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ARTICLE 124(A) – DEMOCRACY IN CLAWS OF SEDITION LAW

INTRODUCTION:

The freedom to speech and expression is a basic feature of any democracy. The Constitution of India provides this freedom to all its citizens, subject to certain ‘reasonable’ restrictions such as maintaining friendly relations with other States, security of State, keeping public order, etc¹. Article 124(a) which forms a part of Chapter VI (dealing with offences against state), more commonly known as the sedition law, imposes certain restrictions on the citizen’s right to freedom of speech and expression. It is a non-bailable offence with punishment varying from fine to imprisonment up to three years or a life term. The person is also barred from applying for a government job, has to live without their passport, and must present themselves in court whenever required. The restrictions imposed by the law on the extent of expressing dissent against the government have made it highly controversial.

HISTORY AND DEVELOPMENT:

Though the law was originally drafted in 1837 by Thomas Babington Macaulay, it was only inserted into the code in 1870 when the British felt the need to suppress the Wahabi movement by Muslims as it posed a threat to their supremacy in British India. Since then, the article was regularly

¹ Article 19(2), Indian Constitution.

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used to stifle any criticism expressed by people against the British policies and dismantle the nationalist movement by throwing the nationalist leaders into jail for showing dissent. The first known registered case under this section was *Queen Empress v. Jogendra Chunder Bose*.² It was held in Calcutta High Court in 1891 but the case was later dropped. The three sedition trials of Bal Gangadhar Tilak and the trial of Mahatma Gandhi for publishing three articles in the weekly edition of *Young India* (newspaper), in which they were sentenced to prison are well known. This section of IPC was meant to ensure there were no criticisms against the British in India and to repress the voice of activists so they could reign freely without any threat to their rule. It was just one of the many draconian laws passed during the British Raj. The Dramatic Performances Act of 1876 another such law enacted by the British was only repealed in India in 2017. Sadly, the sedition law continues to remain valid in post-independent India whereas the British themselves have abolished the sedition law in their own country. When the First Amendment to the Constitution was introduced in 1951, Jawaharlal Nehru had raised his objections regarding this section, calling it obnoxious and stating it should have no place in the laws of this country for practical as well as historical reasons. In *Tara Singh Gopi Chand v. State of Punjab*³, section 124(a) was found to be unconstitutional by the Punjab High Court as it went against the fundamental right provided under Article 19(1) (a) and a similar ruling was also passed by the Allahabad High Court in *Ram Nandan v. State of U.P.*⁴. However, these decisions of the High Courts were overruled by the Supreme Court in *Kedarnath v. State Of Bihar*⁵, upholding the constitutionality of Article 124(a). The court held that laws enacted in the interest of public order can be saved from constitutional invalidity and that the article did not violate freedom to speech and expression as it was within the ambit of restrictions provided under article 19(2) of the constitution. In its 39th report, the Law Commission had rejected the idea of repealing this section and in its 42nd report, it wanted its scope to cover the legislature and the judiciary. However, the Law Commission altered this view in its latest consultation paper.

² (1892) ILR 19 Cal 35.

³ *Tara Singh Gopi Chand v. State of Punjab*, A.I.R 1951 S.C. 441.

⁴ *Ram Nandan v. State of U.P.*, A.I.R 1959 All 101.

⁵ *Kedarnath v. State of Bihar*, A.I.R 1962 S.C. 955.

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SEDITION LAW AND DEMOCRACY:

Article 124(a) states the following:

‘Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempt to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.’

It has been upheld that this law is necessary for the State to protect itself and is required to combat separatist movements and terrorism in the country. It allows the people to criticize the government as long as they do not attempt to excite hatred, contempt, or disaffection towards it. Disaffection includes disloyalty and all feelings of enmity. However, in the words of Mahatma Gandhi, “affection cannot be measured or regulated by law. If one has no affection for a person or a system, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence.” This has also been reflected in the consultation paper by the Law Commission on sedition that suggested Article 124(a) be invoked only to criminalize those acts which were committed to disrupt public order or overthrow the government with violent and illegal means. This would allow necessary protection to the state without encroaching upon the citizen’s rights. Moreover, as expressed by Abraham Lincoln, democracy is for the people, of the people, and by the people. If the government is acting in a manner that dissatisfies the people, they should have complete freedom to criticize it. We are citizens of a country not the slaves of a government. If anything, our loyalty ought to lie towards the nation and not the government. And in a democratic republic such as India, the government is a tool or an organ to express people’s will. If the people will that the government is acting irresponsibly or abusing its authority, they are within their rights to express it. How does Article 124(a) find its place in our Constitution when it goes against the very cornerstone of democracy? According to the National Crime Records Bureau, 35 persons were arrested on sedition charges in the country. Often, many people are charged under this law but very few are convicted. Such acts imply a convenient ploy to intimidate the people, especially activists into subordinating to the government. Moreover, the government is capable of committing follies and as such its responsibility lies in accepting the dissent of the

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citizens rather than throwing them into prison for doing so. The criticism expressed by the people should be taken into account by the government rather than dismissing it as anti-national. If the people are to remain submissive to the government, are we really independent? Or is the government the new face of old oppression? While one cannot turn a blind eye to the fact that the State does require protection from attempts to overthrow it by illegal means, article 124(a) is not the way to do that given its wide gambit to be misused. The government cannot be allowed to suppress people in the name of maintaining public order. It must take accountability for its actions whereas this article showers upon the state the liberty to hoard people into jail like sheep for expressing disaffection. As observed in *Romesh Thapar v. State of Madras*⁶, the freedom of speech and press lies at foundation of all democratic organizations because without free political discussion, the proper functioning of the government will not be possible.

CONCLUSION:

On January 26, 1950, India declared itself to be a sovereign democratic republic and this has been enshrined in the preamble of our Constitution. And as held in the infamous *Kesavananda Bharati*⁷ case, preamble is a part of the basic structure of the Constitution and cannot be violated. Yet, article 124(a) continues to remain a valid law when it clearly goes against the principles of democracy as well as a republic and thus stands in clear violation to the preamble. If not repealed, the article at least needs to be amended as suggested by the Law Commission of the India. As long as a person's acts does not incite violence directly and are not involved in terrorism, they should not be punished under a democracy. Mahatma Gandhi had referred to Section 124(a) as the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen. The battle for independence was fought and won so why are we still allowing our liberty to be suppressed by such law? Many people involved in the Anti-CAA protests of 2020 were charged under the sedition law though the core of the protests lay at protecting the secularism in the country and ensuring the government did not exploit its power. The use of violence for such protests needs to be tackled but the intention to express disaffection against the government should be accepted in a democracy.

⁶ *Romesh Thapar v. State of Madras*, A.I.R 1950 S.C. 124.

⁷ A.I.R. 1973 S.C. 1461.

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Even though the Supreme Court observed a person could be prosecuted for sedition only if his acts caused incitement to violence but since we adhere to the Constitution as the supreme law, we need to amend the article to prevent its abuse. Let's safeguard democracy before safeguarding the government.