

THE RIGHT TO CRITICISE: THE SEDITION JUDGMENT ON KISHORECHANDRA WANGKHEM

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to Fundamental Rights, Directive Principles and Fundamental Duties

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.

The writer is a former judge of the Supreme Court

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