

Should India Do Away With Sedition Law?

—By Wing Commander Dinesh Mathur, VSM (Retd.)

Communicating in a group is significant in both organisational and social life. It is so because one person alone does not have all the talent, skill and ideas to accomplish a difficult task. Communicating in a group leads to getting more information and significantly improves chances of success. Groups are known to be better problem-solvers as they can spot flaws and biases in each other's thinking. Strong communication skills are central to effective discussion and productive teamwork. Therefore, group discussions are frequently used in the corporate world to improve decision-making. At the same time, group discussions are also effectively used as a part of selection process to select candidates for jobs and also screen candidates for admissions to prestigious institutions. This is due to the fact that while participating in a group discussion, a candidate willy-nilly reveals a number of personality traits, which may not be possible during a personal interview or a written test. These personality traits include: capability to work in teams, spirit of give and take, depth of awareness, listening abilities and communication skills, etc.

A group of nine candidates were called as a part of screening process to select candidates for an MBA course conducted by a prestigious institute. As instructed, candidates arrived wearing formal dresses. Thereafter, they were made to sit in a semi-circle, so that the three assessors could observe them and also listen to them clearly. They were then allotted Identification Numbers and these Identification Numbers were prominently displayed on their shirts. Candidates were told to address each other by these numbers and not by their names. Subsequently, a detailed briefing was given to apprise candidates of all Dos and Don'ts to be kept in mind during the group



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discussion. Candidates were specifically informed that they were permitted to speak as much as they wanted and as many times as they wished, but they had to ensure that all candidates got an opportunity to speak. Further, they should speak in an orderly fashion, which implied that only one candidate should speak at a time. Thereafter, candidates were given three topics and asked to select any one topic for discussion by mutual consultation. The above topic was chosen by this group of candidates for the group discussion. Candidates were asked to conclude this GD in 20-25 minutes. Subsequently, the group discussion progressed in the following manner:

Candidate No. 9 : Good morning friends. I hope all of you are keen to express your opinions on this controversial yet interesting topic, which is currently being debated in almost every forum in our country. While our government and a large number of people feel that sedition law is certainly needed to keep a check on and also firmly deal with anti-national elements of our country, quite

a few others strongly feel that this law is no more needed in an independent India. The fact remains that sedition law is certainly a colonial law, which was primarily used to prosecute freedom fighters like Mahatma Gandhi, Bal Gangadhar Tilak, Annie Besant, Maulana Abul Kalam Azad and others. But, in independent India, subsequent governments have used this law with much increased frequency, often to settle political scores or otherwise. Friends, we are here to discuss whether sedition law is still relevant in modern India or is it being only abused?

Candidate No. 4 : I think, after No. 9 has introduced the topic, you all may start giving your opinions now.

Candidate No. 7 : I feel, to put things in perspective, we must touch upon its historical background and how in the past our courts had viewed sedition law in our country. Can some friend comment on these aspects?

Candidate No. 5 : Yes, I would like to inform that although Thomas Macaulay's draft of the Indian Penal Code (IPC) had the law of sedition, it was ultimately not included in the Code enacted in 1860. However, experts opine that it was merely accidental. In 1890, sedition law was included as an offence under Section 124 A through the Special Act. The punishment prescribed then, "transportation beyond the seas for the term of his or her natural life", was amended to life imprisonment in 1955. It was this provision which was extensively used to curb political dissent during our independence movement with numerous cases under it lodged against our prominent leaders like Mahatma Gandhi, Tilak and others.

Candidate No. 2 : Very correct. It was during this period that famous sedition trial in the case of Queen Empress vs Bal Gangadhar Tilak (1898) also took place. The

Constituent Assembly did debate for including sedition as an exception to the Fundamental Rights guaranteed in the Constitution. Subsequently, in 1950, in the case of Romesh Thapar, the Supreme Court held that criticism of the government exciting dissatisfaction or bad feelings towards it, is not to be regarded as justifying grounds to restrict freedom of expression, unless it undermines security or tends to overthrow the state.

Candidate No. 3 : I think No. 5 and 2 have adequately covered the historical aspects of sedition law. We need more details about how courts have later viewed this law.

Candidate No. 7 : Friends, I feel that before we discuss how our courts have dealt with this law, let us at least understand what exactly is contained in Section 124 A of Indian Penal Code. Am I right? Can somebody spell out this provision?

Candidate No. 9 : Well, if I recall correctly, this Section of IPC defines sedition as : whoever, by words, either spoken or written, brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the government, shall be punished with imprisonment for life, to which fine may be added. "Disaffection" includes disloyalty and all feelings of enmity.

Candidate No. 5 : You are right, but in simple terms sedition would mean the crime of creating a revolt, disturbance, or violence against lawful civil authority with the intent to cause its overthrow or destruction. I think that gives us a clear meaning of sedition.

Candidate No. 1 : I think No. 9 and 5 have defined the sedition law fairly well.

Candidate No. 2 : Yes, subsequently Punjab and Haryana High Court in 1951 as well as Allahabad High Court in 1959 held that Section 124 A was primarily a tool for colonial rulers to suppress discontent, and declared the provision unconstitutional. However, our Supreme Court dealt with the provision of sedition law in 1962, while hearing the famous case of Kedarnath Singh vs State of Bihar. Supreme Court held the provision of IPC Section 124 A constitutionally valid, but attempted to restrict the scope of its misuse, holding that

unless accompanied by an incitement or call for violence, criticism of the government cannot be labelled sedition. The Supreme Court clarified that only speech that is likely to incite "public disorder" would qualify as sedition.

Candidate No. 3 : Friends, in the past, Supreme Court has dealt with this law a number of times and reiterated that real intent of the speech must be taken into account and criticism of the judiciary would also not amount to sedition. Subsequent reports of the Law Commission of India and even Supreme Court have underlined the misuse of the sedition law.

Candidate No. 9 : I feel the misuse of sedition law is mainly due to the fact that the onus of distinguishing between a legitimate speech and seditious speech is put on the police by law and courts. Opposition parties often allege that police force is used by the government to punish or harass their political opponents. So, the misuse of sedition law has a political twist as well.

Candidate No. 6 : Yes, I tend to agree with what No. 9 has said.

Candidate No. 5 : In this context, I recall that in the recent past i.e., only last year, FIRs were lodged against well-known journalist Vinod Dua for bitterly criticising the government's handling of Covid-19 crisis. Subsequently, the Supreme Court quashed the FIRs and also cautioned against unlawful application of the law. So, it is apparent that political leaders and agencies are applying a very broad interpretation of the Supreme Court ruling on Section 124 A in Kedarnath case. In this case, the Supreme Court had stated that sedition law is legal, but criticism of the government cannot be labelled sedition unless it is followed by incitement or call for violence. However, police in various states continue to invoke this law on frivolous grounds.

Candidate No. 2 : Yes, quite right, the result of this is that there are 800 cases of sedition currently being heard in India and 13,000 people are in jail. According to some other reports, 65% of nearly 11,000 individuals in 816 sedition cases since 2010 were implicated during the last 8 years. Do you think, such a law should be allowed to continue to be used in modern India, which curtails liberty to express ideas so severely?

Candidate No. 1 : I think this is really shocking. What do you all feel about it?

Candidate No. 2 : Friends, do you think a cartoon can stir unrest and bring down an elected government. Police thought so, when they arrested a cartoonist for sedition ten years back. This cartoonist had tried to highlight corruption through his cartoons. This sedition case continued for several years and was finally struck down by Bombay High Court in 2015. Eventually, this cartoonist had to quit his profession forever. This case is a fit example to show how sedition law is being used by various governments in our country. No wonder, currently there is so much hue and cry to abolish this provision of law.

Candidate No. 7 : Yes, I quite agree with No. 2. I don't think any democratic country should allow this state of affairs to continue. This is so because the right to question, criticise and change rulers is very fundamental to the idea of democracy.

Candidate No. 9 : May I add that from cartoonists to stand-up comedians and satirists to small political activists and opposition leaders, sedition law has been used to harass or punish them. Some experts point out that there seems to be some mix-up between the definitions of treason and sedition. As per them, while treason is an act against the state; sedition is an act against the government of the day, and criticising the government should never be penalised in this way. After all, Opposition parties are supposed to find faults and even criticise the governments in power. Ironically, when a political party is in power, it wants to crush the opposition, but when the same political party is in opposition, it wants all the liberty to criticise the government. I feel, it shows that quite a few of our political leaders are not yet ready to constructively participate in a healthy democracy.

Candidate No. 3 : Not only that, Allahabad High Court has held that criticising a judgement of the court also cannot be held as sedition. The fact remains that quite a few people, who were implicated in sedition cases, have been regularly given relief by High Courts and the Supreme Court.

Candidate No. 5 : Friends, as per National Crime Records Bureau's

report “Crime In India 2020”, there have been 70, 93 and 73 cases of sedition in the years 2018, 2019 and 2020 respectively. Not only this, since 2014, 399 sedition cases have been filed. And interestingly, while the number of cases has increased, conviction has been consistently low. This clearly highlights that Section 124 A is being abused and cases are being filed despite the absence of the solid grounds required under this section. Several artists, journalists, others who dissented with the government, have been booked under this law. This certainly is not a happy situation for our democracy.

Candidate No. 7 : Yes, several well-known people and politicians have raised their voice against the misuse of sedition law on multiple occasions. In addition, several private members’ bills in Parliament have been tabled to bring about changes in the existing sedition law.

Candidate No. 2 : I would like to mention here that several countries like Australia, Canada, Ireland, Nigeria, Uganda and Ghana, etc. have either diluted or have totally removed laws of sedition in the past. Even in United Kingdom, which was the basis of Indian law, sedition law has been abolished.

Candidate No. 9 : I don’t understand why India is taking so much time to stop the misuse of sedition law, and in the meanwhile, so many innocent people are suffering. This is yet another unfortunate impact of judicial delays, which are so common in our country. Our governments had been defending the retention of sedition law in the past, which has further aggravated this situation.

Candidate No. 5 : Yes, let me tell you some arguments in support of sedition law : Section 124 A of the IPC has its utility in combating anti-national, secessionist and terrorist elements. It protects the elected government from attempts to overthrow it with violence and illegal means. It is argued that if contempt of court invites penal action, contempt of government should also attract punishment. In our country, Maoist insurgency and rebel groups still exist and they openly advocate the overthrow of the government by revolution. So sedition law is certainly needed to tackle this category of people.

Candidate No. 3 : I think, while reviewing the existing sedition law, if it is not possible to do away with it altogether, we must immediately bring about requisite changes in this law to substantially avoid its misuse by the governments.

Candidate No. 8 : Yes, very well said No. 3. I fully agree with you.

Candidate No. 2 : Friends, very recently, the Supreme Court was hearing a batch of petitions on sedition law. While initially the government was forcefully defending this provision, later it informed the court that it was reconsidering a review. This came as a surprise. After this development, if the Supreme Court strikes down this provision, it will have to overrule the Kedarnath ruling and favour free speech. However, if the government reviews this law by diluting the language or repealing it, it could still bring back this law in a different form.

Candidate No. 4 : What did the Supreme Court rule?

Candidate No. 9 : In view of above developments, the Supreme Court has now directed that all proceedings on charges under Section 124 A, the IPC provision for sedition, be kept in abeyance until the government has completed re-examining it. This is being widely considered a measure of relief for the offence of sedition. This order is not a final judgement, but an interim relief till the constitutionality of sedition is determined and the case before the Supreme Court remains alive. In effect, this provides some relief to people facing sedition cases and also those who may be threatened by fresh prosecutions.

Candidate No. 6 : So, friends this is the present status of sedition law in our country. I think the time allotted to us is also getting over. If you all agree, may I request No. 2 to conclude this discussion now.

Candidate No. 2 : Well, friends we all had an extremely interesting discussion on sedition law as it exists in our country. Very informative data and facts have been brought forward by our friends during this GD. The fact remains that this is a colonial law, which was frequently used by the British government to suppress our freedom struggle and prosecute our leaders of freedom movement. Unfortunately, in independent India also our governments misused this

legal provision to harass and punish all those who spoke against the government of the day. Presently, a large number of people are victims of gross misuse of this provision. This issue has been dealt with by our courts on numerous occasions who have provided relief to a number of people who were unnecessarily implicated in sedition cases. Presently, the Supreme Court is dealing with this issue and has recently directed to hold in abeyance all proceedings under Section 124 A of IPC i.e., sedition.

Thank you friends. Have a good day and good luck.

Critical Analysis of Candidates’ Performance :

Good : Candidate Nos. 2, 5 and 9

These candidates came out with analytical and positive views and other candidates did appreciate them. These candidates were in the centre of the discussion most of the time. It became quite apparent that they had prepared quite well for this discussion. Other candidates did not dispute or contradict the data and information presented by them. Their knowledge was up-to-date and they made reference to the latest happenings connected with the topic to make the group discussion more interesting. Owing to all these reasons, their performance has been assessed as ‘Good’.

Average : Candidate Nos. 3 and 7

These candidates managed to put across their views along the sidelines. They did put across their points of view and certainly enhanced the momentum of the discussion. However, their contribution remained restricted only. This was due to the fact that they did not make required preparation before they came for this discussion and also lacked initiative. Due to lack of preparation, they also lacked self-confidence to come out with new information on this important topic. Owing to these reasons, their performance has been assessed as ‘Average’.

Below Average : Candidate Nos. 1, 4, 6 and 8

These candidates barely made any positive contribution to make the group discussion interesting. They had been only appreciating the active candidates who were speaking, or asking other candidates to participate. Their own contribution was very limited indeed. It became conspicuous that they had opted to come over for this group discussion without any preparation and did not put in efforts to study the topic. It was observed that they were just nodding once in a while to keep themselves in picture. Therefore, their performance has been adjudged as ‘Below Average’.

CSR