

1. **Appointment of parliamentary secretaries is a fraud on the constitution. It is acting as a backdoor to shower perks and privileges on ruling party MLAs. Explain its relation to 'Office of profit'. Also enumerate five tenets of determining 'Office of profit'. (12.5 Marks)**

Answer:

- A Parliament Secretary often holds the rank of Minister of State and has the same entitlements and is assigned to a government department.
- Parliamentary secretaries are appointed by Chief Minister and are deemed to be Ministers only for the purpose of ensuring better co-ordination between the executive and legislature. These secretaries by virtue of a Statute are involved with the sole purpose of planning and co-ordination of legislative and other official business in the state.
- But it is against the constitutional principles of the following grounds:
 - a) Article 102 and 191 of the Constitution says that a person shall be disqualified for being chosen and for being a member of the House if he holds any office of profit under Government of India or any state government. The essence of this disqualification is that there should be no conflict between the duties and interests of an elected member.
 - b) Article 164(1A) 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 not a 'full' state) Over the last few years, courts across the country have struck down the appointment of Parliamentary Secretaries for violating the Constitution.
- Further Parliament secretaries for maintaining pro-party, pro-government (tilting towards ruling party) approach many a times acts as the lenient source towards the ruling party for implementation of.
- They got privileges of handling files of the Department concerned under certain circumstances which is not acceptable and justifiable when the very system in existence indicate Cabinet form of Government. It is nothing but elevating good number of MLAs, to the position of Minister of State under the guise of Parliamentary Secretaries violating the Constitution mandate.
- State is under an obligation to act in accordance with the provisions of Constitution of India and is not free to act upon its whims and fancies.
- A certain office will qualify to be an office of profit if-
 - a) Government makes the appointment
 - b) Government has the right to dismiss the office bearer at its will
 - c) Government pays the remuneration
 - d) Government exercises control over the functions of the office holder
 - e) Office yields personal gains to the holder
- Though these five tenets need not co-exist conjointly for determining whether an office is an office of profit under the government, however Supreme Court has over-stressed on third and fifth point.

PRACTICE QUESTIONS

Answer the following Questions

(12.5 Marks)

1. "There is a general impression that this House (Rajya Sabha) cannot make or unmake governments and, therefore, it is a superfluous body. But there are functions which a revising chamber can fulfil fruitfully..." Elucidate with reference to recent debate over the relevance of Rajya Sabha; giving both sides of arguments.
2. Accountability of public institutions focuses on (a) prevention of activities not specifically authorized by law and (b) maintenance of financial propriety. Is this concept of accountability capable of bringing good governance? What other dimensions should be added to make it more holistic?