

1. "SHOULD THE PARLIAMENTARY SECRETARIES APPOINTED BY GOVERNMENT FALL UNDER THE SCANNER OF THE 'OFFICE OF PROFIT'? DISCUSS THE RECENT CONTROVERSIES REGARDING PARLIAMENTARY SECRETARIES IN INDIAN STATES?"

Answer:

The appointment of 21 MLAs of Delhi Assembly as Parliamentary Secretaries has opened fresh debate on the efficacy and significance of the office in Indian polity. Parliamentary Secretaries are a creation of Westminster System and are designated to assist senior ministers with his or her duties. Whether such posts need to be politically appointed needs elaboration. As they are politically appointed from amongst the ruling party members, there is a necessity to put them under scanner of the 'office of the profit'. Office of Profit is not found mentioned in the Constitution. Over the years, some broad principles have evolved for determining whether an office attracts the constitutional disqualification. First, whether the government makes the appointment; second, whether the government has the right to remove or dismiss the holder; third, whether the government pays remuneration to the occupants of such posts; fourth, what the functions of the holder are; and fifth, does the government exercise any control over the performance of these functions.

As the appointed Parliamentary meets most of the principles, they are apt to be called holders of 'Office of Profit'. In 1959 (Amended in 2006) Parliament enacted a law specifying offices that would not attract disqualification under the Constitution. There is no mention of Parliamentary Secretaries in the said law.

Appointments of Parliamentary Secretaries in many states have been challenged. In 2015, the High Court in Hyderabad struck down the Telengana government order for such appointment. The Calcutta High Court acted in similar fashion in 2014. In 2009, such appointments were held unconstitutional in Goa, and in 2005 in Himachal Pradesh.