

Course Name - B.A.LL.B 4<sup>TH</sup> sem/  
LL.B 2<sup>nd</sup> sem

Subject - Constitution of India

Teacher - Dr. Monika Garg

Concept - Protection of civil servants

# THE PARLIAMENT

The supreme legislative organ of the union of India is called the Parliament. Indian Constitution provides us a Parliamentary Democracy. Articles 79-122 of the Indian Constitution deal with the composition, powers and procedures of the Parliament of India. The Indian parliament is considered as a bicameral structure. It consists of Lok Sabha, President, and Rajya Sabha. Rajya Sabha represents the council of states and the upper house. While Lok Sabha represents the house of people and the lower house. Lok Sabha represents the Indian people while Rajya Sabha represents the union territories and states.

## Composition of the Parliament

**Article 79** of the Constitution of India states that there shall be a Parliament for the Union, which comprises of the President and the two Houses- Rajya Sabha (the council of states) and Lok sabha (House of the people).

**Article 80** of the Constitution specifies the composition of the council of states, which consists of 12 members nominated by the President and 238 representatives of the state and union territories.

The allocation of seats in the council of states to be fulfilled by representatives of states and union territories in accordance with the provisions contained in the 4th schedule.

**Representation from States-** They shall be elected by the elected members of the legislative assembly of the state in accordance with the system of proportional representation by means of single transferable vote. Hence from the above it can be said that the number of seats to each state varies in accordance with population of that state. Therefore larger states occupy more seats than smaller states.

**Representatives from Union Territories:** By convention the representatives are indirectly elected by members of an electoral college and the election is held in accordance with the system of proportional representation by means of the single transferable vote. Among all the Union Territories only Delhi and Pondicherry have representation since all other UT's have less population.

**Nominated Members-** Those persons who have special knowledge or practical experience in the fields of literature, science, art and social service are provided opportunity to enter Rajya Sabha without going through process of election. Recently this clause was in news for nomination of Sachin Tendulkar as it does not provide for sportspersons to enter Rajya Sabha through Presidential nomination but later it was accepted.

**Article 81** specifies the composition of the house of the people, which consists of not more than 530 members chosen by direct elections from territorial constituencies in the states; not more than 20 members representing the union territories; 2 Anglo-Indians.

**Representation of States-** They are elected by the people directly by universal adult franchise. Each state shall be allotted number of seats in the house of the people in such a manner that the ratio between the number and the population of the state is equal for all the states. There is also a provision for reservation of seats for SC/ ST communities on the basis of population ratio.

**Representation from Union Territories-** According to the law prescribed by the Parliament the union territories direct election to the house of people act 1965 was passed and thereby they are also elected directly by people.

**Nominated Members-** President has powers to elect 2 members from Anglo-Indian community if the President feels that their community is not adequately represented.

**Qualification & disqualification for Membership of Parliament-**

According to Article 84 following are the qualifications for members of Parliament. It states that a person shall not be qualified to be chosen to fill a seat in Parliament unless he is Citizen of India and

- Makes and subscribes before some person authorized in that behalf by the election commission an oath or affirmation according to the form subscribed to that purpose in the third schedule.
- In case of council of states the age of the member should not be less than 30 years and in case of house of people the age should not be less than 25 years.
- Possessing such other qualification as mentioned by Parliament from time to time. Accordingly Parliament has passed Representation of peoples act 1951, following are additional qualifications as per this act.
- A person shall not be qualified to be chosen as a representative of any state or UT in the council of states unless he is an elector of a parliamentary constituency in India
- A person shall not be qualified to be chosen to fill a seat in the house of people unless in case of a seat reserved for the scheduled castes or scheduled tribe in any state, he is a member of any of SC / ST respectively whether of that state or of any other state and he is an elector for any parliamentary constituency.
- A person shall be disqualified where the convicted person is sentenced to only fine, for a period of 6 years from the date of such conviction or imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of 6 years since his release.
- If the election commission is satisfied that a person has failed to lodge an account of election expenses within the time and the manner required
- Disqualification on the ground of corrupt practices and disloyalty  
The following are declared as corrupt practices under Representation of Peoples act 1951:
- The appeal to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language
- Promotion of feeling of enmity or hatred between different classes of citizens on the ground of religion, race, caste, community or language
- Publication of any statement of fact which is false in relation to personal character or conduct of any candidate
- Booth capturing
- Incurring expenditure in contravention to that specified

- Obtaining assistance from any person in service of government
- Hiring or procuring any vehicle for free conveyance of any elector to and from any polling station

## **OFFICE OF PROFIT**

The expression office of profit has not been defined in the Constitution or in the Representation of People Act 1951. Its ambit has to be inferred only from the pronouncement of the courts and other competent authorities like the Election Commission and the president. The object of the provision is to secure the independence of the members of Parliament and do not contains persons who have received favors or benefits from the executive and who consequently being under an obligation to executive might be amenable to influence.

### **Rationale for the Disqualification for Holding an Office of Profit**

The underlying concept behind these two articles is the principle of separation of power between the functionaries of a state like the legislative, judiciary and the executive. The principle of separation of powers enjoins that the three organs of the government- the executive, the judiciary, the legislature should be separate from each other. This is to ensure the isolation, immunity, or independence of one branch of government from the actions or interference of the another and to ensure checks and balances.

The object of enacting Articles 102(1)(a) and the 191(1)(a) is that there should not be any conflict between the duties and interests of an elected member and to see that such an elected member can carry freely and fearlessly his duties without subjected to any kind of governmental pressure, thereby implying that if such an elected person is holding an office which brings him remunerations and if the Government has a voice in his functions in that office there is every likelihood of such persons succumbing to the wishes of Government. These articles are intended to eliminate the possibility of such a conflict between duty and state so that purity of legislature is unaffected. The true principle behind these provisions in Article 102(1)(a) is that there should not be any conflict between the duties and interest of the elected member.

Article 102(1)(a) of the constitution says that a person shall be disqualified from being chosen as and for being a member of the either house of the parliament:

If he holds any office of profit under the Government (center or state ) other than an office declared by parliament by law not to disqualify its holder

An office of profit need not be necessarily confer pecuniary benefit, it is sufficient if it bestows administrative and executive powers.

This provision is thus designed to protect the democratic fabric of the country being corrupted by executive patronage and also secures the independence of the MPs and MLAs from the influence of the Government so that they discharge their functions without fear or favor. The presumption is that if a legislature receives benefit from the executive then he may not be independently scrutinize the actions of the Government. It ensures that parliament may contain persons who are amenable to the Government because receiving benefits from it.

The word ‘ profit’ connotes the idea of pecuniary gain. Constitution of India doesn’t define the term Office of profit similar to the other grey area of the constitution, it is the judiciary which interpreted it in the case of **Ravanna subanna v. G.S.Kaggerappa**. The word profit connotes the idea of some pecuniary gain attached to the office. Supreme court, in this case, said that 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 indicating whether the office really carries any profit

In case of **Chandrasekhar Raju v. vyricherla Pradeep kumar** the Supreme Court after examining the catena of authorities, it was opined:

The power of the government to appoint a person in an office or to revoke his appointment at its discretion. The mere control of the government over the authority having the power to appoint , dismiss or control the working of the office employed by such authority does not disqualify that officer from being a candidate for election as a member of legislation.

The payment from out of the Government revenues are important factors in determining whether the person is holding an office of profit or not of the government Though payment from a source other than the Government is not always a decisive factor in determining office of profit.

The whole point that requires consideration is how the judiciary interprets this provision of the office of profit . The plain meaning of this expression seems to be that an office must be held

under Government to which any pay salary emoluments or allowance is attached. Court took this view to define this undefined area of the constitution

Any office under the control of the Government of India or the government of a state, whether or not the salary or remuneration for such office is paid out of the public revenue of the government of India or of the government of state.

Any office under a body, which is wholly or partially owned by the Government of India or government of any state and the salary and remuneration is paid by such body.

Any officeholder which is capable of exercising the executive powers delegated by the government, including disbursement of funds, allotment of lands, issuing of licenses and permits or making of public appointment or granting of such other favors of substantial nature or legislative, judicial, or quasi-judicial functions.

The best course appears to be the parliament is competent to enact a law to remove a disqualification with retrospective effect and this is settled in the case of **Kantha Kathuriya vs Manakchand Surana**. In the light of above mentioned discussion it becomes clear that the true test to be applied to determine whether a person holds an office of profit or not depends upon the extent of control the government exercises, whether the salary paid out of government has power to appoint or dismiss, whether the salary paid out of government fund or not, the salary which the person entitled to get must not be compensatory in nature to bear out day to day expenses but it must confer some pecuniary gain to the person. One thing which must be borne in mind the objective of the disqualification is to avoid the conflict between the functionaries of state.

In the present scenario concept of separation of power becomes too thin because of the government function becomes so wide that it is not possible for the government to work in its limited power which is given to the government. And in these conditions it must be seen that there must not be any conflict between the duties discharged by the person in their legislative and executive capacity. Though our constitution has provisions that the legislature could exempt any post to come under the preview of "office of profit" by making laws with retrospective effect. By giving such a wide power to legislature it has constricted the scope of Art.102 (1) a and Art. 191 (1) a. It becomes the usual practice of the

government which is in majority to exempt the post on which the party members are appointed by amending laws.

### **Speaker and deputy speaker of Lok Sabha**

In Lok Sabha, the speaker is elected from amongst its elected members. Also, the date for the election of the speaker is fixed by the president. The speaker decides if a bill is a money bill or not. Also, the decision of the speaker is considered as final within any question.

Like the election of the speaker, the deputy speaker is also elected by the members of Lok Sabha. However, the election date is fixed by the speaker. In the case of resignation, the deputy speaker offers his resignation to the speaker of Lok Sabha.

### **Regulating the Business of the House**

The final authority for adopting rules for regulating its procedure rests with each House, but a perusal of the rules of the Indian Parliament would indicate that the Presiding Officers in the two Houses are given vast powers by the rules. It is the Presiding Officer who decides the admissibility of a Question; it is she who decides the forms in which amendments may be moved to the Motion of Thanks to the President's Address. With regard to moving amendments to a Bill, the permission of the Chair is required. If a Bill is pending before the House, it is the Speaker who decides whether she should allow amendments to be moved to various clauses of the Bill or not. As regards regulating discussions in the House, it is the Speaker who decides as to when a member shall speak and how long she shall speak. It is left to her to ask a member to discontinue her speech or even decide that what a particular member said may not go on record as part of the proceedings. If she is satisfied, the Speaker can direct a member to withdraw from the House for a specific period of time. A member who flouts her orders or directions may be named by the Speaker and in such cases, she may have to withdraw from the House.

The Speaker is the guardian of the rights and privileges of the House, its Committees and members. It depends solely on the Speaker to refer any question of privilege to the Committee of Privileges



for examination, investigation and report. It is through her that the decisions of the House are communicated to outside individuals and authorities. It is the Speaker who decides the form and manner in which the proceedings of the House is published. She also issues warrants to execute the orders of the House, wherever necessary, and delivers reprimands on behalf of the House. The entire Parliamentary Estate is under the authority of the Speaker. When a decision of the House is to be ascertained on a motion made by a member, the question is put by the Speaker before the House to obtain the decision. On questions of points of order, it is she who finally decides whether the matter raised is in order or not. The Speaker also has certain residuary powers under the Rules of Procedure. All matters which are not specifically provided under the rules and all questions relating to the working of the rules are regulated by her. In exercise of this power and under her inherent powers, the Speaker issues from time to time directions which are generally treated as sacrosanct as the Rules of Procedure. On matters regarding interpretation of constitutional provisions relating to the House or the Rules of Procedure, she often gives rulings which are respected by members and are binding in nature. Under the Constitution, the Speaker enjoys a special position insofar as certain matters pertaining to the relations between the two Houses of Parliament are concerned. She certifies Money Bills and decides finally what are money matters by reason of the Lok Sabha's overriding powers in financial matters. It is the Speaker of the Lok Sabha who presides over joint sittings called in the event of disagreement between the two Houses on a legislative measure. As regards recognition of parliamentary parties it is the Speaker who lays down the necessary guidelines for such recognition. It is she who decides on granting recognition to the Leader of the Opposition in the Lok Sabha. Following the 52nd Constitution amendment, the Speaker is vested with the power relating to the disqualification of a member of the Lok Sabha on grounds of defection. The Speaker makes obituary references in the House, formal references to important national and international events and the valedictory address at the conclusion of every Session of the Lok Sabha and also when the term of the House expires. Though a member of the House, the Speaker does not vote in the House except on those rare occasions when there is a tie at the end of a decision. Till date, the Speaker of the Lok Sabha has not been called upon to exercise this unique casting vote.

### **Power & function of chairman & deputy chairman**

As the Chairman of the Rajya Sabha, the Vice-President presides over the meetings of the House. As the Presiding Officer, the Chairman of the Rajya Sabha is the unchallenged guardian of the prestige and dignity of the House. He is also the principal spokesman of the House and represents the collective voice to the outside world. He ensures that the proceedings of the House are conducted in accordance with the relevant constitutional provisions, rules, practices and conventions and that decorum is maintained in the House. He is the custodian and guardian of the rights and privileges of the House and its members. Due to several pressing and urgent engagements and preoccupations as Vice-President he may not be able to devote full time as Presiding Officer of the Rajya Sabha, but in practice he presides during the first hour of the sitting of the House which is the Question Hour. This lively and occasionally tumultuous period is one of the high points of the day during each Session where the accountability of Government is most obviously on display. He deftly handles the situation, ensures that Members' rights of asking questions and receiving complete replies is well enforced and gives rulings on privilege matters and other procedural points. Whenever important debates or landmark discussions such as on Constitution Amendment Bills take place, he is invariably in the Chair. He has no vote except when there is a tie (article 100). The Chairman's rulings constitute precedents which are of a binding nature. The Chairman is not bound to give reasons for his decisions. The Chairman's rulings cannot be questioned or criticised and to protest against the ruling of the Chairman is a contempt of the House.

In his task as Chairman, he is assisted by the Deputy Chairman who is a member of the House and elected by it. The Deputy Chairman presides over the Rajya Sabha in the absence of the Chairman and performs the duties of the office of the Chairman if the Vice-President is acting as President or if there is a vacancy in the office of the Vice-President. There is also a panel of six Vice-Chairmen, which is constituted every year. A Vice-Chairman presides over the meeting of the Rajya Sabha in the absence of the Chairman or the Deputy Chairman. There is a Secretariat of the Rajya Sabha headed by a Secretary-General to assist the Chairman in the discharge of his functions.

As the Presiding Officer, the Chairman of the Rajya Sabha is the unchallenged guardian of the prestige and dignity of the House. His impartial and fair judgment enhances the reputation and prestige of his office.

The Chairman is also the principal spokesman of the House and represents its collective voice to the outside world. Communications from the President to the House are made to the Chairman.

Under the Constitution, the Chairman exercises only a casting vote in the case of equality of votes. However, if at any sitting of the House a resolution for the removal of the Chairman from his office is under consideration, he is not to preside at that sitting. He cannot also vote at all on such resolution or on any other matter during such proceedings.

The Constitution also lays down certain powers and duties of the Chairman: he is empowered to adjourn the House or to suspend its sitting in the event of absence of quorum. In case of resignation of a member from the House, the Chairman is required not to accept the resignation, if from information received or otherwise, and after making such inquiry as he thinks fit, he is satisfied that such resignation is not voluntary or genuine; under the Tenth Schedule to the Constitution, the Chairman determines the question as to disqualification of a member of the Rajya Sabha on ground of defection; he also makes rules for giving effect to the provisions of that Schedule; he is empowered to direct that any wilful contravention of the said rules should be dealt with in the same manner as a breach of privilege of the House; and the Chairman may permit a member who is unable to express himself in Hindi or in English, to address the House in his mother tongue. The Chairman does not take part in the deliberations of the House except in the discharge of his duties as the Presiding Officer. However, on a point of order raised or on his own, he may address the House at any time on a matter under consideration with a view to assisting members in their deliberations.

Maintenance of order in the House is a fundamental duty of the Chairman and he has been invested with all the necessary disciplinary powers under the rules for the purpose, such as checking irrelevance or repetition in the speech of a member, intervening when a member makes an unwarranted or defamatory remark by asking him to withdraw the same. The Chairman may also order expunction of any unparliamentary or undignified words used in the debate, or order that anything said by a member without his permission would not go on record. He may direct any member guilty of disorderly conduct to withdraw from the House and name a member for suspension if he disregards the authority of the Chair and persists in obstructing the proceedings of the House. He may also adjourn or suspend the sitting of the House in case of grave disorder.