

## Freedom of Expression VS Protection of Dignity

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21 February 2012

The principle that aims to restrict false assertions against an individual, institution, emblem or flag which represent the state is enshrined in insult laws. These laws which seek to protect reputation and dignity are also called defamation laws. The crime of creating an offence against the dignity of a reigning sovereign or against a state is called lese majeste from the Latin *laesa maistas* (injured majesty). On the other hand, there is also a principle that sets out to uphold the human right to freedom of expression. Both principles are represented in national courts of law and major international and regional human rights instruments such as the European Convention on Human Rights (ECHR).

As both principles merit recognition, the evolution of lese majeste laws around the world have centered on striking an appropriate balance between the freedom of expression and the need to protect sovereign dignity. In light of the attention lese majeste laws in Thailand have received recently, examples from various constitutional monarchies offer a comparison to how defamation against the monarchy are enforced in legal instruments- namely the constitution, criminal code, or other legislative acts.

In Western Europe where both principles have been evolving throughout history, Denmark, The Netherlands, and Spain are constitutional monarchies that enshrine defamation laws in the Criminal Code.

Denmark's monarch is protected by the Criminal Code, Article 121 and the generally applied Article 267 which states that *Violation of "the personal honor of another by offensive words or conduct or by making or spreading accusations of an act likely to disparage another in the esteem of his fellow citizens," punishable by fine or simple detention....* In case that the target of the defamation is a monarch, the punishment is doubled while queen consorts or crown princes are the target, a 50% increase in punishment may be increased. There are no obvious examples of a case involving a member of the Danish royal family. The closest application of this law was probably in March 2011 when Greenpeace activists were charged for minor sentences for letting out a banner at the 2009 United Nations Climate Change Conference. The charge relating to the monarch was acquitted.

In The Netherlands, the Criminal Code, Article 111 states that *"Intentional insult of the King," punishable by up to five years imprisonment or a fine...* Article 112 and 113 also specify punishments on offenses to the royal family: *"A person who disseminates, publicly displays or posts, or has in stock to be disseminated, publicly displayed or posted, written matter or an image containing an insult of the King, the King's consort, the Heir Apparent or the spouse of the latter, or of the Regent" may be punished by up to one year imprisonment or a fine...* A lese majeste offense was committed in October 2007 when a 47 year old man was fined 400 Euros among other punishments for verbal abuses against Queen Beatrix and describing sexual acts he would like to perform on her to a police officer.

In Spain, although there were amendments to its 1995 Criminal Code to make it consistent with the Constitution, provisions covering insult (*injuria*) and calumny (*calumnia*) of the Royal Family, the government, certain government institutions and the army were retained. An example of an offense include the Spanish satirical magazine *El Jueves* publishing an issue with a caricature of the Prince of

Asturias and his wife engaging in sexual intercourse on the cover in 2007. The magazine was fined for lese majeste violations.

Moving on to the Asian Region, criminal defamation laws exist but are enforced differently in different countries. Constitutional Monarchies that exist in the region include Japan, Malaysia, Brunei, and Thailand.

In 1947, the provision in Japan's Criminal Code punishing criticism of the Emperor was repealed. General criminal defamation laws are applied but are seldom called upon as journalists and citizens are free to criticize public servants without fear. These laws include: Penal Code, Art. 230 (1907, amended 1947, 1991): *"(1) A person who defames another by publicly alleging facts, regardless of whether such facts are true or false, shall be punished with imprisonment with or without forced labor for not more than three years or a fine of not more than 500,000 yen (c. \$3,500 U.S.). (2) A person who defames a dead person shall not be punished unless such defamation is based on a falsehood."* There are no reported violations of defamation laws against the monarch in Japan.

Brunei's constitution in Part XI Miscellaneous: Immunity [S 65/04] 84B declares that *"(1) His Majesty the Sultan and Yang Di-Pertuan can do no wrong in either his personal or any official capacity. His Majesty the Sultan and Yang Di-Pertuan shall not be liable to any proceedings whatsoever in any court in respect of anything done or omitted to have been done by him during or after his reign in either his personal or any official capacity."* Furthermore, *"No person shall publish or reproduce in Brunei or elsewhere any part of proceedings ... that may have the effect of lowering or adversely affecting directly or indirectly the position, dignity, standing, honour, eminence or sovereignty of His Majesty the Sultan."* As the Sultan was Prime Minister, Defence Minister, Finance Minister, Supreme Commander of the Armed Forces, Supreme Head of Islam, chief of the Royal Brunei Police, head of the petroleum unit and of broadcasting & information services as of 2006, it is evident that there are mechanisms against criticism of the absolute ruler. Anyhow, there are no reported lese majeste acts committed.

In Malaysia, there are many specific provisions that protect the monarchy. Penal Code Section 499 Defamation: *Whoever, by words either spoken or intended to be read or by signs, or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.* The Sedition Act (1948) Criminalizes any speech with a *"seditious tendency."* The concept is broadly defined to include tendencies that *"bring into hatred or contempt or . . . excite disaffection against any Ruler or against any Government" ... or "question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III of the Federal Constitution or Arts. 152, 153 or 181 of the Federal Constitution."* Section 233(1) of the Communications and Multimedia Act 1998 (CMA), bans *"improper use of facilities or network service, etc."* There are many instances of lese majeste. On March 13, 2009 a crackdown against online criticism of the Sultan of Perak led to insult charges against six bloggers. A week later, a local businessman and his lawyer wife were charged for criticizing the Sultan on a web site. Proceedings were based on and on the Penal Code. Azrin Mohd Zain, one of the bloggers, pleaded guilty and was fined 10,000 Ringgits (about US\$2,800) and could face five months in prison if he fails to pay. The others decided to take their cases to trial, and faced maximum fines of 50,000 ringgits (approx. US\$13,800) or up to one year in prison.

Laws protecting the reputation of the monarchy in Thailand have a long tradition in Thailand, and have been enshrined in every version of its Constitution. The 2007 Constitution states that the *"King shall be enthroned in a position of revered worship and shall not be violated. No person shall expose*

*the King to any sort of accusation or action.” Lese majeste is an offense under the Penal Code: Section 112: Whoever defames, insults or threatens the King, the Queen, the Heir Apparent or the Regent shall be punished with imprisonment of three to 15 years. Section 133: Whoever defames, insults or threatens the Sovereign, his Queen or her Consort, the Heir Apparent or head of a foreign State shall be punished with imprisonment between one to seven years or a fine between 2,000 to 140,000 baht (approx. US\$60-4,100), or both. Thailand’s police chief also has the power to ban import of any publication deemed to contain lese majeste or contrary to public order or good morals. Under Thai law, anyone may file a police complaint against someone he or she deems to have defamed the monarch or others in the royal family. The Offenses Relating to Computers Act of 2007 addresses topics such as hacking and the distribution of pornography. Section 14 prohibits entering information into a computer system that constitutes an offense related to national security. It is punishable by up to five years in prison or a fine of up to 100,000 baht (approx. US\$3,000), or both. Section 20 permits authorities to seek court orders prohibiting distribution of information via a computer that could affect national security or contrary to public order or good morals. Since lese majeste offenses are treated as national security violations, these provisions allow authorities to block sites deemed insulting to the monarchy.*

In today’s enforcement of laws, the principles of freedom of expression and the protection of individuals and institutions from false assertions require a balance. This balance is reflected from the maturity of both the enforcement side of the law and the alleged wrongdoer. As can be seen from various constitutional monarchies around the world, laws exist for both principles but may or may not be enforced to the full extent. In any case, the only mechanism to enforce both principles lay in the hands of justice and it is up to the courts to decide whether freedom of expression or the protection from false accusations prevails. Nowadays, just as everyone has the more rights to express their ideas, there exist less absolute monarchies with divine rights and in this respect, royalty rely solely on laws as their protection.