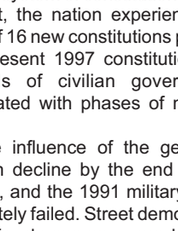
Understanding the Thai coup



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STRAIGHT LINE

In Thailand the fundamental problem has been that the key players have not accepted the rules of constitutionalism. In particular, the credibility of the entire structure has been called into question because the most influential figures that operate the levers of power have blatantly breached the rules. The accountability mechanisms were engaged but the authority of the constitution was dissipated when the PM was allowed by the Constitutional Court to escape with impunity.

DEMOCRATS all over the world must have been shocked and disappointed at the not-very-unexpected military coup in Thailand. This is because the constitution that was framed in 1997 has been abrogated and it appears that years of hard work by different groups to strengthen constitutionalism in Thailand have been set at naught.

Viewed from such a perspective, it may be interesting to very briefly venture into Thailand's socio-political history to understand why a country having a reasonably buoyant economy and admirably sound constitutional mechanisms in place has not succeeded in firmly establishing its democratic credentials.

Socio-political background

Since the end of absolute monarchy in 1932, Thailand has lacked a stable system of constitutional rule. In fact, the nation experienced a total of 16 new constitutions prior to the present 1997 constitution, as periods of civilian government alternated with phases of military rule.

The influence of the generals was in decline by the end of the 1980s, and the 1991 military coup ultimately failed. Street demonstrations for democracy were brutally suppressed, but the Bangkok business and urban class demanded a restoration of civilian rule and there were wider calls for political reform.

Influenced by the ideas of Thai liberal intellectuals, in 1995, a constitutional drafting assembly representing all regions of Thailand set about the task of reaching agreement on the essentials of a new constitution. The proposals which emerged were strongly resisted by entrenched elements such as generals, senators, judges, and village heads.

A number of diverse groupings, ranging from monk intellectuals to the Democrat Party in parliament, recognized that Thailand needed to strengthen its internal institutions if it was going to survive and prosper. A radically improved constitution offered a new way forward.

The constitutional plan contained measures designed to guarantee democracy and human rights, exclude military influence in the political process, and eliminate corruption in public life. As one commentator put it: "The 1997 constitution represents a revolution in Thai politics. It was a bold attempt at conferring greater power to the Thai people than had ever been granted before."

Although Thailand remains a constitutional monarchy, with the king as head of state at the apogee of power (mainly symbolically but also with limited capacity to intervene in certain circumstances), the new constitution modified the electoral system, changed the composition of both houses of parliament, and reformed the structure of the courts. As well as recasting the shape of the main institutions, a prime objective was to provide a basis for stable government, tackle corruption, and to protect basic human rights effectively.

Cultural dimension

The Thai constitution of 1997 was carefully drafted by a body of experts to eliminate previous shortcomings. It is interesting to note that although Thai features may not be obvious from the constitution itself, they are manifestly present and influential when it comes to its practical implementation.

In a general sense it has been explained that: "Buddhist concepts run counter to the whole idea of positive law as a means of resolving what we might call 'situations of injustice.' What is seen by lawyers using Western concepts as an act of injustice caused by an illegal action to be remedied or restored through a process involving attribution of liability, a Thai Buddhist might see as an adverse event which occurs in a context that includes the victim's actions in a previous life and his or her own fault in this life."

In Thailand patron-client relations come to embody a deeply ingrained set of complementary values. In part, these values establish a strong sense of social order in which every individual is ranked according to wealth, power, birth and status. Each person is expected not only to know their place in the hierarchy, but also to adjust their behaviour accordingly.

In Thai consciousness, the king is at the very pinnacle of society (also at the peak of the constitution) and he has sometimes used his unquestioned authority to intervene on the political stage in times of crises or controversy with immediate impact. In an important sense, the stability of society relies on never questioning the authority of those further up the hierarchy. Once in post, rather than insisting on performing statutory obligations to investigate and prosecute ministers and officials, the person in question might be naturally inclined to defer to superior authority, deriving from the patronage of the government or prime minister.

On the part of the patron [i.e. the holder of power at any level], political influence or power ensures access to wealth. As for the client, he provides the services that contribute to the patron's wealth (and power) while he shares, in proportion to his degree, in the proceeds. It is a symbiotic relationship in which each needs the other to derive the benefits they both receive.

In Thai society, a person owes a moral obligation to those who have protected, helped or nurtured them. More generally, individuals will consider themselves under a similar sense of obligation to reciprocate in kind when a favour has been extended to them.

It is obvious that such an informal, but deeply influential concept which requires that associates repay each other in kind for favours rendered is fundamentally antithetical to traditional and formal ideas of constitutionalism. In fact, Thais do not have the opportunity to vote to secure the achievement of wider community political goals, but for calculated individual gain at election time.

Contracting state

Thailand has moved towards a type of "contracting state." Such an agenda attempts to reduce the size of public services through contracting out to the private sector, and also by the privatization of state-run industries. The objective is to improve the efficiency of delivery of such services to the citizen by exposure to market forces. The result of this initiative is that the business sector is increasingly drawn into the practice of government. The process of contract making through which private companies assume the task of service delivery, or carry out construction projects, greatly expands the interface between, on the one hand, members of the government, officials working for the bureaucratic organs of the state, and elected politicians (not in government); and, on the other hand, private sector organizations responsible for performing these functions. At the same time, these developments increase the potential for conflicts of interest to arise in the award of such contracts. This is particularly problematic in Thailand as many members of government and elected politicians, including the former prime minister, have had strong business connections.

Election commission failure

It is worth stressing that under the 1997 constitution, to minimize the potential for vote buying, Thai citizens are actively required to vote and a party list system of elections has been adopted. As a result, recent elections have witnessed exceptionally high turnouts, and the party list method puts more focus on the party rather than on the personality of candidates.

The ECT (Election Commission of Thailand) began its work by taking decisive action where it found evidence of abuse. In the election held in March 2000, 78 candidates who were alleged to have cheated in the senatorial contest were issued with "red cards" and disqualified. However, at the general election which was held the following year there was evidence of extensive malpractice. After the 2001 general election, 30 candidates were summoned before the ECT and there were complains lodged to the commission in 312 constituencies.

The overwhelming win by Prime Minister Thaksin in the January 2005 election, in which he took 370 of the 500 seats in parliament, was equally unsatisfactory. It has led to concerns over the further erosion of democracy. It was claimed that Thailand was on the path to turning into one-party state. The collapse of support for the opposition Democratic Party was greatly assisted by Thaksin's control over a substantial section of the media and by blatant vote buying. It has been estimated that some 10 billion baht or $260 million was spent in bribes to voters during the campaign.

The performance of the election commission fell a long way short of the previously high expectations. In response to claims of malpractice there was very little evidence of positive intervention in the form of full investigations followed by firm action to eliminate continuing abuse. Controversy has continued to surround the ECT. The decision of the ECT to allow the election held on April 2 has been challenged in the courts and during the election itself there were once again many allegations that votes were being bought on widespread basis.

The ECT failed to uphold objections to the results and the Constitutional Court initially confirmed individual results which had been called into question, but in an unprecedented move the king intervened by addressing the judges of the constitutional and administrative courts directly. He suggested that they should assert their authority under the constitution to invalidate the election which had been boycotted by opposition parties.

Weakness of Constitutional Court

The limits of the National Counter Corruption Commission's (NCCC) effectiveness became increasingly evident after the Constitutional Court failed to uphold the commission's findings in 2001. The incident was of great national importance as it involved an investigation of claims that Thaksin Shinawatra before becoming prime minister had concealed most of his fortune as part of a dishonest scheme to conceal conflicts of interest which were outlawed under the constitution. It was found that the assets had been registered in the names of his housekeeper, chauffeur, driver, security guard, and business colleagues.

The NCCC duly conducted its investigation and passed an 8-1 judgement against Thaksin. If the decision of the NCCC had been allowed to stand unchallenged the result would have been a "red card" -- an automatic suspension from politics for five years, operating with immediate effect, thus depriving Thaksin of the premiership.

Thaksin countered the accusations openly on the political stage. It was suggested that the finding were merely part of a political smear campaign by the bureaucratized political establishment who were resistant to his image which represented the success of an emerging class. The NCCC decision was challenged before the Constitutional Court where it was argued that the failure to declare assets was no more than an honest mistake. Although the argument was not accepted, the Constitutional Court voted narrowly in Thaksin's favour.

In the face of political interference and challenge at the highest level, the failure to act decisively and punish the PM for manifest breach of the rules severely undermined the credibility of the constitutional watchdog and therefore also of the constitution itself.

The 1997 constitution, with its multiple watchdog bodies have not been able to eliminate ubiquitous corruption and as such the abuse of power by the prime minister, ministers, politicians, and officials continues, and basic human rights have been regularly breached.

The constitution which was set in place resulted from a process of popular consultation and it has many positive features. The administrative courts and the ombudsman scheme have established an independent and robust system of administrative remedies. However, it was a serious mistake to assume that a politically neutral Senate without any party allegiances which could operate beyond normal politics could be created. A great deal was constructed on what proved to be a very shaky foundation.

In Thailand the fundamental problem has been that the key players have not accepted the rules of constitutionalism. In particular, the credibility of the entire structure has been called into question because the most influential figures that operate the levers of power have blatantly breached the rules. The accountability mechanisms were engaged but the authority of the constitution was dissipated when the PM was allowed by the Constitutional Court to escape with impunity. Such undesirable events, it is strongly believed, hastened the unfortunate military coup.

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Bangladesh needs a right to information law now

With the present effort by civil society organizations to build mass awareness, it is hoped that more and more people will understand the implication of such a law. It is only when the demand for Right to Information law comes from the people that policy makers will take notice and speed up the process to enact it. There are many examples of how correct information received at the right time has had a positive impact on lives of people. This will force government to be responsive to the needs of the people and help people to participate in their own governance.

SHAHEEN ANAM

TODAY is Right to Know Day. Civil society representatives from across the world met in Sofia, Bulgaria in 2002 and formed into an advocacy network with the objective of promoting people's right to access information. They also declared September 28 as International Right to Know Day which is now observed in many countries of the world.

So far, 65 countries across the world have enacted Right to Information laws. In the sub-continent so far, India passed the Right to Information Act in May 2005. In Pakistan an ordinance was promulgated in June 2002 ensuring people's access to information. In Bangladesh, the law commission prepared a working draft in 2002 which has not been tabled in the parliament as yet..

Although countries are now legislating for right to information, the United Nations General Assembly recognized freedom of information as a fundamental right and the touchstone for all freedoms to which the United Nations is consecrated. Right to information creates legal entitlement for people to seek information and includes duty of the public function bodies, both government or non-government, to make information public and easily available. It enables citizens to seek information from duty holders and makes duty holders responsible to disseminate important information proactively even if it is not asked for.

Right to information has a governance as well as a rights perspective. Correct information at the right time reduces the chance of misuse of resources and lessens corruption. It also helps governance system function better, makes service providers accountable for their actions, creates participatory and transparent environment for people to contribute in policy formulation and establishing rule of law. It also gives people a legal right to demand entitlements and monitor the use or misuse of funds meant for them.

Right to Information regime is also a means for government to empower the poor and inform them about pro-poor polices and safety net programs.

Public as well as private bodies, corporations, NGOs and international institutions that carry out public function, which affects public rights, influence the destinies of millions, are all responsible for providing information. Considering this, some Commonwealth countries have extended the coverage of their laws to some private bodies. Often agreement, treaty with international, multinational agencies and corporations are not made public, based on the presumption that it is confidential. However, it is argued that issues concerning the public interest should be made open.

India

India passed the law on right to information in May 2005, which became operational in October of the same year. A massive movement preceded this with some civil society organization such as the Mazdoor Kisan Shakti Shangstha (MKSS) taking the lead in creating mass awareness on the need for a law on right to information in Rajasthan.. Their slogan: "I will know and I will live" became a rallying cry for thousands to come together to demand that the use of public funds in the Panchayats be made transparent. People realized and became aware how lack of access to information effected their lives and livelihood in a negative way.

The Right to Information Bill in India is treated as a radical measure and contains clear rights for those requesting information and has in place a strong enforcement mechanism. Under the act, information concerning the life, liberty of a person is required to be provided within 48 hours, and other information is to be provided within 30 days. However, implementation mechanism is not mentioned clearly and public interest has been so broadly defined that there is scope to conceal information by interpreting it as public interest overrides.

The most commendable part of the act is the enforcement mechanism. A commission has been set up headed by a high-profile chief information commissioner as the main arbitrator to oversee compliance of the act.

Recently an attempt by certain vested quarters within government to bring amendment to the act was thwarted by mass public protest validating the awareness level of the people on this issue. The amendment proposed was to exempt notes made on files be made public. This would have would have destroyed the spirit of the act as this had the scope for some vital information from public institution to be withheld.

Pakistan

In Pakistan, the Freedom of Information Ordinance was promulgated in October 2002 to provide for transparency and freedom of information to all, and clearly states that all citizens of Pakistan have the right to access public records.

However, there is widespread criticism that the ordinance makes accessing information extremely difficult and has too wide an area for exemptions. It does not override the Official Secrecy Act and applies only to federal records and not the provincial and local records. National security is defined as everything and anything so that all records may be exempted from public access. There is also no time frame for disposal of matters, giving scope for harassment of information seekers.

The Pakistan People's Party parliamentarians, led by Ms. Sherry Rahman (Member of National Assembly), is in the process of tabling an alternative bill in parliament that addresses the loopholes in the present ordinance. This bill follows on an internationally accepted model of minimal exemption. The bill also provides for declassification of public records after a period of time. This will make the Hamoodur Rahman Commission report public record and make it possible for government or individuals to be held responsible for historic wrongs. The bill also protects information from being destroyed by an official seeking to cover up records.

However, at least an ordinance has been promulgated making it obligatory on public institutions to open up information. This can be seen as a positive sign and one on which improvements may be brought about by the concerted efforts of civil society organizations, media, political parties, etc.

Situation in Bangladesh

Although the constitution does not make a clear reference on right to information, Article 39 (2) states: "a) the right of every citizen to freedom of speech and expression and b) freedom of the press are guaranteed."

Bangladesh Law Commission drafted a working paper on the Right to Information Act in 2002. However, little is known about its present status. We hear that it is now lying with the Ministry of Information for further review.

Features of the proposed act

- Government and semi-government offices are bound to publish their documents to the public. The publication should contain useful and accurate information on important matters. Side by side, in this act, the private authority comes under the same boundary.
- The definition of information has been defined in Section 2 (a).
- Public authority is bound to supply information to the people and they will enjoy this statutory right.
- The process of access to information is discussed in detail.
- The offences committed are divided into different categories and have different penalties (compensation, fine, imprisonment, etc).
- The formation of Information Tribunal and Appellate Information Tribunal has been recommended. All the disputes are to be settled as early as possible.

Loopholes in the proposed Right to Information Act

- The proposed act is applicable subject to certain provisions of the Official Secrecy Act (this is an Act of 1923, used by the colonial powers to subjugate people but is still in effect in all countries of the sub-continent).
- Some rules exist where public authority is not bound to give information by using the safety and state security excuse.
- The structure and power of the information tribunal has been mentioned but is without any specific time limit. As a result anyone seeking information may be harassed without decision for a long period of time.
- The aggrieved person who is denied access to information is entitled to get Tk 5000/ as compensation, which has not been rationalized.
- There is no enforcement mechanism to monitor compliance of the law.

At present, a national movement is emerging in Bangladesh in support of the demand for right to information. Several civil society organizations have formed coalitions and networks to work at different levels to make the act a reality. Attempts are ongoing to draft a law based on the existing one by the Law Commission and address the loopholes that exist in the first draft. A process of consultation is ongoing to take inputs from a wide stakeholders group on the draft law and prepare a final draft that has ownership of many, including lawyers, professions, and the general public.

To this effect, several core groups have been formed comprising of lawyers, academics, journalists, etc. to work on this issues at several levels. The three core groups are: a) for promoting and building consensus among policy makers, bureaucrats, politicians, etc; b) for building mass awareness and knowledge on why we need the Right to Information law; and c) to work on the present working paper and prepare a draft law. The ultimate aim of these core groups is to have the draft law tabled in parliament for its enactment as law.

In India, the demand for such a law came from the people instead of an idea from some urban elites. It is therefore important that in Bangladesh we continue to raise awareness on the issue especially its impact on the livelihood of common people.

Examples abound on how correct information received at the right time has changed the lives of people. Several NGOs have taken up programs to provide much needed information on health, agriculture, and human rights to people at the local level. Farmers claim that correct and timely information improved their yield, poultry farmers averted a major crisis and prevented death of thousands of poultry, and women have been able to claim rightful dowry and benefits from divorced husbands. Information on government entitlements, safety net programs, allocation to local government are what people want to know and benefit from in a Right to Information regime.

The Right to Information law has a special significance for the media and journalists. A free media is one of the pillars of democracy and is guaranteed by the constitution.

The media in Bangladesh is perceived as relatively free. However, they largely face obstacles to access information in order to report with neutrality and fairness. They often have to rely on informers which poses risks as there is no provision of security of "whistle blowers" as per law. Recently there has been a spate of defamation cases against editors and publishers for publishing articles that went against the vested interest of certain groups. This leaves journalists in a vulnerable situation, hampering their ability to report freely.

While well-known, high-profile editors are not subject to serious harassment, the journalists at local level are often under great threat . It is envisioned that a Right to Information law will protect journalists perform their duty.

Although right to information is not yet recognized as a fundamental right, there is enough evidence to believe that it has implication on every aspect of people's lives and well-being. It will assist people to live in dignity and security. It is all the more important in Bangladesh where violations occur easily and common people become vulnerable to the failings of the state and forces of vested interest groups.

With the present effort by civil society organizations to build mass awareness, it is hoped that more and more people will understand the implication of such a law. It is only when the demand for Right to Information law comes from the people that policy makers will take notice and speed up the process to enact it. There are many examples of how correct information received at the right time has had a positive impact on lives of people. This will force government to be responsive to the needs of the people and help people to participate in their own governance.

Women face added constraint to access information due to their exclusion from decision making both in private and public sphere. A special attempt should be made to ensure that women are represented in the entire process of providing inputs to the draft law, the enactment of the law, plus its implementation and monitoring.

It is equally important that Right to Information law is not restricted to public and government institutions. Private organizations, NGOs, businesses, etc. all those who deal with public funds or provide services to public have to be held accountable and abide by the same standards of maximum disclosure.

It is imperative that a strong enforcement mechanism is set in place. Without such a mechanism, the law will only be on paper. We should learn from examples of other countries where an independent commission has worked wonders in assisting people to get information and address grievances when access has been denied.

Lastly, we should all make an effort, at individual and institutional level to get out of the culture of secrecy. For too many years, information has been the monopoly of only a few. Open and timely information has the potential to change the lives of millions. It can only help and assist governments to promote their pro-poor policies and bring benefits to the poor. This cannot and should not be the private domain of only a few.

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