

MCQ Question · mcqquestion.com

Office of Profit and Conduct Rules

Free · Share

Office of Profit and Conduct Rules

A public job should never pull an official away from the public interest. India guards this idea in two ways. Legislators face the “office of profit” rule in the Constitution. Civil servants follow conduct rules. This lesson explains both, and the cases that shaped them.

Must know: the rule, the articles and the tests

1 What is an office of profit, and who decides?

What do Articles 102 and 191 say?



Sansad Bhavan, the Parliament House in New Delhi. Photo by Nikhilb239, CC BY-SA 4.0, via Wikimedia Commons.

Article 102(1)(a) covers Members of Parliament. It disqualifies anyone who holds an office of profit under the Government of India or a State Government. Article 191(1)(a) covers State legislators in the same way.

Both articles have an exception. The office may be one that a law says will not disqualify its holder. A Minister is also not treated as holding an office of profit only for being a Minister.

Does the Constitution define the term?

No. PRS India says the law does not clearly define it. Courts read it as a post that brings the holder some financial gain, advantage or benefit. The amount of profit does not matter.

Why have this rule?

Legislators hold the government to account. A legislator with a government post may bend to government influence. The rule aims to stop a clash between a member's duty and interest.

Who decides?

Article 103 sends the question to the President. The decision is final. But the President must first obtain the Election Commission's opinion and act on it. Article 192 gives the Governor the same role for State legislators.

> **Quick check 1.** Article 103 requires the President to obtain the Election Commission's opinion and act according to it. *(True or False?)* See answer ↓

Sources: cdnbbsr.s3waas.gov.in; prsindia.org

2 How do courts test an office of profit?

What are the five tests?



The Supreme Court of India, which has shaped the tests for an office of profit. Image credit: Subhashish Panigrahi, CC BY-SA 4.0, via Wikimedia Commons.

The Supreme Court set out tests in Guru Gobinda Basu (1964) and Shivamurthy Swami Inamdar (reported 1971). It asks five questions:

- Does the Government make the appointment?
- Can the Government remove or dismiss the holder?
- Does the Government pay the remuneration?
- What are the holder’s functions, and does he perform them for the Government?
- Does the Government control how those functions are done?

The Constitution Bench said these factors need not all be present. The decisive test is the test of appointment.

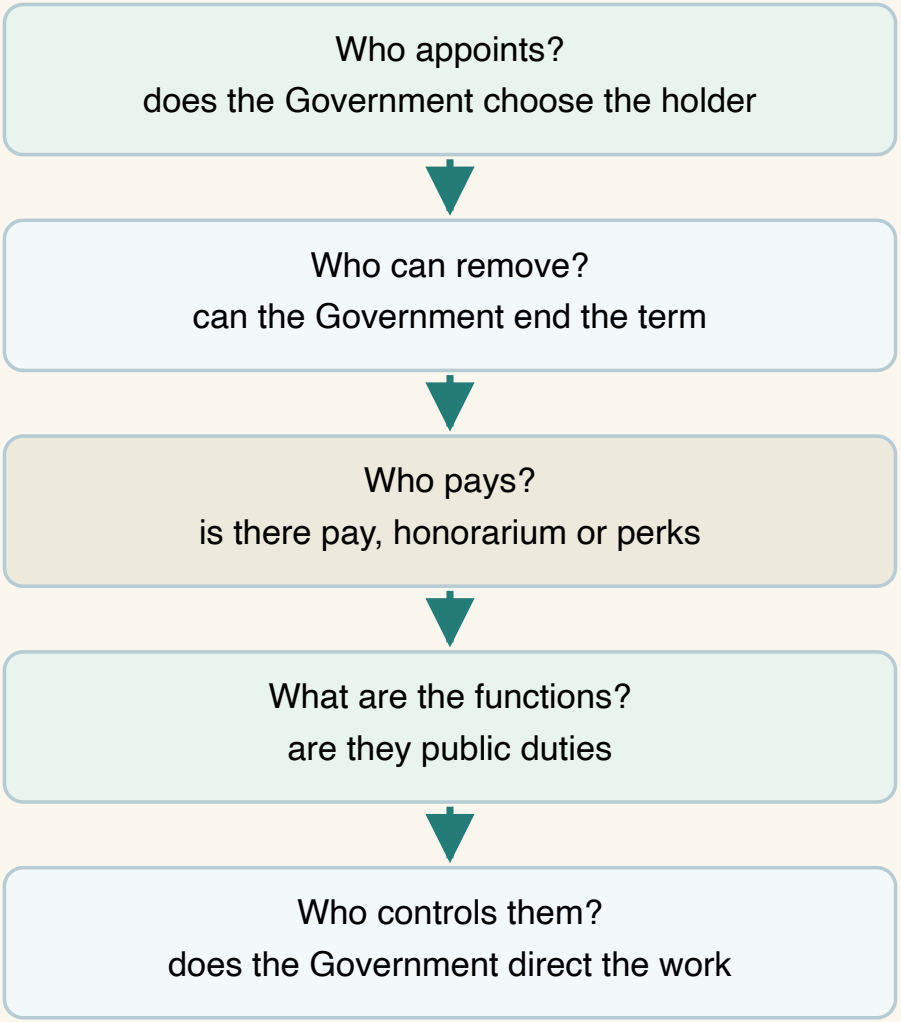
What did Pradyut Bordoloi decide?

Pradyut Bordoloi v Swapan Roy was decided on 12 December 2000. It was an Article 191 case from Assam. Swapan Roy was a clerk in Coal India Ltd, a Government company. The President of India had no power over appointment, removal or discipline below Board level. The High Court held that the clerk held no office of profit. The Supreme Court agreed.

Why was a municipal accountant not disqualified?

Ashok Kumar Bhattacharyya v Ajoy Biswas was decided on 15 November 1984. Ajoy Biswas was Accountant-in-charge of Agartala Municipality in Tripura. The Court held he held no office of profit under the Government of Tripura. A local authority is a separate body. Article 58(2) names local authorities for the Presidential election. Article 102(1)(a) does not.

> **Quick check 2.** In Pradyut Bordoloi v Swapan Roy (2000), the Supreme Court held that a Coal India clerk held an office of profit. *(True or False?)* See answer ↓



A five-part checklist, set out by the Supreme Court in Guru Gobinda Basu (1964). Original explanatory diagram.

Sources: indiankanoon.org

Good to know: cases, exemptions and the Delhi episode

3 What did the Jaya Bachchan case decide, and what is the 1959 Act?

Why was Jaya Bachchan disqualified?

Jaya Bachchan was a Rajya Sabha member. On 14 July 2004 Uttar Pradesh made her Chairperson of the Uttar Pradesh Film Development Council. The post carried the rank of a Cabinet Minister. It brought a monthly honorarium of Rs 5,000, a staff car with driver, and free housing and medical care. The President disqualified her. A three-judge bench dismissed her petition on 8 May 2006.

What rule did the Court state?

The key is whether the gain is “receivable”. It does not matter whether the holder actually received it. She called the post decorative and said she took no benefits. The Court said that did not matter, even if she was affluent.

What is the 1959 Act?

The Parliament (Prevention of Disqualification) Act, 1959 is Act 10 of 1959. Section 3 lists offices that do not disqualify an MP. They include Ministers, Whips and Parliamentary Secretaries.

How did Parliament respond in 2006?

Parliament acted fast. The amendment Bill was introduced on 16 May 2006. The President returned it on 30 May 2006 under Article 111. Parliament passed it again. It became Act 31 of 2006 on 18 August 2006. It added the Chairperson of the National Advisory Council. Some of its new exemptions applied from 4 April 1959. On 24 August 2009 the Supreme Court upheld the law in Consumer Education and Research Society v Union of India.

Was it amended again?

Yes. Act 28 of 2013 was passed on 20 September 2013. It exempted the Chairpersons of the National Commissions for Scheduled Castes and for Scheduled Tribes.

> **Quick check 3.** In Jaya Bachchan's case, it did not matter that she had not actually received the benefits of her post. *(True or False?)*
>
> See answer ↓

Sources: indiankanoon.org; prsindia.org

4 What was the Delhi case of 2018?

What was the issue?

In March 2015 Delhi made a group of Aam Aadmi Party MLAs parliamentary secretaries to ministers. Twenty of them faced disqualification, accused of holding offices of profit. In September 2016 the High Court ruled against the appointments. The Election Commission gave its opinion on 19 January 2018. The President then disqualified the MLAs.

What did the Delhi High Court do?

On 23 March 2018 a bench headed by Justice Sanjiv Khanna set the opinion aside. It called the opinion bad in law for failing to follow natural justice. It asked the Commission to hear the MLAs again.

Which law applied?

The Delhi case rested on Section 15(1)(a) of the Government of National Capital Territory of Delhi Act, 1991. It was not Article 191. The Court ruled on fair procedure. It did not settle whether the posts were offices of profit.

Why are parliamentary secretaries controversial?

PRS India notes that the Calcutta High Court in 2015 saw such posts as a way to bypass the cap on ministers. Article 164(1A) limits ministers to 15 per cent of the Assembly.

> **Quick check 4.** In March 2018 the Delhi High Court held that the 20 parliamentary secretary posts were not offices of profit. *(True or False?)* See answer ↓

Sources: tribuneindia.com; livelaw.in; prsindia.org

Great to know: conduct rules and how exams ask this

5 What do the conduct rules say about integrity and politics?

Who follows which rules?

Conduct rules govern how officials behave in service. Central civil servants follow the Central Civil Services (Conduct) Rules, 1964. Members of the All India Services, such as the IAS and IPS, follow the All India Services (Conduct) Rules, 1968.

What do they ask on integrity?

CCS Rule 3(1) says every Government servant must at all times maintain absolute integrity and devotion to duty. The list also includes high ethical standards, honesty and political neutrality. AIS Rule 3 says much the same.

What about politics?

CCS Rule 5(1) bars a Government servant from being a member of any political party. He may not be associated with any body that takes part in politics. He may not take part in, or assist, any political movement or activity. AIS Rule 5(1) says the same for its members.

> **Quick check 5.** Under Rule 5(1) of the CCS (Conduct) Rules, 1964, a Government servant may not be a member of a political party. *(True or False?)* See answer ↓

Sources: dopt.gov.in; ips.gov.in

6 What do the rules say on gifts, outside work and property?

How are gifts handled?

CCS Rule 13 bars gifts, save as the rules allow. A “gift” includes free transport, boarding or lodging from anyone other than a near relative or a personal friend with no official dealings. A casual meal or lift is not a gift. Officers should avoid lavish or frequent hospitality from firms that deal with them. AIS Rule 11 is similar.

Can an officer do private business?

Not without sanction. CCS Rule 15(1) bars a Government servant from trade, business or other employment without the Government's previous sanction. AIS Rule 13 says the same.

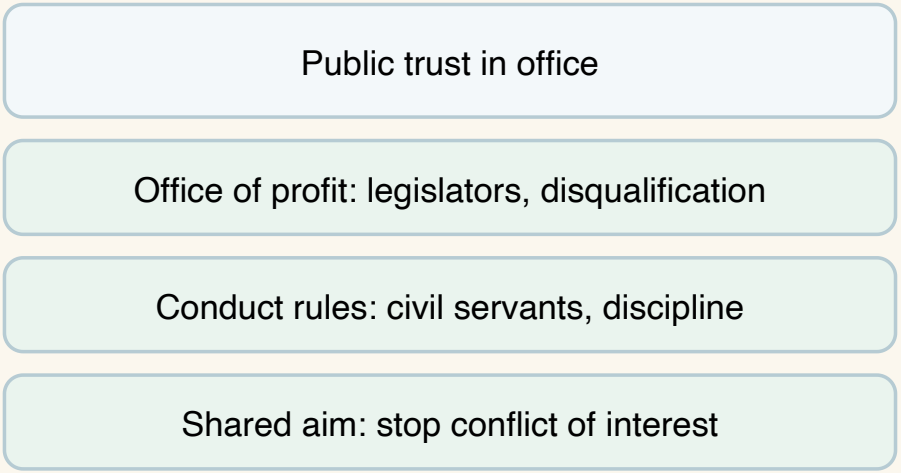
What about property?

CCS Rule 18(1) asks for a return of assets and liabilities on first appointment. Group A and B officers also file an annual return of immovable property. AIS Rule 16(1) asks for a similar first return.

How do the two systems differ?

The office of profit rule disqualifies a legislator. The President or Governor decides, and courts review it. Conduct rules guide civil servants. Both aim to keep personal interest out of public duty.

> **Quick check 6.** A casual meal from a friend counts as a gift under Rule 13 of the CCS (Conduct) Rules, 1964. *(True or False?)* See answer ↓



Two systems with one aim. Original explanatory diagram.

Sources: dopt.gov.in; ips.gov.in

Each card above had a true or false check. Your score for all six shows here. Tap Reset checks to try again.

Questions to think through

Why do courts look at the benefit and not the name of a post?

A post can be called honorary and still bring money or perks. The risk of influence comes from the benefit. So courts ask what the holder can receive.

Why can Parliament exempt some offices?

Some posts are useful public roles that do not threaten a member's independence. But the power can be misused. Courts have had to decide which posts really carry a profit.

Why is the Delhi case a lesson in fair procedure?

The High Court did not say whether the posts were offices of profit. It said the MLAs were denied a fair hearing. Fair process is part of the rule of law.

Practice MCQs

1. Consider the following statements:

1. The Parliament (Prevention of Disqualification) Act, 1959 exempts several posts from disqualification on the grounds of 'Office of Profit'.

2. The above-mentioned Act was amended five times.

3. The term 'Office of Profit' is well-defined in the Constitution of India.

Which of the statements given above is/are correct?

A. 1 and 2 only

B. 3 only

C. 2 and 3 only

D. 1, 2 and 3

See answer ↓

2. Under Article 103, who decides whether a Member of Parliament has become disqualified for holding an office of profit?

A. The Speaker of the House

B. The Prime Minister

C. The President, after obtaining the Election Commission's opinion

D. The Supreme Court, on a petition

See answer ↓

3. In Jaya Bachchan v Union of India (2006), the Supreme Court held that a post is an office of profit if its pecuniary gain is:

A. Paid from the Consolidated Fund of India

B. More than Rs 5,000 a month

C. Receivable in connection with the office

D. Actually received by the holder

See answer ↓

4. Which test did the Constitution Bench in Pradyut Bordoloi v Swapan Roy treat as decisive for an office of profit under the Government?

A. The test of appointment

B. Whether the post is full-time

C. The amount of salary received

D. The source from which the remuneration is paid

See answer ↓

5. On 23 March 2018 the Delhi High Court set aside the Election Commission's opinion on 20 AAP MLAs. What was the ground?

A. The Commission did not follow natural justice and give the MLAs a proper hearing

B. The posts of parliamentary secretary were held not to be offices of profit

C. The MLAs had resigned before the opinion was given

D. The Governor, not the President, had the power to decide

See answer ↓

6. Under the Central Civil Services (Conduct) Rules, 1964, which of these needs the Government's previous sanction?

A. Accepting a casual meal from a social friend

B. Engaging directly or indirectly in any trade or business

C. Filing a return of assets and liabilities on first appointment

D. Maintaining integrity and devotion to duty

See answer ↓

7. What is an Office of Profit?

A. A term with no constitutional relevance in India

B. A position offering financial benefit or influence that could compromise a legislator's independence, disqualifying them from holding it

C. A purely honorary position with no financial benefit

D. A position exclusively held by unelected civil servants

See answer ↓

Answer Key

1. **A.** The answer is 1 and 2 only. This is the official UPSC key for Series A, question 49 (UPSC CSE Prelims 2019). Section 3 of the 1959 Act lists offices that do not disqualify an MP, so statement 1 is true. The Constitution does not define the term, so statement 3 is false. The key accepts statement 2, but learn the two big amendments of 2006 and 2013 rather than a headline count. ↑ Q1
2. **C.** The answer is the President, after obtaining the Election Commission's opinion. The decision is final, and the President must act according to that opinion. For State legislators, Article 192 gives the same role to the Governor. ↑ Q2
3. **C.** The answer is: receivable in connection with the office. The Court said it does not matter whether the holder actually received the gain. Jaya Bachchan chaired the Uttar Pradesh Film Development Council. Her post carried a Rs 5,000 monthly honorarium and other benefits. The three-judge bench dismissed her petition on 8 May 2006. ↑ Q3
4. **A.** The answer is the test of appointment. The Supreme Court listed five factors, including who removes and who pays. It said they need not all be present. It also said the source of the pay is not by itself decisive. Stress on the other tests depends on the facts of each case. ↑ Q4
5. **A.** The answer is that the Commission did not follow natural justice. The Division Bench headed by Justice Sanjiv Khanna called the 19 January 2018 opinion bad in law. It asked the Commission to hear the MLAs again. The Court did not decide whether the posts were offices of profit. ↑ Q5
6. **B.** The answer is engaging directly or indirectly in any trade or business. Rule 15(1) bars this without the Government's previous sanction. A casual meal is not a gift under Rule 13. Rule 18 requires an asset return on first appointment. Rule 3 makes integrity a standing duty. ↑ Q6
7. **B.** An office of profit is a position that brings the holder financial gain, advantage or benefit. The amount of profit does not matter. Article 102(1)(a) disqualifies a person who holds one under the Government of India or a State Government, unless Parliament has exempted it by law. ↑ Q7

Quick-check answers

1. **True.** Article 103(2) says the President shall obtain the opinion of the Election Commission and shall act according to it. ↑ 1
2. **False.** The Court agreed with the High Court. The President of India had no power over appointment, removal or discipline below Board level. ↑ 2
3. **True.** The Court said what matters is whether the gain is receivable, not whether it was received. ↑ 3
4. **False.** The Court set aside the Election Commission's opinion for failing natural justice. It asked the Commission to hear the MLAs again. ↑ 4
5. **True.** Rule 5(1) bars membership of, or association with, any political party or any body that takes part in politics. ↑ 5
6. **False.** The rule says a casual meal, lift or other social hospitality is not deemed to be a gift. ↑ 6

Curated by Arsalan Zuberi · mcqquestion.com



Scan to read online

https://mcqquestion.com/articles/office-of-profit-and-conduct-rules/