

Office of Profit

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What is the 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 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 (**Separation of powers**).

Constitutional provisions

- **Art 102(1)**– A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder.
- **Art 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 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.
- Judicial interpretation
- SC in **Maulana Abdul Shakur vs Rikhab Chand (1958)** had defined the concept of office of profit under the government. The court said the government's power to appoint a person to an office, or to keep him in that office, or revoke his appointment at its discretion, and

payment from government revenues were important factors in determining if one held an office of profit. Payment from a source other than government revenue was not the decisive factor.

- Similar views were upheld in Pradyut **Bordoloi vs Swapan Roy (2001)** In **Guru Gobinda Basu vs Sankari Prasad Ghosal (1964)**, the court said: “But all these factors need not coexist. Mere absence of one of the factors may not negate the overall test. The decisive test for determining whether a person holds any office of profit under the government, the Constitution Bench holds, is the test of appointment; stress on other tests will depend on the facts of each case.