EVOLUTION OF SEDITION LAWS IN INDIA AND THE STATUTORY INTERPRETATION OF SECTION 124A OF THE INDIAN PENAL CODE, 1860

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Abstract

Despite being called anachronistic, criminal sanction against seditious activity still persists in India. What started as a measure by the British colonial emperors only, still finds legitimacy in the Indian Penal code, 1860. However, what was then significant is now absurd, in light of the matured social and political mindset of the society. The objective of this paper is to scrutinize various landmark judgments in Sedition cases and shed light upon the evolving scope of the provision. Through different tools and different ideologies, judges have transcended above the ordinary verbal meaning of the provision and have given Section 124A of the IPC various connotations and bearings. Another layer of analysis is undertaken to reflect upon the meaning of the provision in light of the fluctuating nature of the restrictions to freedom of speech. Irrespective of the times, freedom of speech cannot be held hostage to narrow ideas propagated by some sections of the society as to what could be an "anti-national" speech. It is a prerogative that the judiciary has taken upon itself, providing meaningful construction of the provision. The paper therefore aims at providing an overview of the evolution of Sedition laws in India, in statutes as well as in judicial precedents.

Keywords: Sedition, Statutory Interpretation, Freedom of Speech, Indian Penal Code, Judicial interpretation, Kedar Nath Singh

I. TOOLS FOR STATUORY INTERPRETATION

Following the doctrine of Separation of Powers[1], the judiciary in India is merely expected to apply the laws in their function of adjudication of disputes. However, the courts and judges are permitted to undertake necessary judicial review of enacted legislation, albeit only to a limited extent. The

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[1] *Keshavananda Bharti v. State of Kerala* AIR 1973 SC 1461

legal landscape of India is such that even though statues are drafted by the sovereign legislature, there is room for interpreting the statute so as to overcome any degrees of ambiguity attached to it. Statutory Interpretation can be distinguished from judicial review in that the aim of the former is to merely make the statute 'workable' by extending the meaning of the words and phrases in the provision with reference to its preamble, travaux préparatoires and other surrounding historic and contemporary facts.

Therefore, interpretation is the method by which the true sense or the meaning of the word is understood[2]. Statute are rarely self-sufficient and hold very little meaning in isolation and hence, require the judges are required to give it meaning through application. The importance of such an interpretation lies in the fact of the fast changing and evolving political and social climate, due to which words and phrases need to be interpreted differently from the time that they were enacted. This is not necessarily to say that the draftsmen were incompetent or vague on purpose, it merely goes on to say that the ability to foresee the future changes and requirements of a society are limited and it is only through judicial intervention that the true meaning of the word can be understood without it seeming absurd in the current day and age.

Therefore, as Salmond says 'The process by which a judge constructs from the words of a statute book, a meaning which he either believes to be that of the legislature, or which he proposes to attribute to it, is called Interpretation'[3].

There are two broad ways in which judges interpret statutes. The first kind is to look into the words used in the statute, i.e. the verbal expression of the legislature and the second form gives effect to the intention of the legislature by referring to surrounding information[4]. There are three major rules of interpretation of statutes. They are the Literal Rule, the Golden Rule and the Mischief Rule.

II. SEDITION LAW IN THE DRAFT CONSTITUTION

[2] *State of Jammu and Kashmir v. Thakur Ganga Singh* [1960] 2 SCR 346, 351
[3] Salmond, *Interpretation Of Statutes*, (11th ed.) p. 152
[4] Ekta Gurjar, 'Literal Rule : A Tool for Statutory Interpretation' <https://ssrn.com/abstract=2002873>

Much like archaic colonial laws like laws against obscenity and blasphemy, Sedition law also runs against the idea of Freedom of Speech and expression and is widely used (and abused[5]). Sedition, a tool used by the British to stifle the voice of freedom fighters in the colonial era continues to exist and now is a tool used by the ruling government to repress non-aligning views and opinions. It would be expected of the framers of the Indian constitution, having suffered from this very draconian law to not allow it to persist however, sedition law still found its place in the draft constitution of India as a restriction to freedom of speech under Article 13(2). This however was altered by the efforts of several opponents of Sedition law such as K.N.Munshi and those who wanted to ensure that legitimate dissent is not curtailed in India. Sedition has evolved to restrict its meaning to an incitement of discontent or rebellion against a government. The essence of the crime of Sedition consists in the intention with which the language is used and can be inferred from the content of the seditious speech, article or letter. Mere existence of feeling of hatred is not punishable unless an attempt is made to excite such feeling of hatred and contempt in others so as to subvert the Government.

Mahatma Gandhi was one of the greatest opponents of the sedition act and he said,

"*...Section 124 A under which I am happily charged is perhaps the prince among the political sections of the IPC designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by the law. If one has no affection for a person, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote or incite to violence*"[6].

III. FOREMOST ENACTMENT OF SEDITION LAW IN INDIA

Enacted by the British in response to the rebellion by the many freedom fighters who publicly dissuaded the colonial leaders and their positions, this law on sedition was legitimized by Section 113 of Macaulay's draft Penal Code of 1835[7]. This section was am amalgamation of the terms laid

[5] 'When Gandhi called Sedition- A rape of the word law' <https://www.thenewsminute.com/article/when-mahatma-gandhi-called-sedition-rape-word-law-49981> accessed 4th January, 2020
[6] Ramachandra Guha, "*Democrats and Dissenters"* (first published 2016, Penguin)
[7] David Skuy. 'Macaulay and the Indian penal code, 1860 of 1862: The Myth of the Inherent Superiority and Modernity of the English Legal System Compared to India's Legal System in the Nineteenth Century' Modern Asian Studies (1998) <http://www.jstor.org/stable/313159>

down in the Common law of the seditious libel, the English law relating to seditious words and the Treason Felony Act. It became extremely important to retain this law as for the rulers the development of media and press were threatening their authority and influencing the people of India.

IV. TRACING STATUTORY INTERPRETATION OF SEDITION LAWS IN INDIA THROUGH CASE LAWS (1891-2019)

Although a provision prosecuting sedition had been a part of Thomas Macaulay's Draft Penal Code in 1835[8], it was only in 1870 that such a provision was added in the Indian penal code, 1860 as Section 124A. At that time, it read as:

'Exciting Disaffection-

Whoever by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites, or attempts to excite, feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which, fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

Explanation-Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause.'

A. Queen Empress v. Jogendra Chunder Bose (1891)

The foremost challenge that arose with respect to the judicial interpretation of this statute was in the case of *Queen Empress v. Jogendra Chunder Bose and Others in 1891*[9]. Jogendra Chunder,

[8] Arvind Ganachari, 'Evolution of the Law of "Sedition" in the Context of the Indian Freedom Struggle in Nationalism And Social Reform In A Colonial Situation'(2005)
[9] *Queen Empress v. Jogendra Chunder Bose* ILR (1892) 19 Cal 35

the editor of the newspaper, "Bangobasi" that wrote about the British existence in India was the first person to have been prosecuted under this Section and held to have crossed the threshold of fundamental rights guaranteed to citizens of British-India when he made public his unequivocal criticism of an "Age of consent bill"[10].

The judge, urged the jury to look at the history of the press in India and to use such "***External aids"*** in the interpretation of Section 124A. External aids to interpretation of statutes include Parliamentary History, Historical Facts and Surrounding Circumstances, Later Scientific Inventions, Reference to Other Statutes and use of Foreign Decision[11]. He referred to Lord Hobhouse's minutes of the discussions on18th May 1875 and the 10th August 1876 in connection with the Vernacular Press Act, and also referred to Lord Lytton's and Sir A. Arbuthnot's speeches in Council. These were adopted as part of their arguments to show the view which those authorities then took as to the scope and meaning of the present section--vide Gazette of India, Supp. Vol., 1878, pages 457 to 481[12]. Sir J. Stephen in his interpretation also looked at the corresponding law for treason in England that punished people when criminal thoughts manifested in an overt act and differentiated that from the impugned Section in the Indian penal code, 1860.

Subsequently, the tool used by Sir Petheram C.J. at the Calcutta High Court in rejecting Mr. Jackson's argument was that of "***Literal Interpretation***". In support of such methodology it has been said by Chief Justice Tindal in the case of Sussex Peerage[13] that of the words of the statute are in themselves precise and unambiguous, then it is sufficient to expound those words in their natural and ordinary sense. The words best declare the intention of the legislature[14]. and he held that the jury being well acquainted with the English language would understand the wide difference between the words "disaffection" and "disapprobation". He explained, '*Whenever the prefix 'dis' is added to a word, the word formed conveys an idea the opposite to that conveyed by the word without the prefix. Disaffection means a feeling contrary to affection; in other words,*

[10] Atul Dev 'A History of the Infamous Section 124-A' Caravan Magazine, 2016 <https://caravanmagazine.in/vantage/section-124a-sedition-jnu-protests> accessed 21st December, 2019
[11] Swati Rao 'External Aids to Interpretation of Statutes: A critical Appraisal' 2010 <https://ssrn.com/abstract=1649438 or http://dx.doi.org/10.2139/ssrn.1649438>
[12] Supra Note 9
[13] *Sussex Peerage Case* (1844) 11 Cl&Fin 85
[14] *Whiteley v Chappell* (1868) LR 4 QB 147

dislike or hatred. Disapprobation means simply disapproval.'[15] If the words were held to be synonymous then it would be impossible to convict any person under the act as all classes of writings could be made to fall within the bounds of the explanation. The court held that it was important to use words calculated to ignite feelings of ill-will against the government to the extent that it amounted to hatred and contempt to be held guilty under the section. It did not matter whether there was any actual disaffection, it was sufficient if it was merely "calculated" to do so. Eventually Jogendra Chunder was exempt from these criminal charges after he made a formal apology.

B. Queen-Empress v. Bal Gangadhar Tilak (1897)

In 1897, Kesari, a weekly of which Balgangadhar Tilak was the publisher and editor, carried an article called 'Shivaji's Utterances'. The paper had resurrected 17th century's iconic Hindu Maratha king Shivaji and recorded his putative statements at the existing state of affairs in colonial India[16]. He was charged for sedition on two grounds and once these charges were formed the British Government transferred and promoted Justice James Strachey to the bench. In this case of *Queen-Empress v. Bal Gangadhar Tilak*[17], the meaning, scope and width of sedition as per the impugned section were discussed at length.

The main interpretative tool used by the judge in this case was ***"The Golden Rule"***. In *Grey Pearson*[18], Lord Wensleydale held that "… the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther." It was held that it is absurd in the context of the provision to regard disaffection as meaning a mere "absence of affection" and the court decided to undertake a construction that was opposed to the ordinary English usage in words compounded with the particle "dis". The scope of the term "feeling of

[15] Supra Note 9
[16] Namit Saxena 'A look back at Tilak's Sedition trials' <https://www.livelaw.in/a-look-back-at-tilaks-sedition-trials/> accessed 30th December, 2019
[17] *Queen-Empress v. Bal Gangadhar Tilak* (1897) I.L.R. 22 Bom
[18] *Grey Pearson* (1857) 6 HL Cas 61

disaffection" was expanded to contain within its meaning hatred, enmity, dislike, hostility, contempt and every form of ill-will. Disaffection was also further equated with disloyalty, reckoning it to be the best general term, comprehending every form of bad will to the government.

The next question was whether it is important to establish that some sort of feeling of disaffection has been excited or mere attempt to excite such feelings is enough. This limb of Stachey's interpretation gains legitimacy from the ***"Mischief Rule"***. This rule requires the court to look at the intent of the legislature by looking at what the law was before the statute and what mischief they were trying to prevent. It is then this mischief that the court should try to prosecute to cover the gap. This was propounded in Heydon's case[19] (1584). For this, he looks at the object of the provision, which through its explanation ensures that honest journalism and bonafide constructive criticism of public measures and institutions are protected. This is distinguished from a pure attempt to make people hate the government. Any person is permitted to express the strongest condemnation of a statute, no matter how unreasonable or severe the criticism is. The section did not intend on stifling expression. However, if a person exceeds the freedoms and holds up the Government to hatred or contempt by "attributing to it every sort of evil and misfortune suffered by the people, or dwelling adversely on its foreign origin and character, or imputing to it base motives, or accusing it of hostility or indifference to the welfare of the people"[20], then he is guilty under the section. Therefore, the question was answered favouring the latter and setting a stricter standard, establishing mere attempt to also fall within the contours of this section.

It was after this judicial precedent a bill was passed as Act IV of 1898 amending, amongst other things, Section 124A by adding the words 'hatred or contempt' to the word 'disaffection'[21]. These amendments also brought in section 153A and section 505 of the IPC.

C. Queen Empress v. Amba Prasad (1898)

The judge in the case of *Queen Empress v. Amba Prasad*[22] dealt with similar questions as the Tilak case. They held that the meaning of word "disaffection" in the main portion of the section was not

[19] *Heydon* (1584) 76 ER 637
[20] Supra Note 17
[21] Supra Note 10
[22] *Queen Empress v. Amba Prasad* (1898) ILR 20 All 55

varied by the explanation. Justice Persons held that the word "disaffection" could not be construed as meaning 'absence of or contrary of affection or love'. Justice Ranade interpreted the word "disaffection" not as meaning mere absence or negation of love or good will but a 'positive feeling of aversion, which is akin to ill will, a definite insubordination of authority or seeking to alienate the people and weaken the bond of allegiance, a feeling which tends to bring the Government into hatred and discontent'.

The court used an "***External aid***" to interpretation, the fact of the statute being ***in Pari Materia with other statues***. In the case, *State of Punjab v. Okara Grain Buyers syndicate Ltd., Okara*[23] the Supreme Court held that when two pieces of legislation are of differing scopes, it cannot be said that they are in pari materia. However it is not necessary that the entire subject matter in the statutes should be identical before any provision in one may be held to be in pari materia with some provision in the other[24]. In the case of Amba Prasad, reference was made to the case of *Niharendu Dutt Majumdar v. The King Emperor*[25], wherein they were dealing with Rule 34(6) (e) of the Defence of India Rules under the Defence of India Act (XXXV of 1939) and Justice Maurice Gwyer held that the language of Section 124A was in ***Pari materia*** with the rule in question. The judge lay down that the first and foremost duty of the government was the preservation of order and that such a duty to precedent to advancing human happiness. This duty has to sometimes be performed in a way that makes the remedy worse than the disease but still the obligation persists and cannot be evaded. This is this realization of paramount government functions that strike a similarity with Sedition laws. Public disorder, or the reasonable anticipation or likelihood of public disorder, is thus the gist of the offence. The must either incite to disorder or must be such as to satisfy reasonable men that is their intention or tendency to do so.

The explanation then passed through a series of amendments over the next fifty years. What is of critical importance is that the terms "disposition to render obedience to the lawful authority" and

[23] *State of Punjab v. Okara Grain Buyers syndicate Ltd.,Okara* AIR 1964 SC 669
[24] *ibid*
[25] *Niharendu Dutt Majumdar v. King Emperor* (1942) F.C.R. 38

"unlawful attempts to resist or subvert that authority" were deleted and replaced with a definition of disaffection: "disloyalty and all feelings of enmity"[26].

The draft Constitution, Article 13(2), what later became Article 19(2), originally included the word "sedition", which was subsequently deleted and replaced by "undermining the security of the State". As per Article 19(2) reasonable restrictions can be imposed either in the interest of the security of the State or Friendly relations with foreign States or Public order. In *Kishori Mohan v. State of West Bengal*[27], the distinction between the three concepts of law and order, public order, security of State was outlined.

D. Ram Ji lal Modi v. State of Uttar Pradesh (1957)

Ram Ji lal Modi v. State of Uttar Pradesh[28] was the first case after the amendment f 1951 that examined the meaning and interpretation of the terms "in the interest of" and "public order" in Article 19(2). It was established that activities that have a tendency to disrupt public order and have not actually led to a breach, then law that penalizes such activities cannot be held to be reasonable restriction. Ramji Lal Modi answers the question of "calculated tendency", whereas the 1960 cases use the standard of "pernicious tendency", the status of the Indian judiciary was not too far from the test of bad tendency adopted by the American courts. Subsequently, what emerged was a new viewpoint, in the form of the "spark in the powder keg" test. In the case of *S. Rangarajan v. P. Jagjivan Ram*[29] the judge said, "*Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a*

[26] Gautum Bhatia 'What is Sedition? – I: The Kedar Nath Singh Case' <https://indconlawphil.wordpress.com/2013/08/12/what-is-sedition-i-the-kedar-nath-singh-case/> accessed 5th January, 2020
[27] *Kishori Mohan v. State of West Bengal* AIR 1972SC 1749
[28] *Ram ji Lal Modi v. State of UP* AIR 1957 SC 620
[29] *S. Rangarajan v. P. Jagjivan Ram* 1989 SCR (2) 204

powder keg". This essentially lays down the test that checks for time lapses and states that there should be some form of continuance or immediacy.

The next major case to deal with these issues was *Superintendent, Central Prison v. Ram Manohar Lohia*[30]. The court discussed the idea of public order and observed that under Art. 19(2), the wide concept of "public order" is split up under different heads (security of the state, friendly relations with foreign states, public order, decency or morality etc) and they argued that while all the grounds mentioned can be brought under the general head "public order" in its most comprehensive sense, it was important that "public order" be demarcated from the others. In their understanding, "public order" was synonymous with public peace, safety and tranquillity. In their discussion of Ramji Lal Modi, the court says the distinction between 'in the interest of' and 'for the maintenance of' does not ignore the necessity for an intimate connection between the law and the public order sought to be maintained by the law. They added that after the word reasonable had been added to 19(2) it was imperative that restrictions have a reasonable relation to the object which the legislation seeks to achieve and must not go in excess of that object. The restriction made "in the interests of public order" must have a reasonable relation to the object to be achieved, i.e., the public order. If the restriction has no proximate relationship to the achievement of public order, it fails the reasonableness test. Further this case established a double test, of proximity and proportionality, adding morality to the idea of public order.

E. Kedarnath Singh v. State of Bihar (1962)

Kedarnath Singh v. State of Bihar[31] is the landmark judgement on Sedition laws and the restrictions under Article 19(2). The case was decided by a constitutional bench constituting Hon'ble Mr. Justice Bhuvaneshwar Prasad Sinha, Hon'ble Mr. Justice S.K. Das, Hon'ble Mr. Justice A.K. Sarkar, Hon'ble Mr. Justice N. Rajagopala Ayyangar and Hon'ble Mr. Justice J.R. Madholkar. Kedar Nath Singh a member of the Forward Communist Party in Bihar accused the Congress of corruption, black-marketing and tyranny and targeted Vinobha Bhave's attempts to redistribute

[30] *Superintendent, Central Prison v. Ram Manohar Lohia* 1960 SCR (2)821
[31] *Kedarnath Singh v. State of Bihar* AIR 1962 SC 955

land. He talked about a revolution that would overthrow capitalists, zamindars and Congress leaders[32]. The trial court convicted Kedar under 124A and 505B of the IPC, and sentenced him to one-year imprisonment for delivering a seditious speech and intending to disturb public tranquility. The case came to the Supreme Court on appeal, wherein a separate issue was made out regarding the constitutionality of the Section 124A and 505 of the IPC. After more than fifty years of amendments, the section stood as follows:

'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 attempts 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.

Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.'

The court primarily focused on the interrelation established between freedom of speech and seditious activities and content. Two cases were referred to, *Romesh Thappar v. The State of Madras*[33] and *Brij Bhushan v. The State of Delhi*[34]. In Romesh Thappar's case the Court declared s. 9(1-A) of the Madras Maintenance of Public Order Act (Mad. XXXIII of 1949), which had authorised imposition of restrictions on the fundamental right of freedom of speech, to be in excess of cl. (2) of Art. 19 of the Constitution and therefore, void and unconstitutional. In Brij Bhushan's case they struck down s. 7(1)(c) of the East Punjab Public Safety Act, 1949, as extended to the

[32] Shivali singh 'Case commentary on Kedarnath Singh v. State of Bihar' <https://www.academia.edu/12501526/Case_Commentary_on_Kedarnath_Singh_v._State_of_Bihar> accessed 27th December, 2019

[33] *Romesh Thapar v. The State of Madras* (1050) S.C.R. 594.

[34] *Brij Bhushan v. The State of Delhi* (1950) S.C. R. 605

Province of Delhi, authorising the imposition of restrictions on the freedom of speech and expression for preventing or combating any activity prejudicial to the public safety or the maintenance of public order. The Court held those provisions to be in excess of the powers conferred on the Legislature by cl. (2) of Art. 19 of the Constitution.

Until Independence, there were broadly two views on Section 124A. First that of the judgements given by the Federal Court that asserted that public disorder or the reasonable anticipation or likelihood of public disorder is the gist of the offence. Second that of the judgements passed by the Privy Council that said that the speech itself, irrespective of whether or not it leads to an incident, could be an offence[35]. It was in view of these conflicting decisions that the court had to decide the constitutionality of Section 124A. If the court adopted the former view then the section would lie within the ambit of permissible legislative restrictions on the fundamental right of freedom of speech and expression[36]. As held in the case of *Virendra v. State of Punjab*[37], any law which is enacted in the interest of the public order may be saved from the vice of constitutional validity. If however, the latter view was adopted by the court that would imply that even without any attack to the public order an offence could be deemed seditious then it would not be giving immunity under Article 19(2). It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction[38]. The tool used by this court was ***"Presumption in favour of constitutionality"***[39].

Subsequently, using the "***Mischief Rule"***[40] in answering the question of the constitutionality of s. 124A or s. 505 of the Indian penal code, 1860, as to how far they are consistent with the requirements of cl. (2) of Art. 19 with particular reference to security of the State and public order, the court focused on the fact that the section penalises any spoken or written words or signs or visible representations, etc., which have the effect of bringing, or which attempt to bring into hatred

[35] Supra Note 26
[36] Gautum Bhatia 'Sedition as Anti-Democratic Speech: The Paradox of Liberal Neutrality?' <https://indconlawphil.wordpress.com/2013/08/15/sedition-as-anti-democratic-speech-the-liberal-paradox-of-neutrality/> accessed on 4th January, 2020
[37] *Virendra v. State of Punjab* 1957 AIR 896
[38] http://scconline.com/DocumentLink/1LB3pqPU
[39] *ibid*
[40] http://scconline.com/DocumentLink/kwI6oS8e

or contempt or excites or attempts to excite disaffection towards the Government established by law. The government is the representation of the state and the very existence of the State will be in jeopardy if the Government established by law is subverted. That is why any attempt to hinder the existence of the government through seditious activities characterized under the impugned section would fall under "Security of the state" exception under article 19(2). It is through the same interpretation, keeping in view the intent of the statute that even very severe words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section.

The judge extensively also used the interpretative "***External Aid"*** of establishing that the statute was in "***Pari Materia***" to another statute. In doing so, they look at the case of *Annie Basant v. Advocate General of Madras*[41] which was a case under s. 4 of the Indian Press Act. (I of 1910) and held that it was closely similar in language to s. 124A of the Penal Code. The court also relied on *Wallace Johnson v. The King*[42] which was a case under sub s. 8 of s. 326 of the Criminal Code of the Gold Coast, which defined "seditious intention" in terms similar to the words of s.124A of the Penal Code.

If we were to hold that even without any tendency to disorder or intention to create disturbance of law and order, by the use of words written or spoken which merely create disaffection or feelings of enmity against the Government, the offence of sedition is complete, then such an interpretation of the sections would make them unconstitutional in view of Art. 19(1)(a) read with clause (2)[43].

F. Balwant Singh v. State of Punjab (1995)

In 1995 the case of *Balwant Singh and another v State of Punjab*[44], the Supreme Court was considering the appeals against conviction under Section 124A for raising pro-khalisthan slogans. However, there had been no other activity other than this raising of slogans in furtherance of their

[41] *Annie Basant v. Advocate General of Madras* (1919) 21 BOMLR 867
[42] *Wallace Johnson v. The King* (1940) AC 231
[43] Gautum Bhatia 'The nine lives of the sedition law' <https://www.livemint.com/Sundayapp/b9neXYTVckT0UBwvU7Ev4K/The-nine-lives-of-the-sedition-law.html> accessed 4th January, 2020
[44] *Balwant Singh and another v State of Punjab* 1994 SCC Supl. (2) 67

exhibition of public support. The court used the same tools of interpretation as that in the previous case and held that while keeping in mind the reasons for the introduction of Section 124A and the history of sedition, the section must be so construed as to limit its application to acts involving intention or tendency to create disorder, or disturbance of law and order; or incitement to violence. The court further laid down an abstract two-tier test wherein, firstly a mere raising of slogans would not be counted as sedition unless it is accompanied by an overt act and secondly, such a raising of slogans should directly leads to some sort of response from the others. In another judgment in the year 2011, the court espoused the test of imminence stating only those activities to be counted as seditious that incite imminent lawless action[45].

Another relevant decision is *Bilal Ahmed Kaloo v State of Andhra Pradesh*[46], where it was held that '*mechanical order convicting a citizen for offences of such serious nature like sedition and to promote enmity and hatred etc. does harm to the cause. It is expected that graver the offence, greater should be the care taken so that the liberty of a citizen is not lightly interfered with'*.[47]

G. JNU Case of Kanhaiya Kumar (2016-ongoing)

The most recent example of Sedition laws coming into widespread attention was in 2016 in the case of Kanhaiya Kumar, a student from JNU, New Delhi who was arrested based only on the allegations of anti-national sloganeering[48]. However, there are no allegations or violence, public disorder, or incitement of imminent violence. It had taken the police three years to file a charge-sheet without the occurrence of any such event that threatened the security of the state or public order[49]. In 2019 the police gained sanction for the charge-sheet and it is now that the court must establish once again whether mere sloganeering is enough to be called an offence under Section

[45] *Arup Bhuyan v. State of Assam* (2011) 3 SCC 377
[46] *Bilal Ahmed Kaloo v State of Andhra Pradesh* 1997 7 SCC 431
[47] *ibid*
[48] Damini Nath 'Uncertainty over prosecution sanction for JNU "sedition" case' <https://www.thehindu.com/news/cities/Delhi/uncertainty-over-prosecution-sanction-for-jnu-sedition-case/article26039326.ece> accessed 4th January, 2020
[49] Manu Sebastian 'JNU Sedition Row : Why Charges Against Kanhaiya And Others Will Not Stand?' <https://www.livelaw.in/columns/jnu-sedition-case-why-sedition-charges-against-kanhaiya-kumar-and-others-are-unsustainable-142183> accessed 5th January, 2020

124 A or that it will not pass the muster with the narrowly defined scope of sedition set by the case of Kedar Nath Singh and subsequent Supreme Court Judgments.

V. CONCLUSION

Through the case laws referred to above, it is evident that there has been a departure from a method of interpretation that focuses on mere plain reading to a more purposive construction. It is a modern approach to interpretation of statutes as it explores through the history and the intent of the legislation. It is seen that the judiciary has been going way beyond the ordinary English meaning of the words of the statues and make assumptions that are applied in consonance with what is thought to be the intention of the legislators. The judiciary identifies the mischief that the parliament sought to remedy ad it is based on this that the judiciary extends or narrows the scope of the words.

As Peter Benson Maxwell encapsulates in his "Interpretation of Statutes", '*If one construction will lead to an absurdity while another will give effect to what commonsense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the Courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided.*'[50]

However, this rule gives a lot more discretion to the judges compared to other tools of interpretation such as the literal rule and the golden rule. The role of the Legislator is to make the laws while the Judiciary's role is to interpret these laws in cases. However, through the mischief rule and a more purposive approach, the Separation of Powers could be hampered by giving the judges greater autonomy.

[50] Peter Benson Maxwell 'Interpretation Of Statutes' (12th Edn., LexisNexis Butterworths Publications 1969) at page 228