

Sparks fly as Jharkhand Governor seeks '2nd opinion' on Soren

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In response to the BJP's demand that Chief Minister Hemant Soren be removed, Jharkhand Governor said that he has sought a "second opinion" in a case of office-of-profit.



[Ref: New Indian express]

Major Highlights

- As per petition by the BJP seeking **Soren's disqualification from the Assembly** in the **office-of-profit case**, the Election Commission had sent its decision to the Jharkhand governor.
 - However, the EC's decision has **not yet been made official**.
- There is a **rumor that the poll panel** has recommended the **chief minister's disqualification** as an MLA in connection with a mining lease.

What is an office of profit?

- It is a position in the government which cannot be **held by an MLA or an MP**.
- The post can **yield salaries, perquisites and other benefits**.
- The origin of this term can be found **in the English Act of Settlement, 1701**.
- Under this law, "**no person who has an office or place of profit under the King, or receives a pension from the Crown**, shall be capable of serving as a member of the House of Commons."
- This was instituted so that **there wouldn't be any undue influence** from the royal household in administrative affairs.

Why should an MLA or an MP not hold an office of profit?

- According to Articles **102(1)(a) and 191(1)(a) of the Constitution**, an MP or MLA is barred from holding an office of profit as it can put them in a position to gain a financial benefit.
- A person shall be **disqualified for being chosen** as, and for being, a member of either House of Parliament:
 - If he holds any **office of profit under the Government of India** or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder.

- Under the Representation of People Act too, holding an **office of profit is grounds for disqualification**.

SC rulings on office-of-profit

Pradyut Bordoloi vs Swapan Roy (2001)

- In this case, the SC in outlined the **four broad principles** for determining whether an office attracts the constitutional disqualification:
 - Whether the government **exercises control over appointment**, removal and performance of the functions of the office.
 - Whether the **office has any remuneration** attached to it.
 - Whether the body in which the office is held has government powers (releasing money, **allotment of land, granting licenses** etc.
 - Whether the **office enables the holder to influence** by way of patronage.

Jaya Bachchan v. Union of India Case

- In this case, the court held that the **Chairperson of the Film Development Council** of a state holds an office of profit as some pecuniary gain is receivable by virtue of the post.
- Even though the **said pecuniary gain may not actually** be received.
- Here, the petitioner has **sanctioned the rank of Cabinet Minister** and received a monthly honorarium, daily allowances, free accommodation, staff car, medical treatment etc.
- however, the petitioner **neither received any payment nor did she use any facilities** that she was entitled to as the Chairperson.
- However, since the post was capable of **yielding profit to the petitioner**, she held an office of profit.
- **Two factors which emerged**, in this case, were:
 - the form of **payment is not relevant as monetary gain** may be merely disguised as an honorarium
 - it is **not relevant whether any remuneration** was actually received, it is only enough if such remuneration was receivable.

The Bhargava Committee on Office-of-Profit

- It has **demarcated five categories** of offices which may constitute an office of profit from the angle of "profit".
- The report enlisted the **following five situations** where a person holds an office of profit:
 - Where the **remuneration granted to the office-holder is less** than the expenses incurred by him.
 - Where the person **does not take any remuneration**.
 - Where the payment of **remuneration has fallen into disuse**.
 - Where the office of profit **is not financed by government funds**.
 - Where the person comes in a **position to exercise influence or patronage** due to the office although there may not be any monetary gain.