

GISWatch 2017
SPECIAL EDITION

UNSHACKLING EXPRESSION:

A STUDY ON LAWS CRIMINALISING EXPRESSION ONLINE IN ASIA



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)

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Unshackling expression: A study on laws criminalising expression online in Asia

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Supported by the European Union under the Instrument for Democracy and Human Rights (EIDHR) and the Internet Policy Observatory (IPO)



Published by APC
2017

Printed in India

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Global Information Society Watch 2017 | Special edition
Unshackling Expression: A study on laws criminalising expression online in Asia

ISBN 978-92-95102-86-6
APC Serial Number: APC-201711-CIPP-R-EN-DIGITAL-276



About the report: Unshackling Expression

Freedom of expression and opinion, the foundation stone of every free and democratic society, faces new and exacerbated challenges in online spaces. Throughout Asia and the world, people have taken to social media and online platforms to express themselves in ways that were not possible through traditional offline mediums. In response to this, and to the reach of the internet, states have sought to regulate and control online speech and expression. Offline regulations, typically in penal legislation, are applied to online spaces, to bolster internet-specific legislation. Legitimate expression on the internet is increasingly being redefined as cybercrime.

The range of expression online currently being criminalised includes content related to religion, sexual expression, gender identity, political opinion, dissent and factual statements – which is often prosecuted as blasphemy, obscenity, sexual deviance, sedition and criminal defamation. States often rely on legal provisions relating to public order, national security, decency and religion-based exemptions to crack down on legitimate forms of expression and dissent. Non-state actors, some of whom benefit from the tacit support of the state, have attacked (and sometimes killed) individuals for expressing themselves online.

In this special edition of GISWatch, *Unshackling Expression*, APC brings together analysis on the criminalisation of online expression from six Asian states: Cambodia, India, Malaysia, Myanmar, Pakistan and Thailand. While the report mostly focuses on criminalisation, curbs placed on expression using laws, regulations and policies are also discussed in parts. These countries were chosen for closer study based on preliminary assessment. These six states have several socio-political characteristics that are similar and varied. They have largely similar legal systems, since India, Malaysia, Myanmar and Pakistan are former British colonies and follow the commonwealth system. These countries were also chosen keeping in mind sub-regional balance and to bring to the table a diverse experience with laws and violations. All these states, amongst many others, criminalise online expression for a variety of reasons, which they set out in their constitutions and legislations. In these country reports, the authors identify and analyse the reasons for which online expression is criminalised, from defamation to sedition, hate speech to blasphemy, national security to contempt of court.

This special edition is ordered as follows: the first section provides an overview of the methodology adapted for the purposes of the reports, which is followed by an identification of the international standards on online freedom of expression and the regional trends to be found across the six states that are part of the study. This is followed by the country reports, which expound on the state of online freedom of expression in their respective states. With this report, we hope to bring to light the problematic trends in online freedom of speech and expression in Asia.

The first chapter, on the methodology developed by SMEX, an NGO based in Lebanon, looks at the reasons why we studied laws and the process followed for analysing offline and online legislation. For the purposes of the report *Unshackling Expression*, the methodology developed by SMEX was modified, specifically looking at freedom of expression online. However, the methodology proposed by SMEX can be applied to study any aspects of digital rights.

The chapter on international standards takes a close look at existing international norms starting with the guarantees and limitations prescribed in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights regarding freedom of expression and opinion. The extension of these guarantees to online spaces as affirmed by the Human Rights Committee, UN Special Rapporteurs and resolutions is captured, affirming that human rights offline apply online as well. The chapter on regional trends looks at the common trends in the countries studied, outlining key issues identified.

The following chapters on Cambodia, India, Malaysia, Myanmar, Pakistan and Thailand study the constitutional and legislative guarantees for freedom of expression domestically. They then look at the offline and specific online legislation and regulation, where applicable, used to criminalise and curb freedom of expression. Emblematic cases are also highlighted to shed light on how these provisions are used.

With this report, we hope to expand this research to other states in Asia and to make available a resource that civil society, internet policy experts and lawyers can use to understand the legal framework domestically and to reference other jurisdictions.

UNSHACKLING EXPRESSION: A study on laws criminalising expression online in Asia

Freedom of expression and opinion online is increasingly criminalised with the aid of penal and internet-specific legislation. With this report, we hope to bring to light the problematic trends in the use of laws against freedom of expression in online spaces in Asia.

In this special edition of GISWatch, APC brings together analysis on the criminalisation of online expression from six Asian states: Cambodia, India, Malaysia, Myanmar, Pakistan and Thailand.

The report also includes an overview of the methodology adapted for the purposes of the country research, as well as an identification of the international standards on online freedom of expression and the regional trends to be found across the six states that are part of the study. This is followed by the country reports, which expound on the state of online freedom of expression in their respective states.

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