

JOINT COMMITTEE ON OFFICES OF PROFIT

ORIGIN

The concept of disqualifying a holder of an office of profit under Government for being chosen as, and for being, a Member of a legislature originated from the need in the democratic Governments to limit the control or influence of the executive over the legislature by means of an undue proportion of office holders being Members of 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 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.

2. In all democracies, including the United Kingdom and U.S.A., Office holders under the Government, as a rule, are disqualified for being Members of Legislatures. The Constitution of India *vide* articles 102(1) and 191 (1) provides for disqualification of a person for being chosen as and for being a Member of either House of Parliament and State Legislature if she/he holds an Office of Profit under the Union or the State

unless the Parliament or the State legislature declares by law that such office does not disqualify its holder. If any question arises as to whether a Member of Parliament has become subject to any of the disqualifications laid down in the Constitution, including the one whether she/he is holding an office of profit or not, the question is referred for the decision to the President and her/his decision is final. However, before giving any decision on any such question, the President is required to obtain the opinion of the Election Commission and shall act according to such opinion. It is important to note that in this matter the President does not act on the advice of her/his Council of Ministers.

3. The underlying object of this constitutional provision is to secure the independence of the Members of Parliament or a State Legislature and to ensure that Parliament or the State Legislature does not consist of 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.

4. If the Executive Government were to have untrammelled powers of offering to a Member any appointment, position or office which carries emoluments of one kind or the other with it, there would be a risk that

an individual Member might feel herself/himself beholden to the Executive Government and thus lose her/his independence of thought and action and cease to be a true representative of her/his constituents.

5. Any restrictions which Parliament may deem necessary to impose upon its Members have to be contained in legislation that is in a form easily interpreted by and readily available to, those who may be directly affected.

6. Although certain enactments had been passed by Parliament, keeping in view the provisions of article 102(1)(a), it was widely felt that none of the Acts met comprehensively the needs of the situation. Speaker G.V. Mavalankar, in consultation with the Chairman, Rajya Sabha appointed, on 21 August 1954, a Committee on Offices of Profit under the Chairpersonship of Pt. Thakur Das Bhargava to study various matters connected with disqualification of members and to make recommendations 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 suggestions as to how the matter should be dealt with.

7. In pursuance of the recommendations of the Bhargava Committee, the Government introduced in

the Lok Sabha the Parliament (Prevention of Disqualification) Bill on 5 December, 1957. It was referred to a Joint Committee of the Houses and its Report was presented to the Lok Sabha on 10 September, 1958.

The Bill, as further amended and passed by Parliament, received the assent of the President on 4 April, 1959. The Parliament (Prevention of Disqualification) Act, 1959 lays down which offices would not disqualify holders thereof from the Membership of Parliament. This Act provides that if a Member/Director of a Statutory or non-statutory body/company is not entitled to any remuneration other than the compensatory allowance, the Member would not incur disqualification for receiving those allowances. Under Section 2 (a) of the said Act, "Compensatory allowance" has been defined as 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 Salary, Allowances and Pension of Members of Parliament Act, 1954), any conveyance allowance, house-rent allowance or travelling allowance for the purpose of enabling the member to recoup any expenditure incurred by the Member in performing the functions of that office".

8. For the duration of each Lok Sabha, a Joint Committee on Offices of Profit was Set up to examine the composition and character of all 'Committees' subsequent to the ones examined by the Joint Committee with respect to Parliament (Prevention of Disqualification) Bill, 1957. The first Joint Committee on Offices of Profit was constituted during the 2nd Lok Sabha in August, 1959. Thereafter, the Joint Committee was constituted in June 1962 (3rd L.S.), June 1967 (4th L.S.), July 1971 (5th L.S.), December 1980 (7th L.S.), May 1985 (8th L.S.), May 1990 (9th L.S.), September 1991 (10th L.S.), August 1996 (11th L.S.), July 1998 (12th L.S.), December 1999 (13th L.S.), August 2004 (14th L.S.), December 2009 (15th L.S.) and December, 2014 (16th L.S.). However, no such Committee was constituted during the Sixth Lok Sabha.

9. The Parliament (Prevention of Disqualification) Act, 1959 was amended in the years 1993, 1999, 2000, 2006 and 2013.

Concept of office of profit

10. In the usual sense of the word, an 'office' means "a right to exercise a public or private employment and to take fees and emoluments thereunto belonging". In its fullest sense an office embraces the element of tenure, durations, duties and emoluments, but the element of emoluments is not essential to the office.

11. To define 'profit' is more difficult. The "Profit" normally connotes any advantage, benefit or useful consequences. Generally, it is interpreted to mean monetary gain but in some cases benefits other than monetary gain may also come within its meaning. "Office of Profit" is one to which some power of patronage is attached or in which the holder is entitled to exercise the executive functions, or which carries dignity, prestige or honour to the incumbent thereof.

12. The expression "office of profit" has not been defined in the Constitution or in the Representation of the People Act, 1951, or in the Parliament (Prevention of Disqualification) Act, 1959, evidently because it is not easy to frame an all embracing definition, covering all the different kinds of posts which exist under Government and those which might hereafter be created. Broadly speaking, it signifies that Government must not be in a position to seduce a Member by placing the Member in a position where the Member can exercise authority, where the Member thinks that the Member is somebody important, even if the member gets no pecuniary remuneration. However, courts and other authorities have enunciated certain broad criteria in this connection in their judgments from time to time, and these are set out as follows:

Three things have to be proved before a person can be held to incur disqualification—that she/he holds an office; that it is an office of profit; and that it is an

office under the Government of India or Government of a State (Deorao Laxman Anande Vs. Keshav Laxman Borker, A.I.R. 1958 Bombay, 314, see also Bhaironlal Vs. Doongarsidas, A.I.R. 1959 Rajasthan 250; and S. Umrao Singh Vs. Darbara Singh, A.I.R. 1968 Punjab and Haryana 450).

In order to bring a case for disqualification, the 'element of profit' is not enough by itself. It must first be proved that what was held was an 'office'.

Further, the essential requirement is that the candidate himself must hold the 'office'. The 'office' cannot be held in benami (Yugal Kishore Sinha Vs. Nagendra Prasad Yadav, A.I.R. 1964 Patna 543).

An "office of profit" means an employment with fees and emoluments attached to it (Bejaysingh Vs. Narbada Charan Lal, 2 E.L.R. 426; see also Ravanna Vs. Kaggudappa, A.I.R. 1954 S.C. 653 (657)). Hence, where pay or salary is attached to an office, it immediately and indisputably makes the office an "office of profit". A person appointed to an office to which some remuneration is attached incurs disqualification whether he accepts payment or not (Bhargava Committee Report).

In order that an office may be "an office of profit" it is not necessary that there must be some sort of regularity of income; neither is it necessary that there should be actual making of profit by the incumbent; it is

enough if the holder of the office may reasonably be expected to make a profit out of it. (Thakur Daoosing Vs. Ramkrishna Rathor, 4 E.L.R. 34)

Further, the expression "office of profit" has been held to mean an office capable of yielding a profit or from which a man might reasonably be expected to make a profit. The actual making of profit is not necessary. Profit means gain or any material benefit, and the amount of such profit is immaterial. (Deorao Laxman Anande Vs. Keshav Laxman Borke op.cit.)

13. Besides the object of enacting provisions like article 102 (1) (a) is that a person who is elected to Parliament or a Legislature should be free to carry on her/his duties fearlessly without being subjected to any kind of governmental pressure. The measure of control by the Government over a local Authority should be judged in order to eliminate the possibility of conflict between duty and interest and to maintain the purity of the elected bodies. The test for an appointment to be an "office" is not whether the appointment is made in accordance with the contract or with statutory provisions but whether having been made, it imposes continuing obligation on the holder in return for which she/he may be reasonably be expecting to make some profit. The power to appoint, the power to discuss, the power to control and give directions as to the manner in which the duties of office

are to be performed and the power to determine the question of remuneration are all present in a given case, then the officer in question holds the office under the Authority so employed.

14. It has been held that an Office of Profit is an office which is capable of yielding a profit or pecuniary gain. Holding office under the Central or State Government, to which some pay, salary, emoluments, remuneration or non-compensatory allowance is attached, is "holding an office of profit". Nomenclature is not important. If the 'pecuniary gain' is 'receivable' in connection with the office, then it becomes an office of profit. (Jaya Bachchan Vs. Union of India, A.I.R. 2006, S.C. 2119)

15. Considering the subjectivity of the topic it has also been held by the Supreme Court that all the determinative factors need not be conjointly present. The critical circumstances, not the total factors, prove decisive. A practical view, not pedantic basket of tests, should guide in arriving at a sensible conclusion. (Madhukar G.E. Pankakar. Vs Jaswant Chobbidas Rajan, A.I.R.1976, S.C. 2283)

Approach of the Committee

16. In order to determine whether an office held by a person is an office of profit under the Government, the Joint Committee on Offices of Profit is diligently following the cardinal tenet laid down by the

Bhargava Committee (1955) and various judicial pronouncements made from time to time. The JCOP in their Tenth Report (7th Lok Sabha), presented to Lok Sabha on 7 May, 1984, laid also 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 object of imposition of the disqualifications as envisaged in the Constitution will become frustrated. The first basic principle should be the guiding factor in offering positions to a Member of the Legislature.”

17. Keeping the above position in view, the Joint Committee on Offices of Profit have been following the undernoted 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.* any 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 her/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, allotments of lands, issue of licences, etc., or gives powers of appointment, grant of scholarship, 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 may entail disqualification.

Each case is examined on merit by the Committee and appropriate recommendation made to Government.

Constitution of the Committee

18. A Joint Committee on Offices of Profit consisting of 10 Members of Lok Sabha and 5 Members of Rajya Sabha is constituted. The Committee is constituted on a Government motion for the duration of the term of each Lok Sabha. The scope and functions of the Committee is as under:—

- (i) to examine the composition and character of all existing 'committees' and all 'committees' that may hereafter 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 'committees' examined by it what offices should disqualify and what offices should not disqualify; and
- (iii) to scrutinise from time to time the Schedule to the Parliament (Prevention of Disqualification) Act, 1959, and to recommend any amendments in the said Schedule, whether by way of addition, omission or

otherwise. The Committee also examines any queries relating to 'Offices of Profit', received from Members of Parliament, Ministries of Government of India, State Governments or other Institutions and sends replies in appropriate cases.

19. On receipt of the notice of a motion from the Ministry of Law and Justice, it is scrutinised and published in Bulletin-Part II for the information of Members.

20. After the motion is adopted by Lok Sabha, arrangements are made for the election of 10 Members of Lok Sabha in accordance with the principle of proportional representation by means of the single transferable vote. A message is sent to Rajya Sabha requesting that House to concur in the recommendation of Lok Sabha to constitute the Joint Committee and to communicate the names of five Members of Rajya Sabha who are elected to the Joint Committee.

21. After the message from Rajya Sabha, concurring in the recommendation of Lok Sabha for the constitution of the Joint Committee of the Houses and communicating the names of Members of Rajya Sabha elected to the Joint Committee, has been received and reported to Lok Sabha and 10 Members of Lok Sabha have also been elected to the Joint Committee, the Chairperson of the Committee is

appointed by the Speaker from amongst the Members of Lok Sabha. If the Chairperson is for any reason unable to act, the Speaker may appoint another Chairperson in her/his place.

If the Chairperson is absent from any sitting, the Committee chooses another Member to act as Chairperson for the sitting. (Rule 258)

22. The Committee after it is constituted functions till the dissolution of the Lok Sabha.

Working of the Committee

Calling of material/information from Ministries/State Governments etc.

23. After the Joint Committee on Offices of Profit has been constituted, all the Ministries of the Government of India and Chief Secretaries of State Governments/Union territories are addressed to furnish the particulars of the Committees, Commissions, Boards, etc., constituted by them, which have not been so far examined by the Joint Committee on Offices of Profit as also, which might be constituted in future. They are also requested to furnish information in respect of the existing Committees, Commissions, Boards, etc., which although have already been examined by the Joint Committee on Offices of Profit but whose constitution (including payment TA/DA, etc. to the Members) has undergone a material change since their examination by the Committee in the past.

Examination of Committees/Commissions etc. appointed by Government and preparation of Memoranda for the Committee

24. The information received from the Ministries etc. is examined and placed before the Joint Committee in the form of Memoranda which are circulated to the Members of the Committee with the approval of the Chairperson. The Memoranda are considered by the Committee at their sittings held from time to time.

25. The functioning of the Committee is governed by the general rules relating to Parliamentary Committees (*viz.* Rules 253 to 286) of the Rules of Procedure and Conduct of Business in Lok Sabha. These rules are further supplemented by Directions issued by the Speaker in exercise of the powers conferred on her/him under Rule 389 and other Rules.

26. The Committee has also framed detailed rules for its internal working. These rules supplement the provisions of the Rules of Procedure and Conduct of Business in Lok Sabha.

Matters Referred to the Committee by the Speaker

27. Apart from examination of the Committee/Boards/Commissions etc. constituted by the Ministries of the Central Government/State

Governments, etc., the Committee also examines the cases referred to it by the Speaker from time to time.

28. The Committee also examines various queries received from members of Parliament pertaining to "Offices of Profit" and expresses its opinion in appropriate cases.

Appointment of sub-Committees

29. The Committee may appoint one or more sub-Committees each having the powers of the undivided Committee, to examine any matters that may be referred to it and the reports of such sub-Committees shall be deemed to be the reports of the whole Committee, if they are approved at a sitting of the whole Committee. The order of reference to a sub-Committee shall clearly state the point or points for investigation. The Report of the Sub-Committee shall be considered by the whole Committee (Rule 263).

Power to call for material/information from Ministries/ Departments

30. The Committee has the powers to send for persons, papers and records. If any question arises whether the evidence of a person or the production of a document is relevant for the purpose of the Committee, the question has to be referred to the Speaker whose decision shall be final. Government may, however, decline to produce

a document on the ground that its disclosure would be prejudicial to the safety or interest of the State. (Rule 270).

[The constitution and working of the Joint Committee on Offices of Profit is governed by Rules 253 to 286 and 389 of the Rules of Procedure and Conduct of Business in Lok Sabha and articles 102 (1) and 191 (1) of the Constitution]

Constitution of Joint Committee to Examine the Constitutional and Legal Position relating to Office of Profit

31. The Parliament (Prevention of Disqualification) Amendment Bill 2006 as passed by Parliament was returned by the then President of India invoking Article 111 of the Constitution of India. While reconsidering the said Bill by the Lok Sabha on 31st July, 2006, an assurance was given by the Government 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 and

was concurred in by Rajya Sabha on 18 August, 2006
The motions provided for inclusion of the following
15 members:—

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

Rajya Sabha

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

Thus, a Joint Committee of 15 members of Parliament (10 from Lok Sabha and 5 from Rajya Sabha) under the Chairmanship of Shri Iqbal Ahmed Saradgi was constituted 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.

The Committee submitted its Report to the Parliament on 22 December, 2008. The Committee *inter alia* made certain observations and recommended amendment to Article 102(1)(a) of the Constitution which provided for disqualification for Members of Parliament for being chosen as, and for being, a Member of either House of Parliament on certain well delineated and defined conditions. The amendment to Article 191 (1)(a) (for Members of State legislatures) was also suggested by the Committee for amendment on the similar lines in order to maintain uniformity in the matter. The Committee proposed for a definition of Office of Profit and had suggested 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; and
- (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.

Comprehensive Review of Parliament (Prevention of Disqualification) Act, 1959 by JCOP

32. The Joint Committee on Offices of Profit for the term of 16th Lok Sabha was constituted on 11 December, 2014. After its constitution, the Committee in its first sitting held on 12 January, 2015, observed that several entries in the Schedule to the Parliament (Prevention of Disqualification) Act, 1959 as amended from time to time, are obsolete as the Committees/Bodies/Organisations have either ceased to exist or there has been significant changes in the composition/character etc. of such Committee/Commission/ Body/Organization after their inclusion in the Schedules.

The Committee decided to undertake a thorough review of the Parliament (Prevention of Disqualification) Act, 1959 for the first time since the enactment of the said Act. In this process of comprehensive review, the Committee took oral evidences of 55 Union Ministries regarding various Bodies/Boards/Committees functioning under their respective administrative domain. The representatives of the Ministry of Law and Justice (Legislative Department and Department of Legal Affairs) were present in each of these sittings. The Committee during these discussions heard with the representatives of the Union Ministries and State Governments unanimously agreed that the Parliament (Prevention of Disqualification) Act, 1959 required to be revisited.

The Committee presented its 28th report on "A Comprehensive review of Parliament (Prevention of Disqualification) Act, 1959—Way Forward to Parliament on 9.8.2018 in which the committee touched upon various areas of the Act which required urgent action. This report was the result of an elaborate exercise undertaken by the Committee to review the said Act in a holistic manner. Besides flagging the requisite changes required in the Act, it also impressed upon the need for a proper definition of the term 'office of profit' as defined in para 31 above as well as other changes and asked the Ministry of Law and Justice to bring new legislation addressing all the actionable points accordingly.

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JOINT COMMITTEE ON
OFFICES OF PROFIT



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PREFACE

This Abstract is part of the Parliamentary Procedure Abstracts Series and gives in brief the procedure regarding Joint Committee on Offices of Profit. It is based on the Rules of Procedure and Conduct of Business in Lok Sabha, the Directions issued by the Speaker under the Rules of Procedure and past precedents. It is intended to serve as a handy guide for ready reference.

The information contained in this Abstract is, however, not exhaustive. It will, therefore, be prudent to refer to and rely on the original sources for full information.

NEW DELHI

Secretary General