



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Office of Profit as a Disqualification in India: A Critical Analysis

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Received 11 July 2022; Accepted 30 July 2022; Published 01 August 2022

The concept of “office of profit” as a ground for disqualification for MPs and MLAs in India has been interpreted and understood judicially. The Constitution of India under various Articles like Article 58(2), 66(4), 102(1)(a), and 191(1)(a) has opined the phrase “office of profit” in its text but did not define it. This paper introduces a curiosity of finding a nexus between the office of profit as a disqualification and the end that it seeks to achieve. The historical background is studied briefly to find the foundation of this law in its present form. The further discussion finds an explanatory nature wherein the facets of office of profit are divided into various sub-heads which are contentious and at times pose subjective reasoning. Some critical comments are enlisted thereafter. This paper concludes with an attempt to answer the research question and gives suggestive measures as well.

Keywords: *constitution, member, office of profit, parliament, state.*

INTRODUCTION

It is requisite the government be so constituted as one [person] need not to be afraid of another.¹

Certain qualifications and disqualifications have become an inalienable element of the law for the election of members of any country’s legislative body over time. These eligibility requirements usually reflect the people’s genuine desire to choose suitable candidates

¹ C. De Montesquieu, *The spirit of the Laws* (Hafner Publishing Co., 1949)

democratically and with a vision to fulfill their aspirations. The issue is determining the degree of ineligibility has knocked various questions. The importance of examining disqualifications become lies in the fact that it denies a person from participating in an electoral process which is the foundation of democracy. Thus, disqualifications must bear a reasonable and non-arbitrary basis. Apart from listing specific qualifications for Members of Parliament and the Legislative Assembly, the Indian Constitution also lists certain disqualifications. The Constitution of India, therefore, talks about the “Office of Profit” as a disqualification from membership of the House of Parliament or State legislature under Article 102(1)(a) and 191(1)(a)² respectively.

In a democracy, adequate separation of powers between the executive, legislative, and judicial branches is important. Only suitable lawmakers should be elected to and remain in the Parliament and State Legislatures for this reason. The democratic ideals of responsibility, accountability, and transparency are a few objectives that this ground of office of profit tries to achieve but is often hit hard by political vendetta. There is a debate over the misuse of the constitutional guarantee provided under Article 102(1)(a) and 191(1)(a) that empowers the Parliament and State legislature to make laws exempting offices of profit from disqualification. The Parliament (Prevention of Disqualification) Act, 1959, and various State disqualification Acts have displayed an inconsistent approach towards the tests for the office of profit. The foundation on which office of profit rests as a disqualification i.e., separation of power, seems to erode because we find executives within the legislature who have time and again politicized the legal and constitutional guarantees.

It is to be noted that the disqualification for contesting an election on grounds of “office of profit” under the Constitution of India lacks a definite statutory meaning. It is based on certain tests which get modified with each new case that comes before the court of law. The political impact in legal matters often leads to violation of justice to the citizens in a democracy, both as voters and candidates. The rationale of maintaining separation of powers and accountability is blurred by the misuse of the constitutional provision to make laws exempting certain offices to be considered as the office of profit. Thus, whether the present legal discourse on the ‘Office of

² Constitution of India, 1950, art.102(1) (a) and art.191(1) (a)

Profit' in India is sufficient for maintaining the objectives that are sought to be achieved by this disqualification is a question that has to be analyzed.

HISTORICAL BACKGROUND

The concept of office of profit can be traced back to the English law called as the Act of Settlement³ which was passed in 1701, strengthening the Bill of Rights agreed upon by William and Mary in 1689.⁴ Its main goal was to ensure a Protestant succession to the English throne.⁵ Apart from various provisions relating to its objective is that no person who has an office under the monarch, or receives a pension from the Crown, was to be a Member of Parliament, is a positive genesis of law on the office of profit through this Act.⁶ This clause was added to prevent unwelcome royal influence over the House of Commons. It is still in effect, with a few exceptions. This was re-enacted in 1707 as The Succession of the Crown Act. This was clearly done to prevent the government from influencing MPs into plum positions intended for that reason.

There are certain grounds that became important in the eighteenth century to consider the law on the office of profit. These are:

- (i) there existed incompatibility of certain non-ministerial offices with House of Commons membership;
- (ii) there was a necessity of limiting the executive government's influence over the House; and
- (iii) there was a need for a certain number of ministers to be members of the House for the purpose of ensuring control of the executive by Parliament.⁷

The Indian law on the office of profit is reasoned on the basis of these three grounds. Thus Articles 58(2), 66(4), 102(1)(a), and 191(1)(a)⁸ find the phrase "Office of Profit" in matters of

³ Act of Settlement, 1700, s 2

⁴ Act of Settlement, 1701

⁵ Act of Settlement, 1700, s 2

⁶ *Ibid*

⁷ Shruti Bedi, 'Amendment in "Office of Profit" - A Dilution of the Spirit of the Indian Constitution' (2006) 48 (3) Journal of Indian Law Institute, 410

⁸ Constitution of India, 1950, art.58(2), art.66(4), art.102(1)(a), and art.191(1)(a)

qualification for President, Vice President, Member of Parliament and Member of State Legislative Assemblies respectively. It is to be distinguished that there is a different usage between the office of profit under Articles 58(2) and 66(4)⁹ and this has too varied from Article 102(1)(a)¹⁰ and its corollary Article 191(1)(a)¹¹. For the presidential and vice-presidential qualification, a person shall not be eligible if he holds any office of profit under the Government of India or of the State *or any local or other authority which is subject to the said Governments*. The “*local or other authority*” is not mentioned for MP/MLA disqualification. Therefore, our major discussion shall revolve around the disqualification of MPs and MLAs under Article 102(1)(a) and 191(1)(a) of the Constitution.

Although this Article was considered by Constituent Assembly on May 19, 1949, *Naziruddin Ahmed* and *Shibban Lal Saxena* were skeptical and did not approve of Parliament being empowered to disqualify people. According to them, this provision could be misused. But Dr. Ambedkar moved the amendment to introduce “Office of Profit” as a disqualification and thereafter the Constituent Assembly accepted it. Apart from the Constitution, there is a statute entitled as “The Parliament (Prevention of Disqualification) Act, 1959”, which repealed previous Acts of 1950, 1951, and 1953, and declares that certain offices of profit under the Government shall not disqualify the holders thereof for being chosen as, or for being, members of Parliament under Section 3 and also the Schedules.

RATIONALE BEHIND OFFICE OF PROFIT AS A DISQUALIFICATION

In the British politico-legal regime, The House of Commons attempted to strike a balance between maintaining the independence of the House from executive control and retaining ministers in the House so that they could be held accountable and answerable to the House.¹² Members of the legislature, such as MPs and MLAs, hold the government accountable for its actions. The core of the office of profit law is that if legislators have a government “office of profit,” they may be susceptible to government influence and may not carry out their constitutional tasks honestly. The goal is therefore to be no conflict between an elected

⁹ Constitution of India, 1950, art.58(2) or art.66(4)

¹⁰ Constitution of India, 1950, art.102(1) (a)

¹¹ Constitution of India, 1950, art.191(1) (a)

¹² Act of Settlement, 1700, s 2

member's duties and interests. As a result, the office of profit law just aims to enforce a fundamental component of the Constitution i.e., the separation of powers between the legislature and the executive.

There are three factors that give rise to that incompatibility as stated in the Australian case of *Sykes v Cleary*¹³ :

- The imbalance of duties – The service duties would impair a person's capacity to attend to the duties as a member of a House.
- Apprehension of risk- There is a very substantial risk that a public servant would share the political opinions of the Minister and it would affect independent judgment.
- Prejudicial to both public service and House membership- It is crucial to note that the membership of the House would detract from the performance of the relevant public service duty.

The objective behind the office of profit disqualification has been explained by the Supreme Court in *Shibu Soren v Dayanand Sahay*¹⁴, as follows:

*“Both Articles 102(1)(a) and 191(1)(a) were incorporated with a view to eliminate or in any event reduce the risk of conflict between duty and interest amongst members of the legislature so as to ensure that the legislator concerned does not come under an obligation of the executive, on account of receiving pecuniary gain or benefit from it, which may render him amenable to the influence of the executive, while discharging his obligations as a legislator.”*¹⁵

FACETS OF OFFICE OF PROFIT

The term “Office of Profit” has not been defined by any law in India whether it is the Constitution of India, the Representation of Peoples Act, 1951, or the Parliament (Prevention of Disqualification) Act, 1959. There is no statutory explanation as to what shall be the nature of

¹³ *Sykes v Cleary* [1992] 176 CLR 77

¹⁴ *Shibu Soren v Dayanand Sahay* (2001) 7 SCC 425

¹⁵ *Ibid*, para 5

an office to be called an office of profit. Therefore, the Courts, tribunals, other authorities, and legal academia have tried to analyze the facets of office of profit. Some of the features are highlighted hereinafter.

- **Characteristics**

It has been held in *Gulab Chand Chordia v Thakur Narain Singh and others* that “office of profit... is not a term of art and its meaning and import are well understood.” The essential characteristics of an office of profit are:

- (i) it involves an appointment by the state in the other,
- (ii) it carries emoluments payable mostly period for a limited period,
- (iii) it is for a limited period,
- (iv) it is terminable,
- (v) it is not assignable,
- (vi) it is not heritable,
- (vii) the holder of the office must be *sui generis*.

The case of *Mahadeo v Shantibai*¹⁶ focused on the ‘position’ of a person to perform duties while determining the office of profit. It is said that in its fullest sense, the expression of office embraces the elements like tenure, duties, duration, and emoluments. The question here was whether a paid lawyer has incurred an office of profit under the government. The appellant was typically handed over with cases up to the evaluation of three thousand only. He was also prohibited from accepting any brief against Railway in any Court. In this case, the ‘rights and duties’ position of an office was considered and referred to as the meaning of ‘office’ given in *Mcmillan v Guest*¹⁷ wherein Lord Wright, delivering the opinion, has said that the word office can fill up to four columns of the English Dictionary and has an indefinite content. But for him, it is a position or place to which certain duties are “attached, especially one of a more or less public character.”

¹⁶ *Mahadeo v Shantibai* (1969) 2 SCR 422

¹⁷ *Mcmillan v Guest* (1942) AC 561

In a recent case of *State Election Commissioner, Bihar v Janakdhari Prasad*¹⁸ it was held by the Supreme Court, that the State and the Assistant Government Pleader have a ‘lawyer-client’ engagement rather than a ‘master-servant’ relationship. Furthermore, the terms “in service” of the State Government and “office of profit” in the State Government were not interchangeable; a person could hold an office of profit in the State but not necessarily be in service of it. A distinction between “office of profit” and “service under the government” was made out. The Court observed that an advocate is under the regulation of the Bar Council and no disciplinary action was directly made by State Government thereby sidelining the “master-servant” relationship.

- **Identifying ‘Profit’**

The word “profit” connotes an idea of pecuniary gain or any material benefit. In the case of a gain, the quantum, value, amount, or nomenclature will not matter. It can be ‘honorarium’, ‘remuneration’, ‘salary’, or any other label. The case of *Jaya Bacchan v Union of India*¹⁹ is famous with regard to the identification of profit. In this case, the petitioner, Jaya Bachchan, was appointed Chairperson of the Uttar Pradesh Film Development Council and given the rank of Cabinet Minister by the Government of Uttar Pradesh in an Official Memorandum dated July 14, 2004. The benefits to which she became entitled were an honorarium of Rs. 5,000 per month, daily allowance, fee accommodation, escorts, bodyguards, etc. The Election Commission expressed the opinion that the office of the Chairperson of the Council, to which the petitioner was appointed by the State Government, is an “office of profit” under the Government of Uttar Pradesh for the purposes of Article 102(1)(a) of the Constitution, after referring to the facts and the law enunciated by the Supreme Court in several decisions. The Commission further determined that Section 3 of the Parliament (Prevention of Disqualification) Act, 1959 did not exempt the said office from Article 102(1)(a) of the Constitution.

The petitioner claimed that the position of Chairperson of the Council and the conferment of the rank of Cabinet Minister were only “decorative,” and that she received no remuneration or

¹⁸ *State Election Commissioner, Bihar v Janakdhari Prasad* (2018) SCC OnLine SC 659

¹⁹ *Jaya Bacchan v Union of India* (2006) 5 SCC 266

monetary benefit from the State Government, and did not seek residential accommodation, or any other facility. The petitioner claimed that she cannot be said to hold office unless the Election Commission finds that she received any money or monetary benefit from the State Government. But this contention was denied and the Court observed that if “pecuniary gain” is “receivable” in connection with the office, the office generates a profit, regardless of whether such gain is actually obtained. Thus, the appellant was disqualified.²⁰ It is generally established that if the position carries certain emoluments or the order of appointment says that the person appointed is entitled to certain emoluments, the office will be profitable, even if the holder of the office chooses not to receive/draw such emoluments. What matters is whether the monetary gain is “receivable” in relation to the office, not whether the monetary gain is actually received or gained insignificantly.²¹

- **‘Under the Government’: Test of Appointment**

The Hon’ble Supreme Court in *Maulana Abdul Shakur v Rikhab Chand*²² made a distinction between “the holder of an office of profit under the Government” and “the holder of an office of profit under some other authority subject to the control of Government.” Here, the appellant was the principal of a school operated by a management committee established under the DurgahKhwajaSaheb Act of 1955. He was appointed by DurgahKhwajaSaheb’s administrator and was being paid Rs. 100 per month. He was elected to the Council of States by the Electoral College of Ajmer, and the unsuccessful candidate, the respondent, challenged the election on the grounds that the appellant was holding a government Office of profit at the time of the election, and thus he was disqualified to be elected as a member of Parliament under Article 102(1)(a) of the Indian Constitution. Thus it was held, that the appellant was holding his appointment under a committee which was a statutory body and could not be considered as the holder of an office of profit under the Government of India. The Court opined that such an appointment must be made by the government and the person should be directly paid by it.

²⁰ *The aftermath of Jaya Bacchan v UOI* (2006) 5 SCC 266; *See also*, Parliament (Prevention of Disqualification) Act, 1959, s 3(k)

²¹ *Rayanna Subanna v G.S. Kageerappa* (1954), AIR 653

²² *Maulana Abdul Shakur v Rikhab Chand* (1958) AIR 52

A new conflict was addressed in *Ramappa v Sangappa*²³ wherein the question arose as to whether the holder of a village office who has a hereditary right to it is disqualified under Article 191 of the Constitution, which is the counterpart of Article 102. It was observed in this case that the Government has no choice but to appoint the heir to the position if he meets the legislative conditions, it may be that it has no choice under the statute. As a result, the office is held by virtue of Governmental appointment rather than a hereditary right to it. The fact that the government is unable to refuse the nomination has no bearing on the matter. Held, that the holder of a village office though he may have a hereditary right, does not get the office till he is appointed by the Government under whom the office is held. Accordingly, *Patels and Shanbhogs* are holders of offices of profit under the Government and their nomination papers were rightly rejected by the Returning Officer.

The situation was further explained in *Guru Gobind Basu v Sankari Prasad Ghoshal*²⁴, in which the Supreme Court's Five Judge Bench held that a person does not have to be in the government's service or have a master-servant relationship to have a profit-making position under the government. Here, an indirect control was exercisable by the government in the appointment of directors of a government owned company. If the elements like the power to appoint, dismiss, control, perform certain duties, provide remuneration, etc. appeared then the office is an office of profit. It is not at all necessary for these to co-exist. Thus, it was held that the appellant who was an auditor of two government companies was holding an office of profit and therefore he was disqualified from contesting elections under Article 102(1)(a) of the Constitution. This case noted that the decisive test for determining "Office of Profit" is the **"Test of Appointment."**

The test of appointment was summarized in *Shivamurthy Swami Inamdar Veerabhadrapa Veerappa v Agadi Sanganna Andanappa*²⁵ in the following points:

- (i) Whether the government makes an appointment?
- (ii) Whether the government can remove/dismiss/terminate such an appointed person?

²³ *Ramappa v Sangappa* (1959) 1 SCR 1167

²⁴ *Guru Gobind Basu v Sankari Prasad Ghoshal* (1964) SCR (4) 311

²⁵ *Shivamurthy Swami Inamdar Veerabhadrapa Veerappa v Agadi Sanganna Andanappa* (1971) 3 SCC 870

- (iii) Whether the government pays remuneration?
- (iv) Whether the functions performed by the holder of such an office are for the purpose of government?
- (v) Is the government empowered to exercise any control over the performance of such functions?

REMOVAL OF DISQUALIFICATION BY LAW

Parliament established a Parliamentary Committee under the Chairmanship of Pt. Thakur Das Bhargava in 1954 to review the list of such offices of profit and analyze the constitutional paradigms with respect to such offices and disqualifications thereunder because the earlier Acts were not yielding results as expected²⁶. In furtherance of the recommendations by this Committee, the Parliament (Prevention of Disqualification) Bill was introduced in the House of the People on 5th December 1957. The Bill finally received the assent of the President on 4th April 1959. Thus, the Parliament (Prevention of Disqualification) Act, of 1959 came into force. The salient feature of this Act is that it enlists the offices which shall *not* disqualify a person from membership of the Parliament or Legislative Assembly of a State.²⁷ This legislation is enacted in pursuance to “other than an office declared by Parliament by law not to disqualify its holder.”²⁸ This gives rise to two concerns, firstly, whether there is any retrospective effect and secondly, the law can be easily amended to include or exclude any office which shall not be included in the office of profit.

In the case of *Srimati Kanta Kathuria v Manak Chand Surana*²⁹, the appellant was appointed as an assistant counsel to assist a government advocate. The appellant possessed a profit-making office, according to the High Court. Mrs. Kathuria was found ineligible by the High Court. This appeal arose out of an election petition filed under Section 80 of the Representation of the People Act, 1951, hereinafter referred to as the 1951 Act, by Shri Manik Chand Surana, a defeated candidate, challenging the election of Smt. Kanta Kathuria, before the High Court. The

²⁶ Parliament (Prevention of Disqualification) Act, 1959, s 5

²⁷ Parliament (Prevention of Disqualification) Act, 1959, s 3

²⁸ Constitution of India, 1950, art.102(1) (a)

²⁹ *Srimati Kanta Kathuria v Manak Chand Surana* (1969) 3 SCC 268

High Court allowed the election petition on the ground that the appellant held an office of profit within the meaning of Article 191 of the Constitution on the day on which she filed the nomination paper and was thus disqualified for being chosen as a member of the Rajasthan Legislative Assembly. This judgment was given on August 12, 1968. An appeal was filed in this Court on August 20, 1968.

During the pendency of the appeal, the Rajasthan Legislative Assembly Members (Prevention of Disqualification) Act, 1969 declared the office of such a pleader as not to be included in disqualification under the office of profit. The Governor of Rajasthan removed the disqualification retrospectively before this appeal came up for hearing before the Supreme Court. The Prevention of Disqualification of Membership in the State Legislative Assembly Act, 1969, was passed in response to the Ordinance. The Ordinance and Act appear to have been enacted in order to overturn the ruling in this case. One of the respondent's arguments was that the Rajasthan Legislature could not remove the disqualification retrospectively because the Constitution acknowledges disqualifications that existed at a certain time in accordance with the law in effect at the time.

As per Sikri, Ray and Jaganmohan Reddy, JJ. :

“Parliament and the State legislatures can legislate retrospectively subject to the provisions of the Constitution. No limitation on the powers of the Legislature to make a declaration validating an election, effective from an earlier date, is expressly stated nor could it be implied in Article 191(1). The apprehension that it may not be a healthy practice and might be abused is no ground for limiting the powers of the State Legislature.”³⁰

It was decided that a member of the Legislative Assembly cannot be disqualified for holding an “office of profit” unless it can be demonstrated that the office exists independently of the holder.

³⁰ *Ibid*

CRITICAL ANALYSIS OF OFFICE OF PROFIT

- **List of Exemptions**

The list of exemptions from disqualification under Articles 102 and 191 was continually expanded by the legislatures. For example, Act 10 of 1959 identified a number of offices as being free from disqualification under Article 102; there does not appear to be a clear basis for such a list, other than the convenience of protecting particular office holders from time to time. State legislatures have passed similar measures under Article 191, exempting hundreds of positions from eligibility for the state legislature. When the government appoints a lawmaker to a position that could be characterized as a profit-making one, a statute is passed that adds that position to the list of exempted categories.

The inconsistency between States regarding exemptions is also a matter of concern. It is to be noted that in *Bhagwandas v State of Haryana*³¹ it was held that the courts will not interfere if the State and Parliament exercise powers given under Article 102(1)(a) with reasonableness and with due restraint and do not disregard constitutional guarantee in any way.

After the *Jaya Bachchan case*³² was decided on May 8, 2006, and by Act no. 31 of 2006, The Uttar Pradesh Film Development Council was inserted as not an office of profit under the Disqualification Act, 1959, w.e.f. August 18, 2006. This shows that the addition and elimination of offices under the law is gameplay. There has been a grave misuse of such disqualification acts according to the wants of political parties in power. While Supreme Court decisions have offered much-needed transparency on the subject, the Centre still needs to pass legislation on the subject. However, the Central government declared in 2020 that defining the office of profit is “*dangerous*,” citing vague reasons such as defining the law could lead to a backlog of cases with the EC and courts and that defining the law would necessitate amending various corresponding provisions in the Constitution and other relevant acts.³³

³¹ *Bhagwandas v State of Haryana* (1974), AIR 2355

³² The aftermath of Jaya Bacchan (n 20)

³³ Rashmi Bagri, ‘Office of Profit : It’s time to lay down the specifics’ (*The Wire*, 21 November 2021) <<https://www.livelaw.in/columns/office-of-profit-doctrine-of-separation-of-power-governance-legislations-supreme-court-decisions-185994>> accessed 11 May 2022

- **Public Service and Personal Interest**

On the other face of the coin, a public servant might fill the ministerial gaps well. This criticism looks contradictory to the separation of power theory, but legislators typically have significant competence from their personal or professional backgrounds. Furthermore, their public service experience provides them with unique insights and understanding of public policy. The mere fact that such positions come with a salary and other benefits does not make their executive roles. The Constitution recognized that holding such positions in expert and advisory bodies does not contradict the separation of powers, and it was left to Parliament and state legislatures to exempt such non-executive positions from disqualification.

- **Political Manipulation**

To understand this, let us take a recent political scenario of AamAadmi Party (AAP) members' disqualification. A month after the Arvind Kejriwal-led Delhi government entered office, the AAP nominated 21 MPs as Parliamentary Secretaries. Following that, the government sought a modification to the Delhi Members of Legislative Assembly (Removal of Disqualification) Act, 1997, to make appointments to these offices exempt from disqualification, as required by Article 191(1)(a) of the Constitution. Essentially, the AAP sought a “retrospective” exemption for parliamentary secretaries from the disqualification requirement through the Bill, a characteristic that has been repeatedly legitimized by the Supreme Court (*Ajay Bhatt v State Of Uttarakhand*³⁴). However, the LG reserved the matter in bad faith for the President, who later denied consent. The Election Commission disqualified them for the lack of legal justification. The Delhi High Court overruled the Election Commission’s decision to remove 20 AamAadmi Party (AAP) MPs on March 23, 2018.

A parliamentary secretary is a Member of Parliament who aids a Minister in their duties in the Westminster system. Parliamentary secretaries are normally appointed by Prime Ministers and Chief Ministers from their own parties.³⁵ Article 102 and 191 make an explanation that a person shall not be deemed to be disqualified to hold an office of profit if he is only a minister

³⁴ *Ajay Bhatt v State Of Uttarakhand* (2013) 2 UD 61

³⁵ Shruti Radhakrishnan, ‘The Hindu Explains: Office of profit’ (*The Hindu*, 20 January 2018)

<<https://www.thehindu.com/news/national/the-hindu-explains-office-of-profit/article22480152.ece>> accessed 10 May 2022

either from Union or such State. It is already observed that the State legislature cannot create offices of Parliamentary Secretaries. The Supreme Court in *Bimolangshu Roy v State of Assam*³⁶, struck down the Assam Parliamentary Secretaries (Appointment, Salaries, Allowances, and Miscellaneous Provisions) Act, 2004 as unconstitutional because it lacked legislative competence.

CONCLUSION

The dilemma of the “Office of Profit” is both constitutional and political. Political constraint on nominations based on patronage is required, as is transparency in all appointments. It is time for the Supreme Court to establish guidelines for the use of legislative authorities to exempt such offices from disqualification. In light of the foregoing discussion, it is clear that the true test to determine whether a person holds an office of profit or not depends on the extent of government control. One thing to keep in mind is that the goal of disqualification is to avoid disagreement amongst state functionaries. In the current situation, the idea of separation of powers has become too thin because government functions have become so broad that the government is unable to act within its limited powers.

The Parliamentary Secretary's disqualification of AAP saw a politically motivated and autocratic stance by the Election Commission. Even though Delhi High Court overturned the decision, it must be noted that the EC has stated many times that in some situations, the Parliamentary Secretary allowed incumbents to participate in high-level government meetings and even chair them. These Parliamentary secretaries had full access to the Ministers' files and documents at all times, allowing them to exert their influence and power through patronage. In these circumstances, it must be seen that the duties performed by the individual in their legislative and executive capacities must not contradict. The exemptions should be uniform among the States since every candidate is democratically standing for election there should not be a difference in the nature of offices of profit in the States. Furtherance to the separation of power through demarcating legislative and executive fields should be in proportion with the idea of federalism. Every State must have a nexus between application and objective with

³⁶ *Bimolangshu Roy v State of Assam* (2018) 14 SCC 408

respect to their laws on disqualification. To conclude, it is evident to say that the present law on the office of profit lacks a stable framework and positive development in this field is a need of the hour.