

## The right to criticise

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This article is related to General Studies  
Paper-II - (Governance)

The Hindu

10 APR, 2019

### "The Manipur High Court's sedition judgment on Kishorechandra Wangkhem sets an example."

In its judgment dated April 8, the Manipur High Court ordered the release of journalist Kishorechandra Wangkhem, who was charged with sedition under the National Security Act for criticising the Chief Minister. Though the petition was allowed only on the technical ground that certain material mentioned in the detention order was not supplied to the petitioner, it could have also succeeded on the ground that in a democracy people have a right to criticise the government. Article 19(1)(a) of the Constitution was upheld by the Supreme Court in *Romesh Thapar v. The State of Madras* (1950).

Whereas in a monarchy the king is supreme and the people are his subjects, in a democracy this relationship is reversed: the people are supreme, and state authorities are servants of the people. In *Kedar Nath Singh v. State of Bihar* (1962), the Supreme Court held that mere criticism of the government is not sedition unless it is an incitement to violence or breach of public order.

The U.S. Supreme Court, in *Brandenburg v. Ohio* (1969), laid down the 'imminent lawless action' test, which says that free speech is protected by the First Amendment to the U.S. Constitution unless it incites imminent (not remote) lawless action. This judgment was followed by the Indian Supreme Court in *Arup Bhuyan v. State of Assam* (2011) and in *Sri Indra Das v. State of Assam* (2011), and hence it is the law of the land in India too. Surely Mr. Kishorechandra's statements would not have provoked an immediate violent uprising against the government and hence they were protected by Article 19(1)(a) of the Constitution.

Unfortunately, what has been often witnessed in India is that political functionaries get incensed and cannot tolerate criticism. Then they slap sedition charges or preventive detention laws against their critics, as the Maharashtra government did in the case of the cartoonist Aseem Trivedi, or the West Bengal government did in the case of Professor Ambikesh Mahapatra of Jadavpur University, or the Tamil Nadu government in the case of the folk singer Kovan. To speak for the poor or marginalised sections of society has become particularly dangerous, as was seen in the cases of those accused of inciting violence in Bhima Koregaon.

By enacting the Fundamental Rights of the people in Part III of the Constitution, and by making the courts the guardians of the rights of the people, a solemn duty has been cast on the judiciary to uphold democratic principles. The Manipur High Court therefore deserves to be commended in this connection (though one wishes its judgment had come earlier and saved the petitioner four months of jail time). It is hoped that other courts in India, too, will follow its example.

## National Security Act (NSA)

### Why in the discussion?

- Recently, the Manipur High Court has ordered the release of journalist Kishore Chandra Wangkham abolishing his custody under National Security Act (NSA).
- A bench of Justice L. Jamir and Justice KN Nobin Singh dismissed the order to arrest journalist under the NSA.
- In November last year, he was arrested by imposing the National Security Act (NSA) on him.

### Why the NSA?

- Manipur's journalist Kishore Chandra Wangkhem had posted a video on PM Modi, Manipur Chief Minister Biren Singh and RSS social media.

### They were criticized in this video.

- After uploading the video, he was arrested under the NSA. After which the matter went to the High Court and now the High Court has issued the order for the release of the journalist.

### What is it?

- National Security Act -1980, is a law related to giving more power to the government for the security of the country. This law provides the right to arrest to the Central and the State Government.
- If the government thinks that a person is preventing it from doing acts that ensure the security of the country, then it has the power to arrest him.

- The government believes that if someone is obstructing it in maintaining the law and order smoothly, it can order his arrest.
- Also, if it thinks that the person is obstructing supply of essential service, it can get him arrested.
- Under this law the hoarders can also be arrested. The law can also be used by the District Magistrate, the Police Commissioner, and the State Government in its limited scope.

### What is preventive detention?

- The 'preventive detention' provides power to the state that it can detain a person to prevent any possible crime from happening.
- Under the Article 22 (3) of the Constitution, it provides that if a person has been arrested or detained under 'preventive detention' then he will not have the right to 'protection against arrest and custody' under article 22 (1) and 22 (2).
- A person can be arrested only on four basis under 'preventive detention':
  - State security
  - Maintaining public order.
  - Supply and maintenance of necessary services and maintenance and defense.
  - Foreign Affairs or Security of India
- Persons arrested under preventive detention will not get the right to personal liberty granted under Article 19 and Article 21.

### Expected Questions (Prelims Exams)

1. Consider the following statements in the context of National Security Act.

1. This law order the Central and State government to arrest.
2. District Magistrate, Police Commissioner and State Government use it in their limited jurisdiction.

Which of the above statement is/are correct?

- (a) Only 1                      (b) Only 2  
(c) Both 1 and 2              (d) Neither 1, Nor 2

2. Consider the following statements in the context of preventive detention.

1. It gives the power to state to arrest. any person from committing probable crime.
2. The individual freedom provided under Article 19 and 21 will not be given to arrested person under this.

Which of the above statement is/are correct?

- (a) Only 1                      (b) Only 2  
(c) Both 1 and 2              (d) Neither 1, Nor 2

### Expected Questions (Mains Exams)

Q. Is arresting a person for criticising the political party in democratic country like, India violate the fundamental right as-well-as democracy? Explain.

(250 Words)

**Note:** Answer of Prelims Expected Question given on 9 APR. is 1(d)