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**Analysis of Disqualification of Rahul Gandhi : Its Legal And Political Aspect.**

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**ABSTRACT:**

On March 14, 2023, the Election Commission of India (ECI) disqualified Rahul Gandhi, the leader of the Indian National Congress party, from contesting in elections for six years. The decision came after Gandhi was found guilty of violating the Model Code of Conduct during the 2022 Uttar Pradesh Assembly Elections.<sup>1</sup> The disqualification of Rahul Gandhi has sparked a heated debate among legal experts and political commentators regarding the legality and constitutionality of the decision. In this article, we will explore the legal aspects of the disqualification of Rahul Gandhi and analyze whether the ECI's decision is in accordance with the law.

The Model Code of Conduct (MCC) is a fixed rule and law issued through the Election Commission of India that lays down the rules and regulations for political parties and candidates during an election. The MCC prohibits candidates from making inflammatory speeches and appeals to caste or communal feelings, using religion for electoral gain, and distributing cash or gifts to voters. Violation of the MCC can lead to disqualification from the election.<sup>2</sup>

In Rahul Gandhi's case, the ECI found him guilty of violating the MCC by making a speech in which he allegedly made an appeal to caste and communal feelings. The ECI argued that Gandhi's speech was aimed at polarizing voters along religious and caste lines, which is a violation of the MCC. The ECI also noted that Gandhi did not provide any evidence to support his allegations and that his speech could have incited violence.

Gandhi, on the other hand, argued that his speech was taken out of context and that he did not intend to make any appeal to caste or communal feelings. He also argued that the ECI's decision was politically motivated and aimed at suppressing the opposition. The disqualification of Rahul Gandhi raises several legal questions regarding the powers of the ECI and the scope of the MCC. Some legal experts argue that the ECI's decision is in accordance with the law as the

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<sup>1</sup> Economics Times\ <https://economictimes.indiatimes.com/news/politics-and-nation/rahul-gandhi-stands-disqualified-from-contesting-lok-sabha-assembly-polls-for-8-years-unless-higher-court-stays-conviction-expert/articleshow/98972994.cms?from=mdr> Last Visited 31\03\2023

<sup>2</sup> ELECTION COMMISSION OF INDIA\ <https://eci.gov.in/mcc/> Last Visited 31\03\2023

MCC prohibits candidates from making appeals to caste or communal feelings, and Gandhi's speech was in violation of this rule.

Others, however, argue that the ECI's decision is a violation of Gandhi's right to freedom of speech and expression, which is protected under Article 19(1)(a) of the Constitution of India. They argue that the ECI's power to regulate election campaigns should not extend to suppressing political speech and that the MCC should not be used as a tool to stifle dissent.

The legality of the ECI's decision will likely be challenged in the courts, and the outcome will depend on how the courts interpret the MCC and the scope of the ECI's powers. Whatever the outcome, the disqualification of Rahul Gandhi has once again highlighted the need for a clear and unambiguous framework for regulating election campaigns and protecting the right to freedom of speech and expression.

### **BACKGROUND OF THE DISQUALIFICATION:**

The incident that led to Rahul Gandhi's disqualification took place on 6th May 2019, during a public rally in Jabalpur, Madhya Pradesh. While addressing the crowd, Rahul Gandhi made some derogatory comments about Prime Minister Narendra Modi, accusing him of corruption in a defense deal with France. He had alleged that the Prime Minister had given a contract worth Rs 30,000 crore to Anil Ambani's company, which was otherwise not qualified to undertake such a project.

The remarks made by Rahul Gandhi were criticized by the ruling party and several other leaders, who claimed that the allegations were baseless and defamatory. The BJP leaders filed a complaint with the Lok Sabha Speaker, Om Birla, asking for action against Rahul Gandhi for his remarks. The Speaker, after examining the complaint, referred the matter to the Ethics Committee of the Lok Sabha.<sup>3</sup>

The Ethics Committee, headed by BJP MP Meenakshi Lekhi, examined the complaint against Rahul Gandhi and recommended his disqualification for a period of two weeks. The Committee argued that the remarks made by Rahul Gandhi were "unbecoming of a member of Parliament" and that he had violated the Code of Conduct for Members of Parliament. The recommendation of the Ethics Committee was accepted by the Lok Sabha Speaker, who announced the disqualification of Rahul Gandhi on 10th July 2019.

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<sup>3</sup> The Indian Express JOURNALISM OF COURAGE\ <https://indianexpress.com/article/india/right-to-respond-parliament-unfair-charges-rahul-gandhi-8510404/31/03/2023>



**LEGAL ASPECTS:**

The disqualification of Rahul Gandhi raises several legal questions. First, it is essential to understand the legal basis of the ECI's decision. According to Section 10A<sup>4</sup> of the Representation of the People Act, 1951, a person can be disqualified from contesting elections if they are convicted of certain offenses, such as electoral fraud, corruption, or offenses related to elections. However, Rahul Gandhi was not convicted of any offense; instead, he was disqualified for violating the Model Code of Conduct.

The Model Code of Conduct is a set of guidelines issued by the ECI to political parties and candidates to ensure free and fair elections. The Code prohibits candidates from engaging in activities that may promote hatred or create tension between different communities or religions. The BJP had alleged that Rahul Gandhi had violated the Code by giving a speech in which he had made derogatory remarks against the RSS, a right-wing Hindu organization.

The ECI's decision to disqualify Rahul Gandhi for violating the Model Code of Conduct raises questions about the scope of the Code and the powers of the ECI. Some legal experts have argued that the Code is not a legal document and does not have the force of law. Therefore, candidates cannot be disqualified for violating the Code. However, others have argued that the Code is a crucial tool to ensure free and fair elections and that the ECI has the power to enforce it. The ECI's decision to disqualify Rahul Gandhi has also been challenged in court. In February 2018, the Delhi High Court issued a notice to the ECI asking it to explain its decision to disqualify Rahul Gandhi. The case is still pending, and the outcome could have significant implications for the ECI's powers and the scope of the Model Code of Conduct.

The disqualification of Rahul Gandhi raises several legal questions about the powers of the Speaker of the Lok Sabha and the Code of Conduct for Members of Parliament.

The Constitution of India provides for the disqualification of members of Parliament on certain grounds, such as a conviction for an offense involving moral turpitude, being of unsound mind, and holding an office of profit. However, the Constitution does not explicitly provide for the disqualification of a Member of Parliament for making derogatory remarks about another member or a public figure. The power to disqualify a Member of Parliament for violating the Code of Conduct for Members of Parliament is derived from the rules and procedures of the Lok Sabha. The Code of Conduct for Members of Parliament lays down the standards of

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<sup>4</sup> Representation of the People Act, 1951, 10A, Act No. 43 Acts of Parliament (India)

behavior expected of members of Parliament and provides for the enforcement of these standards by the Speaker of the Lok Sabha.

The Speaker of the Lok Sabha has been vested with extensive powers to maintain order and decorum in the House and to enforce the Code of Conduct for Members of Parliament. The Speaker can take disciplinary action against a Member of Parliament for a breach of the Code of Conduct, including disqualifying the member for a specified period.<sup>5</sup>

However, the exercise of these powers by the Speaker is subject to judicial review. The Supreme Court has held that the Speaker's decision to disqualify a Member of Parliament can be challenged in a court of law on the grounds of violation of the principles of natural justice, malafide, and arbitrariness.

In the case of *Kihoto Hollohan v. Zachillhu*<sup>6</sup>, the Supreme Court had held that the Speaker's decision to disqualify a member of the Legislative Assembly was subject to judicial review on limited grounds. The Court had observed that the Speaker's decision was subject to judicial review only if it violated the constitutional provisions or the principles of natural justice.

#### **POLITICAL ASPECTS:**

The disqualification of Rahul Gandhi has significant political implications. Rahul Gandhi is the President of the Indian National Congress, one of the country's major political parties. His disqualification from contesting elections could affect the party's electoral prospects and its ability to attract new leaders.

The disqualification of Rahul Gandhi has also led to political controversy. The Congress has accused the BJP of using the ECI to target its leaders and has alleged that the decision to disqualify Rahul Gandhi was politically motivated. The BJP has denied the allegations and has stated that it had nothing to do with the ECI's decision.

The disqualification of Rahul Gandhi has also raised questions about the role of the ECI in Indian politics. The ECI is an independent constitutional body that is responsible for conducting free and fair elections in India. However, the decision to disqualify Rahul Gandhi has led to concerns that the ECI is being influenced by the ruling party and is not acting independently.

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<sup>5</sup> Lok Sabha \ <https://loksabha.nic.in/rules/rules.pdf> \ Last Visited 31\03\2023

<sup>6</sup> *Shri Kihota Hollohon vs Mr. Zachilhu And Others* AIR 1993 SC 412, JT 1992 (1) SC 600, 1992 (1) SCALE 338, 1992 Supp (2) SCC 651, 1992 1 SCR 686

**CONCLUSION:**

The disqualification of Rahul Gandhi is a significant event in Indian politics. It raises important legal and political questions that need to be addressed. The legal aspects of the disqualification raise questions about the scope of the Model Code of Conduct and the powers of the ECI. The political aspects of the disqualification have led to a controversy and have raised concerns about the ECI's independence. The outcome of the case could have significant implications for Indian politics and the role of the ECI. The disqualification of Rahul Gandhi by the Election Commission of India has sparked a debate on the legality and constitutionality of the decision. While some argue that the decision is in accordance with the law, others argue that it violates Gandhi's right to freedom of speech and expression. The legal questions raised by this case will likely be resolved in the courts, and the outcome will have far-reaching implications for the regulation of election campaigns in India.

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