

BRIEFING PAPER

ON THE TREND AND TRAJECTORY OF REPRESSIVE LAWS IN ASIA

The brief created by extracting the information FORUM-ASIA's publication titled, *The Instrument of Repressions : Regional Report on the status of Freedom of Expressions, Assembly and Association in Asia*. The brief aims to elaborate the utilization of repressive laws within the Asian countries to restrict freedom of expression, peaceful assembly and association that contributes to the shrinking civic space in the region. Social justice, the rule of law and democratic values are under attack from leaders who tolerate no dissent from the authoritarian populist regime that gaining power and influence across the region. In addition, the regional trend of further oppression to the civic space, contributes to the heightened intimidation and risks faces by Women and Human Rights Defenders across the region. Furthermore, the brief also posits recommendations for the improvement of the existing policies, which would enable progressive action by governments, policymakers, duty-bearers, non-governmental bodies, and other stakeholders. We hope that this brief will help nuance the imminent situation on the utilization of repressive laws that affecting Freedom of Expression, Assembly and Association in the region.



Sweden
Sverige

PART 1

REGIONAL TREND AND TRAJECTORY

The broad picture that emerges from this regional study is one of shrinking civil society space as an increasingly extensive web of legislation criminalizes dissent, but a number of sub-trends can also be drawn out.

- Several countries, such as Myanmar and Sri Lanka, despite newly elected self-styled liberal Governments, maintain repressive laws and continue to use them despite rhetoric to the contrary and lip service to human rights.
- Other countries, including many former British colonies, continue to openly and actively use archaic colonial-era laws to suppress civil society, while adding new laws tailored to better target activities of which their Governments disapprove. Falling in this category are Malaysia, the Maldives, Bangladesh, Pakistan, Singapore, and India.
- Other countries such as Cambodia rely more on a raft of recent repressive legislation passed at a rapid pace in the past few years.
- Countries such as China, Vietnam and Laos continue to maintain a totalitarian grip upon society and constantly tighten it through a complex web of legislation and regulations, making it possible to prosecute nearly any act.
- Thailand is increasingly moving to the totalitarian grip direction. Already its laws on assembly, defamation and sedition impose an explicit and complete repression of rights in the way that totalitarian states do, while its laws on cybercrime and the press are edging ever closer to this category.
- On the other side of the spectrum, countries with relatively less restrictive laws such as the Philippines are also rapidly sliding backwards on rights. Indonesia to

some extent also falls in this category, with increasingly repressive laws being proposed on lesbian, gay, bisexual, trans, and/or intersex (LGBTI) rights and the increasing use of blasphemy laws.

- Other countries such as South Korea and Taiwan, while casting themselves as fully compliant with international human rights standards, in reality continue to restrict freedoms. For instance, freedom of assembly in both countries remains heavily restricted and subject to -often violent- state repression.

The analysis also shows how countries can have very inconsistent records on respect for rights. In the case of Indonesia, Myanmar, Sri Lanka, India, Pakistan or the Philippines, there are clear regional disparities: rights that are respected in the capitals may be extremely restricted in areas considered by the Government to be 'conflict areas.' Another distinction is in the laws themselves, with some rights being relatively well respected and others very restricted. For instance, many countries have laws that technically permit a relatively free press and generally respect -at least in law- the right to unionize, but have harsh national security and defamation legislation. For example, Sri Lanka has a fairly free press but also continues to detain innocent people under the draconian Prevention of Terrorism Act; Indonesia's legislation broadly respects the right to unionize, but severely represses religious expression; and South Korea allows Non-governmental organisations (NGOs) to operate with relative freedom but restricts expression under national security and cybercrime laws.

The laws that are most consistently repressive across the region are defamation laws (19 of 20 countries have criminal defamation laws), laws criminalizing assembly (19), cybercrime and telecommunications laws (18), NGO laws (15), and sedition laws (14). Of these, several have experienced a significant surge in legislation in the last decade: anti-terrorism laws, cybercrime and telecommunications

laws, NGO laws (particularly pertaining to funding and international contacts) and assembly laws have all been passed in numerous countries in the region in the recent past.

Furthermore, the repressive laws further oppressed social movement and hence W/HRD are at risks to be targeted by state and non-state actors to be harassed through judicial system in the country. Withal, it is evident that the repressive laws are also intended and utilizes to 'govern' online platform for expression, assembly and association. Furthermore, the recent cases that affecting W/HRD and or CSOs are utilizing ambiguous administrative laws that dictate the organization's registration, source of (funding) resources and taxation and hence further limits the freedom of assembly and association in national level.

PART 2 THE STATUS AND FINDING OF EAST ASIA

Freedom of expression is heavily restricted in East Asia. Governments utilise a range of legal means to control and monitor information online and offline. In **China**, publication houses are required to have Government licenses. Unauthorised publishers, news agencies, and journalists face the risk of being closed down if found to be non-compliant to regulations. The State Public Officials Act in **South Korea** and the Social Order Maintenance Act in **Taiwan** both restrict individuals attempting to express opinions that may be detrimental to 'public order.'

Censorship and heavy restrictions have also encroached cyberspace. **China's** National Security Law contains broad provisions designed to control and manage online content. A 2016 CyberSecurity Law further strengthens existing censorship regulations and mandates Internet service providers to actively monitor customers' accounts. **South Korea's** Network Act and Mongolia's

state-run Communications Regulatory Commission regulate online freedom of expression and empower government bodies to monitor and censor online content.

Furthermore, **freedom of assembly** is highly controlled in East and Central Asia. Under **China's** Assemblies, Processions, and Demonstrations Law, organisers are burdened with unreasonable obligations and liabilities, and are subjected to prosecution if the assembly does not follow guidelines set in the application. In **Mongolia**, the Law on Demonstrations and Meetings is severely imposed on environmental and sustainable development demonstrations. Police officials in **South Korea** can cancel any event as they see fit through the Assembly and Public Demonstrations Act, usually citing concerns about 'traffic disruption' and 'public safety.' In **Taiwan**, the Social Order Maintenance Act is often misused to penalise individuals who 'harass' residents, or who are alleged to be interfering with Government duties.

Withal, **freedom of association** in **China** remains restrictive. NGOs are subjected to invasive monitoring and intimidation. The Foreign NGO Management Law acts a restriction mechanism for foreign NGOs by implementing a cumbersome and difficult registration process . There are fewer restrictions in **South Korea** and **Taiwan**, but the **Civil Act** and **Civil Associations Act**, respectively, grant both Governments to revoke an organisation's registration without much basis in law. Migrant workers in **Mongolia** are not allowed to form unions, as that extends only to citizens.

These laws have been used against government critics, and stifle dissenting views that relate to both the political and civic space. **Human rights defenders** face heavy punishments, including intimidation, harassment, and prosecution (see sample case). **South Korea's** Park Geun-Hye administration used the Network Act to prosecute critics. These included the sentencing of Park Sung-su for printing material critical of the Government, and the filing of defamation cases against six

journalists who had published a report on a leaked document. While the atmosphere for HRDs in **Taiwan** is relatively free, some activities have been charged under the Social Order Maintenance Act (SOMA) for attempting to bring attention to domestic issues. A lack of enabling laws for the protection of human rights defenders in **China, Mongolia** and **South Korea** have also limited recourses for HRDs in cases of harassment or repression.

EMBLEMATIC CASE IN EAST ASIA

China employs its State machinery to restrict freedom of expression online. Human rights defenders face some of the harshest levels of repression, as the Government tries to maintain total control. As well as human rights defenders, journalists and lawyers have been victimised by the State's laws restricting freedom of expression. 2015 to 2016 saw the detention of hundreds of human rights defenders and lawyers, with some tortured and forced to make confessions. China's laws criminalise any form of opposition to the ruling Communist Party, and have also been interpreted to mean restrictions on discussions on religious or ethnic minorities, further limiting the space for dialogue.

PART 3 THE STATUS AND FINDINGS OF SOUTH EAST ASIA

Restrictions on the practice of **freedom of expression** in South East Asia exist under the guise of preserving national interests, national security or protecting a country's morals or religious beliefs. These include **Cambodia's** Press Law, which prohibits the publication of information that may compromise national security, **Indonesia's** Broadcast Act which limits broadcast content, while **Myanmar** and **Malaysia** both have laws that limit the printing or publishing of information. In **Laos**, the

Constitution bans information that can be seen as being against the country's interests. **Vietnam's** criminal code bans criticism of the government.

Timor Leste's Media Law restricts publications from releasing content that impinge on the right to honour and reputation, while **Singapore's** Undesirable Publications Act can ban publications deemed 'obscene'. Blasphemy and defamation laws carry with them heavy punishments. In **Indonesia** and **Thailand**, individuals can be charged for insulting authorities, leaders, or heads of the States.

Restrictions on freedom of expression extend to cybercommunications and telecommunications. **Cambodia** allows government monitoring of private conversations through its TeleCommunications Law. **Myanmar's** TeleCommunications Law allows providers to monitor communication services. **Thailand's** Computer Crime Act criminalises a wide variety of broad acts associated with online content.

State ownership and restrictions on foreign media further discourage State accountability. In **Malaysia**, the Immigration Law bars foreign media from indirectly participating in 'affairs of the State'. The government inspects all programme content of foreign media in **Vietnam**, and foreign journalists can be refused access for reporting on politically sensitive issues.

The governments of **Cambodia, Laos, Indonesia, Malaysia, Thailand,** and **Vietnam** also restrict **freedom of peaceful assembly** by requiring individuals to either provide notice or seek permits prior to holding public protests. In Vietnam, participants in illegal gatherings can face up to seven years of imprisonment and up to fifteen years for the organiser. In the Philippines, the law authorises the use of force in dispersing protests, with a violent dispersal in 2016 leading to two deaths. **Freedom of association** is severely undermined by legislation imposed on the registration and operation of organisations in **Cambodia, Laos, Indonesia, Malaysia, Myanmar, Singapore,** and **Vietnam.** In

Cambodia, the Law on Associations and Non-Governmental Organisations (LANGO) imposes burdensome registration requirements and has been used by authorities to threaten or close organisations. An emblematic case is the ban on the CSO coalition Situation Room for allegedly failing to maintain 'political neutrality'.

Repressive laws are used to target **human rights defenders** and political dissidents. They remain subject to fabricated charges, State-sanctioned violence, imprisonment and extrajudicial killings. In **Malaysia**, the Sedition Act has been used to prosecute those who speak out against the government and its policies. Political upheavals may also be used to justify further use of these laws against human rights defenders (see sample case). In **Cambodia**, four human rights defenders were given a six month sentence under a law prohibiting "insult and obstruction to a public official". The **Philippines** President has threatened human rights defenders speaking against the campaign against illegal drugs. Such cases illustrate the use of repressive laws against dissent.

EMBLEMATIC CASE IN SOUTH EAST ASIA

State leaders often utilise repressive laws to further gains and maintain political control. After the 2014 coup in Thailand, government criticism was explicitly banned. The Government also imposed the lese majeste law, Sedition, and political gathering ban to go after political dissidents, leading to significantly increased numbers of arrests.

PART 4 THE STATUS AND FINDINGS IN SOUTH ASIA

In Bangladesh and India, **freedom of expression**, particularly of the press is limited by various government controlled means such as control of licensing, content restrictions, and censorship. The Bangladesh's broadcasting Act under National Broadcasting Policy 2014 significantly curtails critical speech under vaguely defined clauses like that ridicules national ideas, sparks unrest, hurts religious values, ridicules law enforcement agencies, runs counter to Government or public interest. Free expression is also limited through the Broadcasting policy that obliges all broadcasters to air contents deemed of national importance. Likewise, Defamation is also illegitimately criminalized in Bangladesh that burdens the accused to prove such content was published for 'public good'. AKM Wahiduzzaman, a geography professore was jailed for defamation for a Facebook comment referring Prime Sheikh Hasina as 'pesudo scholar'. Furthemore, in India the Government's wide powers over the press and publishing houses has led the State to widely limit free expression despite the laws provide government with somewhat less space to censor or ban free speech. Much of the limitations come from Article 95 of the Penal Code that has powered Government to seize and forfeit publication suspected to incite enmity between groups, and insult religion. As a consequence, a number of novelists and academics have seen their works banned in India for reasons ranging from unconventional interpretations of history to revelations about private business entities.

In 2013, Calcutta high Court ordered a stay on *Sahara: the Untold Sotry*, a book by Ramal Tamal Bandyopadhyia for publishing details on a business conglomerate. In 2014, Penguin India was forced to pull its book on Hinduism written by an American academic. These legitimized harassment over free expression has led to rise in self-censorship. Similar is the case with the film industry in

India where heavy censorship is imposed under vaguely interpreted contents as 'offensive'. Likewise, defamation is also an offense in India which has high benchmarks for the accused to prove one's innocence leading the law open to be abused by the Government, especially politicians to target its critics. Between 2011 to 2016, Tamil Nadu Chief Minister Jayalaithaa filed nearly 200 defamation cases against journalists, media outlets and political rivals, a trend which has been practiced by many other politicians in India.

Free speech and expression is highly restrictive in Maldives, particularly of the press, in the current administration of Maldives despite the fact that free press is a Constitutionally guaranteed right in Maldives. The Government has adopted various legislations to penalize protests and free expression critical to the government, impose strong pre-publication censorship and tighten rules on media contents. With the backing of such laws, government has launched a full-on assault on independent media outlets and journalists in recent years. In 2016, Channel news Maldives was forcefully closed obliging the channel to express pro-government views only. Addu Live independent news website was blocked in the same year for revealing a government charity scandal. Likewise, staff of Haveeru media outlet are barred from working in any media-related field until February 2018. Defamation is also an offence in Maldives under The Protection of Reputation and Good Name and Freedom of Expression Actt imposes severe restriction of Freedom of Expression and forces extreme self-censorship in order to avoid imprisonment and heavy fines up to US\$ 130,000. Media outlets like Dhi TV, Dhivehi Online, DhiFM, and Raajje TV were all shutdown temporarily or permanently citing immense pressure from the government.

Furthermore, the Government of Pakistan has severe restrictions and control over freedom of the press and media imposed through provisions of government formed entities like National Broadcasting Policy, Electronic Media Regulatory Authority, Electronic (Programs and Advertisement) Code of Conduct. These prevents anyone

from airing or publishing contents that are deemed derogatory remarks on religious sects, promotes sectarianism, defamatory contents or contradicts Pakistan's ideology and religious values. The Government has been continuously placing ban on contents critical against the army, judiciary or law enforcement practices. Pakistan Broadcasting Corporation prohibits private radio stations from broadcasting news programs not created by the Corporation. In past several years, multiple television stations has been fined for broadcasting blasphemous contents. Books and magazines are similarly subjected to censorship, and material that is considered obscene is seized by the Government.

Lastly, since the election of President Sirisena in January 2015, the informal constraints on media and the application of repressive laws has been considerably eased, but the latter still remain, although they are not enforced in a repressive manner. The department of Parliamentary Reforms and Mass Media retains control over the registration and licensing of media outlets. Under the Powers and Privileges Act 1953, the Government has the ability to prosecute anyone who publishes the proceedings of a parliamentary committee before they are presented to Parliament. In 2015, former President Mahinda Rajapaksa threatened to charge employees of the Colombo Telegraph under the Act after the newspaper published Articles of a parliamentary investigation into a government bond scam.

PART V

KEY RECOMMENDATIONS

1

IMMEDIATE STEPS MUST BE TAKEN TO IMPROVE THE ATMOSPHERE IN WHICH W/HRDS CARRY OUT THEIR WORK AND ENSURE THAT THEY MAY SAFELY DO SO.

Harassment, intimidation and violence against W/HRDs must be brought to a halt by all means possible; including thoroughly investigating the crimes against them and prosecuting the perpetrators, as well as by reforming laws and institutions.

2

INSTITUTIONS CREATED TO PROTECT HUMAN RIGHTS MUST BE MADE MORE EFFECTIVE.

The National Human Rights Commission must take a more active role in protecting w/HRDs, specifically by setting up an W/HRD focal person and an W/HRD protection desk that can receive complaints and take action quickly.

3

IN ORDER FOR W/HRDS TO TRULY EXERCISE THEIR RIGHT TO FREEDOM OF EXPRESSION, A NUMBER OF PIECES OF LEGISLATION AND ARTICLES OF THE PENAL CODE MUST BE AMENDED OR REPEALED.

The criminalization of defamation is in violation of international standards on free expression, which hold that defamation must be a private matter to be settled by civil suits. Civil defamation laws must be proportionate, have a reasonable severity threshold and avoid fines, with the exception of very serious cases. Therefore, defamation and blasphemy should not be a criminal offence, hence any mention of defamation and blasphemy within the Penal Code must be repealed in their entirety.

4

RESTRICTIONS ON THE ABILITY OF MEDIA WORKERS' AND PUBLISHERS' TO COVER ANY ISSUES IN THE MANNER OF THEIR CHOOSING MUST BE LIFTED.

The Broadcast Act must be amended to ensure that limitations on foreign media are lifted, broadcasting licences are issued by an independent body, and Government censorship powers are scrapped.

1

THE LAW ON FREEDOM OF ASSEMBLY AND DEMONSTRATION MUST BE AMENDED TO REMOVE THE REQUIREMENT THAT PERSON SEEKING TO HOLD A PROTEST NOTIFY THE POLICE,

as well as to retract the police's power to deny permission for peaceful protests to take place. Restrictions on location and time must also be removed.