

Office of Profit or Office of Controversy?

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Article 102 [1] of the constitution has a clause that empowers Parliament to declare certain offices under the union or state governments as exempt from the disqualification requirement. Parliament had earlier exempted certain positions, like ministers, leader of the opposition etc from the purview of this article. But many other offices were not so exempted when the complaint about Jaya Bacchan was made. Under the existing law, there was no option but to terminate her membership of Parliament. However, as many as 40 other MPs were holding positions that could be considered offices of profit.

Parliament hurriedly passed such a law in May 2006 [amid considerable controversy] to protect these MPs from disqualification. The MPs were protecting themselves, and were in the position of both accused and judge. This action has been criticised by many citizens.

Now the President has returned the bill without giving his Assent. He has raised two points—whether there is consistency across states in the definition of an office of profit, and whether the retrospective operation of this law is desirable. Now the bill will have to be reconsidered by Parliament.

The objective of this Article is to ensure the neutrality and impartiality of MPs in the conduct of public affairs. A person who is holding an office such as Chair of a public sector corporation has an interest in doing his or her best for that corporation. This may include efforts to, say prevent its privatisation or liquidation. Yet, and this is only an example, the larger public interest may demand its privatisation or closure. This may require a vote in Parliament. A member's primary duty is to the office to which he or she has been elected, and not to protect an organisation in which he or she holds an important position. It is to avoid such conflicts of interest that this Article has been included in the constitution. Thus, if certain offices are to be exempted, it is essential that there is a clear rationale for doing so. Members of Parliament must not suffer from conflicts of interest.

Exempting offices within the parliamentary structure has such a logic. Ministers are accountable to Parliament, and without ministers—or even a leader of the opposition—a

responsibility and MPs should be in a position to discharge their responsibilities without fear or favour, and without personal interest in the fortunes of various organisations. It would be a mockery of the constitution if a very large number of offices were declared as exempt. And this is what our MPs have recently done. The President has rightly raised these concerns on the recent bill.

If conflict of interest is the basic principle underlying this Article, then one can ask if the restriction should be limited only to positions within the government. Does not an industrialist also face a conflict of interest as an MP? In this situation, the mere fact that Art 102 limits itself to the government should be seen as a minimum requirement. We can develop healthy conventions that reach further. Should it not be a convention that an industrialist, while serving Parliament as a member, distance himself from his company? This can be done by resigning from all positions on the Board, and putting the shares held in a blind trust. Is this not an opportunity for examining all such issues? It is an opportunity for our political leaders to show foresight of the kind the Mahatma had.

It will be tragic if the government sends back the bill in its current form to the President. If it does so, it will be clear evidence that our political leaders are blinded by self interest, and do not have the capacity to live up to their responsibilities. India will then be held back by its politicians. In a democracy, this is a tragedy. But then, perhaps, it is one of our own making.