

# Communication Law and Policy: Asia

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Communication law and policy in Asia covers a spectrum of issues involving widely varying political, cultural, and legal contexts across dozens of countries in the world's largest and most populous continent. While it can be difficult to generalize legal trends in the region because of a lack of conformity of interests and laws, or of what even constitutes Asia, several observations about the more significant developments at both the public level of media–government conflict and at the private level involving civil litigation can be made.

The rise in emerging democracies, burgeoning media markets, anti-terrorism efforts, and new media technologies have been among the major factors affecting communication law and policy in Asia in the latter part of the twentieth and early twenty-first centuries. The manner in which individual countries have responded to these changes has resulted in part from the unique historical traditions in the region.

## HISTORICAL BACKGROUND

For many of the more than thirty jurisdictions in Southeast, East, and South Asia and Oceania, the region's long history of European colonization continues to have a major impact on media law and policy and the type of legal system they inherited. The common law system, imposed in territories under British rule, dating back to the nineteenth century, remains in such former colonies as India, Malaysia, Singapore, Brunei, Australia, New Zealand, Fiji, and Hong Kong.

The French, Dutch, and Portuguese introduced civil law systems in their Asian colonies, including Vietnam, Cambodia, Laos, Indonesia, and Macau. Even without colonization, several jurisdictions – Japan, South Korea, China, Taiwan, and Thailand – adopted European-style civil codes. The significance of these systems extends to media law. For example, British sovereignty bequeathed many harsh laws regarding defamation, official secrets, sedition, and contempt of court to its common law progenies.

Control by Spain and the United States over the Philippines left a legal system based on Spanish and Anglo-American law, a combination of civil and common law. In fact, this blending of influences, including customary and religious law, in a common law or civil system is a distinctive characteristic of many Asian nations. Islamic law or laws protecting Islamic interests are featured in Afghanistan, Bangladesh, Brunei, Indonesia, Malaysia, Pakistan, and East Timor, which have sizable Muslim communities. Nepal's legal system is based on Hindu legal concepts and English common law.

As religion plays a larger role politically throughout the world, *nonsecular restrictions* figure prominently in press freedom issues in Asia (→ Freedom of the Press, Concept of). Indonesia, home to the world's largest Muslim population, prohibits conduct or comment that is hostile or abusive to a religion practiced in that country (Criminal Code, Article 156[a]). In 2006, a newspaper editor in Jakarta was charged with blaspheming Islam by

publishing a cartoon of the Prophet Mohammed that first appeared in a Danish newspaper. Afghanistan has decreed that no law can be “contrary to Islam.” A Kabul television station was fined for airing Indian films considered insulting to Islam; an editor was sentenced to two years in prison for articles criticizing stoning and other Islamic punishments. In 1990, Pakistan’s Federal Shariat Court, which examines legal matters to ensure they do not contravene Islamic principles, held that “the penalty for contempt of the Holy Prophet . . . is death and nothing else.”

Concern over morals also affects the media in more conservative Asian cultures. In 2007, an article about a sex survey with questions about incest and bestiality published in a student university magazine in Hong Kong was ruled to be indecent. In Indonesia, religious groups protested the acquittal of the editor of *Playboy Indonesia* on indecency charges for publishing photographs of scantily clad women (→ Morality and Taste in Media Content).

As one of several remaining communist countries in Asia, the *People’s Republic of China* continues to loom large with its unusual form of media regulation. Its law combines elements of Germany’s civil code, Soviet socialist law, and traditional Chinese culture, emphasizing detailed administrative control over all aspects of media practice. But because of the rapid expansion of its economy, industrialization, and its admission to the World Trade Organization in 2001, rule of law in China and its impact on journalists are evolving. A draft law that would have fined Chinese media each time they reported on “sudden events” without prior government authorization was withdrawn after media protests. In late 2006, authorities announced a relaxation of reporting rules for foreign press (but not applicable to mainland journalists) in the run-up to the Beijing 2008 Olympics. China, however, is not expected to relinquish most of its tight controls over its media in the near future.

## **DEMOCRACIES, POLITICAL INSTABILITY, AND THE PRESS**

A dramatic increase in the number of democracies in Asia, particularly since the 1980s, has generally resulted in more legal protections for press freedoms and, for some nations, the repeal of harsh laws from earlier, more restrictive eras. Countries such as Taiwan, South Korea, and the Philippines best typify this phenomenon as they have made the transition from extended periods of martial law to robust democracies. The establishment of democracies, however, has also brought concurrent concerns by governments that public criticisms foster political instability, and thus in a number of Asian countries, a legal backlash against the media has occurred. Military coups such as in Pakistan (1999) and Thailand (2006), and states of emergencies such as in the Philippines (2006) and Bangladesh (2007) have dealt further setbacks to a free press.

Most of the Asian nations guarantee freedom of expression and speech in their constitutions, but their political and legal environments often create quite different realities, notably in China, where Article 35 of the constitution (1982) states: “Citizens of the People’s Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.”

Governments also frequently use press laws that regulate print media to censor them, typically by withdrawing or withholding licensing and permits. Malaysia’s Printing

Presses and Publication Act can revoke licenses any time without judicial review. Singapore's Newspaper and Printing Press Act gives it control over content for both foreign and local publications. A much rarer situation is Mongolia's 1998 Media Law, which bans government censorship.

Despite the political and legal restrictions they face, the region's media have enjoyed expansion during a period of economic growth after recovery from the Asian economic crisis of the late 1990s. That growth has fostered competition, which in time led to concerns about press responsibility, especially in the areas of defamation and privacy.

Asia has seen an explosion in the number of *defamation cases*, both criminal and civil, filed by government officials, politicians, and others against the media. Most Asian jurisdictions have longstanding criminal defamation laws, although they have been long dormant in some places, such as Hong Kong and Singapore. Nonetheless, criminal prosecutions continue to be brought. The husband of Philippines President Gloria Macapagal-Arroyo brought more than 40 criminal actions against journalists critical of him. He dropped the actions only after the journalists filed a counterclaim for violation of their constitutional rights. East Timor, as one of the youngest democracies in Asia, installed a penal code in 2005 with harsh penalties for criminal defamation, with specific protection for public officials. Under Article 173, harming an official's reputation can yield a three-year prison sentence and unlimited fines.

At the same time, though, there has been a *move toward more freedom of expression* in these cases. Courts in Taiwan, Thailand, Indonesia, Japan, South Korea, and India have ruled in favor of the media, establishing new principles of press protection in criminal defamation. In a 1997 landmark case, a Taiwanese court dismissed criminal charges against two journalists for an article reporting that the business manager of the then-ruling party had offered a \$15 million contribution to US president Bill Clinton's re-election campaign fund; the ruling endorsed a good-faith defense on matters of public interest. In Japan, the courts have upheld a journalist's reasonable belief that statements made concerning matters of public interest were true, even if that belief later turned out to be wrong. Indonesia's Supreme Court in 2006 overturned a defamation conviction against a magazine editor, ruling that a civil press law was the more appropriate mechanism to better protect press freedom. Cambodia and Sri Lanka have repealed their criminal defamation offences altogether.

## ANTI-TERRORISM LAWS AND THE REVIVAL OF SEDITION

Following the September 11, 2001 terrorist attacks in the United States and the Bali bombing in Indonesia in 2002, Southeast Asian countries have been identified by some as the "second front" in the global war against terrorism. A number of Asian countries (e.g., Indonesia, Thailand, and the Philippines) have passed or were considering anti-terrorism laws that would have a major impact on press freedom and other civil liberties. Nations in the region have also been reviving the use of existing sedition laws, which criminalize speech or conduct that incites resistance to or insurrection against authority.

In its 2005 anti-terrorism legislation, Australia, long a beacon of press freedom, strengthened its *sedition laws*, the first modern democracy to do so in decades. Like many former British colonies, Australia still retained the sedition laws it inherited but rarely invoked. In 2006, New Zealand prosecuted its first sedition case in more than 80 years.

Malaysia, which had not used its 1948 Sedition Act in years, began using it to curb political dissent, with “seditious tendency” as its vague criteria. In a three-year period, Indonesia brought more than a dozen sedition prosecutions. In 2005, Singapore sentenced two ethnic Chinese bloggers under its Sedition Act for posting remarks offensive to the minority Muslim-Malay community on their websites. In 2007, Philippine authorities charged a publisher and two columnists with incitement to sedition for articles that alleged corruption in the military. Australia also enacted a covert surveillance law that allows phone tapping against journalists and others. Hong Kong passed a similar surveillance law in 2006. The threat of terrorism in Southeast Asia predates the attacks of the twenty-first century. The rise in militant Islamic groups that push for separate Islamic states has been ongoing for decades.

### ACCESS TO INFORMATION

Laws ensuring access to government records have gained acceptance worldwide, with more than 60 countries having adopted → freedom of information laws as of 2007. The trend, however, has been slower to take hold in Asia, with only half a dozen countries having enacted national laws. They are Australia (1982), New Zealand (1982), Thailand (1997), South Korea (1998), Japan (2001), and India (2005).

Even without national freedom of information legislation, several Asian countries had acknowledged constitutional status for the right to government information. The Philippines explicitly referred to the right to information in its 1973 and 1987 Constitutions (“The right of the people to information of matters of public concern shall be recognized. Access to official records and documents, and papers pertaining to official acts, transactions, or decisions as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law”). Before Thailand adopted its freedom of information law, its 1991 constitution expressly recognized the right to information, which was retained in its 1997 constitution.

India’s courts in the 1970s recognized a constitutional right as implicit in freedom of speech and expression. In 1989, South Korea’s Constitutional Court held that there was a constitutional right to information “as an aspect of the right of freedom of expression and specific implementing legislation to define the contours of the right was not a prerequisite to its enforcement.” In the mid-1990s, the National Assembly of South Korea enacted a freedom of information act, and it revised the statute in its entirety in 2004. The Korean freedom of information law guarantees Koreans’ “right to know” and aims to ensure the citizens’ participation in governance and the transparency of their government.

Despite constitutional recognition or the existence of federal or local laws, citizens and media often face excessive *court costs and improper denials of requests*. Increasingly, they are also finding denials for national security reasons or as contrary to official secrets laws. In 2007, Philippines President Arroyo issued an executive order to restrict public and media access to official information through the creation of a “National Security Clearance System” that would “protect and ensure the integrity and sanctity” of classified information against “enemies of the state.” While freedom of information laws have usually exempted various categories of information, including national security, the latest government efforts around the region citing this category indicate heightened concern over the issue.

Some restraints, however, do exist. South Korea, pursuant to its Military Secrets Protection Act, requires that secrets marked as classified must follow legal procedure and create a clear danger to national security. New Zealand, one of the first jurisdictions in Asia to pass a freedom of information law, also simultaneously dismantled its Official Secrets Act.

The right-of-access trend is likely to continue, albeit slowly, with other countries, such as Indonesia and Nepal, also considering enactment of a freedom of information law. Even China has experimented with a lesser form, an administrative access-to-information scheme, in several large provinces, and in 2007 authorities issued draft national legislation and a regulation mandating more government transparency. (China, however, also has stepped up its prosecutions of journalists and writers for violating state secret laws.) Right-of-access advocates hope further developments will help establish an affirmative right of the public to access the governing process in Asia's developing democracies.

### INTERNET AND COPYRIGHT REGULATION

The rapid escalation in the use of the → *Internet* and other technologies to communicate and publish has spawned particular concern among Asian governments because of their potential for contributing to political opposition. The technical know-how and determination of Internet users in some Asian countries have created a fast-changing game of regulatory chess between the newly technically empowered and governments struggling to contain what they view as harmful content. This has led to varied attempts to monitor and control the Internet, including shutting down sites, filtering, enacting new regulatory regimes, and applying more traditional criminal and civil laws (→ Internet Law and Regulation).

China has been especially innovative and aggressive in *Internet filtering*, imposing regulations, and prosecuting online writers for violation of laws on state secrets, subversion, and sedition. Malaysia arrested a blogger in 2007 under its Official Secrets Act for posting comments about the country's internal security system; this was despite Malaysia's 1998 Communications and Multimedia Act and its guarantees against Internet censorship. Other countries with strong Internet controls include Vietnam, Burma, Pakistan, and Thailand.

Newer regulatory schemes include Thailand's 2007 *cyber crime law*, which addressed computer-related offences such as hacking and data theft, but critics feared it would be used to regulate online content. The law gave the government broad authority to shut down or block websites, seize computers, and penalize individuals who use proxy servers to access banned sites. Also, under the law, damaging someone's reputation by altering a picture online can result in up to three years in prison and large fines. In Japan, the government was considering legislation that would regulate online video programming to the same extent as television broadcasting. A number of Asian jurisdictions, including Australia, Hong Kong, Japan, New Zealand, and South Korea, however, maintain few specific controls over the Internet.

Because of international treaties and agreements such as the Berne Convention and with the World Intellectual Property Organization and the World Trade Organization, there are not as many differences among Asia's → *copyright laws* as there might be in other areas of law. Different legal systems can have similar laws, with some differences, of

course. For example, the fair dealing defense is more common in the countries deriving from common law systems. There can also be unique national characteristics such as Japan's protection of *dojinshi*, which are self-published works, usually *manga* or novels.

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