

# Office of Profit

September 9, 2020

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**.

## Office of Profit

- The office of profit law seeks to enforce a basic feature of the Constitution- the **principle of separation of power between the legislature and the executive**. Intent is that there should be no conflict between the duties and interests of an elected member.
- 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.

## SC Judgements

- In 1964, the Supreme Court ruled that the test for determining whether a person holds an office of profit is the **test of appointment**. Several factors are considered in this determination including factors such as:
  - . 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

. the power that comes with the position

- Similar views were upheld in **Pradyut Bordoloi vs Swapan Roy (2001)**. In **Guru Gobinda Basu vs Sankari Prasad Ghosal (1964)**, the court said: “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 is the test of appointment”.

### Constitutional Provisions

- Under the provisions of **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.
- 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**.
- Several state legislatures have enacted laws exempting certain offices from the purview of office of profit. Parliament has also enacted the **Parliament (Prevention of Disqualification) Act, 1959**, which has been amended several times to expand the exempted list.