

Disqualification of MLAs - II

What is the issue?

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The recent disqualification of 18 MLAs in Tamil Nadu by the Speaker brings to the fore certain constitutional questions on the role of the Governor and the Speaker.

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What are the contentious issues?

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- **Governor** - The Governor in this case is showing reluctance to order a floor test, despite a request from the opposition party.

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- A Constitution Bench has earlier observed that the activities within a political party, as to any turbulence or unrest, were beyond the concern of the Governor.

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- The Governor can intervene only when a breakaway group constitutes two-thirds of a party, as stipulated in the Tenth Schedule.

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- However, notably the Bench adds that the Governor should take action during a constitutional crisis i.e. when the government is seen to have lost the confidence of or majority in the House.

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- Thus the court bars Governors only from political embroilment and not restrict their constitutional duty and responsibility.

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- **Court** - On petitions challenging the Speaker's order of disqualifying the MLAs, the court had extended a stay on conducting the floor test.

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- Instead, a stay on the disqualification would have addressed the fears of those disqualified as well as obviated the need for the questionable stay on the floor test to be extended.

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- The court could have then adjudicated only the constitutional question on

whether the Governor ought to be directed to order a trust vote.

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- **Speaker** - The main question in Speaker's order is that would expressing lack of confidence in the Chief Minister amount to voluntarily giving up the party membership.

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- Disqualifying rebellious MLAs as a way of ensuring the majority of a Chief Minister is highly questionable and needs scrutiny.

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What should be done?

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- The constitution holds floor test as a significant means to ascertaining the confidence and majority of the elected government.

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- The partisan element in anti-defection law and the adjudicatory power of the Speaker seem to be defeating this purpose.

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- This creates the need for transferring the power to an independent body such as the Election Commission.

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- Also, the Speaker's role should be reassessed and a law should be put in place to prevent manipulation while conducting a floor test.

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Source: The Hindu

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