

CHILLING EFFECT: THE HINDU EDITORIAL ON DEFAMATION, FREE SPEECH AND THE RAHUL GANDHI CASE

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The rigours of the law and the tribulations of politics have come together to bedevil Congress leader Rahul Gandhi. An election-time jibe he had made in 2019 — [‘how come all of these thieves have Modi in their names?’](#) — has been declared by a court in Surat to be defamatory. [Mr. Gandhi has been sentenced to two years in prison](#), the maximum sentence for criminal defamation, and [disqualified from his membership in the Lok Sabha](#). Both the conviction and sentence raise legal questions. Does the remark amount to defaming anyone in particular, or to people with the surname ‘Modi’ as a group? Case law indicates that the expression ‘collection of persons’ used in Section 499 of the IPC, with reference to those who can be defamed, has to be an identifiable class or group and that the particular member who initiates criminal proceedings for defamation must demonstrate personal harm or injury by the alleged defamatory statement. It is difficult to sustain the argument that all those with the surname, and not merely the three individuals including Prime Minister Narendra Modi who were referred to, can be aggrieved persons. Also, it is not clear if the complainant, BJP MLA Purnesh Modi, had shown that he was aggrieved by the alleged slur either personally or as a member of the ‘Modi’ group.

The maximum sentence is also troubling. Statutes prescribe maximum jail terms so that trial courts use their discretion to award punishments in proportion to the gravity of the crime. It is questionable whether attacking an indeterminate set of people with a general remark will amount to defamation, and even if it did, whether it is so grave as to warrant the maximum sentence. The correctness of the judgment will be decided on appeal, but the political cost to Mr. Gandhi in the form of disqualification from the House and from electoral contest will have a lasting impact, unless he obtains a stay on the conviction rather than mere suspension of sentence. In a country that often frets over criminalisation of politics, corruption and hate speeches, it is ironic that criminal defamation should overwhelm the political career of a prominent leader. A modern democracy should not treat defamation as a criminal offence at all. It is a legacy of an era in which questioning authority was considered a grave crime. In contemporary times, criminal defamation mainly acts as a tool to suppress criticism of public servants and corporate misdeeds. In 2016, the Supreme Court upheld criminal defamation without adequate regard to the chilling effect it has on free speech, and to that, one must now add, political opposition and dissent. Opposition parties expressing dismay at the verdict against Mr. Gandhi should include abolishing criminal defamation in their agenda.

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