

## Limitation on the Power of Suspension of MLAs

### What is the issue?

The Supreme Court has set aside the one-year suspension of 12 BJP MLAs from the Maharashtra Legislative Assembly observing that the decision to suspend them was unconstitutional, substantively illegal and irrational.

### What was the plea before the Supreme Court?

- On July 5, 2021, Leader of Opposition Devendra Fadnavis objected to tabling a resolution demanding the Centre release data on OBCs, so that seats could be reserved for them in local bodies in Maharashtra.
- Several BJP MLAs entered the well in protest, snatched the mace, and uprooted mics.
- MLA Bhaskar Jadhav, who was in the chair, adjourned the House for 10 minutes, following which some BJP MLAs allegedly entered his chamber and threatened, abused, and misbehaved with him.
- Maharashtra Parliamentary Affairs Minister Anil Parab subsequently moved a resolution to suspend 12 BJP MLAs for a year.
- The MLAs filed a writ petition in the Supreme Court last year against the Maharashtra Legislative Assembly and the State of Maharashtra and asked for the suspension to be quashed.

### What had both sides argued?

- **Stand of the MLAs**- The MLAs challenged their suspension on grounds of denial of principles of natural justice, and of violation of laid-down procedure.
- They said that they were not given an opportunity to present their case violating their fundamental right to equality before the law under **Article 14** of the Constitution.
- They also said that they were not given access to video of the proceedings of the House, and it was not clear how they had been identified.
- The MLAs have contended that under **Rule 53 of the Maharashtra Legislative Assembly Rules**, the power to suspend can only be exercised by the Speaker, and it cannot be put to vote in a resolution.
- **Assembly and the State's view**- They had submitted that the action was taken due to undisciplined and unbecoming behaviour of the MLAs.
- It was argued that that House had acted within its legislative competence, and that under **Article 212**, courts do not have jurisdiction to inquire into the proceedings of the legislature.
- The state had also said that a seat does not automatically become vacant if the member does not attend the House for 60 days but it becomes vacant only if declared so by the House.
- It was submitted that the House is not obligated to declare such a seat vacant.

## What did the court say?

- The court agreed with the MLAs' contention and said that the suspension of a member must be preferred as a short term or a temporary, disciplinary measure for restoring order in the Assembly.
- It said that Rule 53 only provides for the withdrawal of a member for the remainder of the day or in case of repeat misconduct in the same session, for the remainder of the session.
- The court said that as per this rule, withdrawal of a member can only be done in case of the member's conduct being "**grossly disorderly**".
- The year-long suspension will mean that the constituency remains unrepresented, while there would be no vacancy to be filled through a by-election.
- It noted that a thin majority coalition government could use such suspensions to manipulate the Opposition party members affecting their effective participation in discussions/debates.
- It also ruled that legislative procedures are open to judicial review on the touchstone of being unconstitutional, grossly illegal, irrational or arbitrary.
- The ruling is another reminder to legislative bodies that their functioning is subject to constitutional parameters.

## Can members be suspended beyond the remainder of the session?

- The bench referred to **Article 190 (4)** of the Constitution which says, "If an MLA of a State is absent for a period of 60 days without permitted by the House and absent from all meetings thereof, the House may declare his seat vacant".
- Under **Section 151 (A) of The Representation of the People Act, 1951**, "a bye-election for filling any vacancy shall be held within a period of 6 months from the date of the occurrence of the vacancy".
- The court said that anything in excess of that would be irrational suspension entailing deprivation of the constituency from being represented in the House.
- It said further that if the conduct of a member is gross, warranting his removal from the Assembly for a longer period, the House can invoke its inherent power of expulsion.

## Are there any similar rules for Parliament?

- Rules 373, 374, and 374A of the Rules of Procedure and Conduct of Business in Lok Sabha provide for the withdrawal of a member whose conduct is grossly disorderly.
- It provides for the suspension of one who abuses the rules of the House or willfully obstructs its business.
- The maximum suspension as per these Rules is for 5 consecutive sittings or the remainder of the session, whichever is less.
- The maximum suspension for Rajya Sabha under Rules 255 and 256 also does not exceed the remainder of the session.

## References

1. <https://www.thehindu.com/todays-paper/tp-opinion/limits-of-power/article38351274.ece>
2. <https://indianexpress.com/article/explained/explained-maharashtra-bjp-mlas-suspension-illegal-7746450/>



**SHANKAR**  
**IAS PARLIAMENT**  
*Information is Empowering*