

General Studies-2; Topic: Parliament and State Legislatures – structure, functioning, conduct of business, powers & privileges and issues arising out of these.

MPs and MLAs practising Law

1) Introduction

- The Bar Council of India has constituted an expert committee to look into an application to debar MPs and MLAs from practising as lawyers on the grounds that it is against the spirit of Articles 14 and 15 of the Constitution.
- Recently a PIL was filed in the Supreme Court to ban public servants, elected representatives and members of judiciary from simultaneously practicing other professions and declare it as criminal misconduct.

2) Arguments against practicing Law

- Many MPs, MLAs appear as an advocate even during assembly session and participate in matters that affect the financial interests of the country
- Rule 49 of the Bar Council of India states that any full-time salaried employee cannot practise as a lawyer before a court of law.
- A five-judge Bench in M. Karunanidhi v. Union of India (1979) stated that MPs and MLAs are public servants
- No public servant can engage as a lawyer while in service.
- The work of a lawyer is a full-time activity. So is the work of MPs and MLAs
- MPs and MLAs have to take part in the proceedings of the House, meet people in their constituencies, and address people's issues.
- Supreme Court in Haniraj Chulani vs. Bar Council of Maharashtra said – Legal profession requires full time attention
- MPs receive several facilities and salary out of the Consolidated Fund of India and by practicing law it lead to professional misconduct as they enjoy the benefits of both.
- They have the power to initiate impeachment proceedings against a judge, which means that they can pressurise the judge to give a favourable verdict.
- When they take public money and argue against the government, it is professional misconduct.
- Many MLAs and MPs hold corporate retainer-ship and appear against the State to defend their clients, which leads to conflict of interest.
- When we bar public servants from engaging in other professional services, and allowing them to practice law is a violation of Articles 14, 15, and 21.

3) Arguments favouring practicing Law

- Traditionally and historically the lawyers have played a major role in parliamentary affairs and public life
- Parliament must remain a melting pot of diversity, even in terms of diverse talents and varied experiences.
- The issue of whether one is devoting sufficient time will be decided by the electorate.
- Many people carry on their professions along with a sense of civic duty, public service, social work, or politics.
- Training in law helps them understand law and legislation better.

- There is no merit in banning, as doctors can join politics, chartered accountants, engineers and business tycoons can become MPs and MLAs
- One can inform the Privileges Committee or Ethics Committee in the event of a transgression.
- The remuneration, which MPs and MLAs get is meagre and is often cited as the reason for engaging in other professional activities.
- Competent and well-intentional persons do not let down the ideals of either the Parliament or the legal profession.

4) Way Forward

- Need to define the key roles and responsibilities of the public servants to make the Indian democracy more transparent and effective in spirit of Preamble of the Constitution.
- Need for a uniform policy relating to conflict of interest for public servants and members of judiciary in spirit of Article 14 of the Constitution
- Proper safeguards need to be placed like ensuring MPs and MLAs to have proper attendance in assembly and some minimum attendance to their constituency.

