

Suspension of MLAs

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In news– Recently, the Supreme Court has set aside the one-year suspension of 12 BJP MLAs from the Maharashtra Legislative Assembly, stating it as ‘unconstitutional, substantively illegal and irrational’.

What was the issue?

- In July 2021, the MLAs were suspended for a year for “grossly disorderly conduct” in the House.
- 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.
- The 12 MLAs have said they were not given an opportunity to present their case, and that the suspension violated their fundamental right to equality before law under Article 14 of the Constitution.
- The MLAs have also 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 as was done in this case.
- Rule 53 states that the “Speaker may direct any member who refuses to obey his decision, or whose conduct is, in his opinion, grossly disorderly, to withdraw immediately from the Assembly”.
- The member must “absent himself during the remainder of the day’s meeting”.
- The Maharashtra Legislative Assembly and the state, who were named as respondents in the case, had submitted that the action was taken due to “undisciplined and unbecoming behavior” of the MLAs.
- It was argued that the 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.

Court's Judgment on the issue-

- The court agreed with the MLAs' contention that the suspension has to follow the procedure laid down in Rule 53.
- It 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 and anything in excess of that would be irrational suspension.
- 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".
- It ruled that **procedures are open to judicial review** on the touchstone of being unconstitutional, grossly illegal, irrational or arbitrary.
- It said 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.

Constitutional provisions related to MLA's /MPs-

- **Article 212 (1)** states that "the validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure".
- **Article 194** provides for Powers, privileges, etc., of the Houses of Legislatures and of the members and committees.
- **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”, and suspension of one who abuses the rules of the House or willfully obstructs its business.

- **The maximum suspension as per these Rules is “for five 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.** Several recent suspensions of members have not continued beyond the session.
- Similar rules also are in place for state legislative assemblies and councils which prescribe a maximum suspension not exceeding the remainder of the session.
- **Article 190 (4)** of the Constitution says that if for a period of sixty days a member of a House of the Legislature of a State is without permission of the House 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... [in the House] shall be held within a period of six months from the date of the occurrence of the vacancy”, which means that barring exceptions specified under this section, no constituency can remain without a representative for more than six months.