

# Freedom of Expression and the Administration of Justice

## Part 1

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The principles of “freedom of expression” and “the administration of justice” exist as rights in many countries in the world. However these laws are also subject to a number of exceptions which aim to protect the rights linked to the administration of justice for the protection of national security, public order, public health or morals of that country. Major international and regional human rights instruments protect and balance both principles when considering a case in any type of court. While laws enshrine freedom of expression, what happens when the administration of justice is also interfered with? Contempt of court becomes an issue. Contempt of court happens in jurisdictions around the globe- how and why it affects freedom of speech shall be examined.

Before contempt of court is discussed, the concept of Freedom of expression should be understood more clearly. Freedom of expression is broadly defined as the freedom to speak freely without censorship. In terms of law, major international and regional human rights instruments on civil and political rights such as the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR) all have articles or covenants which protect freedom of speech. Freedom of expression is protected in Article 19 of ICCPR. With respect to specific countries such as the United States, “The First Amendment of the United States Constitution” protects the right to freedom of religion and freedom of expression from government interference. In the United Kingdom and other European countries, local laws and policies are altered to conform to the ECHR’s Article 10, which entitles all citizens to free expression. In Thailand, Section 45 of the 2007 Constitution states that “a person shall enjoy the liberty to express opinions, speech, writing, printing, publication, and expressions by other means”.

Contempt of court is the wrongful interference with the administration of justice. The purpose of limiting the rights of the freedom of expression is to protect the rights of litigants and the court (judicial process) from abuse and not the personal dignity of the court. Civil contempt occurs when a person violates a court order and is punishable usually by a fine while imprisonment is also possible. Criminal contempt is disrupting court proceedings (such as yelling in the court room), publishing content which may prejudice the right to a fair trial (trial by media), or criticizing the court or judges which may undermine public confidence in the judicial system (scandalizing the court). The administration of justice, particularly to a fair trial and the presumption of innocence is protected in Article 14 of the ICCPR, Article 19(3) of the ICCPR, and Article 10(2) of the ECHR. The application of laws and statutes related to contempt of court can be exemplified through several cases in specific countries.

The Contempt of Court Act 1981 in the United Kingdom exemplifies the development of laws that address the interference with legal proceedings which are pending. In the *Sunday Times vs. United Kingdom* case (1979), the newspaper proposed to publish an article on the marketing of thalidomide (a drug that caused birth defects) although there were ongoing settlement negotiations between parents and drug manufacturers. UK courts ruled that the article could not be published because it prejudged issues in litigation and would be interfering in the administration of justice and therefore contempt. However, the *Sunday Times* applied to the ECHR and The European Court ruled that the ban was an infringement on the right to freedom of expression: "The Court is faced not with a choice between two conflicting principles but with a principle of freedom of expression that is subject to a number of exceptions which must be narrowly interpreted... The Court concludes that the interference complained of did not correspond to a social need sufficiently pressing to outweigh the public interest in freedom of expression within the meaning of the Convention". More or less as a result of this case, The Contempt of Court Act 1981 was passed to signify the protection of the administration of justice.

In Singapore, also under common law (law that originated from England) because of its status as a former British colony, the Singapore Attorney General's Chambers (AGC) filed an application accusing the *Wall Street Journal Asia* (WSJA) of undermining the independence and integrity of the country's judiciary. Quoting 2 articles and a letter published in early 2008, AGC alleges that the WSJA attacked Singapore's rule of law and damaged the authority of its courts. The claim was not an unjust restriction of the free speech clause as under common law, contempt of court is a justifiable restriction on free speech as a matter of public interest.

The Criminal Court of Thailand also passed a conviction for contempt of court in 2007. Matchimathipataya party leader was given a month sentence in jail (but was later freed on bail) for giving media interviews following the court's verdict against him in the TPI Polene Plc's (TPIPL) share manipulation case. The court ruled that the party leader had not acted properly on the premises of the court which represents a breach of court authority according to Article 31 of the Criminal Procedures Code.

As can be seen in many jurisdictions around the world, both freedom of expression and administration of justice is addressed through laws that have been promulgated. Freedom of speech is a human right that is enshrined in the constitution of many countries. However, the interference with freedom of expression is a necessary measure in a democratic society to protect malicious intentions aimed at undermining the due administration of justice. The ongoing issue it seems may not be whether the preservation of the rule of law is required in a court but rather, what sort of balance should there be between freedom of expression and the administration of justice. As for Thailand, the inclusion of contempt of court laws in all types of courts is also a pending matter.