

Judiciary - No power to impose disqualification on Legislators

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Why in news?

Recently, the Madras HC has observed that "It is for Parliament to enact law against legislators who resign and re-contest in resultant bypolls".

- **About the case** - The Madras High Court heard a PIL seeking a direction to the ECI to disqualify legislators who resign without a compelling reason and to stall the proposed bypolls in Madurantakam and Dharapuram Assembly constituencies in Tamil Nadu until the disposal of his main plea.
- **Court's Decision** -
 - The Election Commission has no free-standing power, either under Article 324 of the Constitution or any other law, to add conditions/bar to the existing list of disqualifications.
 - If the Commission itself has no such power, this Court cannot, through a writ of mandamus, confer that power upon it.
 - Any proposal to prevent legislators from resigning, changing political allegiance, and re-contesting must come ***through a law enacted by Parliament***.
- **Neither the courts nor the Election Commission of India (ECI)** have the authority to impose such restrictions in the absence of legislation.
- **Constitutional reasoning** - The bench observed that -
 - "The right to resign a legislative seat is by itself a facet of the constitutional framework governing membership of a House, and cannot be burdened with extra-statutory conditions by judicial order" - the Court cannot convert an executive or legislative option into a judicial command.
- **Recalling the 2004 proposal** - The Court recalled that the ECI, in its 2004 proposal on electoral reforms, had recommended collection of by-election expenditure deposit from candidates who choose to contest in two constituencies and resign one of those seats if they end up winning both.
- Those recommendations were never enacted into law; therefore, the judiciary cannot impose an even stricter scheme such as a five-year disqualification.
- **Articles involved**
 - Article 324 - Superintendence, direction and control of elections vested in the Election Commission.
 - Article 14 - Equality before law; the court held that targeting only specific individuals would violate equality principles.

- Articles 190 & 191 - Deal with resignation and disqualification of State legislators.



Reference

[The Hindu | Parliament to enact law against legislators who resign and re-contest](#)