

**[ADRN Issue Briefing]**

## **Recent Defamation Case and Mounting State Onslaughts Against Political Opposition in India**

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In the recent years, the global spotlight has been on the steady deterioration of freedom and democracy in the world's largest democracy. Many global democracy watchdogs have been reporting on the rise of majoritarianism, worsening status of minorities, shrinking media freedom, and a plummeting civil society in India (Freedom House 2023). However, not many have brought out the rising majoritarian onslaught on political opposition and their increasing marginalization by the current political regime. Some clear signs of this can be seen from the recent episodes in Parliament and beyond, particularly the disqualification of Mr. Rahul Gandhi, a key opposition figure, from his membership in the Lok Sabha over a defamation case.

### **The Defamation Saga**

On 23 March 2023, a local court in Surat, Gujarat sentenced Mr. Rahul Gandhi, the prominent leader of main opposition Congress Party, two years in prison over a defamation case (Gandhi 2023). On 24 March, the Lok Sabha Secretariat issued a notice disqualifying Mr. Gandhi from the membership of lower house. As per the Representation of the People Act of 1951, Section 8(3) (based on 2013 Lily Thomas judgment by the Supreme Court), if a legislator is convicted for two-year or more for an offence, this will lead to disqualification from the House (Khan 2023). The defamation judgment by the lower court, which many analysts find frivolous and excessive (Bhatia 2023), has created massive uproars among opposition parties. They blame the ruling Bharatiya Janata Party (BJP) for weaponising defamation law to unseat a key leader who has been relentlessly questioning Prime Minister Mr. Narendra Modi on the recent Adani scandal (Tognini and Hyatt 2023).

The circumstances under which Mr. Gandhi's defamation case proceeded, leading to his subsequent disqualification from the parliamentary membership, reek of political vendetta. Political analysts believe the defamation was largely orchestrated to debar Mr. Gandhi from vociferously criticizing the government and simultaneously sending a strong message to other key opposition figures. Take a look at the trajectories of the defamation case. While campaigning in Karnataka, Mr. Gandhi took an election jibe during the Lok Sabha polls in 2019. Intending to ridicule Prime Minister Modi, he said, "Why do all the thieves, be it Nirav Modi, Lalit Modi or Narendra Modi, have Modi in their names?" (*The Hindu* 2023a). Mr. Gandhi's statement during the election campaign became a basis for Mr. Purnesh Modi, a BJP legislator from far off Gujarat, to file a case of criminal defamation against Mr. Gandhi. The BJP lawmaker claimed that Mr. Gandhi had "defamed 130 million living in the whole of India having the surname 'Modi'" (Poddar 2023). Over the next two years, the case progressed at a snail's pace, given that it is very common for politicians to make such jibes during electioneering. So much so, the local court judge in Surat refused to comply with Purnesh Modi's request that Gandhi be summoned to the court for a second time. In an unusual move, Mr. Modi approached the Gujarat High Court to indefinitely halt the proceedings of the defamation case. In a curious case, the High Court relented to the plea, and the case was put on hold until 16 February 2023. From nowhere, Mr. Purnesh Modi moved to the Gujarat High Court to unfreeze the petition, citing the availability of "new evidence," and the court promptly agreed to the plea. With a new judge in charge, the defamation case proceeded very swiftly. As many as seven hearings were recorded in matter of three weeks. On 23 March 2023, the magistrate court judge pronounced the verdict convicting Mr. Gandhi to two years in prison for defaming the reputation of the petitioner and the Modi community in general. The conviction not only denies Rahul Gandhi of parliamentary membership, but it also debars him from contesting 2024 general elections (unless higher courts suspend the conviction).

Mr. Rahul Gandhi's conviction and his subsequent disqualification has raised plenty of uncomfortable questions, both legal as well political. Legal experts feel that the defamation judgment by the magistrate was "excessive" and suffered from major infirmities. One, the criminal offence of defamation under the Indian Penal Code (Section 499) based on 1860 colonial law is very clear: if references or defamation are made to an indefinite "class" of people, an individual cannot claim that they are a member of that class and have therefore been defamed. As per the case law, the particular person who moves criminal proceedings for defamation has to demonstrate personal harm or injury due to the defamatory statement. Mr. Gandhi was convicted for the remark, "How is the names of all these thieves Modi, Modi, Modi...Nirav Modi, Lalit Modi, Narendra Modi." None of the three names mentioned filed a complaint.

It was filed by Purnesh Modi, a BJP legislator from the Gujarat, who asserted that by virtue of his surname, he, along with all other people bearing the surname “Modi,” were defamed by Mr. Gandhi (Bhatia 2023). Thus, the judgment seems legally unsustainable. Two, the maximum sentence awarded in this case appears to lack a sound legal basis. The defamation law prescribes maximum jail terms of two years, which should be in proportion to the gravity of the offence. Given that the complainant is not directly linked to Mr. Gandhi’s defamatory statement, the sentence seems to be “excessive.” Even if offensive, a generic statement cannot be so grave as to warrant the maximum sentence. Three, the defamation law and several judgments of the Supreme Court have clearly stated that the provision should be applied in rare cases (*The Hindu* 2023a). The lower court seems to have overlooked these rules and basic reasoning.

Beyond legal infirmities, Gandhi’s defamation episode (the timing and speed) raises lot of political questions. The defamation case, as mentioned earlier, was filed way back in 2019 by someone who was not directly connected with Mr. Gandhi’s statement. Furthermore, after two years of the case going nowhere, the complainant moves to Gujarat High Court to unfreeze the case. Curiously, the court relents to this unusual request. Then, after a year, the case is suddenly revived by the plaintiff, and with a new judge at helm, the case proceeds in an unusual speed, with the lower court recording as many as seven hearings in matter of 20 days. However, the reopening of defamation case seems to have coincided with Mr. Gandhi’s blistering attacks on Prime Minister’s Modi’s alleged links with industrialist Gautam Adani. Analysts feel that the defamation case was reopened to prevent Mr. Gandhi from raising uncomfortable questions on the floor of Parliament (Sharma 2023a). What further strengthens this line of thinking is the fact that in less than 24 hours of the lower court conviction, the Lok Sabha Secretariat issues a disqualification notice to Mr. Gandhi. According to precedence and existing law (Section 8(4) of the Representation of Peoples’ Act, 1951), disqualifications take effect only after three months have elapsed from the date of any conviction, and the lawmaker fails to obtain a stay order from a superior court. Thus, the entire defamation episode reeks of partisan politics being played to silence the opposition voice. It has been carefully orchestrated not only to prevent Mr. Gandhi from raising uncomfortable questions on the floor of Parliament, but also to deprive him of contesting in the 2024 general elections.

### **Beyond Defamation: Weaponising State Agencies to Unsettle the Opposition**

The Rahul Gandhi episode, which came as a huge shock for many, is not an isolated event. Since 2014, the regime has rarely spared any opportunities to target and weaken opposition parties. On

numerous occasions, opposition figures have faced tax raids, been taken for questioning, held in prisons, and endlessly coerced by the state agencies. Let us further explore this.

First, soon after sweeping power in 2014, the BJP government has aggressively pursued cases against opposition leaders, including their regional rivals, using every instrument of the state. From the Enforcement Directorate (ED) to the Income Tax Department (IT) and the Central Bureau of Investigation (CBI), every state agency has been deployed to target key opposition leaders and their relatives. While every political dispensation in India, be it provincial level or at the federal sphere, indulge in targeting opposition leaders, the current regime is many miles ahead of them.

The staggering number of raids launched by central agencies against opposition leaders is telling. As per the media report, since 2014, a total of 121 political leaders have been probed (raided, questioned, arrested, etc.) by the ED alone. Of these, as many as 115 (95%) are from the opposition, whereas only 3 politicians from the ruling BJP are in the ED net (Mehra 2023). The number is in sharp contrast to the ED's record during the Congress-led government between 2004 to 2014. During that period, out of 26 political leaders raided and investigated by the agency, 14 of them (54 per cent) were from Opposition (Tiwary 2022).

Although the ED in the recent years has emerged as government's most potent weapon against the opposition, the trends are similar when it comes to other agencies, particularly the CBI. What makes the ED an effective tool for the government is the Prevention of Money Laundering Act (PMLA), a law that has been in existence since 2002 but was recently amended by the BJP government to provide more authority to the investigating agencies, especially the ED. While the stringent bail provisions and sweeping powers of the ED to search, arrest, and attach properties/assets of the accused remain intact, the government has recently expanded the scope of the PMLA to include "politically exposed persons" and "non-governmental organizations (NGOs)".<sup>1</sup>

As a result, the ED has raided, questioned, arrested and jailed scores of politicians, with a significant majority of them being key opposition figures and their relatives. Not only has the ED raided and questioned scores of opposition leaders, including the senior leaders belonging to the main opposition (such as Sonia Gandhi and Rahul Gandhi in relation to the National Herald case), but the agency has also incarcerated a number of political leaders on money laundering charges (*Express News Service* 2022).

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<sup>1</sup> As per the amended PMLA rules, politically exposed persons are "individuals who have been entrusted with prominent public functions by a foreign country, including the heads of States or Governments, senior politicians, senior government or judicial or military officers, senior executives of state-owned corporations and important political party officials". See *PTI News Agency* (2023).

Recently, alleging political vendetta by the ruling party, as many as 14 political parties, including the National Congress, petitioned the Supreme Court to curb the weaponisation of state agencies (Tripathi 2023).

Two things stand out in the context of the modus operandi of state agencies. One, while the ED has been pursuing money laundering cases with a missionary zeal, its records in terms of convictions is very low. As of July 2022, despite the ED registering 5,422 cases under the PMLA, only about 23 persons were convicted, which accounts for less than 0.5% (*Hindustan Times* 2022). Two, the moment any opposition politicians cross over to the ruling party, cases are dropped or probes get slowed by the state agencies. Several of them have been rewarded with ministerial berths in the government and attractive positions within the party (*India Today* 2023). Furthermore, it is widely alleged that the government has been selectively using state agencies to engineer defections or even bring down opposition-led governments (Sharma and Arunabh 2022). However, what is unprecedented is that opposition leaders are not spared from raids or arrests even during the middle of electioneering, something that no past governments have indulged in (Chauhan 2021).

Beyond the clever weaponisation of state agencies, there are multiple other means through which the ruling party has been trying to undermine and weaken the opposition parties. Lately, the government has been using administrative and procedural arbitrages, leveraging its brute majority in the lower house of Parliament, to limit the effectiveness of opposition parties in raising tough questions or demanding accountability from the executive. With some exceptions, in the last nine years, the treasury bench has consistently and stubbornly avoided to answer opposition demands, even on questions of national security, allegations of corruption, and rising prices. So much so, on number of occasions the government has allowed the complete washout of parliament sessions rather than responding to opposition demand for debate and probes by the joint parliamentary committee (JPC). For instance, recently the entire parliament session was lost as the ruling BJP declined the opposition's demand for a debate and setting up of a JPC to investigate the alleged link between Prime Minister Modi and controversial billionaire Gautam Adani (*The Hindu* 2023b). While the entire opposition was hell-bent on their demand for JPC and answer from the Prime Minister, the treasury bench did not make single effort to reach out to a distrust opposition to find a way out. Thus, the Parliament is used less as a forum for debate and scrutiny and more as a mechanism to merely pass laws.<sup>2</sup>

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<sup>2</sup> According to think tank PRS Legislative, "The 17th Lok Sabha may turn out to be the shortest full term Lok Sabha since 1952. Entering the final year of its term, the 17th Lok Sabha has functioned for 230 sitting days so far. Of all the Lok Sabhas that completed the full five-year term, the 16th Lok Sabha had the lowest sitting days (331). With one more year remaining in the term, and 58 average sitting days a year, the 17th Lok Sabha is unlikely to sit for more than 331 days. This could make it the shortest full term Lok Sabha since 1952" (Sharma 2023b).

## Conclusion

To sum up, while the defamation case against Mr. Gandhi and his subsequent disqualification from the lower house may appear as an extreme case, it is not an isolated one. His case is indicative of a broader pattern in which the ruling party has been relentlessly targeting key opposition figures and their kin in multiple ways. This includes frequent raids by state agencies, exerting pressure on financial resources and political donation channels, engineering defections, and at times bringing down opposition-led governments. In several cases, the ruling party has managed to win over smaller parties and key regional leaders via economic and political incentives and coercive tactics. The ruling dispensation seems to be playing the copybooks of other illiberal democracies, particularly Hungary and Turkey, to weaken and defang the opposition.<sup>3</sup>

However, what is not helping the opposition cause is the continued infighting among opposition parties, which the ruling party is using to its advantages. Although the Rahul Gandhi case brought a rare unity among the opposition, it remains to be seen whether this unity will persist until the general election in 2024. In short, India's democracy looks even weaker with a marginalized opposition, achieved through the systematic machinations of the ruling party.

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<sup>3</sup> For an excellent analysis of this, see Öktem and Akkoyunlu (2016).

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