



Office of Profit

For Prelims: Office of Profit, Election Commission, Representation of the People Act, Supreme Court, Article 102 (1), Article 191 (1), Article 164 (4), High Court

For Mains: Office of Profit and related Constitutional Provisions

Why in News?

Recently, the [Election Commission](#) issued notice to Jharkhand chief minister on a reference that he held an “**office of profit**” by granting a mining lease to himself in 2021.

- The chief minister is accused of **violating a provision of the Representation of the People Act.**

What is the Concept of ‘Office of Profit’?

- MPs and MLAs, as members of the legislature, **hold the government accountable for its work.**
- The essence of disqualification under the office of profit law is **if legislators holds an ‘office of profit’ under the government**, they might be susceptible to government influence, and may not discharge their constitutional mandate fairly.
- The intent is that **there should be no conflict between the duties and interests** of an elected member.
- Hence, the office of profit law **simply seeks to enforce a basic feature of the Constitution-**
 - The principle of separation of power between the legislature and the executive.

What Constitutes an ‘Office of Profit’?

- **About:**
 - The law **does not clearly define what constitutes an office of profit** but the definition has evolved over the years with interpretations made in various court judgments.
 - An **office of profit has been interpreted to be a position** that brings to the office-holder some financial gain, or advantage, or benefit.
 - The amount of such profit is immaterial.
 - In 1964, the [Supreme Court](#) ruled that the test for determining whether a person holds an office of profit is the test of appointment.
- **Factors which are considered in this determination includes:**
 - Whether the government is the appointing authority
 - Whether the government has the power to terminate the appointment
 - Whether the government determines the remuneration
 - What is the source of remuneration
 - Power that comes with the position

What does the Constitution say about holding an ‘Office of Profit’?

- Under **Article 102 (1) and Article 191 (1) of the Constitution**, an MP or an MLA (or an MLC) is **barred from holding any office of profit** under the central or state government.
 - The articles clarify 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 reason only that he is a minister”.
- Provisions of Articles 102 and 191 also **protect a legislator occupying a government** position if the office in question has been made immune to disqualification by law.
- Parliament has also enacted the **Parliament (Prevention of Disqualification) Act, 1959**, which has been amended several times to expand the exempted list.

What are the Related Judgments of the Supreme Court?

- CM will be disqualified under **Section 9A of the Representation of Peoples’ Act, 1951** in view of three judgments of the apex court.
 - Under that section, **a contract has to be made for the supply of goods** or the execution of any work undertaken by the government.
- A constitution bench of the Supreme Court in 1964 in the case of **CVK Rao vs Dentu Bhaskara Rao** has held that a mining lease does not amount to a contract of supply of goods.
- In 2001, a three-judge bench of the apex court in the case of **Kartar Singh Bhadana vs Hari Singh Nalwa & others** also made it clear that a mining lease does not amount to execution of a work undertaken by the government.
- Even if the **CM is disqualified by any authority**, he can challenge it in the **high court** and in that case and as per a Supreme Court order, the adjudication **has to be completed within four months**.
 - **Under Article 164 (4)**, one person can be a **minister for six months** without being a member.

UPSC Civil Services Examination, Previous Year Questions

Q. Consider the following statements: (2019)

1. The Parliament (Prevention of Disqualification) Act, 1959 exempts several posts from disqualification on the grounds of ‘Office of Profit’.
2. The above-mentioned Act was amended five times.
3. The term ‘Office of Profit’ is well-defined in the Constitution of India.

Which of the statements given above is/are correct?

- (a) 1 and 2 only
- (b) 3 only
- (c) 2 and 3 only
- (d) 1, 2 and 3

Ans: (a)

Exp:

- The Parliament (Prevention of Disqualification) Act, 1959 exempts several posts from disqualification, like:
 - Ministers of State and Deputy Ministers,
 - Parliamentary Secretaries and Parliamentary Under Secretaries,
 - Deputy Chief Whips in Parliament,
 - Vice-Chancellors of Universities,
 - Officers in the National Cadet Corps, and the Territorial Army, and
 - Chairman and members of Advisory Committees set up by the Government when they are not entitled to any fee or remuneration other than compensatory, etc. Hence, statement 1 is correct.
- The Act has been amended 5 times, since its formulation, in the years 1960, 1992, 1993, 2006 and 2013. Hence, statement 2 is correct.

- The Constitution of India does not clearly define what constitutes an office of profit, but the definition has evolved over the years with interpretations made in various court judgments. Hence, statement 3 is not correct. Therefore, option (a) is the correct answer.

[Source: TH](#)

PDF Referenece URL: <https://www.drishtias.com/printpdf/office-of-profit-1>