



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, **Jharkhand chief minister** who was an **accused of holding an [office of profit](#)**, **pleaded to government to make his crime public as well as grant him punishment** at the earliest.

What is the Concept of 'Office of Profit'?

- Members of Parliament (MPs) and Members of Legislature (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 hold 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 Question

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: HT](#)

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