

[DOI: 10.20472/AHC.2016.001.001](https://doi.org/10.20472/AHC.2016.001.001)

SIRIWAN ANANTHO

School of Communication Arts, Sukhothai Thammathirat Open University, Thailand

THAI STYLE FREEDOM OF EXPRESSION DURING THE MILITARY REGIME

Abstract:

The Universal Declaration of Human Rights defines that freedom of expression is the right of every individual to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. In 2004 Thailand ranked 59th out of 167 countries in the worldwide Press Freedom Index from Reporters Without Borders and then has fallen rather steadily. In 2015 Thailand's Press Freedom was ranked 134th out of 180 countries worldwide and ranked 13th among other Asian Pacific countries.

The freedom of expression was first guaranteed by the 1997 Thai Constitution, followed by the Constitution promulgated in 2007. By law, freedom of expression could be restricted only in limited cases such as to preserve national security, maintain public order, prevent insults to Buddhism, and offensive to the monarchy. The military coup in May 2014 led to the establishment of a junta called the National Council for Peace and Order (NCPO) to govern the nation. The NCPO repealed the 2007 constitution (except for provision dealing with the monarchy) and promulgated an interim constitution on July 22. Right after the coup, freedom of expression of people and journalists were threatened by the NCPO which issued broad orders prohibiting criticism of its actions, shut down some media outlets, blocked access to many websites, and sometimes summoned members of the media to report to authorities for questioning. Politicians and journalists who failed to comply with the orders usually were invited for "Attitude Adjustment" (a method to neutralize the NPCO's critics and opponents). Currently most media outlets are allowed to operate under the supervision of the military and government authorities. The restrictions on freedom of speech and censorship by the NPCO therefore resulted in an increasing self-censorship among the media and general public.

The proliferation of various and diverse media will likely make the junta's control of the media ineffective or problematic. This paper aims to explore the freedom of expression under the current military regime in Thailand, in terms of both press freedom and freedom of expression among the public. The case studies and related legal and cultural issues will be discussed.

Keywords:

Freedom of Expression, Thailand, military rule.

Introduction

According to the Universal Declaration of Human Rights (1949), freedom of expression is the right of every individual to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. In practice, however, this fundamental human right is frequently restricted through tactics that include censorship, restrictive press legislation, and harassment of journalists, bloggers and others who voice their opinions, as well as crackdowns on religious minorities and other suppression of religious freedom.

The freedom of expression was first guaranteed in Thailand by the 1932 Constitution. By law, freedom of expression could be restricted only in limited cases such as to preserve national security, maintain public order, prevent insults to Buddhism, and offensive to the monarchy. The military coup in May 2014 led to the establishment of a junta called the National Council for Peace and Order (NCPO), which suspended the 2007 constitution and promulgated a temporary constitutional charter on July 22, 2015.

Thailand current has 18 daily and biweekly national newspapers; over 400 magazines; 520 commercial and more than 7,000 community radio stations; 36 national free-to-air digital television and more than 400 digital satellite and cable television channels. Moreover, among its 67 million population, the country has almost 40 million Internet users and 124.5 percent mobile penetration. The proliferation of various and diverse media will likely make the junta's control of the media ineffective or problematic. The article shows how the military government exercises its power to control freedom of expression in Thailand.

Freedom of Expression Concept

The term "freedom of expression" is sometimes used interchangeably with "freedom of speech". The former includes any act of seeking, receiving and imparting information or ideas, regardless of the medium used, while the latter is the right to communicate one's opinions and ideas without fear of government retaliation or censorship.

Freedom of expression contributes to the "marketplace of ideas," a concept popularized by John Stuart Mill. Ideally, allowing individuals to voice diverse and even controversial ideas and opinions leads to desirable and vetted sociopolitical solutions. This permits people to air their grievances and works as a pressure release valve, helping to curb violent uprising by the population. Freedom of speech serves many functions. One of its most important functions is that decision-making at all levels is preceded by discussion and consideration of a representative range of views. Freedom of speech is also important to governments because when criticisms of a government are freely voiced, the government has the opportunity to respond to answer unfair comments and criticisms about its actions. On the other hand, when

freedom of speech is restricted, rumors, unfair criticisms, comments and downright falsehoods are circulated by word of mouth, and the government is in no position to answer these views, because they are not publicly stated.

In the United States, freedom of speech is protected by the First Amendment to the United States Constitution and by many state constitutions and state and federal laws. However freedom of speech is not absolute, the Supreme Court of the United States has recognized several categories of speech that are excluded from the freedom, and it has recognized that governments may enact reasonable time, place, or manner restrictions on speech.

Freedom of speech has been limited in many cultures because a number of conditions must be met before it can be realized. (Fraleigh and Tuman, 2011). There are limited exceptions to when the government can prohibit certain forms of speech. Some examples are fighting words, obscenity, child pornography, libel and slander, crimes involving speech, threats, violation of copyright rules.

Freedom of Expression in Thailand

Freedom of expression was first guaranteed in the 1932 Constitution of Thailand and continued up until the 2007 Constitution. In 2007, a various pieces of legislation were also enacted to replace an interim charter imposed by a military government in 2006. The 2007 constitution restored and extended freedom of expression as stated in Section 45:

“A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicize, and make expression by other means.

The restriction on the liberty under paragraph one shall not be imposed except by virtue of the provisions of the law specifically enacted for the purpose of maintaining the security of the State, safeguarding the rights, liberties, dignity, reputation, family or privacy rights of other persons, maintaining public order or good morals or preventing the deterioration of the mind or health of the public.

The closure of a newspaper or other mass media business in deprivation of the liberty under this section shall not be made.

The prohibition of a newspaper or other mass media business from presenting information or expressing opinions in whole or in part or imposition of interference by any means in deprivation of the liberty under this section shall not be made except by virtue of the law enacted under paragraph two.

The censorship by a competent official of news or articles before their publication in a newspaper or other mass media shall not be made except during the time when the country is in a state of war; provided that it must be made by virtue of the law enacted under paragraph two. The owner of a newspaper or other mass media business shall be a Thai national.

No grant of money or other properties shall be made by the State as subsidies to private newspapers or other mass media.”

While freedom of expression are guaranteed by the Thai constitution, there are some provisions in other laws that limit freedom of expression in Thailand. For example, the 2007 Internal Security Act grants the government sweeping powers in the event of vaguely defined security threats, including the authority to detain suspects for 30 days without charge.

Under the Criminal Law, defamation is a criminal offense and can be punished with fines and prison terms of up to two years. On several occasions, journalists were threatened with defamation suits by government authority. The Criminal Law states that:

Section 326. Defamation

Whoever, imputes anything to the other person before a third person in a manner likely to impair the reputation of such other person or to expose such other person to be hated or scorned, is said to commit defamation, and shall be punished with imprisonment not exceeding one year or fined not exceeding twenty thousand Baht, or both.

Section 327. Defamation to the Family

Whoever, imputing anything the deceased person before the third person, and that imputation to be likely to impair the reputation of the father, mother, spouse or child of the deceased or to expose that person hated or scorned to be said to commit defamation, and shall be punished as prescribed by Section 326.

Section 328. Defamation by Publication

If the offence of defamation be committed by means of publication of a document, drawing, painting, cinematography film, picture or letters made visible by any means, gramophone record or another recording instruments, recording picture or letters, or by broadcasting or spreading picture, or by propagation by any other means, the offender shall be punished with imprisonment not exceeding two years and fined not exceeding two hundred thousand Baht.

Like other monarchy countries, Thailand has been confronted with the difficulties of allowing people to have freedom of expression, while protecting the constitutional monarchy from defamation. Lèse majesté is the crime of violating majesty, an offence against the dignity of a reigning sovereign or against a state. It has been prohibited by the law of Thailand since 1908. Following the Thai military coup in 2006, lèse-majesté laws have been invoked as a weapon against political opposition and to suppress the free political discussion.

Article 112 in Thailand’s Criminal Code contains a provision of lèse-majesté, and has made it punishable by up to three-to-fifteen year imprisonment for each offence that “defames, insults, or threatens the King, Queen, and the Heir-apparent or the

Regent.” Additionally, the 2007 Computer-Related Offences Commission Act, better known as the Computer Crimes Act (CCA) has also extended the range of Thailand’s lèse-majesté laws to cyberspace. Even though lèse-majesté is not explicitly mentioned in the CCA, often times the offenders were charged under the provision of ‘national security.’ The recent proliferation of lèse-majesté cases has shown that the CCA usually being used in conjunction with Article 112 to “suppress critics of the monarchy and persecute perceived government enemies.”

Up until January 2016, the military junta has brought at least 56 lèse majesté cases, most for comments posted or shared online. Military courts have routinely imposed harsh sentences than did the civilian courts (Human Rights Watch, January 28, 2016).

Press Freedom in Thailand

Focusing on the media, press freedom in Thailand suffered significantly in the wake of the military coup on May 22, 2014. Right after the coup, freedom of expression of people and journalists in Thailand were threatened by the NCPO which issued broad orders prohibiting criticism of its actions, shut down some media outlets, blocked access to many websites, and sometimes summoned members of the media to report to authorities for questioning. Politicians and journalists who failed to comply with the orders usually were invited for “Attitude Adjustment.” The new military regime aggressively enforced existing laws against defamation and lèse-majesté. Many journalists faced intimidation, summonses from authorities, and arbitrary detention throughout the year (Freedom House, 2015). In 2004 Thailand ranked 59th out of 167 countries in the worldwide Press Freedom Index from Reporters without Borders and then has fallen rather steadily. In 2015 Thailand’s Press Freedom was ranked 134th out of 180 countries worldwide and ranked 13th among other Asian Pacific countries. The performance of 180 countries is based on a range of criteria that include media pluralism and independence, respect for the safety and freedom of journalists, and the legislative, institutional and infrastructural environment in which the media operate (Reporters Without Borders, 2015).

Table 1: Annual press freedom index on Thailand (Reporters Without Borders, 2004-2015)

Year	Press Freedom Index Ranking (Reporters Without Borders)	Press Freedom Status (Freedom House)	Press Freedom Score (Freedom House)
2004	59	Partly Free	39
2005	107	Partly Free	42
2006	122	Partly Free	50
2007	135	Partly Free	59
2008	124	Partly Free	56
2009	130	Partly Free	57
2010	153	Partly Free	58
2011	137	Not Free	62
2012	137	Partly Free	60
2013	135	Not Free	62
2014	130	Not Free	64
2015	134	Not Free	75

Source: REPORTERS WITHOUT BORDERS. (2015) *World Press Freedom Index: Thailand*. [Online]

Available from: <https://index.rsf.org/#!/index-details/THA>. [Accessed: 1st February 2016].

Attitude Adjustments

Since the military coup in May 2014, Thailand's ruling military has employed its method of "Attitude Adjustments" to neutralize its critics and opponents. Those "invited" for attitude adjustment are detained without charge and interrogated for a period of time that might vary from hours to 7 days or longer. The treatment for those "invited" for attitude adjustment ranges from effusive politeness to terse language; from being kept in a military camp where you can walk around and play sports to

being detained in a small room, depending on his/her learning curve toward the attitude adjustment process (Rojanaphruk, 2015).

Puangthong Pawakapan, an associate professor at Chulalongkorn University's Faculty of Political Science, was asked to report to the NPCO in July 2015 to "exchange ideas" on her role as one of the members of a fact-finding committee investigating the 2010 military crackdown on red shirt protesters. She was interrogated by nine male officers from the National Intelligence Agency and police. ".....They said the meeting was to exchange ideas, but they didn't listen to us at all. When I answered their questions concerning the fact-finding report, they said I was biased....although their voice sounded polite, it was aggressive. I felt threatened....They want to cause a climate of fear...." It's a psychological war which not only affects the person but also their families (Bangkok Post, September 27, 2015).

Pravit Rojanaphruk was a senior reporter and columnist for English language *The Nation Newspaper* for 23 years. He was detained in September 2015 because statements made by him violated junta policies on information. During the detention, he was interrogated for six hours. ".....They wanted to know things like my nickname, details about my parents, their profession, my siblings, my political network, my address, and so on. They also asked why I was against the coup and critical of the lese majeste law...." (Rojanaphruk, September 23, 2015). Pravit was detained from September 13-15, 2015. He resigned from the post a day after he was released from detention and revealed what he experienced during the "attitude adjustment" session.

Figure 1: Journalist Pravit Rojanaphruk protesting outside Thailand's military headquarters following the coup in May 2014.



Source: <http://www.bbc.com/news/world-asia-34249428>

Sakda Sae lao is a prominent editorial cartoonist with the local language *Thai Rath* newspaper, also known by his pen name "Sia." He was first summoned for the "attitude adjustment" by the military two weeks after the May 22 coup, and later in October 2015 he was warned that he could be prosecuted for his future work. The military authorities claimed that several of his cartoons satirized Prime Minister Prayuth's speech. The authorities told Sakda he would not be punished for his existing drawings, but that he could be prosecuted if future caricatures are perceived to distort the truth. The Committee to Protect Journalists (CPJ) condemns the harassment and calls on Prime Minister Prayuth Chan-ocha to end his military government's intimidation campaign against journalists (CPJ, October 5, 2015).

The majority of those who had experienced the "attitude adjustment" sessions said that they were asked to express their views on various issues, such as the monarchy, the recent coup and former Prime Minister Thaksin Shinawatra. Most of them agreed that the methods used will only increase in intensity to make the experience more frightening for those who refuse to remain silent (Bangkok Post, September 27, 2015).

Conclusion

Right after the coup, freedom of expression of people and journalists in Thailand were threatened by the NCPO. Currently most media outlets in Thailand are allowed to operate under the supervision of the military and government authorities. In October 2015 the military government appointed the committee to draft the new constitution after a previous draft was rejected, and the newly drafted Thai constitution also guarantees freedom of expression in Section 34-36.

The military in Southeast Asian countries have realized that national security is an excellent excuse for silencing criticism and deterring investigative reporting. Even though the military government in Thailand has sharply suppressed media criticism with heavy-handed rule, the proliferation of various and diverse media will likely make the junta's control of the media ineffective or problematic.

Thailand's ranking on press freedom in 2015 has fallen to 134th out of 180 countries worldwide due to the political circumstances. However the situation in Thailand seems to be better than some neighboring countries in ASEAN since no journalists or netizen were killed. Fraleigh and Tuman (2011) argued that freedom of speech has been limited in many cultures because a number of conditions must be met before it can be realized, and Thailand is not an exception. More than 100 years the freedom of expression in Thailand has been limited by the *lèse majesté* law and sometimes the ruling government used the law to oppress their opponents or criticism. The "attitude adjustment" method employed by the NCPO may be a threat to freedom of expression, on the other hand it resulted in an increasing self-censorship among the media and general public. Thai style freedom of expression therefore is determined by Thai culture, political condition, and the loyalty to the monarchy.

References

- BANGKOK POST. (September 27, 2015) *Military Mind Games Play Out Under Strict Insecurity*. [Online] Available from: <http://www.bangkokpost.com/print/708280/>. [Accessed: 1st February 2016].
- BBC NEWS. (September 14, 2015) *Thailand Journalist Detained for "Attitude Adjustment*. [Online] Available from: <http://www.bbc.com/news/world-asia-34249428>. [Accessed: 1st February 2015].
- CPJ (COMMITTEE TO PROTECT JOURNALISTS). (October 5, 2015) *In Thailand, Cartoonist Detained and Warned He Could Be Prosecuted*. [Online] Available from: <https://cpj.org/2015/10/in-thailand-cartoonist-detained-and-warned-he-coul.php>. [Accessed: 1st February 2016].
- FRALEIGH, D.M. and TUMAN, J.S. (2011) *Freedom of Expression in the Marketplace of Ideas*. Thousand Oaks, CA: SAGE.
- FREEDOM HOUSE. (2015) *Freedom in the World 2015: Thailand*. [Online] Available from: <https://freedomhouse.org/report/freedom-world/2015/Thailand>. [Accessed: 1st February 2016].
- HUMAN RIGHTS WATCH. (January 28, 2015) *Political Prisoners in Thailand*. [Online] Available from: <https://thaipoliticalprisoners.Wordpress.com/tag/human-rights-watch/>. [Accessed: 1st February 2016].
- NUNCHANOK WONGSAMUTH. (September 27, 2015) *Military Mind Games Play Out Under Strict Insecurity*. [Online] Available from: <http://www.bangkokpost.com/news/specialreports/708280/military-mind-games-play-out-under-strict-insecurity>. [Accessed: 1st February 2016].
- REPORTERS WITHOUT BORDERS. (2015) *World Press Freedom Index: Thailand*. [Online] Available from: <https://index.rsf.org/#!/index-details/THA>. [Accessed: 1st February 2016].
- ROJANAPHRUK, P. (2015) *How Thailand's Military Junta Tried to 'Adjust My Attitude' in Detention*. [Online] Available from: <http://thediplomat.com/2015/09/how-thailands-military-junta-tried-to-adjust-my-attitude-in-detention/>. [Accessed: 1st February 2016].