

Relief for Rahul Gandhi in Disqualification Case

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Summary

After the Supreme Court stayed the conviction of Congress leader Rahul Gandhi by a Gujarat court in a defamation case, he was back in parliament on 9 August 2023. While the Supreme Court order threw the spotlight on the lower court's judgment, Rahul's disqualification will be kept on hold until the Gujarat court concludes its hearing.

The Congress leader Rahul Gandhi returned to parliament on 9 August 2023 after serving a disqualification of over four months to take part in a no-confidence motion against the Bharatiya Janata Party (BJP) government. The ban and the return of Rahul – issues which are still before the courts since the Supreme Court has only stayed an earlier verdict by a lower court – is an indicator of both the infirmities of the disqualification law and the frailties of India's lower courts.

The immediate chain of events began on 23 March 2023 when the chief judicial magistrate of Surat in Gujarat, Prime Minister Narendra Modi's home state, sentenced Rahul to two years in jail for comments made at an election rally in Karnataka in April 2019. Rahul had then asked, "Why do all these thieves have Modi as their surname? Nirav Modi, Lalit Modi, Narendra Modi." Besides, Modi, the others being referred to were Nirav Modi, a fugitive tycoon currently in a British prison, and Lalit Modi, a businessman and former cricket administrator who now lives in London.

A BJP legislator from Gujarat, Purnesh Modi, brought a defamation charge against Rahul in December 2019 alleging that he had defamed the entire 'Modi' community. Interestingly, Purnesh had kept his petition on hold and [reactivated it in 2023](#) after an aggressive speech by Rahul against the Modi government in parliament on 7 February 2023. Shortly afterwards, the trial court in Surat convicted Rahul and sentenced him to two years of imprisonment. That is the maximum permissible punishment in a defamation case and rarely ever handed out.

The two-year punishment meant that Rahul would have to be disqualified from parliament under the provisions of the Representation of People Act (RPA). Section 8(3) of the RPA states, "A person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (1) or sub-section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release." That meant that Rahul would not be able to contest the 2024 general election and his disqualification would continue till 2031. Earlier, elected representatives were given three months to appeal against a conviction. However, the Supreme Court in two rulings – *Lily Thomas vs Union of India* and *Lok Prahari vs Union of India* – had removed that protection.

While the Lok Sabha (Lower House of parliament) speaker immediately disqualified Rahul as a member of parliament (MP), he challenged the trial court order in a sessions court in Surat. The sessions court granted Rahul bail but did not stay his conviction. Next, Rahul appealed before the Gujarat High Court which, too, dismissed the petition. It was only then that the case reached the Supreme Court, which stayed Rahul's conviction.

One of the [reasons given by the Supreme Court](#) for staying the conviction was that the trial court had offered no reason for the maximum permissible punishment of two years to Rahul. It was the two-year punishment that triggered the provision in the RPA which led to Rahul's disqualification. The three-judge bench of the Court noted, "Except the admonition by [the] Supreme Court in a contempt case [Rafale], no other reason has been granted for this [conviction] by [the] trial judge...only on account of the maximum sentence imposed by the trial judge, provisions of [the] Representative of People Act have come into play."

The [bench questioned the reasoning](#) of the lower court by adding, "Had [the] sentence been a day lesser, provisions would not have been attracted, particularly when an offence is non-cognisable, bailable and compoundable. The least the trial court judge was expected to do was give some reasons to impose a maximum sentence. Though [the] appellate court and high court have spent voluminous pages rejecting [the] stay on [the] conviction, these aspects are not considered in their orders." The bench also said that by disqualifying Rahul, the lower courts were not just affecting the right of one individual but that of his "entire constituency".

While the Supreme Court pulled up the lower courts, it also warned that Rahul's "utterances are not in good taste" and that he was expected to "exercise caution while making public speeches".

The Supreme Court's comments were a strong critique of lower courts which are understaffed, plagued by a huge backlog of cases and, sometimes, prone to pass judgments in sensitive cases that do not pass the test of legal reasoning. However, it might be noted that the relevant section of the RPA is also open to misuse. Although the RPA was amended to address the issue of criminality among elected representatives, there are some loopholes that could potentially be used to target political opponents. One of them is equating serious criminal charges like murder or rape with relatively minor offences. Moreover, despite the provisions in the RPA, [the number of MPs with criminal charges](#) have increased over the last few years, with 43 per cent of MPs in the current Lok Sabha having a criminal background. As for Rahul, he is not out of the woods yet. His disqualification will be kept on hold until the Surat sessions court concludes hearing his appeal against the trial court judgment. If the sessions court upholds the earlier judgment, Rahul will have to move to a higher court once again.

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