

Dynasty, Defamation, Democracy

Sukriti Issar

Associate Professor of Sociology

Sciences Po, Paris

March 29th, 2023

In my classes, I tell students that our aim is to understand the real world, to not jump to conclusions, and that the most interesting information is sometimes in the footnotes. On reading some of the media coverage of the Rahul Gandhi defamation verdict of 23rd March 2023, I am struck by a lack of interest in understanding the political and legal context of this verdict. The court order, or any of its extracts, has yet to make an appearance in English. Whether this verdict is a death knell for democracy, I cannot say. The lack of an effective and vibrant opposition is however a real threat.

The headline on online news site Vox.com says, ‘India’s ruling party just kicked a major rival out of Parliament — and sparked a new crisis’¹. But the ruling party (BJP) did not ‘kick out’ a ‘major rival’. Rahul Gandhi was convicted to a two-year prison term in a defamation case decided by a regional court in Gujarat. Whether he *should* be convicted, whether defamation *should* be a crime, whether it *should* result in disqualification from Parliament - those are normative questions that I don’t intend to address as my point of view cannot retrospectively impact Indian law. Being a two-year term, it carried an automatic disqualification from Parliament, as per the Representation of the People Act (RPA), 1951. The defamation suit was brought in response to a comment made by Rahul Gandhi in the run-up to the 2019 Lok Sabha elections. He is alleged to have said, ‘how come all the thieves have Modi as the common surname?’² He has been immediately granted bail, and appeals will likely commence. The judges are neither Modi judges nor Gandhi judges the way they are in the United States (Biden judges, Trump judges). Partisanship could of course still be in play in the verdict.

The facts are more interesting than the editorializing of media would lead one to believe. Vox went on to note, ‘But to the Lok Sabha, the BJP-controlled lower house of India’s Parliament, that didn’t matter. The chamber acted almost immediately after conviction to kick Gandhi out of

¹ <https://www.vox.com/2023/3/24/23654832/rahul-gandhi-expelled-lok-sabha-narendra-modi>

² <https://indianexpress.com/article/explained/explained-law/gujarat-court-rahul-gandhi-defamation-case-explained-8514062/>

its ranks.’ The NYT reported that after the verdict, ‘On Friday, Mr. Modi’s allies moved to finish the job... [the] move came before he had any chance to appeal’.³

However, Kapil Sibal, an important legal voice in the Congress sphere and current member of the Rajya Sabha, seemed frustrated to have to explain the procedural aspects of what will come next for Rahul Gandhi.⁴ In an interview on NDTV, Sibal seemed to lose patience with the interviewer who asked him whether Rahul Gandhi ‘can be disqualified’. Sibal makes it clear that it is not whether he ‘can be’, but that the law says that he *is* immediately and certainly disqualified. The interviewer again asks whether the Lok Sabha Secretariat will move or the order is automatic. Sibal responds, ‘the law requires it, then naturally the Speaker will move in accordance with the law’. The ‘chamber’ did not kick Rahul Gandhi out of Parliament – as per the law, a conviction of two-years results in an automatic kicking out, the Lok Sabha Secretariat does not choose to do so. Sibal also noted that he is yet to read the order, as it hasn’t been translated. He ends the short interview by saying that he finds it ‘bizarre’ that Gandhi was convicted for a two-year prison term for statements that he made about individuals (and not for any community referred to by the caste name ‘Modi’, as is alleged in the suit). He repeated the latter point in his column of 27th March, added that the case was heard in a Gujarat court as the complainant (BJP politician Purnesh Modi from Gujarat) might have believed he ‘would be able to persuade’ the chief judicial magistrate.⁵ What the magistrate would make of this statement by a member of the Indian Bar is anyone’s guess. Sibal also raised the question of the timing of the case, and its movement through the court system (suggesting that the Adani-Modi controversy had impacted the outcome of the case).

The curious point about this automatic disqualification is that in 2013, the then Congress-led UPA government was considering an ordinance that would have allowed politicians convicted in court more time to appeal before disqualification.⁶ In what seemed to have been an unexpected event, Rahul Gandhi dropped into a press conference at the last minute, called the ordinance ‘nonsense’, and said it should be torn up. His actions were counter to the support of the ordinance by Congress PM Manmohan

³ <https://www.nytimes.com/2023/03/24/world/asia/india-gandhi-modi.html>

⁴ NDTV reporting, posted on 23/3/2023 at 2:59pm
<https://twitter.com/ndtv/status/1638903266665984001>

⁵ <https://www.newindianexpress.com/opinions/2023/mar/27/rahul-defamation-case-amend-law-to-protect-mps-mlas-2559784.amp>

⁶ <https://www.thehindubusinessline.com/news/national/rahul-tears-into-ordinance-to-protect-convicted-lawmakers/article20666122.ece1>

Singh and the Cabinet, and appear to have caused significant consternation within the party. In other words, this automatic disqualification-after-conviction is a procedure that Gandhi has upheld strongly in his own public actions, even in contradiction to his party. This incident led to the resignation of a senior Congress leader, Ghulam Nabi Azad who said Gandhi had surrounded himself with a ‘coterie of inexperienced sycophants’, and undermined party dynamics.⁷ In his 27/3/2023 column, Sibal notes that the ‘ordinance did not become law’.⁸ He does not elaborate further, that it was Gandhi who played a key role in stymying the legal reform that Sibal is once again calling for.

There is a tendency in some media to frame Rahul Gandhi as a pawn of the system, buffeted by forces. But we must remember that speeches (such as the one that was indicted for defamation) are calculated or written by seasoned speech-writers, and that lawyers know the defamation law in the country. I see some comments online about whether or not the Congress took the lawsuit seriously and had mounted a serious defense – I cannot weigh in on this point. Gandhi followed up this verdict by stating that he would not apologize because he is a Gandhi and not Veer Savarkar (an independence activist who has seen a recent resurgence on the right). In response, the current Maharashtra CM Eknath Shinde (Shiv Sena) believes another defamation suit would be in order, as independence activists or ‘freedom fighters’ are a sacrosanct pillar in India.⁹ The grandson of Savarkar is also considering filing a complaint with the police (an FIR in Indian parlance).¹⁰ To add to this thicket of defamation cases, Kapil Sibal’s son (it is a well-known legal family of at least three generations), Amit Sibal, had filed a defamation case against AAPs Arvind Kejriwal in 2013.¹¹ It was the third defamation suit against Kejriwal (as of 2018); he is the current CM of New Delhi.

The jokes commenced as well. A commentator on the right tweeted, ‘Rahul Gandhi’s conviction is a massive blow. To the BJP. While simple majority for Modi in 2024 is still attainable, the much talked about landslide is now in jeopardy. The BJP must bring out its legal eagles and

⁷ <https://indianexpress.com/article/political-pulse/rahul-gandhi-ordinance-tearing-incident-azad-quoted-in-resignation-letter-8113079/>

⁸ <https://www.newindianexpress.com/opinions/2023/mar/27/rahul-defamation-case-amend-law-to-protect-mps-mlas-2559784.amp>

⁹ <https://www.hindustantimes.com/india-news/savarkar-india-s-idol-will-be-difficult-for-rahul-gandhi-to-walk-on-shinde-101679741869170.html>

¹⁰ <https://twitter.com/ANI/status/1640595059568435201>

¹¹ <https://www.thestatesman.com/india/majithia-gadkari-now-kapil-sibal-kejriwals-apology-spree-continues-1502604423.html>

officially appeal this verdict.’¹² The tongue-in-cheek comment reflects that Rahul Gandhi is often seen as the star campaigner – for the BJP.

The opposition to the BJP has been weak, and the Congress does not appear to have the strength to make a national showing in the 2024 elections. Regional parties like AAP wane and wax (the deteriorating security situation in Punjab does not bode well for AAP’s immediate prospects). The Gandhi dynasty has been reputed to keep out any rising stars over the decades, carefully maneuvering that popular Congresspersons not take the shine off the family. In the process, the organic growth of the party or bubbling up of leaders from the regional cadres is stymied. The leadership of Gandhi is a particularly contentious point, as he has never held a government office (even a junior ministership), and cadres morale would be shaken as the fortunes of the party decline. The BJP now holds the Congress’ family constituency of Amethi (having been held in the past by Rahul Gandhi, his mother, his father, and his uncle). Rahul Gandhi continues to be propped up as the present and future of the party in the continuing hopes that he will one day be PM. In the process, India loses an effective opposition.

¹² Anand Ranganathan, 23/3/2023, 5:40pm
<https://twitter.com/ARanganathan72/status/1638943755318460416?cxt=HHwWgIDQ6a6q2b4tAAAA>