <li>iii. Disciplinary action test.</li> <li>iv. Whether the contract or agreement of service is with the Government.</li> </ul>	Bombay High Court after rejection by Election Tribunal
27.	G. Narayanaswamy Naidu v. C. Krishnamurthy and others (ELR Vol. XIV; p. 21)	A salaried employee of the Life Insurance Corporation cannot be said to be holding an office of profit under the Government.	<ul style="list-style-type: none"> <li>i. Appoint and removal test.</li> <li>ii. Source of remuneration, being distinct from the Government.</li> </ul>	Madras High Court after the Tribunal declared the election void & that the respondent was not holding an office of profit under the Government

1	2	3	4	5
28.	Hoti Lal v. Raj Bahadur (ELR Vol. XV; p. 55)	An Office of Oath Commissioner is an office of profit under the Government.	Government to be given widest interpretation and it includes the Executive, the Legislature and the Judiciary and an office of profit under any of these would be an office of profit under the Government.	Rajasthan High Court
29.	M. Ramappa's v. Sangappa and Others (ELR Vol. XV; p. 475)	Patels and Shanbhogs hold offices of profit under the Government.	<ul style="list-style-type: none"> <li>i. Appointment and removal test.</li> <li>ii. Government Control and supervision test.</li> <li>iii. Remuneration paid by the Government.</li> </ul>	Supreme Court of India setting aside the order of the High Court and restoring the Returning Officer's order of rejection
30.	Shirur Veerabhadrapa Veerappa v. Shankara Gouda Basangouda (ELR XVII; p. 117)	Mali Patel of a Taluk is an office of profit.	Transfer of duties attached to an office of profit by the office holder to a deputy does not terminate the office of profit.	Election Tribunal
31.	Raghunath Mishra v. Kishore Chandra Deo Bhanj and Others (ELR XVII; p. 321)	The office of Sarbarkar is an office of profit under the State.	Appointment and removal test was applied as the most conclusive test.	High Court overruled the decision of the Election Tribunal
32.	Prabhunath Tiwary v. Janardhan Singh & Others (3 ELR 117)	Mukhia of a Gram Panchayat does not hold an office of profit.	<ul style="list-style-type: none"> <li>i. Appointment and removal test was applied.</li> <li>ii. Gain, in order to be construed as profit, must be determined and real and attached to the office.</li> </ul>	Election Tribunal
33.	Ramdayal Ayodhya Prasad Gupta v. K.R. Patil and Others (ELR XVIII; p. 378 of 1958)	Member of the State Electricity Consultation Council.	The office of profit was one, which enabled him to make a profit, irrespective of whether the holder himself made profit.	Election Tribunal, Nagpur
34.	Lachman Singh v. Harprakash Kaur (ELR 19; p. 417; Punjab High Court, 1958)	Convener of Ludhiana District Project Implementing Committee is not an office of profit.	The holder of the office should receive money for personal use not connected with official work.	Punjab High Court after the Tribunal declared it an office of profit
35.	Bhairon Lal v. Doongarsidas and others (ELR 20; p. 157; Dec. 1958)	"Meena Bara Gaon", a tenure holder rendering services to save the payment of land revenue in cash is not an office of profit.	The office of profit cannot be assignable or heritable.	Rajasthan High Court

1	2	3	4	5
36.	Karu Lall and another v. Fida Hussain and another (ELR 20)	Inspector of minor irrigation works is not an office of profit.	Allowances paid to meet out-of-pocket expenses do not make the office an office of profit.	High Court of Patna
37.	Badri Narayan Singh v. Kamdeo Prasad Singh (ELR 21; p. 64; March 1959)	Ghatwali tenure is an office of profit under the Government.	<ul style="list-style-type: none"> <li>i. Performance of public duties, namely in the nature of police and military duties.</li> <li>ii. The office is not heritable or assignable.</li> </ul>	High Court of Patna
38.	Tikati Hargobind Prasad Singh v. Smt. Phaldani Kumari (AIR 1952 SC 38 at p. 41)	Ghatwals are persons holding offices of profit under the Government.	<ul style="list-style-type: none"> <li>i. The Government makes appointment of successors.</li> <li>ii. Remuneration is attached to the office.</li> <li>iii. Performance of public duties, namely in the nature of police and military duties.</li> </ul>	Supreme Court of India
39.	Jyoti Prasad Upadhyaya v. Kalka Prasad Bhatnagar (AIR 1962 All 128)	A Vice-Chancellor of a University is not holding an office of profit under the Government.	<b>Appointment and removal test</b> applied in relevance with decision that the Governor appoints the Vice Chancellor in his capacity as Chancellor of the University and not in exercise of the executive power of the State.	Allahabad High Court after rejection by Election Tribunal, Uttar Pradesh
40.	Guru Govind Basu v. Shankari Prasad Ghoshal (ELR 25; p. 77; 1963)	Auditor of Life Insurance Corporation of India is an office of profit.	<ul style="list-style-type: none"> <li>i. An office of profit does not necessitate the existence of a master-servant relationship between the Government and the office holder.</li> <li>ii. Appointment and removal test was also applied.</li> </ul>	Supreme Court of India.
41.	In Re. Shri Edouart Goubert (ELR 26; 297)	A mayor does not hold an office of profit under the Government.	<ul style="list-style-type: none"> <li>i. Appointment and removal test.</li> <li>ii. Government Control and supervision test.</li> </ul>	Election Commission
42.	In Re. N. Mahalingam, MLA, Madras, (ELR Vol. 28, p. 232)	A non-official Director of a Government company is held to be an office of profit.	<ul style="list-style-type: none"> <li>i. Appointment and removal test.</li> <li>ii. Government Control and supervision test.</li> </ul>	Election Commission
43.	Shri Ram Haribhan Mankar v. Madhusudhan Atmaram Virale (ELR 29; p. 171)	A Deputy Minister of a State is not an office of profit under the Government and does not incur disqualification under Article 191(1).	A Deputy Minister is construed to be exempted under Article 191(1).	Bombay High Court

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44.	Moti Singh v. Bhaiyyalal (ELR 29; 215)	The office of Vice President of a Zilla Parishad is not an office of profit under the Government.	i. Source of remuneration test, & ii. Government control test were applied.	Bombay High Court
45.	Vishwanath v. Visheshwar Nath (ELR 29; 1967 p. 306)	The Pramukh of a Zilla Prashad is not an office of profit under the State Government.	i. Appointment and removal test is the most decisive test. ii. Government Control and supervision test.	Rajasthan High Court
46.	Ranga Rao v. Komaran Ramayya (ELR Vol. 30 of 1967, p. 52)	The post of Extra-Departmental Mail Carrier under the Postal Department of the Government of India is an office of profit under the Government.	i. Appointment and removal test. ii. Remuneration is attached to the office. iii. A resignation letter sent but not accepted has the effect of the incumbent continuing in service.	Andhra Pradesh High Court
47.	Upendra Lal v. Smt. Narainee Devi Jha (ELR Vol. 30; 1967, p. 372)	District Honorary Family Planning Leader under the Government is not an office of profit.	i. Pecuniary advantage is an essential element of office of profit, irrespective of the quantum. ii. Reimbursement of out-of-pocket expenses does not constitute remuneration and the person receiving it is not holding and office of profit.	High Court of Madhya Pradesh
48.	Niranjan Lal Sharma v. Rajkumar Agarwal & Others (ELR Vol. XXXIII, p. 224)	Chairman of Janpad Sabha constituted under the Municipalities Act, 1962 is not an office of profit.	i. Appointment and removal test. ii. Government Control and Supervision test. iii. Source of Remuneration test.	High Court of Madhya Pradesh
49.	Kamta Prasad Upadhyaya v. Sarjoo Prasad Tiwari and others (ERL Vol. XXXV, p. 1)	A teacher is a Government Primary School is an office of profit.	i. A resignation letter sent but not accepted has the effect of the incumbent continuing in service. ii. The resignation could not be retrospectively accepted as to remove the disqualification already earned by the person.	High Court of Madhya Pradesh
50.	Ishvarappa Sidningappa Ghattarki v. Pampakavi Rayappa Velgali (ELR Vol. XXXIX, p. 120)	Membership of: i. Mysore State Development Council. ii. Bijapur District Development Council. iii. Jamkhandi Taluk Development Board does not constitute offices of profit under the Government.	An <i>ex-officio</i> membership by a member of the legislature is not an office of profit under the Government operating as a disqualification.	High Court of Mysore

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51.	Umrao Singh v. Darbara Singh and Others (ELR Vol. XXXIX, p. 240)	Chairman of Panchayat Samiti is not an office of profit.	Compensatory allowance in the nature of travel allowances and daily allowances is not a source of profit.	Supreme Court upheld the High Court's decision of rejecting the election petition
52.	Ghulam Hassan v. Ghulam Nabi Wani and Another (40 ELR Vol. XL p. 1)	A permanent teacher in a Government High School is holding an office of profit.	A resignation letter sent but not accepted has the effect of the incumbent continuing in service.	High Court of Jammu and Kashmir
53.	Mahadeo v. Shantibhai and Others (40 ELR Vol. XL, p. 81)	A person holding the following offices of profit: <ul style="list-style-type: none"> <li>i. Inclusion in the panel of lawyers prepared by the Central and Western Railway Administration.</li> <li>ii. President-member of a tribunal constituted under M.P. Town Improvement Trust Act, 1960.</li> <li>iii. Office of Professor of law in the Madhav college, Ujjain do not constitute offices of profit under the Government.</li> </ul>	<ul style="list-style-type: none"> <li>i. The office of profit was one, which enabled him to make a profit, irrespective of whether the holder himself made profit.</li> <li>ii. Office means a fixed position for performance duties.</li> </ul>	Supreme Court concurred with the High Court's decision
54.	Bapurao v. Sidramappa and Others (ELR Vol. XLI, p. 83)	Chairman of Market Committee and member of Food Advisory Committee do not hold offices of profit.	<ul style="list-style-type: none"> <li>i. Compensatory allowance in the nature of out-of-pocket expenses is not a source of profit.</li> <li>ii. The offices mentioned in Parliament (Prevention of Disqualification) Act, 1969 need not necessarily be offices of profit.</li> </ul>	High Court of Mysore
55.	D.R. Gurushantappa v. Abdul Khuddus Anwar & Others (ELR Vol. XLI, p. 153)	Superintendent of Steel Works in the Mysore Iron and Steel Works, Ltd. is not an office of profit.	Appoint and removal test & source of remuneration test were applied.	Supreme Court upheld the High Court's decision
56.	Chandan Lal v. Ram Dass and Another (ELR Vol. XLI, p. 214)	Mere appointment of an Agricultural Assistant at the Government Agricultural farm does not amount to holding an office of profit.	A person cannot occupy an office until he enters upon the office and the entry upon that office is not necessarily simultaneous with the appointment to the office.	Supreme Court of India
57.	Unrao Singh Dhabariya v. Yashwant Singh Nahar and Others (ELR Vol. XLII, p. 126)	The office of a Zilla Pramukh is not an office of profit under the State.	<ul style="list-style-type: none"> <li>i. Appointment and removal test.</li> <li>ii. Government Control and supervision test.</li> </ul>	High Court of Rajasthan



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			<ul style="list-style-type: none"> <li>iii. Source of Remuneration test.</li> <li>iv. Whether the holder of the office performs his functions for the government?</li> </ul>	
58.	Kanta Kathuria v. M. Manak Chand Khuarana, (1969) 3 SCC 268	Special Government Pleader appointed to assist the Government Advocate in an Arbitration matter does not hold an office of profit.	Whether the office is of a permanent nature, which has an existence independent of the person who filled it?	Supreme Court decided in a 3:2 majority decision overruling the High Court's decision
59.	Shivamurthy Swami Inamdar v. Veerabhadra Veerappa (ELR Vol. XLIV, p. 119)	Membership of the Taluk Development Board, District Development Council, Khadi and Village Industries Board and Chairmanship of Agricultural Produce Marketing Co-operative Society do not constitute offices of profit.	<ul style="list-style-type: none"> <li>i. Appointment and removal test.</li> <li>ii. Government Control and supervision test.</li> <li>iii. Source of Remuneration test.</li> <li>iv. Compensatory allowance in the nature of out-of-pocket expenses is not a source of profit.</li> </ul>	Supreme Court of India
60.	Gurugobinda Basu v. Shankari Prasad Ghoshal AIR 1964 SC 254	Comptroller and Auditor General was held to a holder of an office of profit under the Government of India.	<ul style="list-style-type: none"> <li>i. Appointment and removal test.</li> <li>ii. Government Control and supervision test.</li> <li>iii. Source of Remuneration test.</li> <li>iv. Whether the holder of the office performs his functions for the government?</li> </ul>	Supreme Court of India
61.	Surya Kant Roy v. Imamul Hak Khan AIR 1975 SC 1053; (1975) 1 SCC 531	Chairman of the Mines Board of Health appointed by the State Government was not an office of profit under the State Government.	<ul style="list-style-type: none"> <li>i. Government Control and supervision test.</li> <li>ii. Source of Remuneration test.</li> </ul>	Supreme Court of India
62.	Divya Prakash v. Kultar Chand Rana AIR 1975 SC 1067	Chairman of the Board of School Education, Himachal Pradesh cannot be said to hold an office of profit.	In the absence of any profit accruing to the holder as a result of the holding of the office it cannot be said that he was holding an office of profit.	Supreme Court of India agreeing with the High Court dismissed the petition
63.	Madhukar G.E. Pankakar v. Jaswant Chobbildas Rajani and others (1977, 1 SCC 70)	A Medical Practitioner working as a panel doctor appointed under the Employees' State Insurance Scheme does not hold an office of profit.	Whether the office is of a permanent nature, which has an existence independent of the person who filled it?	Supreme Court
64.	Gurugobinda Basu v. Shankari Prasad Ghoshal AIR 1964 SC 254	A chartered accountant, a partner of a firm of auditors of two companies, which were owned by the Government,	<ul style="list-style-type: none"> <li>i. Appointment and removal test.</li> <li>ii. Government Control and supervision test.</li> </ul>	Supreme Court of India

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		amounts to an office of profit under the Government.	iii. Source of Remuneration test. iv. Whether the holder of the office performs governmental functions?	
65.	Ashok Kumar Bhattacharya v. Ajoy Biswas and others (1985) 1 SCC 151	Accountant-in-charge of the Agartala Municipality is not an office of profit under the Government.	i. Government control and supervision test. ii. Whether the holder of the office performs governmental functions? iii. Source of Remuneration test. iv. There should not be any conflict between the duties and interest of the elected member.	Supreme Court dismissed the appeal against the Gujarat High Court.
66.	Biharilal Dobray v. Roshan Lal Dobray (1984) 1 SCC 551	Assistant teacher of a basic primary school run by UP Board of Basic Education is an office of profit under the Government.	Appoint and removal test was applied.	Supreme Court of India.
67.	Bhagwati Prasad Dixit Ghoshal v. Rajeev Gandhi AIR 1986 SC 153	A Member of Parliament drawing salary cannot be said to hold an office of profit.	i. Appointment and removal test. ii. Government control and supervision test.	Supreme Court of India.
68.	Satrucharla Chandrasekhar Raju v. Vyricherla Pradeep Kumar Dev and another AIR 1992 SC 1959	A teacher in a primary school run by the Integrated Tribal Development Agency (ITDA) does not hold an office of profit under the Government.	There should not be any conflict between the duties and interest of the elected member.	Supreme Court of India.
69.	Kethamreddi Venkata Ramana Reddi v. Government of Andhra Pradesh and other (AIR 1985 AP 73)	A Lecturer in a private college affiliated to a University receiving grant-in-aid from the State cannot be said to hold an office of profit under the Government.	i. Appointment and removal test. ii. Government control and supervision test.	High Court of Andhra Pradesh.
70.	Nongthombam Ibomcha Singh v. Lesangthem Chandramani Singh and others (AIR 1977 SC 682)	Speaker of a Legislative Assembly does not hold an office of profit under the Government.	Removal of Disqualification Act, 1975 (Manipur Act 1 of 1975) with retrospective effect is valid.	Supreme Court of India.
71.	Jaineshwar Bora and others v. Returning Officer, Panchayati Raj Elections, Nowgong and others (AIR 1975 Gauhati 61)	A contractor under the Public Works Department does not hold an office of profit under the Government.	i. Appointment and removal test. ii. Disciplinary action test.	High Court of Gauhati.
72.	Sivadasa Menon v. Sunni Sahib (AIR 1977 Ker. 187)	A Receiver appointed by Court is not holding an office of profit under the Government.	i. Whether the office is of a permanent nature, which has an	High Court of Kerala.

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			<p>existence independent of the person who filled it?</p> <p>ii. Appointment and removal text.</p> <p>iii. Whether the holder of the office performs public duties?</p> <p>iv. Source of remuneration test.</p>	
73.	Ganga Prasad Triveni Rai and Ram Murti Anchal [71 (55 ELR 163)]	Directors of U.P. Agro Industrial Corporation Ltd. a Government company were exempted from disqualification as offices of profit under the Government by an amendment to the U.P. State Legislature (Prevention of Disqualification) Act, 1971, which was upheld by the Election Commission.	Whether the State Legislative Assembly has power to declare with retrospective effect that an office shall not disqualify its holder from being a member of the State Legislature?	Election Commission upon reference from the Governor of U.P.
74.	Divya Prakash v. Kultar Chand Rana, 1975 2 SCR 749	The post of the Chairman of the Board of School Education of the State is not an office of profit.	Whether the appointment carried any remuneration?	Supreme Court of India.
75.	Radha Krishna Visharad v. Civil Judge, Aligarh & Ors. 1964 All. LJ. 840	A person in service of a college receiving grant-in-aid from the Government is said to hold an office of profit under the Government.	Government control and supervision test was applied.	Supreme Court of India reversed the High Court's decision and affirmed the Returning Officer's decision.
76.	D.S. Awasthi and others v. Virendra Swaroop, (AIR 1976 All 26)	Chairman of U.P. Legislative Council does not hold an office of profit under the Government.	<p>i. Appointment and removal test.</p> <p>ii. Government control and supervision test.</p>	Allahabad High Court.
77.	Ramnarain v. Ramchandra, (AIR 1958 Bom. 325)	Member of the Legislative Council is not a person holding an office of profit under the Government.	Appointment and removal test was applied as the decisive test.	Bombay High Court.
78.	Rustom Satin v. Dr. Sampoonanand (1959) 20 ELR 221.	Chairman of the U.P. Legislative Council does not hold an office of profit under the Government.	Appointment and removal test was applied.	Bombay High Court.
79.	Shivamurthy Swami v. Agadi Senganna Andanappa, (1971) 3 SCC 870	Chairman of Legislative Council does not hold an office of profit under the Government.	<p>i. Appointment and removal test.</p> <p>ii. Government control and supervision test.</p> <p>iii. Source of Remuneration text.</p> <p>iv. Performance of governmental functions test.</p>	Supreme Court of India.

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80.	Aklu Ram Mahto v. Rajendra Mahto (AIR 1999 SC 1259)	A Khalasi and a Meter Reader under the employment of the Bokaro Steel Plant belonging to the Steel Authority of India do not hold offices of profit under the Government.	i. Appointment and removal test. ii. Source of Remuneration test.	Supreme Court of India upheld the decision of the High Court.
81.	Rabindra Kumar v. Collector, Mayurbhanj, Orissa (AIR 1999 SC 1120)	An Assistant Public Prosecutor holds an office of profit.	i. Whether the office is of a permanent nature, which has an existence independent of the person who filled it? ii. Whether income or profit accrued from that office?	Supreme Court of India.
82.	Shri Bhagavandas Sehgal v. State of Haryana & others (AIR 1974 SC 2355)	The office of Chairman of the Ambala Improvement Trust is an office of profit under the Government.	i. Appointment and removal test. ii. Source of Remuneration test.	Supreme Court of India.
83.	Pradyut Bordoloi v. Swapan Roy (AIR 2001 SC 296)	A clerk Grade-I in Tirap Colliery, North Eastern Coal Fields under the Coal India Limited is not an office of profit under the Government.	i. Appointment and removal test. ii. Disciplinary action test.	Supreme Court of India.
84.	Shibu Soren v. Dayanand Sahay & others (2001) 7 SCC 425	Chairman of Interim Jharkhand Area Autonomous Council is an office of profit under the Government.	Mere use of the word 'honorarium' cannot take the payment out of the purview of profit, if there is some pecuniary gain for the recipient.	The Supreme Court of India.
85.	M.V. Rajasekharan & others v. Vatal Nagaraj (AIR 2002 SC 742; (2002) SCC 704)	The One-Man Commission appointed by the State Government to study problems of Kannadigas is held to be an office of profit under the Government.	Remuneration other than compensatory allowance is profit.	The Supreme Court overruled the High Court's decision.
86.	In Re: Disqualification of Shri R. Mohanarangam	A Special Representative holds an office of profit under the Government.	The office of profit was one, which enabled him to make a profit, irrespective of whether the holder himself made profit.	Supreme Court upon a Presidential Reference.
87.	Smt. Jaya Bachchan v. Union of India and Ors. (2006) 5 SCC 266	Chairperson of the Film Development Council is an office of profit under the Government.	i. Whether the office is of a permanent nature, which has an existence independent of the person who filled it? ii. Appointment and removal test. iii. The office of profit is one, capable of yielding a profit or pecuniary gain.	Supreme Court upheld the opinion of the Election Commission of India.
88.	Shrikant v. Vasant Rao and Ors. (2006) 2 SCC 682	The Government Contractor does not hold an office of profit.	Whether the State Government is different from local or other authorities under the State.	Supreme Court of India.

JOINT COMMITTEE TO EXAMINE THE CONSTITUTIONAL AND LEGAL POSITION  
RELATING TO OFFICE OF PROFIT

**FIRST TERM OF REFERENCE**

TO EXAMINE IN THE CONTEXT OF SETTLED INTERPRETATION OF THE EXPRESSION  
"OFFICE OF PROFIT" IN ARTICLE 102 OF THE CONSTITUTION AND THE  
UNDERLYING CONSTITUTIONAL PRINCIPLES THEREIN, AND TO SUGGEST  
A COMPREHENSIVE DEFINITION OF "OFFICE OF PROFIT"

Sl.No.	Name of State	Feasibility of definition	Definition of Office of Profit (a) State's definition of Office of Profit (b) Opinion on suggested definition**	Opportunity for resignation*
1	2	3	4	5
1.	Andhra Pradesh	In favour of defining Office of Profit.	(a) No, definition given. However, the State Government is of the view that the word 'office of Profit' be defined keeping in view the observations of the Hon'ble Supreme Court.  (b) Suggested definition is comprehensive.	In favour.
2.	Arunachal Pradesh	Workable definition does not appear to be feasible.	(a) No definition suggested.  (b) Suggested definition is comprehensive, just and fair for uniform application to all States/UTs.	In favour.
3.	Assam	No need for definition.	(a) No definition suggested.  (b) No opinion offered (No need for such definition).	In favour.
4.	Bihar	Not in favour of defining Office of Profit.	(a) No definition suggested.  (b) No need for such definition.	In favour.
5.	Chhattisgarh	In favour.	(a) No definition suggested.  (b) In agreement with the suggested definition.	In favour of providing option to resign.
6.	Goa			
7.	Gujarat	No need for definition.	(a) No definition suggested.  (b) Not in favour of any definition. Present scheme of the Constitution be continued.	Not in favour.
8.	Haryana	No need for definition	(a) Although no definition is given, the State Government is in favour of insertion	In favour.

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			of following clause while evolving the definition:- "An office can be an Office of Profit based on the profit or pecuniary gain obtained from it. Word 'Honorarium' should also be added in the definition of Office of Profit."	
9.	Himachal Pradesh	In favour	(b) No comments offered. (a) No comprehensive definition has been provided. (b) Suggested definition is comprehensive. However, the State Government is of the view that the proposed clause (1A) is not necessary.	Not in favour.
10.	Jammu and Kashmir			
11.	Jharkhand			
12.	Karnataka	No comprehensive definition of Office of profit is feasible	(a) No definition given. However, the State Government is of the view that any definition should incorporate the aspect of pecuniary gain. (b) No specific reply.	In favour.
13.	Kerala	In favour	(a) No definition suggested. (b) Has given opinion only on one aspect. The State Government is of the view that in order to avoid ambiguities and judicial interference, honorarium, sitting fee, daily allowances, etc. should be specifically excluded from 'remuneration'.	In favour.
14.	Madhya Pradesh			
15.	Maharashtra	Workable definition not feasible.	(a) No definition suggested. (b) Except the resignation clause (1A), the suggested definition defines Office of Profit comprehensively in context of the underlying constitutional principles.	Not in favour.
16.	Manipur	Workable definition not feasible.	(a) No definition suggested. However, State Government has desired to have its own definition under its own Act. (b) No comments offered.	In favour.
17.	Meghalaya	In favour of providing definition.	(a) State's definition—"Office of Profit means any office where pecuniary benefits or remunerations whether in the form of salary or honorarium whatever may be called, is paid for holding such office/post but will not include any office/post which will have been declared	In favour.

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18. Mizoram	In favour of comprehensive statutory definition.	<p>not to disqualify the holder of such office/post by law made by Parliament or the Legislature of the State/Union Territories.”</p> <p>(b) No specific reply offered but has offered their own definition.</p> <p>(a) State’s definition—No definition offered. However, the State Government is of the opinion that definition be based on the tests formulated by Supreme Court.</p> <p>(b) The Government of Mizoram has endorsed the suggested definition and has given suggestion:—</p> <p><i>“That the expression viz. a Minister either for the Union or for such a State” occurring in clause (II) of the Explanation-I may be replaced by the expression viz. “A Minister either for the Union under article 75 or for such a State under article 164 of the Constitution”, so that those have been assigned the rank or status of Minister may be kept outside.”</i></p>	In favour.	
19. Nagaland	Have attempted a definition and suggested rewording of explanation to Articles 102(1) and 191(1) may be reworded.	<p>(a) Article 102(1) and 191(1) may be reworded as follows:—</p> <p><b>“102. Disqualifications for membership.—</b>  <b>(1) A person shall be disqualified for being a member of either House of Parliament,—</b></p> <p>(a) if he holds any remunerative political post;</p> <p><b>Explanation:</b> (1) “remunerative political post” shall have the same meaning assigned to it in article 361B.</p> <p>(2) For the purposes of this clause a person shall not be deemed to hold a remunerative political post by reason only that,—</p> <p>(i) he is a Minister or a Parliamentary Secretary either for the Union or for such State;</p> <p>(ii) as a Minister or a Parliamentary Secretary, he holds any other remunerative political post in <i>ex officio</i> capacity; and</p> <p>(iii) he holds any office in the affairs of either House of Parliament.</p> <p>Provided that no remunerative political post shall be deemed as such within the meaning assigned to it under Article 361B, if the salary or remuneration, as compensatory in nature, payable in respect of</p>	Not in favour.	

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			that remunerative political post or posts together, exceeds ten per cent of the total emoluments paid to a person as a Minister or a Parliamentary Secretary or a member per month, as the case may be.”	
			(b) The suggested definition does not define the ‘office of Profit’ comprehensively. The definition of ‘Office of Profit’ in the proposed Article is as same as the definition of ‘remunerative political post’ provided in Article 361B. There is no need to define both remuneration and salary in Explanation II. The proposed sub-clause (1A) in the proposed article will defeat the constitutional purpose of punishing holders of Office of Profit.	
20.	Orissa			
21.	Punjab	Not in favour of definition.	(a) Definition not feasible as each State has its own peculiar circumstances and depending on the situation the Legislature in its wisdom declares as per the provisions of the Constitution whether a particular Office is an office of Profit. By providing to the term, the freedom of the Legislature will be curtailed.  (b) No specific reply. Not in favour of any definition.	In favour.
22.	Rajasthan	In favour.	(a) No definition suggested.  (b) Suggested incorporation of various offices under Part (II) of the Explanation of suggested definition for all practical purpose seeking general exemption.	In favour.
23.	Sikkim	No specific view.	(a) No definition suggested.  (b) No specific comments offered.	Not in favour.
24.	Tamil Nadu	No views offered.	(a) No definition suggested.  (b) No views offered on the definition. However, the State Government is of the view that whether a person holds an Office of Profit has to be determined based on the facts of circumstances of the each case and relevant statutory provisions.	In favour.
25.	Tripura	Comprehensive definition of ‘Office of Profit’ may be included in the Constitution. State legislature should have the authority to make its own laws.	(a) State’s definition-No definition suggested.  (b) In favour of suggested definition.	Not averse.



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26.	Uttar Pradesh			
27.	Uttaranchal	In favour.	(a) No definition given. (b) The definition of the "Office of Profit" should be comprehensive. But the proposed amendment in Explanation II "After Clause (1), the following Clause...subject to of disqualification" should not be inserted otherwise the very purpose of Clause (a) of Article 102 (1) 191(1) will be defeated.	Not in favour.
28.	West Bengal	Comprehensive definition not feasible.	(a) No definition suggested. (b) Definition too restrictive...	In favour.

\*Opportunity for resignation—Incorporation of an enabling provision in the Constitution for an elected Member of Parliament to exercise an option to resign from an office in the event of the office he is holding is determined to be an "Office of profit" under the Government, without losing his membership of the House.

\*\*Suggested definition—A definition of office of profit has been attempted in some quarters which reads as under:—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JOINT COMMITTEE TO EXAMINE THE CONSTITUTIONAL AND LEGAL POSITION  
RELATING TO OFFICE OF PROFIT

**SECOND TERM OF REFERENCE**

TO RECOMMEND, IN RELATION TO "OFFICE OF PROFIT", THE EVOLUTOIN OF GENERIC AND  
COMPREHENSIVE CRITERIA WHICH ARE JUST, FAIR AND REASONABLE AND CAN BE  
APPLIED TO ALL STATES AND UNOIN TERRITORIES

Sl.No.	Name of State	Criteria followed by State Governments in granting exemption	Desirability for uniform criteria	Criteria to be adopted	Desirability of bringing constitutional amendments in Art. 102 & 191 of the Constitution
1	2	3	4	5	6
1.	Andhra Pradesh	No criteria followed while giving exemptions.	In favour.	No criteria suggested.	In favour.
2.	Arunachal Pradesh	No specific criteria has been followed.	In favour.	No criteria suggested.	In favour of amendment.
3.	Assam	No specific criteria apart from part-time clause. Exemptions given on case-to-case basis.	Not in favour.	Matter should be left to State Government as per present provisions of the Constitution.	Not in favour.
4.	Bihar	No specific criteria.	Not in favour.	Matter should be left to State Governments.	Not in favour.
5.	Chhattisgarh	No specific criteria.	In favour. However, the State Government has desired that States must be consulted before evolving such principles/ criteria.	No criteria suggested.	In favour.
6.	Goa				
7.	Gujarat	No criteria followed other than pecuniary aspect in some cases.	Uniform principle not practical.	Each and every case related to Office of profit be decided on the basis of its merit and circumstances.	Not in favour.
8.	Haryana	No criteria has been followed. However, exemptions are given after due deliberation on the floor of the House.	No need to evolve uniform criteria if the concept of federalism is to be protected.	No criteria suggested.	Not in favour as it is against the concept of federalism.

1	2	3	4	5	6
9.	Himachal Pradesh	No specific criteria has been stated.	In favour.	The State Government has suggested following comprehensive criteria for constituting "Office of Profit" without compromising with the object sought to be achieved by the provisions of Article 191(1) (a) and Article 102 (1) (a):- <ul style="list-style-type: none"> <li>• Pecuniary considerations.</li> <li>• The holder of the office should not wield any financial and executive power and patronage.</li> </ul>	In favour of amendment.
10.	Jammu and Kashmir				
11.	Jharkhand				
12.	Karnataka	No specific criteria has been stated. Exemptions are being given on the lines of Parliament Act.	In favour.	Criteria (pecuniary aspect) laid down by the Supreme Court in <i>Jaya Bachan Vs. UOI</i> can be the guiding factor.	In favour.
13.	Kerala	Remuneration is the general criteria followed for granting exemption. However, considering the importance, necessity and nature of duties and obligations, certain specific offices have also been declared exempted without considering the remuneration aspect.	In favour.	No criteria suggested.	No view offered.
14.	Madhya Pradesh				
15.	Maharashtra	General exemptions provided.	In favour.	Pecuniary gain or any kind of profit obtained by the Holder of Office of Profit.	In favour.
16.	Manipur	Ethnic and tribal interest along with the needs of other sections of the society are taken care of.	Not in favour.	Each State should determine its own criteria depending on its own needs including political aspirations and needs of the society.	No comments offered.
17.	Meghalaya	General exemptions provided.	In favour.	Criteria be decided only after indepth study as each State may have its own peculiar needs.	In favour of constitutional amendment and has desired that all provisions of Prevention of Disqualification

1	2	3	4	5	6
					(Members of Legislative Assembly of Meghalaya) Act, 1972 be included.
18.	Mizoram	No other criteria other than part-time clause and not remunerated either by salary or fees has been followed while giving exemptions.	In favour.	No specific criteria suggested.	In favour of amendment.
19.	Nagaland	No criteria suggested other than pecuniary aspect.	No need for uniform criteria.	No criteria suggested.	No need for constitutional amendment.
20.	Orissa				
21.	Punjab	Criteria followed— (i) Part-time office (ii) Office to which no regular salary is attached.	Not in favour.	There should be some guiding principles that can be suggestive in nature for declaring a particular post or office to be an office of Profit and finally it should be left open to the Legislature to decide whether any office/post is an 'Office of Profit' or not taking into consideration the available relevant facts.	Not in favour. State independence should remain.
22.	Rajasthan	No criteria followed.	In favour.	No criteria suggested.	In favour of bringing constitutional amendments and has desired that general principles be laid which may be followed by the States while exempting office of profit under article 191. These principles may comprise the general elements of the offices holding of which would derogate the position or efficiency of a member as representative of people.

1	2	3	4	5	6
23.	Sikkim	No specific criteria has been followed.	In favour.	In general, principles may be uniform. However, the other details of exemption or criteria be decided by State Government.	No comments offered.
24.	Tamil Nadu	No specific criteria has been followed in granting exemption from disqualification to the offices in corporations, Boards, Committees, Bodies etc. appointed by the State Government and the relevant Acts are amended accordingly.	In favour.	No particular criteria suggested.	No comments offered.
25.	Tripura	No specific criteria.	In favour.	No criteria suggested.	In favour of bringing constitutional amendments. However, State Legislatures should have authority to make laws under Article 191.
26.	Uttar Pradesh				
27.	Uttaranchal	No specific criteria.	In favour.	No criteria suggested.	In favour.
28.	West Bengal	No criteria (other than restrictions on holding whole-time office and remuneration) has been followed.	In favour of uniform criteria but uniform criteria not so easy to be implemented and should be evolved only after wide deliberation.	Though it is difficult to evolve uniform criteria, however, if it is implemented local conditions be taken into account because each State forms its own legislature.	Present System of Constitution be continued.

HOUSE OF COMMONS DISQUALIFICATION ACT, 1975  
(1975 Chapter 24)

[8th May, 1975]

An Act to consolidate certain enactments relating to disqualification for membership of the House of Commons.

Be it enacted by the Queens most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**1. Disqualification of holders of certain offices and places**—(1) Subject to the provisions of this Act, a person is disqualified for membership of the House of Commons who for the time being—

- (a) holds any of the judicial offices specified in Part I of Schedule 1 to this Act;
- (b) is employed in the civil service of the Crown. Whether in an established capacity or not, and whether for the whole or part of his time;
- (c) is a member of any of the regular armed forces of the Crown;
- (d) is a member of any police force maintained by a police authority;
- (e) is a member of the legislature of any country or territory outside the Commonwealth;  
or
- (f) holds any office described in Part II or Part III of Schedule 1.

(2) A person who for the time being holds any office described in Part IV of Schedule 1 is disqualified for membership of the House of Commons for any constituency specified in relation to that office in the second column of Part IV.

(3) In this section—

“civil service of the Crown” includes the civil service of Northern Ireland, Her Majesty’s Diplomatic Service and Her Majesty’s Overseas Civil Service;

“police authority” means any police authority within the meaning of the Police Act, 1964 (1964 c.48) or the Police (Scotland) Act, 1967 (1967 c.77) or the Police Authority for Northern Ireland; and “member” in relation to a police force means a person employed as a full-time constable;

“regular armed forces of the Crown” means the Royal Navy, the regular forces as defined by section 225 of the Army Act, 1955 (1955 c.18), the regular air force as defined by section 223 of the Air Force Act, 1955 (1955 c.19), the Women’s Royal Naval Service, Queen Alexandra’s Royal Naval Nursing Service and Voluntary Aid Detachments serving with the Royal Navy.

(4) Except as provided by this Act, a person shall not be disqualified for membership of the House of Commons by reason of his holding an office or place of profit under the Crown or any other office or place; and a person shall not be disqualified for appointment to or for holding any office or place by reason of his being a member of that House.

**2. Ministerial offices.**—(1) Not more than ninety-five persons being the holders of offices specified in Schedule 2 to this Act (in this section referred to as Ministerial offices) shall be entitled to sit and vote in the House of Commons at any one time.

(2) If at any time the number of members of the House of Commons who are holders of Ministerial offices exceeds the number entitled to sit and vote in that House under sub-section (1) above, none except any who were both members of that House and holders of Ministerial offices before the excess occurred shall sit or vote therein until the number has been reduced, by death, resignation or otherwise, to the number entitled to sit and vote as aforesaid.

(3) A person holding a Ministerial office is not disqualified by this Act by reason of any office held by his *ex officio* as the holder of that Ministerial office.

**3. Reserve and auxiliary forces, etc.**—(1) Notwithstanding section 1(1) (c) above—

- (a) a person who is an officer on the retired or emergency list of any of the regular armed forces of the Crown, or who holds an emergency commission in any of those forces, or belongs to any reserve of officers of any of those forces, is not disqualified as a member of those forces; and
- (b) a naval, army, marine or air force pensioner who is recalled for service for which he is liable as such is not disqualified as a member of the regular armed forces of the Crown.

(2) A person is not disqualified under section 1(1)(c) above by reason of his being an Admiral of the fleet, a Field Marshal or a Marshal of the Royal Air Force, if he does not for the time being hold an appointment in the naval, military or air force service of the Crown.

(3) A person is not disqualified under section 1(1) (b) above by reason of his being a member of the Royal observer Corps unless he is employed as such for the whole of his time.

**4. Stewardship of Chiltern Hundreds, etc.**—For the purposes of the provisions of this Act relating to the vacation of the seat of a member of the House of Commons who becomes disqualified by this Act for membership of that House, the office of steward or bailiff or her Majesty's three Chiltern Hundreds of Stoke, Desborough and Burnham, or of the manor of Northstead, shall be treated as included among the offices described in Part III of Schedule 1 to this Act,

**5. Power to amend Schedule 1.**—If at any time it is resolved by the House of Commons that Schedule 1 to this Act be amended, whether by the addition or omission of any office or the removal of any office from one Part of the schedule to another, or by altering the description of any office specified therein, Her Majesty may by Order in Council amend that Schedule accordingly.

(2) A copy of this Act as from time to time amended by Order in Council under this section or by or under any other enactment shall be prepared and certified by the Clerk of the Parliaments and deposited with the rolls of Parliament; and all copies of this Act thereafter to be printed by Her Majesty's printer shall be printed in accordance with the copy so certified.

**6. Effects of disqualification and provision for relief.**—(1) Subject to any order made by the House of Commons under this section,—

- (a) if any person disqualified by this Act for membership of that House, or for membership for a particular constituency, is elected as a member of that House, or as a member for that constituency, as the case may be, his election shall be void; and
- (b) if any person being a member of that House becomes disqualified by this Act for membership, or for membership for the constituency for which he is sitting, his seat shall be vacated.

(2) If, in a case falling or alleged to fall within sub-section (1) above, it appears to the House of Commons that the grounds of disqualification or alleged disqualification under this Act which subsisted or arose at the material time have been removed, and that it is otherwise proper so to do, that House may by order direct that any such disqualification incurred on those grounds at that time shall be disregarded for the purposes of this section.

(3) No order under sub-section (2) above shall affect that proceedings on any election petition or any determination of an election court, and this sub-section shall have effect subject to the provisions of section 124(5) of the Representation of the People Act, 1949 (1949 c.68) (making of an order by the House of Commons when informed of a certificate and any report of an election court).

(4) In any case where, apart from this provision, the Speaker of the House of Commons would be required to issue during a recess of that House a warrant for a new writ for election of a member, in the room of a member becoming disqualified by this Act, he may, if it appears to him that an opportunity should be given to that House to consider the making of an order under sub-section (2) above, defer the issue of his warrant pending the determination of that House.

**7. Jurisdiction of Privy Council as to disqualification.**—(1) Any person who claims that a person purporting to be a member of the House of Commons is disqualified by this Act, or has been so disqualified at any time since his election, may apply to Her Majesty in Council, in accordance with such rules as Her Majesty in Council may prescribe, for a declaration to that effect.

(2) Section 3 of the Judicial Committee Act, 1833 (1833 c.41) (reference to the Judicial Committee of the Privy Council of appeals to her Majesty in Council) shall apply to any application under this section as it applies to an appeal to Her Majesty in Council from a court.

(3) Upon any such application the person in respect of whom the application is made shall be the respondent; and the applicant shall give such security for the costs of the proceedings, not exceeding £ 200, as the Judicial Committee may direct.

(4) For the purpose of determining any issue of fact arising on an application under this section the Judicial Committee may direct issue to be tried—

- (a) if the constituency for which the respondent purports to be a member is in England or Wales, in the High Court;
  - (b) if that constituency is in Scotland, in the Court of Session;
  - (c) if that constituency is in Northern Ireland, in the High Court in Northern Ireland;
- and the decision of that Court shall be final.



(5) A declaration under this section may be made in respect of any person whether the grounds of the alleged disqualification subsisted at the time of his election or arose subsequently, but no such declaration shall be made—

- (a) in the case of disqualification incurred by any person on grounds which subsisted at the time of his election, if an election petition is pending or has been tried in which his disqualification on those grounds is or was in issue;
- (b) in the case of disqualification incurred by any person on any grounds, if order has been made by the House of Commons under section 6(2) above directing that any disqualification incurred by him on those grounds shall be disregarded for the purposes of that section.

**8. Relaxation of obligation to accept office.**—(1) No person being a member of the House of Commons, or for the time being nominated as a candidate for election to that House, shall be required to accept any office or place by virtue of which he would be disqualified by this Act for membership of that House, or for membership of that House for the constituency for which he is sitting or is a candidate.

(2) This section does not affect any obligation to serve in the armed forces of the Crown, whether imposed by an enactment or otherwise.

**9. Interpretation.**—(1) In this Act—“Minister of State” means a member of Her Majesty’s Government in the United Kingdom who neither has charge of any public department nor holds any other of the offices specified in Schedule 2 to this Act or any office in respect of which a salary is payable out of money provided by Parliament under section 3(1) (b) of the Ministerial and other Salaries Act, 1975 (1975 c. 27):

“Parliamentary Secretary” includes a person holding Ministerial office (however called) as assistant to a Member of Her Majesty’s Government in the United Kingdom, but no having departmental responsibilities.

**10. Consequential amendment, repeals and saving.**—(1) Schedule 2 to the Representation of the People Act, 1949 (1949 c. 68) which contains Parliamentary Elections Rules shall be amended by substituting, for paragraph (2) of Rule 9 of the Parliamentary Elections Rules, the following paragraph—

“(2) A candidate’s consent given under this rule shall contain a statement that he is aware of the provisions of the House of Commons Disqualification Act, 1975, and that, to the best of his knowledge and belief, he is not disqualified for membership of the House of Commons.”

(2) The enactments specified in Schedule 4 to this Act, are hereby repealed, so far as they apply in relation to disqualification for the House of Commons, to the extent specified in the third column of that Schedule.

(3) Nothing in this Act shall be construed as affecting the enactments relating to the disqualification for membership of the House of Commons, of priests in holy orders or ministers of any religious denomination.

(4) Nothing in the definition of “regular armed forces of the Crown” in section 1(3) above shall be taken to alter the law in force immediately before the passing of this Act in relation to disqualification for membership of the House of Commons.

**11. Short title and extent.**—(1) This Act may be cited as the House of Commons Disqualification Act, 1975.

(2) This Act extends to Northern Ireland.

## SCHEDULES

### Schedule 1

#### Offices Disqualifying for Membership

##### PART I

##### JUDICIAL OFFICES

Judge of the High Court of Justice or Court of Appeal.

Judge of the Court of Session.

Judge of the High Court of Justice or Court of Appeal in Northern Ireland.

Judge of the Courts-Martial Appeal Court.

Chairman of the Scottish Land Court.

Circuit Judge.

Sheriff Principal or Sheriff (other than Honorary Sheriff) appointed under the Sheriff Courts (Scotland) Act, 1907 (1907 c. 51), or Temporary Sheriff Principal or Temporary Sheriff appointed under the Sheriff Courts (Scotland) Act, 1971 (1971 c. 58).

County Court Judge or Temporary County Court Judge in Northern Ireland within the meaning of the Government of Ireland Act, 1920 (1920 c. 67), or the deputy of such a Judge.

Stipendiary Magistrate within the meaning of the Justices of the Peace Act, 1949 (1949 c. 101).

Stipendiary Magistrate in Scotland.

Resident Magistrate appointed under the Summary Jurisdiction and Criminal Justice Act (Northern Ireland), 1935 [1935 c. 13 (N.I.)] or the Magistrates' Court Act (Northern Ireland), 1964 [1964 c. 21 (N.I.)]

Chief or other National Insurance Commissioner.

Chief or other National Insurance Commissioner for Northern Ireland.

Umpire or Deputy Umpire appointed for the purposes of section 43 of the National Service Act, 1948 (1948 c. 64).

## PART II

### BODIES OF WHICH ALL MEMBERS ARE DISQUALIFIED

The Advisory Board for the Research Councils.

The Agreement Board.

The Appellate Tribunal constituted under the provisions of the National Service Act, 1948 relating to conscientious objectors.

An Area Electricity Board in England and Wales.

The Attendance Allowance Board.

The British Airports Authority.

The British Airways Board.

The British Film Fund Agency.

The British Gas Corporation.

The British Railways Board.

The British Steel Corporation.

The British Transport Docks Board.

The British Waterways Board.

The Central Council for Agricultural and Horticultural Co-operation.

The Central Electricity Generating Board.

The Channel Tunnel Planning Council.

The Civil Aviation Authority.

The Civil Service Arbitration Tribunal.

A Colonial Currency Board.

The Commission for Local Administration in England.

The Commission for Local Administration in Wales.

The Commission for the New Towns.

The Commonwealth Development Corporation.

The Community Relations Commission.

The Council on Tribunals.

The Covent Garden Market Authority.

The Crofters Commission.

The Crown Agents for Oversea Governments and Administrations.

The Crown Estate Commissioners.

The Development Commission established under the Development and Road Improvement Funds Act, 1909 (1909 c. 47).

A development Corporation within the meaning of the New Towns Act, 1965 (1965 c. 59) or the New Towns (Scotland) Act, 1968 (1968 c. 16).

A Development Council established under the Industrial Organisation and Development Act, 1947 (1947 c. 40).

The Eggs Authority.

The Electricity Council.

The Foreign Compensation Commission.

The Forestry Commission.

The Freight Integration Council.

The Gaming Board for Great Britain.

The General Practice Finance Corporation.

The Health and Safety Commission.

The Health and Safety Executive.

The Herring Industry Board.

The Highlands and Islands Development Board.

The Home-Grown Cereals Authority.

The Housing Corporation.

The Immigration Appeal Tribunal.

An Independent Schools Tribunal constituted under Schedule 6 to the Education Act, 1944 (1944 c. 31) or Schedule 7 to the Education (Scotland) Act, 1962 (1962 c. 47).

The Independent Broadcasting Authority.

The Industrial Arbitration Board.

An Industrial Court established in Northern Ireland.

The Industrial Estates Corporations constituted in accordance with the Local Employment Act, 1972 (1972 c. 5).

The Industrial Injuries Advisory Council.

The Intervention Board for Agricultural Produce and every committee of the Board performing functions of the Board.

A Joint Planning Inquiry Commission constituted under Part III of the Town and Country Planning (Scotland) Act, 1972 (1972 c. 52).

The Lands Tribunal.

The Lands Tribunal for Northern Ireland.

The Lands Tribunal for Scotland.

The Law Commission.

The Local Government Boundary Commission for England.

The Local Government Boundary Commission for Scotland.

The Local Government Boundary Commission for Wales.

The Location of Office Bureau.

The Manpower Services Commission.

The Maplin Development Authority.

The Meat and Livestock Commission.

A Medical Appeal Tribunal constituted for the purposes of Part III of the Social Security Act, 1975 (1975 c. 14) or Part III of the Social Security (Northern Ireland) Act, 1975 (1975 c. 15), including any panel constituted for the purposes of any such Tribunal.

A Medical Board or Pneumoconiosis Medical Board constituted for the purposes of Part III of the Social Security Act, 1975 or Part III of the Social Security (Northern Ireland) Act, 1975, including any panel constituted for the purposes of any such Board.

A Medical Practices Committee constituted under section 34 of the National Health Service Act, 1946 (1946 c. 81) or section 35 of the National Health Service (Scotland) Act, 1947 (1947 c. 27).

The Medicines Commission and any Committee established under section 4 of the Medicines Act, 1968 (1968 c. 67).

A Mental Health Review Tribunal constituted under the Mental Health Act, 1959 (1959 c. 72).

The Mental Welfare Commission for Scotland.

The Metrication Board.

The Ministry of Defence (Army Department) Teachers Selection Board.

The Monopolies and Mergers Commission.

A National Broadcasting Council.

A National Bus Company.

The National Coal Board.

The National Dock Labour Board.

The National Film Finance Corporation.

The National Freight Corporation.

The National Health Service Staff Commission.

The National Insurance Advisory Committee.

The National Ports Council.

The National Radiological Protection Board.

The National Research Development Corporation.

The North of Scotland Hydro-Electric Board.

The Northern Ireland Electricity Service.

The Occupational Pensions Board.

A Panel of Chairmen of Re-instatement Committees constituted under section 41 of the National Service Act, 1948 (1948 c. 64).

The Panel of Official Arbitrators constituted for the purposes of the Acquisition of Land (Assessment of Compensation) Act, 1919 (1919 c. 57).

The Parole Board constituted under section 59 of the Criminal Justice Act, 1967 (1967 c. 80).

A Pensions Appeal Tribunal.

The Performing Right Tribunal.

A Planning Inquiry Commission constituted under Part III of the Town and Country Planning Act, 1971 (1971 c. 78).

A Planning Inquiry Commission constituted under Part III of the Town and Country Planning (Scotland) Act, 1972 (1972 c. 52).

The Post Office.

The Price Commission.

The Property Commission for Scotland established under section 224 of the Local Government (Scotland) Act, 1973 (1973 c. 65).

The Race Relations Board and any conciliation Committee constituted by the Board under section 14 of the Race Relations Act, 1968 (1968 c. 71).

The Red Deer Commission.

The Reserve Pension Board.

The Restrictive Practices Court.

The Review Board for Government Contracts.

A Rural Development Board.

The Scottish Committee of the Council on Tribunals.

The Scottish Land Court.

The Scottish Law Commission.

The Scottish Transport Group.

The South of Scotland Electricity Board.

The Staff Commission established under section 85(5) of the London Government Act, 1963 (1963 c. 33).

The Staff Commission for England established under section 257 of the Local Government Act, 1972 (1972 c. 70).

The Staff Commission for Scotland established under section 218 of the Local Government (Scotland) Act, 1973 (1973 c. 65).

The Staff Commission for Wales established under section 258 of the Local Government Act, 1972.

The Sugar Board.

The Supplementary Benefits Commission.

The Traffic Commissioners for any area (including the Commissioner for the Metropolitan Traffic Area).

The Transport Tribunal.

The Tribunal established under Part II of the Wireless Telegraphy Act, 1949 (1949 c. 54).

The United Kingdom Atomic Energy Authority.

The University Grants Committee.

A Value Added Tax Tribunal.

The Water Resources Board.

The Welsh National Health Service Staff Commission.

The White Fish Authority constituted in accordance with section 1 of the Sea Fish Industry Act, 1970 (1970 c. 11) and the Committee constituted in accordance with section 2 of that Act.

### PART III

#### OTHER DISQUALIFYING OFFICES

Account of Court appointed under section 25 of the Administration of Justice (Scotland) Act, 1933 (1933 c. 41).

Adjudicator appointed for the purposes of the Immigration Act, 1971 (1971 c. 77).

Agent for Northern Ireland in Great Britain.

Ambassador representing Her Majesty's Government in the United Kingdom.

Assessor of Public Undertaking (Scotland).

Assistant Commissioner appointed under Part IV of the Local Government Act, 1972 (1972 c. 70).

Assistant Commissioner appointed under part II of the Local Government (Scotland) Act, 1973 (1973 c. 65).

Attorney General of the Duchy of Lancaster.

Auditor of the Civil List.

Auditor of the Court of Session.

Boundary Commissioner or Assistant Boundary Commissioner appointed under Part I or Part II of Schedule 1 to the House of Commons (Redistribution of Seats) Act, 1949 (1949 c. 66).

Chairman or Deputy Chairman of an Administrative Board constituted for the purposes of any scheme made, or having effect as if made, under section 2 or 5 of the Industrial Injuries and Diseases (Old Cases) Act, 1975 (1975 c. 16).

Chairman or Vice-Chairman of the Advisory Committee on Distinction Awards.

Chairman of the Advisory Committee on Distinction Awards in Northern Ireland.

Paid Chairman of an Area Transport Users Consultative Committee established under section 56 of the Transport Act, 1962 (1962 c. 46).

Chairman or Member of a Panel of Deputy-Chairmen of an Agricultural Land Tribunal.

Chairman of an Appeal Tribunal constituted under Schedule 3 to Ministry of Social Security Act, 1966 (1966 c. 20) or Schedule 3 to the Supplementary Benefits & C. Act (Northern Ireland), 1966 [1966 c. 28 (N.I.)].

Chairman or Director-General of the British Council.

Paid Chairman of the Central Tribunal Consultative Committee for Great Britain established under section 56 of the Transport Act, 1962.

Chairman of the Cinematograph Films Council.

Chairman of the Countryside Commission for Scotland and any other member of the Commission in receipt of remuneration.

Chairman or Vice-Chairman of the Dental Estimates Board or member of that Board appointed at an annual salary.

Paid Chairman of an Economic Development Committee.

Paid Chairman of a Health Board constituted under the National Health Service (Scotland) Act, 1972 (1972 c. 58).

Chairman of a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order, 1972 [S.I. 1972/1265 (N.I. 14)].

Paid Chairman of an Industrial Training Board constituted under the Industrial Training Act, 1964 (1964 c. 16) or of a Committee appointed under that Act or paid Deputy Chairman of such a Board.

Chairman, Vice-Chairman or member of the executive Committee of the Land Settlement Association Limited appointed at a salary.

Chairman of the Local Government Staff Commission for Northern Ireland.

Chairman of a Local Tribunal constituted under section 94(2) of, and Schedule 10 to, the Social Security Act, 1975 (1975 c. 14) or under section 94(2) of, and Schedule 10 to, the Social Security (Northern Ireland) Act, 1975 (1975 c. 15).

Chairman or Deputy Chairman of a Local Tribunal constituted under the provisions of the National Service Act, 1948 (1948 c. 64) relating to conscientious objectors.

Chairman or Reserve Chairman of a Military Service (hardship) Committee constituted under Schedule 3 to the National Service Act, 1948.



Chairman of the Mining Qualifications Board.

Paid Chairman of a National Economic Development Council Working Party.

Chairman in receipt of remuneration of the National Gas Consumers' Council or any Regional Gas Consumers' Council.

Chairman or Vice-Chairman of the National Seed Development Organisation Limited.

Chairman, or other member appointed by a Minister, of the National Water Council.

Chairman of the Northern Ireland Central Services Agency for the Health and Social Services.

Chairman of the Northern Ireland Council for Nurses and Midwives.

Chairman of the Northern Ireland Staffs Council for the Health and Social Services.

Any Chairman of the Plant Varieties and Seeds Tribunal.

Chairman of the Post Offices Users' National Council.

Chairman of a Regional Economic Planning Council.

Chairman in receipt of remuneration of any Regional Health Authority, Area Health Authority or Area Health Authority (Teaching) or of any special health authority.

Chairman of a Regional Water Authority.

Chairman of the Scottish Dental Estimates Board or member of that Board appointed at an annual salary.

Chairman, Deputy Chairman or member of the Council of Management of the Scottish Special Housing Association, appointed at a salary.

Chairman of the Staff Commission for Education and Library Boards in Northern Ireland.

Chairman of the Tribunal constituted under section 463 of the Income and Corporation Taxes Act, 1970 (1970 c. 10)

Chairman of the Welsh National Water Development Authority.

Chief Electoral Officer or Deputy Electoral Officer for Northern Ireland.

Clerk of the Crown and peace in Northern Ireland.

Clerk of the Peace in Scotland.

Clerk or Assistant Clerk of Petty Session in Northern Ireland.

Assistant Commissioner appointed under Part II of the Local Government (Scotland) Act, 1973 (1973 c. 65).

Commissioner or Assistant Commissioner appointed under section 50(1) or (2) of or Schedule 4 to, the Local Government Act (Northern Ireland 1972), [(1972 c. 9 (N.I.))].

The Commissioner appointed by Her Majesty's Government in the United Kingdom under Article 3 of the Agreement confirmed by the Nauru Island Agreement Act, 1920 (1920 c. 27).

Commissioner or Assistant Commissioner of Police of the Metropolis.

Commissioner of the City of London Police.

Comptroller and Auditor General.

Comptroller and Auditor-General for Northern Ireland.

Constable, Lieutenant or Major of the Tower of London.

Correspondent appointed by the Commissioners of Customs and Excise.

Counsel to the Secretary of State under the Private Legislation Procedure (Scotland) Act, 1936 (1936 c. 52).

Crown Solicitor for Northern Ireland.

Delegate for Her Majesty's Government in the United Kingdom to the Central Rhine Commission.

Director of the Agricultural Mortgage Corporation Limited nominated by a Minister of the Crown or government department.

Director of the British Petroleum Company Limited nominated by a Minister of the Crown or government department.

Director of the British Sugar Corporation Limited appointed by the Ministers as defined by section 17 of the Sugar Act, 1956 (1956 c. 48).

Director of Cable and Wireless Limited.

Director of the Cereals Committee Limited appointed by a Minister of the Crown or government department.

Director of the Commonwealth Institute.

Director of the Compagnie Financiere de Suez et de L'Union Parisienne appointed by a Minister of the Crown or government department.

Director of any company in receipt of financial assistance under the Distribution of Industry Act, 1945 (1945 c. 36), the Distribution of Industry (Industrial Finance) Act, 1958 (1958 c. 41), The Shipbuilding Industry Act, 1967 (1967 c. 40), the Local Employment Act, 1972 (1972 c. 5) or Part II of the Industry Act, 1972 (1972 c. 63). being a Director nominated by a Minister of the Crown or government department.

Director nominated by the Secretary of State of any company in respect of which an undertaking to make advances has been given by the Secretary of State under section 2 of the Highlands and Islands Shipping Services Act, 1960 (1960 c. 31), and is for the time being in force.

Director of the Holding Company referred to in the Transport Act, 1962 (1962 c. 46).

Director appointed at a salary of Industrial Advisers to the Blind Limited.

Director of International Computers (Holdings) Limited nominated or appointed by a Minister of the Crown or government department.

Director appointed at a salary of the National Building Agency.

Director appointed at a salary of the National Institute for House-craft (Employment and Training) Limited.

Director of the Peterhead Bay (Management) Company Limited.

Director, or Deputy Director, of Public Prosecutions for Northern Ireland.

Director appointed at a salary of Remploy Limited.

Director of S.B. (Realisations) Limited nominated or appointed by a Minister of the Crown or government department.

Director of the Scottish Agricultural Securities Corporation Limited nominated by a Minister of the Crown or government department.

Director General of Fair Trading.

Distributor of Stamps appointed by the Commissioners of Inland Revenue for the Stock Exchange at Manchester or Glasgow.

Examiner or member of a board of interviews appointed by the Civil Service Commissioner.

Examiner for entrance examination to, or member of a board of interviewers for entrance to, the civil service of Northern Ireland.

General Manager or Secretary of the Scottish Special Housing Association.

Governor of the British Broadcasting Corporation.

Governor, Deputy Governor or Director of the Bank of England.

Governor, Lieutenant and Secretary, or Captain of Invalids of Chelsea Hospital.

Governor, Medical Officer or other officer or member of the staff of a prison to which the Prison Act (Northern Ireland) 1953 [(1953 c. 18 (N.I.))] applies.

Health Service Commissioner for England.

Health Service Commissioner for Scotland.

Health Service Commissioner for Wales.

High Commissioner representing Her Majesty's Government in the United Kingdom.

Industrial Assurance Commissioner or Deputy Industrial Assurance Commissioner appointed under the Industrial Assurance Act (Northern Ireland), 1924 [1924 c. 21 (N.I.)].

Judge Advocate of the Fleet.

Judge Advocate General, Vice Judge Advocate General, Assistant Judge Advocate General or Deputy Judge Advocate.

Lay observer appointed under section 45 of the Solicitors Act, 1974 (1974 c. 47).

Local government officers, the following—

Clerk or deputy clerk of a district council in Northern Ireland;

County clerk or depute county clerk of a county in Scotland;

Clerk or deputy clerk of a district council in Scotland;

Town clerk or deputy town clerk of a burgh in Scotland.

Lyon Clerk.

Lyon King of Arms.

Member of an Agricultural marketing Board appointed by the Minister under Schedule 2 to the Agricultural Marketing Act, 1958 (1958 c. 47).

Member of an Agricultural Marketing Board appointed under section 2 of the Agricultural Marketing Act (Northern Ireland), 1933 [1933 c. 22 (N.I.)] or section 3 of the Agricultural Marketing Act (Northern Ireland), 1964 (1964 c. 13 (N.I.)).

Member appointed by the Minister of Agriculture, Fisheries and Food of the Agricultural Wages Board for England and Wales committee established under the Agricultural Wages Act, 1948 (1948 c. 47), or Chairman of such a committee.

Member appointed by the Secretary of State of the Scottish Agricultural Wages Board.

Member appointed by the Head of the Department or Minister of Agriculture for Northern Ireland of the Agricultural Wages Board for Northern Ireland.

Any member of the British Library Board in receipt of remuneration.

Any member in receipt of remuneration of the British Tourist Authority, the English Tourist Board, the Scottish Tourist Board or the Wales Tourist Board.

Any member of the Countryside Commission in receipt of remuneration.

Member appointed by the Secretary of State of the Horserace Betting Levy Board.

Member of the Council of the National Computing Centre appointed at a salary by a Minister of the Crown or government department.

Any Member of the Nature Conservancy Council in receipt of remuneration.

Member of a panel of valuers appointed at an annual salary under section 4 of the Inland Revenue Regulation Act, 1890 (1890 c. 21).

Member of the permanent Joint Hops Committee appointed by a Minister of the Crown or government department.

Member of a Wages Council or Central Co-ordinating Committee appointed under paragraph 1 (a) of Schedule 2 to the Wages Councils Act, 1959 (1959 c. 69). Chairman of a Committee appointed under paragraph 1 (1) (a) of Schedule 3 to that Act or member of a Commission of Inquiry appointed under paragraph 1 (a) of Schedule 4 to that Act.

Member of a Wages Council or Central Co-ordinating Committee appointed under paragraph 1(a) of Schedule 1 to the Wages Councils Act (Northern Ireland), 1945 [1945 c. 21 (N.I.)] or Member of a Commission of Inquiry appointed under paragraph 1 (a) of Schedule 2 to that Act.

Northern Ireland Commissioner for Complaints.

Northern Ireland Parliamentary Commissioner for Administration.

Officer of the Board of Referees appointed for the purposes of section 26 of the Capital Allowances Act, 1968 (1968 c. 3).

Officer or servant employed under the Commissioner of Police of the Metropolis or the Receiver for the Metropolitan Police District.

Officer or servant of the Crown Estate Commissioners.

Officer or other member of the County Court Service within the meaning of the County Courts Act (Northern Ireland), 1959 [1959 c. 25 (N.I.)].

Officer, clerk or servant appointed or employed under section 20 of the Greenwich Hospital Act, 1865 (1865 c. 89).

Officer of the Supreme Court within the meaning of sections 115 to 120 of the Supreme Court of Judicature (Consolidation) Act, 1925 (1925 c. 49).

Officer of or attached to the Supreme Court of Northern Ireland to whom section 76 of the Supreme Court of Judicature Act (Ireland), 1877 (1877 c. 57) applies.

Parliamentary Commissioner for Administration.

President, or member of a panel of chairmen, of Industrial tribunals established under section 12 of the Industrial Training Act, 1964 (1964 c. 16).

Principal Clerk of Justiciary appointed under section 25 of the Administration of Justice (Scotland) Act, 1933 (1933 c. 41).

Procurator fiscal or procurator fiscal depute appointed under the Sheriff Courts and Legal Officers (Scotland) Act, 1927 (1927 c. 35).

Public Works Loan Commissioner.

Receiver for the Metropolitan Police District.

Registrar or Assistant Registrar appointed under section 18 or section 19 of the County Courts Act, 1959 (1959 c. 22).

Registrar or Assistant Registrar of Friendly Societies.

Registrar of the Privy Council.

Registration Officer appointed under Part III of the Local Government Act, 1972 (1972 c. 70).

Sheriff Clerk or sheriff clerk depute.

Solicitor in Scotland to any department of Her Majesty's Government in the United Kingdom.

Standing Counsel to any department of Her Majesty's Government in the United Kingdom.

Substitution Officer of the Royal Air Force.

Technical Adviser to the Commissioners of Customs and Excise.

Under-Sheriff appointed under section 1 of the Sheriffs (Ireland) Act, 1920 (1920 c. 26).

PART IV

OFFICES DISQUALIFYING FOR PARTICULAR CONSTITUENCIES

<i>Office</i>	<i>Constituency</i>
Her Majesty's Commissioner of Lieutenancy in the City of London.	The Cities of London and Westminster.
Her Majesty's Lieutenant for Greater London.	Any constituency comprising any part of Greater London.
Her Majesty's Lieutenant for a County in Great Britain.	Any constituency comprising the whole or part of the area for which he is appointed.
Governor of the Isle of Wight.	The Isle of Wight.
The High Sheriff of Greater London.	Any constituency comprising any part of Greater London.
High Sheriff of a County in England and Wales.	Any constituency comprising the whole or part of the area for which he is appointed.

**Schedule 2**

**Ministerial Offices**

Prime Minister and First Lord of the Treasury.  
Lord President of the Council.  
Lord Privy Seal.  
Chancellor of the Duchy of Lancaster.  
Paymaster General.  
Secretary of State.  
Chancellor of the Exchequer.  
Minister of Agriculture, Fisheries and Food.  
President of the Board of Trade.  
Minister of State.  
Chief Secretary to the Treasury.  
Minister in charge of a public department of Her Majesty's Government in the United Kingdom (if not within the other provision of this Schedule).  
Attorney General.  
Lord Advocate.  
Solicitor General.

Solicitor General for Scotland.

Parliamentary Secretary to the Treasury.

Financial Secretary to the Treasury.

Parliamentary Secretary in a Government department other than the Treasury, or not in a department.

Junior Lord of the Treasury.

Treasurer of Her Majesty's Household.

Comptroller of Her Majesty's Household.

Vice-Chamberlain of Her Majesty's Household.

Assistant Government Whip.

### Schedule 3

#### Repeals

Chapter	Short Title	Extent Repeal
1	2	3
5 & 6 Eliz. 2, c. 20	The House of Commons Disqualification Act, 1957.	The whole Act, except section 2(3).
5 & 6 Eliz. 2, c. 48	The Electricity Act, 1957.	In Schedule 4, in Part II, the entry relating to the House of Commons Disqualification Act, 1957.
6 & 7 Eliz. 2, c. 16	The Commonwealth Institute Act, 1958.	Section 7 (2).
6 & 7 Eliz. 2, c. 71	The Tribunals & Inquiries Act 1958.	The whole Act, so far as unrepealed.
6 & 7 Eliz. 2, c. 71	The Agriculture Act, 1958.	Section 8 (2). In Section 11(2), the words "except sub-section (2) of section eight thereof".
7 & 8 Eliz. 2, c. 40	The Deer (Scotland) Act, 1959.	In the section 37(2), the words from "except" to "Act, 1957". In Schedule 1, paragraph 3.
7 & 8 Eliz. 2, c. 62	The New Towns Act, 1959.	Section 2 (11). In section 14, in sub-section (2) the words from "except" to "Commons" and in sub-section (3) the words "except the said provisions". In Schedule 1, paragraph 1 (10).
7 & 8 Eliz. 2, c. 69	The Wages Councils Act, 1959.	Section 25. In section 27(3) the words "save as otherwise expressly provided".
7 & 8 Eliz. 2, c. 72	The Mental Health Act, 1959.	Section 3(5). In sections 150 and 152 the words "sub-section (5) of section three".
8 & 9 Eliz. 2, c. 18.	The Local Employment Act, 1960.	Section 11.
8 & 9 Eliz. 2, c. 58.	The Charities Act, 1960.	In section 49(2) (a) the words from "it amends" to "1957".
8 & 9 Eliz. 2, c. 61	The Mental Health (Scotland) Act, 1960.	Section 2(6) In sections 114 and 116 the words "sub-section (6) of section two".

1	2	3
9 & 10 Eliz. 2, c. 17	The Betting Levy Act, 1961,	The whole Act, so far as unrepealed.
9 & 10 Eliz. 2, c. 49	The Covent Garden Market Act, 1961.	Section 47.
10 & 11 Eliz. 2, c. 46	The Transport Act, 1962.	Section 85. In Part I of Schedule 11, the words "section eighty-five" and the words "and the House of Commons Disqualification Act, 1957".
1963 c. 33	The London Government Act, 1963.	Section 92. In section 94, in sub-section (3) the words "and section 92" and the words from "and the repeals" to "Act 1957" and in sub-section (4) the words from the beginning to "said repeals" and the words "other than this sub-section".
1963 c. 38	The Water Resources Act, 1963.	In section 137, in sub-section (2) the words "and paragraph 4 of Schedule 6 thereto" and in sub-section (3) the words " (except paragraph 4 of Schedule 6)". In Schedule 6, paragraph 4.
1963 c. 40	The Commonwealth Development Act, 1963.	Section 1(4).
1964 c. 14	The Plant Varieties and Seeds Act, 1964.	In Schedule 4, paragraph 4.
1964 c. 16	The Industrial Training Act, 1964.	Section 15. In section 19 (2) the words "except section 15".
1964 c. 25	The War Damage Act, 1964.	Section 13(4).
1964 c. 40	The Harbours Act, 1964.	In section 63(2) the words "except paragraph 7 of Schedule 1." In Schedule 1, paragraph 7.
1964 c. 42	The Administration of Justice Act, 1964.	In section 41, in sub-section (6), the words from "and so" to "Act 1957" and in sub-section (7) the words from "except" to "Act 1957". In Schedule 3, in Part II, paragraph 23.
1964 c. 56	The Housing Act, 1964.	In section 108(3) the words "except paragraph 2(10) of Schedule 1". In Schedule 1, paragraph 2(10).
1964 c. 98	The Ministers of the Crown Act, 1964.	Section 3. In section 5, sub-sections (1) to (3) Schedule 2.
1965 c. 10	The Superannuation (Amendment) Act, 1965.	In Schedule 1, the entry relating to the House of Commons Disqualification Act, 1957.
1965 c. 14	The Cereals Marketing Act, 1965.	In Schedule 1, paragraph 12.
1965 c. 16	The Airports Authority Act, 1965.	In section 25(2), the words "except paragraph 5 of Schedule 1." In Schedule 1, paragraph 5.
1965 c. 22	The Law Commissions Act, 1965.	Section 6(1).
1965 c. 46	The Highlands and Islands Development (Scotland) Act, 1965.	In section 19(2) the words from "except" to "Act 1957". In Schedule 1, paragraph 6.



1	2	3
1965 c. 6	The National Insurance Act, 1966.	Section 13(2).
1966 c. 8	The National Health Service Act, 1966.	In the Schedule, paragraph 8.
1966 c. 20	The Ministry of Social Security Act, 1966.	In section 40(4) the words "the House of Commons Disqualification Act, 1957". In Schedule 1, paragraph 7. In Schedule 6, paragraph 15.
1966 c. 34	The Industrial Development Act, 1966.	In section 21(6), the words from "except" to "(disqualification)". In section 31(7), paragraph (b) and the words "and" immediately preceding it. In Schedule 3. In Part II, the entry relating to the House of Commons Disqualification Act, 1957.
1967 c. 13	The Parliamentary Commissioner Act, 1967.	Section 1 (4).
1967 c. 17	The Iron and Steel Act, 1967.	Section 1(8). In section 51(2) the words "except section 1(8) (thereof)".
1967 c. 18	The Local Government (Termination of Reviews) Act, 1967.	In section 3(2) the words from the beginning to "Act 1957".
1967 c. 22	The Agriculture Act, 1967.	Section 73.
1967 c. 80	The Criminal Justice Act, 1967.	In Schedule 2, paragraph 3.
1967 c. 86	The Countryside (Scotland) Act, 1967.	Section 1(7). In section 79(2) the words from "except" to "Act 1957".
1968 c. 24	The Commonwealth Telecommunications Act, 1968.	Section 2(b).
1968 c. 41	The Countryside Act, 1968.	Section 1(6). In section 50, sub-section (4) and in sub-section (5) the words "and (4)" and "subject to sub-section (4) above".
1968 c. 65	The Gaming Act, 1968.	Section 10(4). In section 54(2) the words "except section 10(4)".
1968 c. 67	The Medicines Act, 1968.	Section 2(6).
1968 c. 71	The Race Relations Act, 1968.	In section 29(4) the words from "except" to "Act 1957". In Schedule 1, paragraph 12. In Schedule 4, paragraph 8.
1968 c. 73	The Transport Act, 1968.	Section 155.  In Schedule 17, in Part I, the words "155" and the words from "and so far" to "Part III".
1969 c. 30	The Town and Country Planning (Scotland) Act, 1969.	In section 108(3), the words from "and except" to "Act 1957".
1969 c. 35	The Transport (London) Act, 1969.	In section 47(4) the words from the beginning to "Act 1957".

1	2	3
1969 c. 48	The Post Office Act, 1969.	Section 14(20). In Schedule 1, paragraph 6.
1969 c. 51	The Development of Tourism Act, 1969.	Section 1(4). In section 21(4) the words "except section 1(4)".
1970 c. 40	The Agriculture Act, 1970.	In Schedule 1, paragraph 12.
1970 c. 46	The Radiological Protection Act, 1970.	In Schedule 1, paragraph 6.
1970 c. 51	The National Insurance (Old persons' and widows' pensions and attendance allowance) Act, 1970.	In section 10(3), the words "I and" In Schedule 2, in Part I, paragraph 1.
1971 c. 18	The Land Commission (Dissolution) Act, 1971.	In section 7(3) the words from "except" to "Act 1957".
1971 c. 23	The Courts Act, 1971.	Section 17(5). In section 59(5) and (6), paragraph (b).
1971 c. 58	The Sheriff Courts (Scotland) Act, 1971.	Section 21. In section 47(3) the words from "and section" to "Act 1957".
1971 c. 73	The Social Security Act, 1971.	In section 10(2), the words "I and".
1971 c. 75	The Civil Aviation Act, 1971.	Section 1(5). Section 37(5).
1971 c. 77	The Immigration Act, 1971.	In Schedule 5. paragraphs 4 and 10.
1971 c. 78	The Town and Country Planning Act, 1971.	Section 47(5). In section 295(2) the words from "relates to" to "Act 1957 or".
1972 c. 3	The Ministerial and other Salaries Act, 1972.	In section 1(6) the words from the beginning to the end of paragraph (b) and the words "and" immediately following that paragraph.
1972 c. 41	The Finance Act, 1972.	In Schedule 6, paragraph 8.
1972 c. 52	The Town and Country Planning (Scotland) Act, 1972.	Section 44(5). Section 47(5). In section 281(3) the words from "and relates" to "Act 1957".
1972 c. 54	The British Library Act, 1972.	In the Schedule, paragraph 6.
1972 c. 58	The National Health Service (Scotland) Act, 1972.	Section 42(4). In section 65 (3) and (4) the words "42(4)". In Schedule 1, paragraph 6.
1972 c. 60	The Gas Act, 1972.	In section 50(2) the words from "and the" to "Schedule 8". In Schedule 3, paragraph 4. In Schedule 6, paragraph 7.
1972 c. 62	The Agriculture (Miscellaneous Provisions) Act, 1972.	In section 27(5)(b) the words "to the House of Commons Disqualification Act, 1957".

1	2	3
1972 c. 68	The European Communities Act, 1972.	In Schedule 4, paragraph 5(6).
1972 c. 70	The Local Government Act, 1972.	Section 268. In section 274 in sub-section (2) the words "section 268 above" and the words from "and the repeals" to "that Act" and in sub-section (3) the words from the beginning to "said repeals".
1973 c. 9	The Counter-Inflation Act, 1973.	In Schedule 1, paragraph 9.
1973 c. 32	The National Health Service Reorganisation Act, 1973.	In Schedule 4, paragraph 79 and in paragraphs 147 and 148 the figures "42(4)".
1973 c. 37	The Water Act, 1973.	In section 40, in sub-section (4)(d) the figures "69" and in sub-section (5) the words "and paragraph 69 of Schedule 8" In Schedule 8, paragraph 69.
1973 c. 38	The Social Security Act, 1973.	Section 66 (3). Section 73(5). In Schedule 7, paragraph 2. In Schedule 27, paragraph 18.
1973 c. 39	The Statute Law (Repeals) Act, 1973.	In Schedule 2, paragraph 3.
1973 c. 41	The Fair Trading Act, 1973.	In Schedule 1, paragraph 4.
1973 c. 50	The Employment and Trading Act, 1973.	In section 15(3), the figures "4" where it first occurs. In Schedule 3, paragraph 4.
1973 c. 54	The Nature Conservancy Act, 1973.	In section 5(3) the words "and paragraph 19 of schedule 3 also extends to Northern Ireland". In Schedule 3, paragraph 19.
1973 c. 64	The Maplin Development Act, 1973.	In Schedule 1, paragraph 5.
1973 c. 65	The Local Government (Scotland) Act, 1973.	Section 281 (5). Section 224 (5). In section 283(3) the words from "and except" to "Act 1957". In Schedule 4, paragraph 3.
1974 c. 7	The Local Government Act, 1974.	In section 43(6) the words from the beginning to "Act 1957". In Schedule 4, paragraph 12.
1974 c. 21	The Ministers of the Crown Act, 1974.	Section 2. Section 3(1).
1974 c. 24	The Prices Act, 1974.	Section 6(3).
1974 c. 37	The Health and Safety at Work etc. Act, 1974.	In section 84(1)(b), the words "2 and". In Schedule 9, paragraph 2.
1974 c. 47	The Solicitors Act, 1974.	In section 90(4)(c), the words "paragraph 5 of Schedule 3". In Schedule 3, paragraph 5.
1974 c. 48	The Railways Act, 1974.	Section 9(3).
1974 c. 52	The Trade Union and Labour Relations Act, 1974.	In section 31(5), the words "the House of Commons Disqualification Act, 1957". In Schedule 3, paragraph 6.
1957 c. 18	The Social Security (Consequential Provisions) Act, 1957.	In Schedule 2, paragraph 12.

JOINT COMMITTEE TO EXAMINE THE CONSTITUTIONAL AND  
LEGAL POSITION RELATING TO OFFICE OF PROFIT

**THIRD TERM OF REFERENCE**

TO EXAMINE THE FEASIBILITY OF ADOPTION OF SYSTEM OF LAW RELATING TO PREVENTION OF  
DISQUALIFICATION OF MEMBERS OF PARLIAMENT AS EXISTING IN THE UNITED KINGDOM AND  
CONSIDERED BY THE CONSTITUTION (FORTY-SECOND AMENDMENT) ACT, 1976.

Sl.No.	Name of State	Reintroduction of disqualification provisions as in 42nd Amendment Act	Adoption of the U.K. House of Commons (Disqualification) Act, 1975
1	2	3	4
1.	Andhra pradesh	In favour of reintroduction, however, the State Government has desired that the guidelines of the Supreme Court be incorporated in it.	Conceptually in favour.
2.	Arunachal Pradesh	No comments offered.	No comments offered.
3.	Assam	Not in favour.	No specific comments offered. However, it can be inferred that the State Government is not in favour of adoption of U.K. Law as it is against reintroduction of 42nd Amendment Act which is on the pattern of U.K. law.
4.	Bihar	Not in favour.	No specific comments. However, it can be inferred that the State Government is not in favour of U.K. Law.
5.	Chhattisgarh	In favour of reintroduction.	No specific comments. However, it can be inferred that the State Government is conceptually in favour of U.K. Law.
6.	Goa		
7.	Gujarat	Not in favour.	Not in favour.
8.	Haryana	Conceptually in favour.	Conceptually in favour.
9.	Himachal Pradesh	No specific comments offered. However, it can be inferred that the State Government is conceptually in favour of reintroduction of disqualification provisions as in 42nd Amendment Act.	In favour.

1	2	3	4
10.	Jammu and Kashmir	–	
11.	Jharkhand		
12.	Karnataka	In favour.	In favour.
13.	Kerala	In favour.	No specific comments offered. However, it can be inferred that the State Government is conceptually in favour of U.K. Law.
14.	Madhya Pradesh		
15.	Maharashtra	Not in favour.	Not required there are adequate provisions in our Constitution and Prevention of Disqualification Act.
16.	Manipur	No comments offered	No comments offered.
17.	Meghalaya	No view offered.	No view offered.
18.	Mizoram	In favour.	In favour.
19.	Nagaland	No need for reintroduction.	No need for adoption.
20.	Orissa		
21.	Punjab	Not in favour.	Not in favour.
22.	Rajasthan	Conceptually in favour.	In favour. But the power to provide exemption under Article 191 should remain with the State Legislature.
23.	Sikkim	No comments offered.	No comments offered.
24.	Tamil Nadu	In favour.	In favour.
25.	Tripura	Not in favour.	No need for adoption.
26.	Uttar Pradesh		
27.	Uttaranchal	In favour.	Conceptually in favour.
28.	West Bengal	No need for reintroduction.	Conceptually not in favour.

**JOINT COMMITTEE TO EXAMINE THE CONSTITUTIONAL AND  
LEGAL POSITION RELATING TO OFFICE OF PROFIT**

**FOURTH TERM OF REFERENCE**

**TO EXAMINE ANY OTHER MATTER INCIDENTAL TO THE ABOVE**

Sl.No.	Name of State	Existence of any Committee in State Legislature similar to JCOP in Parliament	Need for designated authority to determine whether a particular Office is an Office of Profit	General views of State Government
1	2	3	4	5
1.	Andhra Pradesh	No such Committee in Andhra Pradesh Legislature.	In favour of having a designated authority in consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council.	State Government has desired to have a Joint Committee on Office of Profit on the lines of Joint Committee in the Parliament.
2.	Arunachal Pradesh	No such Committee in Arunachal Pradesh Legislature.	In favour of designated authority and has proposed constitution of a Commission like that of Election Commission headed by a retired Judge of the Supreme Court or High Court.	No specific view.
3.	Assam	No such Committee in Assam Legislature.	No need for designated authority. Such matters are decided by courts.	Exemption of "Offices of Profit" from disqualification should be left to the State Governments.
4.	Bihar	No such Committee in Bihar Legislature.	No need for designated authority.	Exemption of "Offices of Profit" from disqualification should be left to the State Governments.
5.	Chhattisgarh	No such Committee in Chhattisgarh Legislature.	No other authority required. Courts are sufficient to decide the cases.	Office of Profit must be specifically mentioned in the Schedule of exemption specifying the specific post, exempted from the purview of disqualification leaving no room for the court to interpret.
6.	Goa	—	—	—
7.	Gujarat	No such Committee in Gujarat Legislature.	No need for designated authority. The Central/State Government should consider the case and thereafter decide whether a particular office under the Government is an Office of Profit.	No specific view.

1	2	3	4	5
8.	Haryana	No such Committee in Haryana Legislature.	As the Constitution has appropriate provisions in this regard, there is no need for designated authority.	The exercise of legislative powers of exemption of offices should be entirely left to the wisdom of respective Legislatures. If any deviation in law is made in this regard, then it is likely to impair the legislative competence of the Legislature. Further, it will militate against and curtail the legislative powers of the State which is against the principle of federalism in the Constitution which is basic feature of Constitution.
9.	Himachal Pradesh	No such Committee.	Not in favour of creating new authority other than the existing ones.	The issue whether a person holds an Office of Profit is required to be interpreted in a realistic manner having regard to the facts and circumstances of each case and relevant statutory provisions. The expression office of profit should be interpreted with the flavour of reality bearing in mind the object for enactment of Article 102(1)(a) and 191(1)(a).
10.	Jammu and Kashmir	—	—	—
11.	Jharkhand	—	—	—
12.	Karnataka	No such Committee in Karnataka Legislature.	No authority other than the existing ones as envisaged in the Constitution is required.	No other view suggested.
13.	Kerala	No such Committee in Kerala Legislature.	No view offered.	In matters related to disqualification and scope of term of Office of Profit be restricted to Supreme Court interpretation and guidelines.
14.	Madhya Pradesh	—	—	—
15.	Maharashtra	No such Committee in Maharashtra Legislature.	No need for designated authority.	In favour of fair and reasonable generic and comprehensive criteria which can be made applicable to all States/UTs as laid down by Supreme Court in Jaya Bachchan's case.
16.	Manipur	No such Committee in Manipur Legislature.	Governor of the State should be the designated authority.	No other view suggested.
17.	Meghalaya	No such Committee in Meghalaya Legislature.	No need for any such authority as courts are sufficient to decide individual cases.	Present arrangement as in the Constitution be continued.

1	2	3	4	5
18. Mizoram	No such Committee in Mizoram Legislature.	In favour of having a designated authority in respect of post-election cases. Hon'ble Speaker of the Lok Sabha or Hon'ble Chairman of the Rajya Sabha or Hon'ble Speaker of a State Legislature, as the case may be, may be the designated authority for the purpose.	The expression <i>viz.</i> "Other than an office declared by Parliament by law not to disqualify its holder", as occurring in sub-clause (a) of clause (1) of article 102, could rather have been "other than an office declared by Parliament by law not to be the office of profit for the purposes of this clause". Same is for sub-clause (a) of clause (1) of article 191. In that case, the laws contemplated to be made under these articles would confine to declaring the offices which would be no longer the offices of profit irrespective of its holders. As of now, these laws list out and declare those offices which are admittedly the offices of profit but the holders thereof are declared not to be disqualified for no spelt-out reason or justifications given in such laws.	
19. Nagaland	No such Committee in Nagaland Legislative Assembly	No authority required.	<ul style="list-style-type: none"> <li>• The idea of "Office of Profit" in Indian situation has to be abolished;</li> <li>• A member of a Legislature should hold his position as member of that Legislature on full time basis. Doctors, lawyers, actors and other professionals must stop their practice and every member must take a oath in this regard and violation of such oath must be punishable by a huge pecuniary penalty per day by law. The organizations that entertain the members of Legislatures practicing before, or for, them, should also be punished under law.</li> <li>• In place of the existing articles in the Constitution relating to office of profit which need to be scrapped, a Constitutional provision banning all members of Legislatures to take up any other office except the offices in the Legislature like, Speaker, Deputy</li> </ul>	



1	2	3	4	5
				<p>Speaker, Chairman, Deputy Chairman, members of Panel of Chairman, Leader of Opposition, Leaders of Legislature parties, Chairmen of Committees etc. Any addition to this list must be by Constitutional amendment. The list should be applicable both to the members of Parliament and members of State Legislatures. The office of Ministers should, however, be exempted. Any one who holds any other office should be disqualified not for holding office of profit but for holding any other office along with the office of the Legislator that hinders devoted and full-fledged service to the constituents.</p> <ul style="list-style-type: none"> <li>• The concept of "remunerative political post" in article 361B should also be abolished along with the idea of Office of Profit.</li> <li>• As anti-defection law is in place which strictly organizes the House on party lines and thereby the Government, any presumption that the office of profit would act as a lure for members to cross floor is simply anachronistic. May be before the advent of the anti-defection law, the presumption would have matured into a fact. The idea of office of profit itself has thus become anachronistic warranting removal from the Constitution.</li> </ul>
20.	Orissa	-	-	-
21.	Punjab	No such Committee in Punjab Legislature.	If a definition to the term 'Office of Profit' is provided in the Constitution then the designated authority can be the Governor who shall obtain the opinion of the Election Commission and shall act accordingly. (This is the existing system).	Since Office of Profit has not been defined in the Constitution, the State Legislature should decide whether a particular office can be classified as Office of Profit.

1	2	3	4	5
22.	Rajasthan	No such Committee in Rajasthan Legislature.	No need for designated authority. Courts are sufficient to decide the cases.	What factors will bring an office within the purview of 'office of profit' may be and should be decided by the representative of people and the decision as to whether the given factors exists in a particular office should be left to the court.
23.	Sikkim	No such Committee in Sikkim Legislature.	Courts are ultimately to decide the case. However, if any other authority is required, it could be manned by a judicial officer of the rank of District Judge at the State level either serving or retired.	Issue of Office of Profit may be governed by the laws framed by different State Governments and Union Parliament from time to time based on the requirements.
24.	Tamil Nadu	No such Committee in Tamil Nadu Legislature.	No need for designated authority as Articles 103 and 192 of the Constitution provides that it should be decided by the President/Governor based on the opinion of the Election Commission. (This is the existing provision)	No other view.
25.	Tripura	No such Committee in Tripura Legislature.	No need for designated authority.	No other view suggested.
26.	Uttar Pradesh	—	—	—
27.	Uttaranchal	No such Committee in Uttaranchal Legislature.	Not in favour of creating new authority. Courts are the best forum which can give decisive opinion.	No specific view.
28.	West Bengal	No such Committee in West Bengal Legislature.	No other authority required. Courts are best to provide decisive opinion on the matter.	No other comments.

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## **APPENDICES**

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## APPENDIX I

### MOTION

(Moved in Lok Sabha on 17 August, 2006)

"That a Joint Committee of the Houses to be called the Joint Committee to examine the constitutional and legal position relating to Office of Profit be constituted consisting of fifteen members, ten members from this House to be nominated by the Speaker including the Chairperson of the Joint Committee and five members from the Rajya Sabha to be nominated by the Chairman, Rajya Sabha.

2. That the terms of reference of the Joint Committee shall be—

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

3. 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 Joint Committee.

4. That the Joint Committee shall make a report to this House by the first day of the last week of the next session of Parliament.

## APPENDIX II

### JOINT COMMITTEE TO EXAMINE THE CONSTITUTIONAL AND LEGAL POSITION RELATING TO OFFICE OF PROFIT

#### LIST OF PERSONS FROM WHOM WRITTEN MEMORANDA WERE RECEIVED

S.No.	Name/Address
1	2
1.	Shri Rustom S. Gae, Senior Advocate, Former Law Secretary to the Govt. of India, 5-B Sagar Apartments 6, Tilak Marg, New Delhi-110001
2.	Dr. R.K. Balasubramanian, Chief Executive, Bureau for Parliamentary Work, 30, Chitrakulam North, Mylapore, Madras-4
3.	Shri R.R. Singh, Retired Professor and Head (Department of Social Work), Delhi University & Former Director, Tata Institute of Social Sciences
4.	Shri Sitaram Aggrawal, 109-A, Adrash Nagar, Ajmer-305002
5.	Shri Raj Kanwar, R/O Vill. & P.O.-Kohand, Distt. Karnal, Haryana
6.	Shri Ravinder Kumar, President to Rashtriya Mukti Morcha, 37, Angad Nagar Extension, Delhi-110092.
7.	Shri Prosenjit Das Gupta, Flat G2, 206/1 N.S.C. Bose Road, Kolkata-700047

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8. Shri P. Sakthivel,  
Shri D. Shanmugam,  
Dr. S.K. Palanisamy,  
Shanthi Clinical Laboratory,  
Kandappa Mudali Lane,  
Opposite to Telephone Bhavan, Brough Road,  
Erode-638001
  9. Shri Naved Yar Khan  
5182, Ballimaran,  
Chandni Chowk,  
Shahjahanabad, Delhi-110006
  10. Shri Ashoke Kr. Singhi,  
Dr. S.P. Mukherjee Road (Dinbuzar)  
P.O. & Dist. Jalpaiguri
  11. Shri Harsh Shrivastava,  
H-26, First Floor,  
Jangpura Extension,  
Delhi-110104
  12. Shri Bhanwar Lal Sharma,  
Near Ramgadiyo Dharamshala,  
Sujangarh-331507,  
Distt. Churu (Rajasthan)
  13. Shri Milap Choraria,  
B-5/52, Sector-7, Rohini,  
Delhi-110085.
  14. Shri Sudhir Kumar,  
D-1/115, Satya Marg,  
Chanakyapuri,  
New Delhi-110021.
  15. Shri N.H. Badlani,  
Flat No. 69-B,  
Pocket-I, Dilshad Garden,  
Delhi-95.
  16. Sh. N. Haridas,  
District Judge (Rtd.)  
T.C. 9/802, V J Lane, Sasthamangalam P.O.,  
Thiruvananthapuram-10
  17. Sh. N.C. Dey,  
J.P. Road, Haludooni,  
Jamshedpur, Jharkhand-831002,
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18. Dr. Satyabrata Dutta,  
C/o Prof. (Dr). S. Sengupta,  
President, Council for Political Studies,  
140/20 B, Soputh Sinthee Road,  
Kolkata-50
19. Shri S.N. Shukla,  
IAS (Retd.) Advocate,  
General Secretary, Lok Prahari,  
B-7, Nirala Nagar,  
Lucknow-226020
20. Dr. Sivasamy  
"sivasamy sivasamy" dr sivasamy@yahoo.com
21. Shri Derrick D'souza,  
F-1, Jayraj Nagar,  
Ambadi Road,  
Vasai (W)-401202
22. Shri Vidyadhar  
"Vidyadhar sail" <vidyadhar.sail@gmail.com>
23. "Vijai Kumar Sahny" <vksahny@hotmail.com>
24. "Kishen Sharma" <rm\_patriotsasia2006@yahoo.co.in>
25. "Benoy Gopal Chakraborty"  
<bgchakraborty@hotmail.com>
26. Dr. (Prof.) Kalipada Basu,  
"Chiaruprava",  
153, Joraghat Lane,  
Chinsurah-712101  
Distt. Hoogly, West Bengal (India)
27. Shri Pritis Chandra Majumdar,  
1/30 B Chittaranjan Colony, 2nd Floor,  
Kolkata-700032
28. Prof. Subhedar Surve,  
President, Sadguru Sainath Ed. Society (Regd.)  
Sanchalak–Sai Theater Academy (Mumbai)  
Vatsala Tai Naik Nagar Primary School,  
Near Signal, Kurla (E), Mumbai-71  
144/4904, Nehru Nagar, Kurla (E) Mumbai-24
29. Shri Jagdish Prasad Aggrawal,  
Advocate,  
Grampost–Chadra, Pin-303509  
Tehsil–Sikrai,  
Dosa Dis. Rajasthan
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30. Shri Satyanarayan Datta,  
Advocate, High Court and Supreme Court,  
7-B, Kiron Sankar Royroad, 4th Floor,  
Kolkata-700001
31. Shri Ganesh Latta,  
Analyst (Management),  
Trinetra, Parisamvad Parishad,  
C-21, Lal Kothi Shopping Centre,  
Near Laxmi Mandi Cinema,  
Tonk Road,  
Jaipur, (Rajasthan)-302015
32. Shri Paras Singh Bhansali,  
672, Sardarpura, 12/C Road,  
Jodhpur-342003
33. Shri Prasanta Chouduri,  
P.O. & P.S.—Tamluk, Ward No. 15,  
Distt.—Midnapur (E),  
Pin-721636
34. Shri Satyaranjan Das,  
C/o Krishnagopal Smail, Basantia School Bazar,  
P.O. Basantia, P.S. Contai,  
Distt. Purba Medinipur (West Bengal)
35. Shri P. Ranjan Sandhi,  
Convenor,  
Forum for protection and promotion of articles 19 &19,  
St. Martin Road,  
Palarivattom,  
Cochin-682025
36. Shri Debendra Benerji,  
86/A, Nilmoni Shome St.,  
Bhadrakali, Hooghle,  
West Bengal-712232
37. Shri A. Anadam,  
Sreeji Appartment,  
H.No. 10-3-32/9/1/109/110/1,  
Flat No. G-3, Nehru East Marredpally,  
Behind Vidyasagar Primary School, Sec'bad,  
A.P.-500026
38. Shri Sudha Gouranga Chakrabarti,  
92, Khirkee Lane, Chinsurah,  
Hooghly-712101 (WB)
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39. Raja Vikram Nair,  
Raipur (C.G.),  
"Brijkishor" kishor-ryp@yahoo.com
40. Shri Ajit Chandra Roy,  
50 DD Tewari Road,  
Fokotalhat,  
P.O. Nutangani, Distt. Burdwan,  
West Bengal-713102
41. Shri Manoj Kumar T.,  
X/1258, Rajgarh Colony,  
Gandhi Nagar,  
Delhi-110031
42. Shri Joganath Das,  
Puri-BSSR,  
Orissa
43. Shri C. Krishnarao Laxmanrao Chinchamatpure,  
290/9, Wadia Estate, Bail Bazar,  
Kurla, Mumbai-400070
44. Shri Ganesh Bari
45. Shri Ajay Mathur,  
Vice-President,  
Jan-Hit Residents Welfare Association,  
1-62-A, Dilshad Garden,  
Delhi-110095
46. Shri Ranjit Kumar Hazra,  
R.G.S. Road, Asansol-3,  
Vill & P.O. Ushagrani,  
Distt. Bhrdwar (West Bengal), Pin Code-713303
47. Shri Kuberan G.,  
58, Kamarajan Nagar,  
Padikuppam Salai,  
Annanagar, West Extension,  
Chennai-40
48. Shri J.K. Pathanic/Shri A.K. Gupta,  
President, Service Institute,  
Air Force Station, Agra
49. Shri Kamata Prasad,  
Teacher (Physics),  
Village-Alipura, Post Babrai,  
Distt. Mahoka (Uttar Pradesh)
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1	2
50.	Sh. V. Roman Joseph James, OCEANIC-A/22, 2nd Floor, Roshan Park, Naigaon (West), Vasai-401201
51.	Shri Achintya Mahanta, Rampur, Bankura, West Bengal-722101
52.	Shri Raj Kumar Ajmera, 13, Keshav Nagar, Civil Lines, Jaipur, Rajasthan
53.	Sh. S.B.S. Kushwaha, Retd. General Manager, 117, Q/611 A, Sharda Nagar, Kanpur
54.	Sh. V. Veerabhadrappe, 2133, T.G. Extn. Hosakota, Bangalore
55.	Shri Raghu Thakur, National President, Loktantrik Samajwadi Party, 27A, DDA Flats, Mata Sundri Road, New Delhi-110002
56.	Shri Ravi Kumar Mishra, House No. 10844, Gali No. 11, Kotmangal Singh Nagar, Ludhiana-141003 Punjab
57.	Shri Manoj Kumar Jha, Inspector, Central Excise and Customs AF-12/Customs & Central Excise Colony, M.O.G. Lines, Indore-452002, Madhya Pradesh

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**APPENDIX III**  
**JOINT COMMITTEE TO EXAMINE THE CONSTITUTIONAL AND**  
**LEGAL POSITION RELATING TO OFFICE OF PROFIT**  
(Witnesses examined)

Sl.No.	Name of Organisation/ Association/Individual	Date on which Evidence was taken	Page No.
1.	Shri Fali S. Nariman Senior Advocate Supreme Court of India and Ex-Member of Rajya Sabha	17.11.2006	
2.	Shri Rustam S. Gae Senior Advocate Supreme Court of India and former Secretary, Ministry of Law & Justice Government of India	-do-	
3.	Shri Rajeev Dhawan Senior Advocate Supreme Court of India	01.12.2006	
4.	Shri Harish N. Salve Senior Advocate Supreme Court of India	-do-	
5.	Representatives of Ministry of Home Affairs, Government of Puducherry and NCT of Delhi	20.03.2007	
6.	Representatives of State Government of Gujarat	23.08.2007	
7.	Representatives of State Governments of North Eastern States	31.10.2007	
8.	Representatives of State Government of Rajasthan	27.11.2007	
9.	Representatives of State Government of Uttar Pradesh	28.04.2008	
10.	Representatives of State Governments of Orissa	05.06.2008	
11.	Representatives of State Government of Madhya Pradesh	20.08.2008	
12.	Representatives of State Government of Kerala	09.09.2008	

## APPENDIX IV

### MINUTES OF THE FIRST SITTING OF THE JOINT COMMITTEE TO EXAMINE THE CONSTITUTIONAL AND LEGAL POSITION RELATING TO OFFICE OF PROFIT

The Joint Committee sat from 1500 hrs. to 1630 hrs. on 14 September, 2006 in Committee Room No. 53, Parliament House, New Delhi.

#### PRESENT

Shri Iqbal Ahmed Saradgi – *Chairman*

#### MEMBERS

##### *Lok Sabha*

2. Shri V. Kishore Chandra S. Deo
3. Shri Santosh Gangwar
4. Shri A. Krishnaswamy
5. Shri Madhusudan Mistry
6. Shri Mohammad Salim
7. Shri Rajesh Verma

##### *Rajya Sabha*

8. Shri Virendra Bhatia
9. Shri Arun Jaitley
10. Shri Ram Jethmalani
11. Shri Sitaram Yechury

#### SECRETARIAT

- |                         |   |                          |
|-------------------------|---|--------------------------|
| 1. Shri P.D.T. Achary   | – | <i>Secretary-General</i> |
| 2. Shri J.P. Sharma     | – | <i>Joint Secretary</i>   |
| 3. Shri A. Louis Martin | – | <i>Director</i>          |

2. The Joint Committee first held an internal meeting to discuss the programme of work of the Joint Committee. At the outset, the Chairman welcomed the Members of the Joint Committee to examine the constitutional and legal position relating to Office of profit. Then the Committee held discussion among themselves regarding the concept of office of profit.

3. Thereafter the representatives of the Ministry of Law & Justice (Legislative Department) were called in for a briefing. The following officials represented the Ministry:—

Dr. K.N. Chaturvedi	—	Secretary (Legislative Department)
Shri N.L. Meena	—	Joint Secretary and Legislative Counsel

Before the Joint Committee proceeded to hear the views of the representatives of the Ministry, the Chairman drew their attention to the provisions contained in the Direction 58 of the Directions by the Speaker.

4. Thereafter, the representatives of the Ministry briefed the Joint Committee on the subject matter under reference. The Joint Committee sought clarifications on some points and desired that the information on points, which was not readily available with them, might be furnished subsequently to the JPC for their information and use.

*The witnesses then withdrew.*

5. Thereafter, the Committee after some internal discussion decided that a press communique be issued in all national dailies in English and Hindi inviting memoranda from constitutional/legal experts, academicians, law institutes, Bar Councils, public bodies or individuals on the subject matter under consideration of the JPC.

6. The Committee also decided to seek the views of all the Parliamentary Parties/Groups, constitutional and legal experts and State Governments on the subject and decided to seek the approval of Hon'ble Speaker to invite information from State Governments.

A verbatim record of the proceeding of the Committee was kept.

*The Committee then adjourned.*

*CONFIDENTIAL*

MINUTES OF THE SECOND SITTING OF THE JOINT COMMITTEE TO EXAMINE THE  
CONSTITUTIONAL AND LEGAL POSITION RELATING TO OFFICE OF REPORT

The Joint Committee sat from 1130 hrs. to 1230 hrs. on 19 October, 2006, in Committee Room No. 'B', Parliament House Annexe, New Delhi.

PRESENT

Shri Iqbal Ahmed Saradgi – *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Santosh Gangwar
3. Shri Madhusudan Mistry
4. Shri Ram Gopal Yadav

*Rajya Sabha*

5. Shri Ram Jethmalani

SECRETARIAT

1. Shri J.P. Sharma – *Joint Secretary*
2. Shri A. Louis Martin – *Director*

2. At the outset, the Chairman apprised the members of the action taken in pursuance of the decisions taken by the Committee at their first sitting on 14.9.2006. The Committee had decided to issue a Press Communique inviting views/suggestions from the public and also decided to seek the views of all parliamentary parties/experts and State Governments. He informed the Committee that communications were sent to the Chief Secretaries/administrators of all the States/Union Territories, 41 Parliamentary Parties and 25 legal and constitutional experts and that Press Communique was issued in 19 local (Delhi) dailies and 73 regional newspapers and was broadcast/telecast in All India Radio, Doordarshan and Lok Sabha TV Channel and also displayed on website of Lok Sabha.

3. The Chairman further informed the Committee that 56 memoranda were received from public and there were responses from 7 experts *viz.* (1) Sarvashri P.P. Rao, (2) The Director, Indian Law Institute, (K.N. Chandra Sekharan Pillai), (3) Mahendra Pratap Singh, (4) J.S. Verma, (former Chief Justice of India) (5) Fail S. Nariman, (6) Harish Salve, and (7) Shri Bhanu Pratap Mehta (Centre for Policy Research). There were also responses from the Union territory of Lakshdweep and three Parliamentary Parties namely RJD, NLD and Shiv Sena.

4. Copies of all the memoranda/responses received till then and replies from the Legislative Department of the Ministry of Law and Justice had been circulated to the members of the Committee.

5. The Committee authorized the Chairman to shortlist experts who might be asked to appear before the Committee for oral evidence.

6. Thereafter, the representatives of the Ministry of Law & Justice (Legislative Department) were called in. The following were present:—

Dr. K.N. Chaturvedi	—	Secretary (Legislative Department)
Shri N.L. Menna	—	Joint Secretary and Legislative Counsel

After some discussion, the Committee desired the Ministry to furnish written information on certain points which include meaning of one of the terms of references *viz.* “to examine in the context of settled interpretation of the expression office of profit” and State-wise list of posts of offices of profit attached with perks and facilities. The Committee directed that State-wise list of offices of profit be collected by 5th November, 2006.

Record of verbatim proceeding kept.

*The Committee then adjourned.*

*CONFIDENTIAL*

MINUTES OF THE THIRD SITTING OF THE JOINT COMMITTEE TO EXAMINE THE  
CONSTITUTIONAL AND LEGAL POSITION RELATING TO OFFICE OF REPORT

The Joint Committee sat from 1500 hrs. to 1730 hrs. on Friday, 17 November, 2006 in Committee Room 'D', Parliament House Annexe, New Delhi to have personal hearing of two constitutional/legal experts.

PRESENT

Shri Iqbal Ahmed Saradgi – *Chairman*

MEMBERS

*Lok Sabha*

2. Shri V. Kishore Chandra S. Deo
3. Shri Santosh Gangwar
4. Dr. Satyanarayan Jatiya
5. Shri Raghunath Jha
6. Shri A. Krishnaswamy
7. Shri Madhusudan Mistry

*Rajya Sabha*

8. Shri Virendra Bhatia
9. Shri Arun Jaitley
10. Shri Sitaram Yechury

SECRETARIAT

- |                         |   |                          |
|-------------------------|---|--------------------------|
| 1. Shri P.D.T. Achary   | — | <i>Secretary-General</i> |
| 2. Shri J.P. Sharma     | — | <i>Joint Secretary</i>   |
| 3. Shri A. Louis Martin | — | <i>Director</i>          |

2. The Committee first held the hearing of the constitutional/legal expert Shri Fali S. Nariman. At the outset, the Chairman welcomed Shri Nariman and apprised him of Direction 58 of the Directions by the Speaker. Thereafter, the Committee heard views/suggestions of Shri Nariman on the matters under reference to the Committee and held discussion.

*The witness then withdrew.*

3. Thereafter, Shri Rustom S. Gae, Former Law Secretary and Senior Advocate was called in. The Chairman welcomed him and apprised him of Direction 58 of the Directions by the Speaker. Thereafter, the Committee heard views/suggestions of Shri Gae on the matters under reference to the Committee and held discussions.

A verbatim record of proceedings was kept.

*The Committee then adjourned.*



## MINUTES OF THE FOURTH SITTING OF THE JOINT COMMITTEE TO EXAMINE THE CONSTITUTIONAL AND LEGAL POSITION RELATING TO OFFICE OF PROFIT

The Joint Committee sat from 1500 hrs. to 1655 hrs on 1 December, 2006 in Committee Room No. 63, Parliament House, New Delhi to have personal hearing of two constitutional/legal experts.

### PRESENT

Shri Iqbal Ahmed Saradgi—*Chairman*

### MEMBERS

#### *Lok Sabha*

2. Shri V. Kishore Chandra S. Deo
3. Shri Santosh Gangwar
4. Dr. Satyanarayan Jatiya
5. Shri Raghunath Jha

#### *Rajya Sabha*

6. Shri Virendra Bhatia
7. Shri Ram Jethmalani
8. Shri Sitaram Yechury

### SECRETARIAT

- |                         |   |                        |
|-------------------------|---|------------------------|
| 1. Shri J.P. Sharma     | — | <i>Joint Secretary</i> |
| 2. Shri A. Louis Martin | — | <i>Director</i>        |

At the outset, the Joint Committee noted that the current session of Parliament is upto 19 December, 2006 and that the term of the Committee would expire on the first day of the last week of the current session. The Committee observed that views and suggestions were awaited from as many as 24 State Governments/U.T. Administrations and 31 parliamentary parties, whose views are necessary for the JPC to arrive at their recommendations as the criteria that might be evolved by the Committee are applicable to all States and Union Territories. It is after receipt of views from majority of State Governments and political parties, the Committee might complete oral evidences of all concerned. The Committee, therefore felt that it might not be possible for them to complete the work and present their report by the stipulated date and proposed to seek extension of time upto the first day of the last week of the Budget Session, 2007.

3. The Committee felt that the issues regarding criteria in relation to “office of profit” applicable to the States and Union Territories needed to be discussed with State Governments and Union Territories before formulating their views. The Committee, therefore, proposed that subject to extension of their term, approval of Hon’ble Speaker might be sought to undertake study visits to some States/UTs for holding informal discussion with them.

4. The Committee further noted that one of the terms of reference of the Committee is to examine the feasibility of adoption of system of law relating to prevention of disqualification of Members of Parliament as existing in the United Kingdom and considered by the Constitution (Forty-Second Amendment) Act, 1976. The Committee felt that it would be necessary to undertake a study visit to UK and Australia to study their existing laws on the subject before finalising their report.

5. Thereafter, Shri Rajeev Dhavan, Senior Advocate was called in. The Chairman welcomed Shri Rajeev Dhavan and apprised him of the Direction 58 of the Directions by the Speaker. Thereafter, the Committee heard views/suggestions of Shri Dhavan on the matters under reference to the Committee and held discussion.

*The witness then withdrew.*

6. Thereafter, Shri Harish N. Salve, Senior Advocate was called in. The Chairman welcomed him and apprised him of Direction 58 of the Directions by the Speaker. Then, the Committee heard views/suggestions of Shri Salve on the matters under reference to the Committee and held discussion.

A verbatim record of proceedings was kept.

*The Committee then adjourned.*

## MINUTES OF THE FIFTH SITTING OF THE JOINT COMMITTEE TO EXAMINE THE CONSTITUTIONAL AND LEGAL POSITION RELATING TO OFFICE OF PROFIT

The Joint Committee sat from 1500 hrs. to 1600 hrs. on 20 March, 2007 in Committee Room 'A' Parliament House Annexe, New Delhi.

### PRESENT

Shri Iqbal Ahmed Saradgi — *Chairman*

### MEMBERS

#### *Lok Sabha*

2. Shri Santosh Gangwar
3. Shri Raghunath Jha
4. Shri Madhusudan Mistry
5. Shri Mohammad Salim

#### *Rajya Sabha*

6. Shri Ram Jethmalani
7. Shri Sitaram Yechury

### SECRETARIAT

- |                      |   |                         |
|----------------------|---|-------------------------|
| 1. Shri J.P. Sharma  | — | <i>Joint Secretary</i>  |
| 2. Shri R.S. Mishra  | — | <i>Director</i>         |
| 3. Shri K. Jena      | — | <i>Deputy Secretary</i> |
| 4. Shri R.D. Silawat | — | <i>Deputy Secretary</i> |

2. At the outset, the Chairman welcomed the members of the Committee and briefed them about the progress of work done by the Committee since its constitution. He informed the Committee that apart from hearing the views of some of the legal luminaries, the Committee undertook two study visits covering four States namely Maharashtra, Karnataka, West Bengal and Tamil Nadu. The Chairman emphasized the need to visit major remaining States also, as the Committee has to recommend in relation to office of profit, a generic and comprehensive criteria applicable to all States/UTs.

3. Some of the members drew the attention of the Chairman regarding one of the terms of reference of the Committee *i.e.* to examine the feasibility of adoption of system of law relating to prevention of disqualification of members of Parliament existing in the United Kingdom. The

Committee reiterated their earlier decision to undertake study visits to U.K. and Australia to study their laws on the subject in detail.

4. Thereafter, the representatives of Ministry of Home Affairs, NCT of Delhi and Union Territory of Pondicherry were called in. The following were present:

**Ministry of Home Affairs**

- |                       |   |                      |
|-----------------------|---|----------------------|
| 1. Shri Vinay Kumar   | – | Additional Secretary |
| 2. Shri B.A. Coutinho | – | Joint Secretary      |

**National Capital Territory of Delhi**

- |                              |   |  |
|------------------------------|---|--|
| 1. Shri Ramesh Narayanaswami | – | Chief Secretary                                  |
| 2. Shri B.S. Mathur          | – | Pr. Secy. (Law, Justice and Legislative Affairs) |
| 3. Smt. Shakuntala D. Gamlin | – | Secretary, GAD                                   |
| 4. Shri Ajay Chagti          | – | Deputy Secretary<br>(GAD/Services)               |

**Union Territory of Pondicherry**

- |  |   |               |
|--|---|---------------|
| Shri John Claude Pompei<br>Mariadassou | – | Law Secretary |
|--|---|---------------|

5. The Chairman welcomed the representatives of Ministry of Home Affairs, Union Territory of Pondicherry and NCT of Delhi and drew their attention to the provisions contained in Direction 58 of the Directions by the Speaker. The Committee held discussion with them on the genesis of granting exemption to certain offices under the relevant Acts of Pondicherry and NCT of Delhi. The Committee further desired that note on certain points on which information was not available might be furnished subsequently.

A verbatim record of proceedings was kept.

*The Committee then adjourned.*

MINUTES OF THE SIXTH SITTING OF THE JOINT COMMITTEE TO EXAMINE THE  
CONSTITUTIONAL AND LEGAL POSITION RELATING TO OFFICE OF PROFIT

The Joint Committee sat from 1500 hrs. to 1530 hrs. on 9 May, 2007 in Committee Room 'E' Parliament House Annexe, New Delhi.

PRESENT

Shri Iqbal Ahmed Saradgi – *Chairman*

MEMBERS

*Lok Sabha*

2. Shri V. Kishore Chandra S. Deo
3. Shri Santosh Gangwar
4. Dr. Satyanarayan Jatiya
5. Shri Mohammad Salim

*Rajya Sabha*

6. Shri Virendra Bhatia

SECRETARIAT

- |                       |   |                         |
|-----------------------|---|-------------------------|
| 1. Shri J.P. Sharma   | – | <i>Joint Secretary</i>  |
| 2. Shri R.S. Mishra   | – | <i>Director</i>         |
| 3. Shri K. Jena       | – | <i>Deputy Secretary</i> |
| 4. Shri Kushal Sarkar | – | <i>Under Secretary</i>  |

At the outset, the Hon'ble Chairman, Joint Committee to examine the constitutional and legal position relating to office of Profit welcomed the Members of the Committee to the sitting and briefed them about the progress of work done by the Committee since its constitution.

Then, the Hon'ble Chairman apprised the Members about the informal discussions the Committee had with the representatives of the respective State Governments and others during study visits to Mumbai-Bangalore and Kolkata-Chennai during the months of January and February, 2007 respectively. The Members emphasised the need to visit the other remaining major States *viz.* Rajasthan, Bihar, Uttar Pradesh, Gujarat, Jharkhand, Punjab, Himachal Pradesh, North-Eastern States, etc. which could not be visited by the Committee due to election in Uttar Pradesh and other inevitable reasons, to ascertain their views/suggestions on the subjects under reference besides hearing some more constitutional/legal experts.

Recalling one of the terms of reference of the Committee *viz.* to examine the feasibility of adoption of system of law relating to prevention of disqualification of Members of Parliament as

existing in the United Kingdom and considered by the Constitution (42nd Amendment) Act, 1976, some of the members desired that the relevant material on the subject might be obtained from Canada, Australia and other countries where parliamentary system of government exist through the Ministry of External Affairs. The Committee also reiterated that the feasibility of visiting U.K. in order to have wide discussion/interaction with House of Commons on the subject may be explored.

In view of the aforementioned voluminous task involved before finalizing their report, the Committee felt that it might not be possible for them to complete the work and present their report by the stipulated date *i.e.* by the first day of the last week of Budget Session, 2007. The Committee, therefore, proposed to seek extension of time for presentation of their report up to the first day of the last week of Monsoon Session, 2007.

*The Committee then adjourned.*

MINUTES OF THE SEVENTH SITTING OF THE JOINT COMMITTEE TO EXAMINE THE  
CONSTITUTIONAL AND LEGAL POSITION RELATING TO OFFICE OF PROFIT

The Joint Committee sat from 1500 hrs. to 1610 hrs. on 23 August, 2007 in Committee Room No. 63, Parliament House, New Delhi.

PRESENT

Shri Iqbal Ahmed Saradgi—*Chairman*

MEMBERS

*Lok Sabha*

2. Shri V. Kishore Chandra S. Deo
3. Shri Santosh Gangwar
4. Shri Madhusudan Mistry
5. Shri Mohammad Salim
6. Prof. Ram Gopal Yadav

*Rajya Sabha*

7. Shri Virendra Bhatia
8. Shri Arun jaitley
9. Shri Ram Jethmalani
10. Shri Sitaram Yechury

SECRETARIAT

- |                       |   |                         |
|-----------------------|---|-------------------------|
| 1. Shri P.K. Grover   | — | <i>Joint Secretary</i>  |
| 2. Shri R.S. Mishra   | — | <i>Director</i>         |
| 3. Shri K. Jena       | — | <i>Deputy Secretary</i> |
| 4. Shri Kushal Sarkar | — | <i>Under Secretary</i>  |

**Representatives of State Government of Gujarat**

- |                     |   |   |
|---------------------|---|---|
| 1. Shri H.D. Vyas   | — | Secretary<br>Department of Legislative and<br>Parliamentary Affairs       |
| 2. Shri I.A. Parmar | — | Joint Secretary<br>Department of Legislative and<br>Parliamentary Affairs |

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

- |                     |   |   |
|---------------------|---|---|
| 1. Dr. B.A. Agarwal | – | Additional Secretary                    |
| 2. Shri N.L. Meena  | – | Joint Secretary and Legislative Counsel |

2. At the outset, the Chairman welcomed the members of the Joint Committee to examine the constitutional and legal position relating to Office of Profit and apprised them in brief about the work done by the Committee since its constitution. The members thereupon, discussed among themselves on the terms of reference of the Committee and other related issues. The Committee also felt the need to undertake an on-the-spot study visit to North Eastern States to elicit their views on the subject under reference of the JPC.

3. Thereafter the representatives of State Government of Gujarat and the Ministry of Law and Justice (Legislative Department) were called in. Hon'ble Chairman welcomed the representatives to the sitting of the Committee and drew their attention to the provisions contained in Direction 58 of the Directions by the Speaker.

4. Thereafter, the Joint Committee held informal discussions with the representatives of the State Government of Gujarat. The Joint Committee sought clarifications on some points and desired that the information on the points, which were not readily available with them, might be furnished subsequently in writing to the Committee for their information and use.

*The witnesses then withdrew.*

A verbatim record of the proceedings of the Committee has been kept.

*The Committee then adjourned.*



## MINUTES OF THE EIGHTH SITTING OF THE JOINT COMMITTEE TO EXAMINE THE CONSTITUTIONAL AND LEGAL POSITION RELATING TO OFFICE OF PROFIT

The Joint Committee sat from 1500 hrs. to 1530 hrs. on 5 September, 2007 in Committee Room No. 62, Parliament House, New Delhi.

### PRESENT

Shri Iqbal Ahmed Saradgi—*Chairman*

### MEMBERS

#### *Lok Sabha*

2. Shri V. Kishore Chandra S. Deo
3. Shri Santosh Gangwar
4. Shri Raghunath Jha
5. Shri Madhusudan Mistry
6. Prof. Ram Gopal Yadav

#### *Rajya Sabha*

7. Shri Virendra Bhatia
8. Shri Arun Jaitley
9. Shri Ram Jethmalani
10. Shri Sitaram Yechury

### SECRETARIAT

- |                       |   |                         |
|-----------------------|---|-------------------------|
| 1. Shri P.K. Grover   | — | <i>Joint Secretary</i>  |
| 2. Shri R.S. Mishra   | — | <i>Director</i>         |
| 3. Shri K. Jena       | — | <i>Deputy Secretary</i> |
| 4. Shri Kushal Sarkar | — | <i>Under Secretary</i>  |

At the outset, the Hon'ble Chairman, Joint Committee to examine the constitutional and legal position relating to Office of Profit welcomed the Members of the Committee to the sitting and briefed them about the progress of work done by the Committee since its constitution. Thereafter, the Committee deliberated over the work done by the Committee particularly the views obtained from constitutional and legal luminaries and suggestions obtained from various States on the terms of reference of the Committee. The Committee desired to visit North-Eastern States and Uttar Pradesh from 25 to 27 October, 2007 to ascertain their views on the terms of reference of the Committee. Some members also emphasized the need to have a sub-Committee for drafting the Report and further deliberation on it.

In view of the aforementioned task involved before finalizing their report, the Committee felt that it might not be possible to complete the work and present the report by the stipulated date i.e. by the first day of the last week of the Monsoon Session, 2007. The Committee, therefore, proposed to seek extension of time for presentation of their report upto last day of Winter Session, 2007.

*The Committee then adjourned.*

MINUTES OF THE NINTH SITTING OF THE JOINT COMMITTEE TO EXAMINE THE  
CONSTITUTIONAL AND LEGAL POSITION RELATING TO OFFICE OF PROFIT

The Joint Committee sat from 1140 hrs. to 1315 hrs. on 31 October, 2007 in Committee Room 'D' Parliament House Annexe, New Delhi.

PRESENT

Shri Iqbal Ahmed Saradgi—*Chairman*

MEMBERS

*Lok Sabha*

2. Shri V. Kishore Chandra S. Deo
3. Shri Santosh Gangwar
4. Shri Raghunath Jha
5. Shri Madhusudan Mistry
6. Shri Rajesh Verma
7. Shri Ram Gopal Yadav

*Rajya Sabha*

8. Shri Ram Jethmalani
9. Shri Sitaram Yechury

SECRETARIAT

- |                       |   |                         |
|-----------------------|---|-------------------------|
| 1. Shri P.K. Grover   | — | <i>Joint Secretary</i>  |
| 2. Shri R.S. Mishra   | — | <i>Director</i>         |
| 3. Shri Kushal Sarkar | — | <i>Deputy Secretary</i> |

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

- |                         |   |                 |
|-------------------------|---|-----------------|
| 1. Shri K.N. Chaturvedi | — | Secretary       |
| 2. Shri N.L. Meena      | — | Joint Secretary |

**Representatives of North Eastern State Governments**

TRIPURA

- |                          |   |               |
|--------------------------|---|---------------|
| Shri Swapan Chandra Bose | — | Law Secretary |
|--------------------------|---|---------------|

MIZORAM

- |                     |   |  |
|---------------------|---|--|
| Shri P. Chakraborty | — | Secretary,<br>Parliamentary Affairs Department |
|---------------------|---|--|

#### ARUNACHAL PRADESH

1. Shri K.K. Sharma — Chief Secretary
2. Shri C.P. Mansai — Secretary (Law and Parliamentary Affairs)

#### ASSAM

1. Shri P.C. Sharma — Chief Secretary
2. Shri P.K. Chaudhary — Principal Secretary  
Parliamentary Affairs Department

#### NAGALAND

- Shri R. Kothandaraman — Secretary, Parliamentary Affairs Department

#### MANIPUR

- Shri Saichhuana — Additional Chief Secretary

#### SIKKIM

- Shri R.K. Purukayastha — Secretary, Parliamentary Affairs Department

#### MEGHALAYA

- Shri L.M. Sangam — Joint Secretary, Parliamentary Affairs  
Department

At the outset, the Chairman, JPC welcomed the members of the Joint Committee to examine the constitutional and legal position relating to office of profit and apprised them about the reasons for postponement of the study visit of the JPC to Guwahati fixed for 25 and 26 October, 2007. Further, the Committee reiterated the need to visit some of the States *viz.* Uttar Pradesh, Madhya Pradesh and Bihar etc., to obtain their views and suggestion on the terms of reference of the Committee before finalizing their report. The Committee also deliberated among themselves the need to draw and discuss threadbare terms of reference-wise views/suggestions received from various quarters to arrive at their conclusions. In view of the above task involved before finalizing their report, the Committee felt that it might not be possible for them to complete the work and present their report by the stipulated date i.e. by the last day of winter Session, 2007 keeping in view the fact that the ensuing Winter Session, 2007 may be for a short duration. The Committee, therefore, proposed to seek another extension of time for presentation of their report upto the first day of the last week of Budget Session, 2008.

Thereafter, the representatives of the North Eastern State Governments were called in. Before the Joint Committee proceeded to hear the views of the representatives of the North Eastern State Governments, the Chairman drew their attention to the provisions contained in Direction 58 of the Directions by the Speaker.

Thereafter, the Committee heard the views of the representatives of the North Eastern State Governments and sought clarifications on some points and desired that the information on points, which was not readily available with them, might be furnished subsequently to the JPC for their information and use.

*The witnesses then withdrew.*

Verbatim proceeding of the sitting have been kept on record.

*The Committee then adjourned.*

MINUTES OF THE TENTH SITTING OF THE JOINT COMMITTEE TO EXAMINE THE  
CONSTITUTIONAL AND LEGAL POSITION RELATING TO OFFICE OF PROFIT

The Joint Committee sat from 1505 hrs. to 1535 hrs. on 27 November, 2007 in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Shri Iqbal Ahmed Saradgi — *Chairman*

MEMBERS

*Lok Sabha*

2. Shri Santosh Gangwar

*Rajya Sabha*

3. Shri Ram Jethmalani

4. Shri Sitaram Yechury

SECRETARIAT

- |                       |   |                         |
|-----------------------|---|-------------------------|
| 1. Shri P.K. Grover   | — | <i>Joint Secretary</i>  |
| 2. Shri R.S. Mishra   | — | <i>Director</i>         |
| 3. Shri K. Jena       | — | <i>Deputy Secretary</i> |
| 4. Shri Kushal Sarkar | — | <i>Deputy Secretary</i> |

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

- |                         |   |                 |
|-------------------------|---|-----------------|
| 1. Shri K.N. Chaturvedi | — | Secretary       |
| 2. Shri N.L. Meena      | — | Joint Secretary |

**Representatives of Government of Rajasthan**

- |                         |   |                            |
|-------------------------|---|----------------------------|
| 1. Shri A.K. Pande      | — | Additional Chief Secretary |
| 2. Shri Mahesh Bhagwati | — | Law Secretary              |

At the outset, the Chairman, Joint Committee to examine the constitutional and legal position relating to Office of Profit welcomed the members to the sitting of the JPC. Thereafter, the representatives of the Government of Rajasthan were called in. Before the Joint Committee proceeded to hear the views of the representatives of the State Government of Rajasthan, the Chairman drew their attention to the provisions contained in Direction 58 of the Directions by the Speaker.

Then, the Committee heard the views of the representatives of the State Government of Rajasthan and sought clarifications on some points and desired that the information on points, which was not readily available with them, might be furnished subsequently to the JPC for their information and use.

*The witnesses then withdrew.*

Verbatim proceedings of the sitting have been kept on record.

*The Committee then adjourned.*

MINUTES OF THE ELEVENTH SITTING OF THE JOINT COMMITTEE TO EXAMINE THE  
CONSTITUTIONAL AND LEGAL POSITION RELATING TO OFFICE OF PROFIT

The Joint Committee sat from 1510 hrs. to 1615 hrs. on 28 April, 2008, in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

Shri Iqbal Ahmed Saradgi—*Chairman*

MEMBERS

*Lok Sabha*

2. Shri V. Kishore Chandra S. Deo
3. Shri Santosh Gangwar
4. Shri Madhusudan Mistry
5. Shri Mohammad Salim

SECRETARIAT

- |                       |   |                         |
|-----------------------|---|-------------------------|
| 1. Shri P.K. Grover   | — | <i>Joint Secretary</i>  |
| 2. Shri R.S. Mishra   | — | <i>Director</i>         |
| 3. Shri Kushal Sarkar | — | <i>Deputy Secretary</i> |

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

Shri N.L. Meena — Additional Secretary

**Representatives of State Government of Uttar Pradesh**

- |                          |   |                                      |
|--------------------------|---|--------------------------------------|
| 1. Shri P.K. Mishra      | — | Chief Secretary                      |
| 2. Shri Pradeep Dubey    | — | Secretary, Parliamentary Affairs     |
| 3. Shri Atul Kumar Gupta | — | Commissioner, Industrial Development |

2. At the outset, the Chairman, Joint Committee to examine the constitutional and legal position relating to Office of Profit welcomed the members to the sitting of the JPC. Thereafter, the representatives of the Government of Uttar Pradesh were called in. Before the Joint Committee proceeded to hear the views of the representatives of the State Government of Uttar Pradesh, the Chairman drew their attention to the provisions contained in Direction 58 of the Directions by the Speaker.

3. Then, the Committee heard the views of the representatives of the State Government of Uttar Pradesh and sought clarifications on some points. The main points discussed during the

meeting were the desirability of evolving a uniform criteria and definition for the 'office of profit' applicable uniformly to all States; the criteria followed for exempting certain offices from the purview of 'office of profit' in the State of U.P.; the need for the public representatives to be associated with the developmental process. The Committee desired that the information on points, which was not readily available with the witnesses, might be furnished subsequently to the JPC for their information and use.

4. The witnesses then withdrew.

5. Verbatim proceedings of the sitting have been kept on record.

6. Thereafter, the Committee held discussion among themselves. Hon'ble Chairman apprised the Committee that replies from most of the States/UT Governments have been received. However, out of 41 political parties/groups which were asked to give their considered views on the reference of the Committee, replies from only 14 parties/groups had been received. The Committee felt that it is after receipt of views from the remaining States and Political Parties that the Committee would be able to complete their examination of the subject. Thereafter, the Committee would hold discussion with the administrative Ministry i.e. Ministry of Law and Justice (Legislative Department) to elicit their views/clarifications on the various points raised by the States/U.T. Governments and others. Thereafter, the Committee would hold sittings to have detailed discussion among themselves on the views so received from various quarters to arrive at their conclusions.

7. In view of the above, the Committee felt that it would not be possible for them to complete the task before them and present the Report by the stipulated time *i.e.* last day of the Budget Session, 2008. The Committee, therefore, decided to seek extension of time for presentation of the report upto the last day of the Monsoon Session, 2008.

*The Committee then adjourned.*

MINUTES OF THE TWELFTH SITTING OF THE JOINT COMMITTEE TO EXAMINE THE  
CONSTITUTIONAL AND LEGAL POSITION RELATING TO OFFICE OF PROFIT

The Joint Committee sat from 1110 hrs. to 1245 hrs. on 5 June, 2008 in Committee Room No. 62, Parliament House, New Delhi.

PRESENT

Shri Iqbal Ahmed Saradgi—Chairman

MEMBERS

*Lok Sabha*

2. Shri V. Kishore Chandra S. Deo

*Rajya Sabha*

3. Shri Abhishek Manu Singhvi

SECRETARIAT

- |                      |   |                         |
|----------------------|---|-------------------------|
| 1. Shri R.S. Misra   | — | <i>Director</i>         |
| 2. Shri Kusal Sarkar | — | <i>Deputy Secretary</i> |

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

- |                    |   |                      |
|--------------------|---|----------------------|
| 1. Shri K.D. Singh | — | Secretary            |
| 2. Shri N.L. Meena | — | Additional Secretary |

**Representatives of State Government of Chhattisgarh**

- |                        |   |                     |
|------------------------|---|---------------------|
| 1. Shri R.S. Sharma    | — | Law Secretary       |
| 2. Shri A.K. Samantray | — | Addl. Law Secretary |

**Representatives of State Government of Orissa**

- |                    |   |                                 |
|--------------------|---|---------------------------------|
| 1. Shri B.K. Nayak | — | Principal Law Secretary         |
| 2. Shri K.C. Patra | — | Joint Secretary, Parly. Affairs |
| 3. Shri S.K. Panda | — | Joint Resident Commissioner     |

2. At the outset, the Chairman, Joint Committee to examine the constitutional and legal position relating to Office of Profit welcomed the members to the sitting of the JPC. Thereafter, the representatives of the Government of Chhattisgarh were called in. Before the Joint Committee proceeded to hear the views of the representatives of the State Government of Chhattisgarh, the Chairman drew their attention to the provisions contained in Direction 58 of the Directions by the Speaker.



3. Then, the Committee heard the views of the representatives of the State Government of Chhattisgarh and sought clarifications on some points. The main points discussed during the meeting were the desirability of evolving a uniform criteria in relation to office of profit which can be applied to all States and Union Territories; feasibility of adoption of system of law as existing in United Kingdom; definition of 'office of profit' and the criteria followed for exempting certain offices from the purview of office of profit in the State of Chhattisgarh. The Committee desired that the information on points, which was not readily available with the witnesses might be furnished subsequently to the JPC for their information and use.

4. The witnesses then withdrew.

5. Thereafter, the representatives of Government of Orissa were called in. The Joint Committee held informal discussions with the representatives of the State Governments of Orissa on matters under reference of the JPC. The main points on which the JPC sought views of the officials of the State Government of Orissa were the need to evolve generic and comprehensive criteria applicable to all States and Union Territories; the need for public representatives to be associated with the developmental activities; the need to evolve suggestive general guidelines/principles to declare an office/post to be an 'office of profit'; the feasibility of adoption of United Kingdom law on the subject; conflict between duty and interest of members holding two offices simultaneously. The Committee sought clarifications on some points and desired that the information on the points, which were not readily available with the witnesses, might be furnished subsequently in writing to the Committee for their information and use.

*The witnesses then withdrew.*

Verbatim proceedings of the sitting have been kept on record.

6. Thereafter, the Committee held discussions among themselves. The Committee felt the need to visit Dehradun in the month of June, 08 to hold discussion with the officials of the State Government of Uttarakhand to ascertain their views on matters under reference of the JPC.

*The Committee then adjourned.*

MINUTES OF THE THIRTEENTH SITTING OF THE JOINT COMMITTEE TO EXAMINE THE  
CONSTITUTIONAL AND LEGAL POSITION RELATING TO OFFICE OF PROFIT

The Joint Committee sat from 1500 hrs. to 1545 hrs. on 20 August, 2008 in Committee Room 'D', Parliament House Annexe, New Delhi.

PRESENT

Shri Iqbal Ahmed Saradgi—*Chairman*

MEMBERS

*Lok Sabha*

2. Shri Santosh Gangwar
3. Shri A. Krishnaswamy
4. Shri Madhusudan Mistry
5. Shri Mohammad Salim

*Rajya Sabha*

6. Shri Sitaram Yechury

SECRETARIAT

1. Shri P.K. Grover — *Joint Secretary*
2. Shri Kusal Sarkar — *Deputy Secretary-II*

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

- Shri K.D. Singh — Secretary  
Shri N.L. Meena — Additional Secretary

**Representatives of State Government of Madhya Pradesh**

- Shri Rakesh Sahni — Chief Secretary  
Shri Dilip Mehra — Principal Secretary, Parliamentary Affairs Department  
Shri Naresh Kumar Gupta — Principal Secretary, Law & Legislative Affairs Department

2. At the outset, the Chairman, Joint Committee to examine the constitutional and legal position relating to Office of Profit welcomed the members to the sitting of the JPC. Thereafter, the representatives of the Government of Madhya Pradesh were called in. Before the

Joint Committee proceeded to hear the views of the representatives of the State Government of Madhya Pradesh, the Chairman drew their attention to the provisions contained in Direction 58 of the Directions by the Speaker.

3. Then, the Committee heard the views of the representatives of the State Government of Madhya Pradesh and sought clarifications on some points. The main points discussed during the meeting were the feasibility of definition of 'offices of profit' and the Criteria followed for exempting certain offices from the purview of 'office of profit' in the State of Madhya Pradesh; feasibility of adoption of system of law as existing in United Kindom; desirability of evolving a uniform criteria in relation to office of profit which can be applied to all States and Union Territories; The Committee desired that the information on points, which was not readily available with the witnesses, might be furnished subsequently to the JPC for their information and use.

*The witnesses then withdrew.*

Verbatim proceedings of the sitting have been kept on record.

*The Committee then adjourned.*

MINUTES OF THE FOURTEENTH SITTING OF THE JOINT COMMITTEE TO EXAMINE THE  
CONSTITUTIONAL AND LEGAL POSITION RELATING TO OFFICE OF PROFIT

The Joint Committee sat from 1500 hrs. to 1530 hrs. on 9 September, 2008 in Committee Room 'B' Parliament House Annexe, New Delhi.

MEMBERS

Shri V. Kishore Chandra S. Deo—*Acting Chairman*

*Lok Sabha*

2. Shri Ganesh Prasad Yadav
3. Shri Madhusudan Mistry
4. Shri Rajesh Verma

*Rajya Sabha*

5. Shri Sitaram Yechury

SECRETARIAT

- |                      |   |                            |
|----------------------|---|----------------------------|
| 1. Shri P.K. Grover  | — | <i>Joint Secretary</i>     |
| 2. Shri R.S. Mishra  | — | <i>Director</i>            |
| 3. Shri Kusal Sarkar | — | <i>Deputy Secretary-II</i> |

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

- |                        |   |                                       |
|------------------------|---|---------------------------------------|
| Shri T.K. Vishwanathan | — | Secretary                             |
| Shri S.R. Dhaleta      | — | Joint Secretary & Legislative Counsel |

**Representatives of State Government of Kerala**

- |                        |   |   |
|------------------------|---|---|
| Smt. Neela Gangadharan | — | Additional Chief Secretary, Parliamentary Affairs<br>Department, Government of Kerala |
| Shri B.R. Mohan Kumar  | — | Law Officer   |

2. In the absence of the Chairman, the Committee chose Shri V. Kishore Chandra S. Deo, to act as Chairman under rule 258(3) of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. At the outset, the Chairman welcomed the members to the sitting of the JPC. Thereafter, the representatives of the State Government of Kerala were called in. Before the Joint Committee proceeded to hear the views of the representatives of the State Government of Kerala, the

Chairman drew their attention to the provisions contained in Direction 58 of the Directions by the Speaker.

4. Then, the Committee heard the views of the representatives of the State Government of Kerala and sought clarifications on some points.

5. The main points discussed during the meeting were the criterion being followed for granting exemption from disqualification and the factors other than remuneration being considered for giving exemptions by the State Government of Kerala; need for evolving a uniform criteria in relation to office of profit which can be applied to all States/UTs; feasibility of definition of office of profit; and providing for an enabling provision in the Constitution for exercising an option by an elected member to resign from an office in the event of the office he is holding being determined to be an office of profit. The information on some of the points was not available with the witnesses. The Committee, therefore, desired that the information as asked for during the discussion might be furnished subsequently by the State Government of Kerala to the JPC for their information and use.

*The witnesses then withdrew.*

Verbatim proceedings of the sitting have been kept on record.

*The Committee then adjourned.*

## MINUTES OF THE FIFTEENTH SITTING OF THE JOINT COMMITTEE TO EXAMINE THE CONSTITUTIONAL AND LEGAL POSITION RELATING TO OFFICE OF PROFIT

The Joint Committee sat from 1510 hrs. to 1600 hrs. on 16 December, 2008 in Committee Room No. '62' Parliament House, New Delhi.

Shri Iqbal Ahmed Saradgi – *Chairman*

### MEMBERS

#### *Lok Sabha*

2. Shri V. Kishore Chandra S. Deo
3. Shri Santosh Gangwar
4. Dr. Satyanarayan Jatiya
5. Shri Ganesh Prasad Singh
6. Shri Madhusudan Mistry
7. Shri Mohammad Salim

#### *Rajya Sabha*

8. Shri Virendra Bhatia
9. Shri Arun Jaitley
10. Shri Ram Jethmalani
11. Shri Sitaram Yechury

### SECRETARIAT

- |                      |   |                            |
|----------------------|---|----------------------------|
| 1. Shri P.K. Grover  | – | <i>Joint Secretary</i>     |
| 2. Shri R.S. Mishra  | – | <i>Director</i>            |
| 3. Shri Kusal Sarkar | – | <i>Deputy Secretary-II</i> |

2. At the outset, the Hon'ble Chairman, welcomed the members of the Joint Committee to examine the constitutional and legal position relating to office of profit to the sitting.

3. The Committee then considered and adopted the draft report with minor modifications.

4. The Committee authorized the Chairman to present the report and lay the record of evidence on the Table of the House.

5. The Committee decided that two sets of memoranda containing comments/suggestions received by the Committee might be placed in Parliamentary Library, after the Report has been presented, for reference by the Members of Parliament.

6. The Committee also placed on record their deep appreciation of the hard work done and valuable assistance rendered by the officers and staff of the Lok Sabha Secretariat to facilitate the work of the Committee.

7. The Chairman while associating himself in thanking the above mentioned officers, also thanked the members of the Committee for extending their full cooperation to him in conducting the proceedings of the Committee in a most congenial atmosphere.

8. The members of the Committee also placed on record their high appreciation and thanks to the Chairman (Shri Iqbal Ahmed Saradgi) for very ably and impartially conducting the proceedings of the Committee and guiding their deliberations.

*The Committee then adjourned.*