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Lecture-6



LECTURE 6: OFFICE OF PROFIT: CONCEPT

An **office of profit** means a position that brings to the person holding it some financial gain, or advantage, or benefit. It may be an office or place of profit if it carries some remuneration, financial advantage, benefit etc. It's a term used in a number of national constitutions to refer to executive appointments. A number of countries forbid members of the legislature from accepting an office of profit under the executive as a means to secure the independence of the legislature and preserve the separation of powers.

❖ 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.

❖ According to the definition, what constitutes an 'office of profit'?

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. Several factors are considered in this determination including factors such as: (i) whether the government is the appointing authority, (ii) whether the government has the power to terminate the appointment, (iii) whether the government determines the remuneration, (iv) what is the source of remuneration, and (v) the power that comes with the position.

❖ What does the Constitution say about holding an 'office of profit'? Can exemptions be granted under the law?

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. 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*". The Constitution specifies that the number of ministers including the Chief Minister has to be within 15% of the total number of members of the assembly (10% in the case of Delhi, which is a union territory with legislature).

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. In the recent past, 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.

❖ **Is there a bar on how many offices can be exempted from the purview of the law?**

There is no bar on how many offices can be exempted from the purview of the law.

This concept has evolved from the British Parliamentary model. One of the earliest laws on this issue was the English Act of Settlement enacted in 1700. By the beginning of the eighteenth century, three broad principles were developed affecting the law on this subject:

1. Certain non-ministerial offices are incompatible with membership of the Parliament.
2. The influence of the Executive over the House of Commons, through the undue proportion of office-holders who are members of the House, should be limited.
3. Certain number of ministers should be members of the House for the purpose of ensuring control of the Executive by the Parliament.

Although, the legislation has clarified the law on some counts, for instance by defining what constitutes “compensatory allowance”, it has not defined an “office of profit”. Neither the Constitution nor any other piece of legislation has defined this term. The main source for understanding what constitutes an office of profit is judicial rulings. Apart from the Judiciary, Joint Committee on Offices Profit has also contributed in defining the term.