

OFFICE OF PROFIT AND PARLIAMENTARIAN

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Privileges of a Parliamentarian

There are a number of ways in which a Parliamentarian is able to discharge his important responsibility. In his primary role as a law maker, he has a great opportunity to translate the needs of society in terms of legislation. Various Parliamentary instruments are at his disposal.

Parliamentary and Parliamentarian's privileges; enable a Parliamentarian or a State Legislator to be the constant vigilant monitoring watchdog of public interest, to enforce accountability of the Executive. The mechanism of consultative committees and standing committees of the Ministries allows him to participate in the process of policy-making and consensus-building. His privileged position gives him easy access to the Ministers and Civil Servants enabling him to short-circuit long bureaucratic channels and to bring people's problems directly before the top rungs of the Government. The Success in projecting the grievances, needs, problems and expectations of the people before the state apparatus and obtaining redressal for them depends on the initiative, skills knowledge and deep involvement of the parliamentarians in discharging their responsibilities for which a parliamentarian has to spend almost day and night of every day, throughout the year and throughout the entire tenure period of a Parliamentarian. Even 24 hours of a day and night is insufficient for a committed responsible Parliamentarian or a Legislator of a State.

Parliamentarian as a propagator of Government Policies

The role of Parliamentarian as a mediator between citizens and the Government relates

to their role in the propagation and implementation of the Government policies and programmes. How can a Parliamentarian carry out this role effectively? Here, he has to realize his immense potential to do good to a very large number of people in his constituency. Since he has an opportunity to be equipped with varied information and data about Government policies programmes and schemes, he is in a unique position to pass it on to people and help them avail of the opportunities offered by such schemes and programmes.

Parliamentarian to ensure speedy Implementation of welfare Schemes

A large number of Government schemes are beneficiary oriented, that is, they are designed to provide direct assistance to individuals in contrast to area development schemes which benefit the society as a whole. Some of the important beneficiary oriented schemes sponsored by the Central Government at present are Swarna Jayanti; Gram Swarojgar Yojana, (Rural self employment programme), Pradhan Mantri Gramodaya Yojana, Gramin Awas (Rural housing scheme), Annapurna (Providing food security to indigent Senior Citizens), Swarna Jayanti Shahari Rojgar Yojana (Urban Self-Employment programme), urban housing scheme, Swayamsamruddhi (Integrated self-help group based programme for the empowerment of women), Kishori Shakti Yojana, (Improving nutritional and health status of girls in the age group 11 to 18 and providing required literacy and numerary skills), Swadhar (Helping women in difficult circumstances, *eg.* Widows, destitutes, Women prisoners and migrant workers by providing shelter, basic amenities and vocational training

to them), Prime Minister's Rojgar Yojana (Financing, setting up of micro enterprises to generate employment for a educated unemployed), Antyodaya Anna Yojana (Providing highly subsidized food grains to the poorest of the poor sections of society) *etc.* often, one finds that many of the provisions made in such beneficiary oriented schemes remain under utilized because of the lack of awareness among the beneficiaries and the apathy of the administrative machinery charged with the implementation of these schemes. In many cases, the benefits of these schemes are cornered by ineligible persons, leaving the needy people high and dry. Actually, over the years the Central and State Governments have developed schemes to address the needs of almost every disadvantaged group in the society and yet, due to lack of proper publicity and sincerity in implementation, the results are usually below expectations. A member of Parliament, armed with the knowledge of such schemes, a passion for helping the people he represents, a healthy influence over the administrative machinery and rapport with his electorate, is well placed to ensure the effective and speedy implementation of these schemes and to help innumerable persons in his constituency, to improve their lot.

All these aspects, clearly indicates a heavy responsibility of constant ever vigilant monitoring accountability of Parliamentarians to the people of India in general and to the people of his constituency in particular.

Accountability means being bound to give account for things one does or omits to do. Responsibility is another word which carries the same meaning. Continuing accountability or responsibility is the main feature that distinguishes the parliamentary system from other forms of Democracy.

All these aspects establishes the fact that our Parliamentary system is the most powerful political Instrument to perpetuate a

Democratic Government for our Nation and States to a maximum period of several centuries benefiting the fruits of Democracy for generations after generations.

To achieve this, there is no other alternative for our Parliamentary system, except to function as meticulously as possible in an atmosphere of unchallengeable situation of being completely Independent of the Executive, which directly makes it mandatory for every Parliamentarian and Legislator to function with fool-proof unchallengeable complete Independence from the Executive.

They have to function exclusively under the Presiding Officers of State legislatures and Presiding officers of both houses of Parliament, Lok Sabha and Rajya Sabha and none else.

These responsibilities of Legislators and Parliamentarians clearly indicates that no parliamentarian or a State Legislator could be spared to take-over any position in any office other than Parliamentary or State Legislature work, even for a single minute and further there is no such office in India which cannot function without involving a Parliamentarian or a State Legislator. If people's elected representatives could be really preferred as Non-official members for any office then there are hundreds of mass based people's representatives available within every party structure and there are experts and leading professionals among them, who could be preferred to hold any position in any office, which does not involve any profit or which involves profit.

A Parliamentarian or a Legislator functions, as a public servant as such he or she cannot take-up any other position which involves some kind of profit either monetarily or either in kind or either in a position to get some favours done to him or her by organization for the position which they hold in that office and under no circumstances a

Parliamentarian or a State legislator shall hold office in any other organization, which creates even the slightest moral obstacle to the functioning of a Parliamentarian or a State Legislator, which constitutionally and morally binds the Parliamentarian or a State Legislator to function meticulously Independent of the Executive.

If this concept is not implemented in a comprehensive manner and in its totality through-out the Nation, then the foundation of Parliamentary system built Independent of the Executive, gets weakened and in the long-run it can even weaken the Democratic system leading to Authoritarian or Dictatorial rule which may create a disaster to any Nation. Millions of people through-out the World have fought for centuries and sacrificed their lives and made their blood to flow like a river for the sake of Freedom and Democracy.

Critical examination of Article 102 of Indian Constitution and offices of Profit Leading to disqualification of Members of either House of Parliament

102. (1) States :—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.

103. *Decision on questions as to disqualification of members*—(1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of Article 102, the Question shall be referred for the decision of the President and his decision shall be final.

- (2) Before giving any decision on any such question, the President shall obtain

the opinion of the election Commission and shall act according to such Opinion.

Article 191(1)(a) deals with State Legislators which is exactly similar to Article 102(1) which deals with Members of either Houses of Parliament and both these Articles deals with disqualification of Members for holding offices of profit.

Office of profit

The expression “*office of profit*” has not been defined either in the Constitution or in the Representation of people Act, 1951. The word “office” is of indefinite content and as Lord Wright observes in *McMillan v. Guest*, 1942 AC 561, it can be taken to be a “*position or place to which certain duties are attached, especially one of a more or less public character.*”

An office of profit is an office which is capable of yielding a profit or pecuniary gain. In the case of *Ravanna Subbanna v. Kaggeerappa*, AIR 1954 SC 653; Supreme Court observed thus :

“The plain meaning of the expression seems to be that an office must be held under Government to which any pay, salary, emoluments or allowance is attached. The word ‘profit’ connotes the idea of pecuniary gain. If there is really a gain, its Quantum or amount would not be material but the amount of money receivable by a person in connection with the office he holds may be material in deciding whether the office really carries any profit.”

If a profit does actually accrue from office, it is an office of profit, no matter how it accrues. A person who holds an office of oath Commissioner receives fees for his services but is not paid any salary from the Government funds. But it is an office of profit which enables him to make profit by receiving fees to whom he administers oath. AIR 1959 Raj. 227.

Tests to be applied :

Before a person is held to be disqualified under Article 191(1)(a), three things must be proved :

- (1) that he held an office;
- (2) that it was an office of profit; and
- (3) that it was an office of profit under the Government of India or the State Government .

In *Dr. Deorao Laxman Ananda v. Keshava Laxman Borkeer*, AIR 1958 Bom. 314, Bombay High Court explained the object of the provision disqualifying person to be members of the Legislature if they hold office under the State.

It is to secure independence of the members of the Legislature and to ensure that the Legislature does not contain persons, who have received favours or the benefits from the Executive and who consequently, being under an obligation to the executive, might be amenable to its influence.

Provision appears to have been made in order to eliminate or reduce the risk of conflicts between the duty and Self – interest, amongst the members of the Legislature.

If the office is capable of yielding profit, Quantum of such profit is immaterial for the present purpose. *Ravanna Subbanna v. Kaggeerappa*, AIR 1954 SC 653.

In *Shivamurthy Swami Inamdar v. Agadi Sanganna Andanappa*, (1971) 3 SCC 870, Supreme Court Laid down five tests to find out whether the office in question is an office under the Government and whether it is an office of profit . These are :-

- (1) Whether the Government makes appointment ?
- (2) Whether the Government has the right to remove or dismiss the holder ?

(3) Whether the Government pays remuneration ?

(4) What are the functions of the holder ? Does he perform them for Government ? and

(5) Does the Government exercise any control over the performance of these functions ?

In *Dr. Deorao's* case, AIR 1958 Bom. 314 cited (supra), Division Bench of Bombay High Court has laid down three tests to decide whether office is under the Government. They are:

- (1) What authority has the power to make appointment to the office concerned?
- (2) What authority can take disciplinary action and remove or dismiss the holder of office? and
- (3) By whom and from what source is his remuneration paid?

Of these, first two are more important than the third one. Applying these tests, *Dr. Deorao Anande*, an insurance Medical Practitioner functioning under the Employees State Insurance Act 1948 was judged to be holder of 'office of profit' under the State. The fact he is allowed private practice will not alter the character of his appointment.

Therefore, he was disqualified for being chosen as and for being a Member of the Legislative Assembly of the then state of Bombay.

All these rulings as per Articles 102 and 191 indicates: that the Parliamentarians or Legislators are not permitted to hold any office of profit under any State or Central Government, which directly or indirectly comes in conflict with the freedom of Parliamentarians or State Legislators to function independently from the State or Center's Executive machinery, without fear

or favour in monitoring and reviewing and checking the functioning of States and Union Government's Executive machinery, for upholding the independence of parliamentary system in India. This should be the main criteria to decide whether a parliamentarian or a State Legislator holds any office of profit to attract any disqualification of members of parliament or State Legislators.

The second part of 102(1)(a) and 191(1)(a) empowers Parliament and State Legislatures to declare certain offices as offices to declare by law not to disqualify their holders for holding offices of profit but here the holders of offices of profit are not ordinary persons; they are the Law-makers of the country in whose hands the destiny of the entire Nation depends, as such our Constitution makers made our Parliamentary system to function Independent of the Executive as such our parliamentarians or State Legislators have to function extremely Independent of the Executive and to secure this situation to the Parliament and State Legislatures the first part of Articles 102(1)(a) and 191(1)(a) had been framed, as such Parliament or State Legislatures can declare certain offices in order not to attract the first part of 102(1)(a) and 191(1)(a); provided they (Holders of offices of profit) meet the main criteria of functioning of Parliamentarians or State Legislators in an atmosphere of extremely Independent of the Executive of State or Central Government for which purpose alone the maximum penalty clause of disqualification of members, the Article 102(1)(a) first part and Article 191(1)(a) first part; have been enshrined in our Indian Constitution; if not there is no purpose of introducing these parts of the said Articles.

In this context, it is very significant to refer to "The Constitution of the United States of America" which, in an unambiguous manner *vide* Article 1; Section 6 Clause 2 states that "No Senator or Representative

shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance of office".

Today our Indian Parliamentary and State Legislatures systems urgently need such Articles in our Indian Constitution, through comprehensive relevant amendments to our present Articles 102 and 191 of our Indian Constitution; so as to uniformly implement through out our Nation to enable our Parliamentary and State Legislatures systems to function independent of the State and Union Government's Executive.

The amendment for Article 102 could be as follows:

- (1) No Member of parliament of either House shall, during the time for which he was elected, be appointed to any civil office under the authority of Government of India or Government of any State and if appointed shall be disqualified for being chosen as and for being, a member of either of House of Parliament.
- (2) Civil office shall mean any office which shall have even the least possible control by either any state or Union Government; and shall mean that any position in such office shall be given by either any State Government or Union Government and civil office shall also mean that it is an office which could be a part and parcel of any State Executive or Union Government Executive machinery or both, which receives budgetary grants or allocations either from the State or from the Union Government or from both either directly or indirectly and civil office shall also mean such office

which do not receive any financial grants either from any State or Union Government but are directly or indirectly controlled by any State Government or Union Government, which shall include several Trusts, Wakf Boards, Religious Temples Trusts and Religious Endowments *etc.* and civil office shall also mean any office including any voluntary organization about whose functioning in the interest of public with or without State or Union budgetary allocation, an annual report is to be laid on the table of the either House of Parliament or on the table of the House of any State Legislature of any State.

On these similar lines, Article 191 of our Indian Constitution could be amended.

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NARCO ANALYSIS – RIGHT TO SELF INCRIMINATION VS PUBLIC INTEREST

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Narco Analysis figured prominently in the news recently yet again when it became eye of the storm and sparked off the debate when media played tapes of *Telgi*, accused subjected to Narco analysis procedure carried out by SIT on Dec 20, 21, 22, 2003 under permission from a Special Court dealing with cases under the Maharashtra Control of Organized Crime Act (MCOCA) located in Pune.

I interest in Narco Analysis test was revived when it caught the attention of media and critics thereby raising several issues regarding its validity as a scientific tool of investigation and its admissibility in court of law

infringement of individual fundamental rights and questioned its value as evidence.

While Narco Analysis yielded an immense amount of information, it also triggered off many questions as several critics shared profound sense of skepticism over the administration of truth serum on the accused/ witness to extract truth. Doubting Thomasses had a field day.

The Narco analysis considered as tool or an Aid in collecting and supporting evidence. However doubts are raised whether it amounted to testimonial compulsion in judiciary and violation of human rights