EC's Disqualification of AAP MLAs

Why in news?

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Election Commission (EC) has recommended to the President that 20 of Aam Aadmi Party's (AAP) MLAs be disqualified for holding offices of profit.

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How did the issue evolve?

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- The Arvind Kejriwal-led Delhi government passed an order back in 2015, **appointing** 21 MLAs as parliamentary secretaries.
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- The appointment of MLAs was **challenged** by an advocate arguing that these MLAs were holding 'office of profit'.
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- There was also a petition before the then President seeking their disqualification.
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- In response, the Delhi Assembly passed the Delhi Member of Legislative Assembly (Removal of Disqualification) (Amendment **Bill**), 2015.
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- The bill excluded the parliamentary secretaries from 'Office of Profit' with retrospective effect.
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- However, **President declined assent** to the Bill.
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- Later on, the Election Commission (EC) held a **personal hearing** for 21 AAP MLAs.
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- Subsequently, the Delhi High Court set aside a government order that appointed 21 of the party’s MLAs as parliamentary secretaries.
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- Very recently, the Election Commission has recommended the President for **disqualification** of the 20 AAP MLAs (one resigned).
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Who is a Parliamentary Secretary?

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- A Parliament Secretary often holds the rank of Minister of State and has the same entitlements.
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- He/she is appointed to assist the ministers and is assigned to a government department.
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- Many states in the Indian Union have instituted the post of Parliamentary Secretary and have also appointed MLAs to the post.
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What is an 'Office of Profit'?

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- ‘Office of profit’ (OoP) is not clearly defined in the Constitution.
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- But deriving from the past judicial pronouncements, five tests have been laid down to check if an office is an OoP or not.
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- They are:
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i. whether the government makes the appointment
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ii. whether the government has the right to remove or dismiss the holder
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iii. whether the government pays remuneration
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iv. what the functions of the holder are
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v. does the government exercise any control over the performance of these functions
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- In all, the word ‘profit’ has always been treated equivalent to or a substitute for the term 'pecuniary gain' (financial gain).
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What are the legal concerns?

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- **Office of Profit** - MPs and MLAs are supposed to hold the government accountable for its work.
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- Logically, holding an “Office of Profit” under the government may make them susceptible to government influence.
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- They may fall short of discharging their constitutional mandate.
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- **Number of members** - Article 164(1A) specifies that the number of ministers including the Chief Minister has to be within 15% of the total strength of the Assembly.
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- In the case of Delhi, which is not a ‘full’ state, the number of Cabinet Ministers cannot exceed 10% of the total 70 seats.
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- This is as per Article 239AA of Constitution which deals with Special provisions with respect to Delhi.
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- As a Parliament Secretary often holds the rank of Minister of State, their numbers should also be considered in meeting this limitation.
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- On violation of this, various High Courts have earlier struck down the appointment of Parliamentary Secretaries as unconstitutional.
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What next?

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- The constitutional procedure is that if there is any petition pertaining to an office of profit, it goes to the President.
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- She/he checks Article 102 and 191 of the constitution and Section 15 of the National Capital Territory of Delhi Act 1991 and takes the EC's opinion.

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- After the presidential sign and seal is placed on the EC’s recommendation, the 20 MLAs will stand disqualified.
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- Notably, the remedial measures for the AAP in court are limited.
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- This is because the Delhi High Court has already heard the matter and quashed the appointments.
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- Moreover, the Election Commission, mandated by the Constitution to deal with such matters, has already dealt the issue at length.



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Source: The Hindu, The Wire

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