

# Asian Currents

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## Judiciary shows its true colours in Thailand's coup

The recent ousting of Prime Minister Yingluck Shinawatra reflects a judiciary that has become politically interventionist and remarkably powerful.



Yingluck Shinawatra

By **Kevin Hewison**

In May 2014, a series of rapid-fire events saw Thailand's Prime Minister Yingluck Shinawatra disqualified by the Constitutional Court, the military declare martial law and then, on 22 May, the Army commander declared that he had taken full power.

The military junta scrapped the constitution, expanded censorship, detained several hundred persons and announced that there would be no elections for a considerable period. The military charged itself with making the country 'safe.' Establishing this safer Thailand has seen anti-coup protests squashed, political opponents rounded up, and Cold War-like propaganda campaigns that are meant to convince people of the value of the monarchy and the reliability of the military.

That Thailand suffered yet another military coup should not come as a surprise. There have been many putsches in the past,

and the anti-government demonstrators who had been on the streets for more than six months, trying to bring down the Yingluck government, had repeatedly called on the military to intervene. When the army chief finally did lose patience with the long political struggle and grabbed power, the anti-government protesters cheered this as their victory.

The demise of the Yingluck government meant that she was the second of the Shinawatra clan to be ousted by the military. Her brother, Thaksin, was thrown out in 2006 and has lived in exile since 2008. Both headed governments that had won handsome electoral majorities but which were undermined by street protests and judicial interventions. Indeed, between these two administrations, a further two pro-Thaksin prime ministers, leading elected governments, had been sent packing by a judiciary that became politically interventionist and remarkably powerful.



#### Exiled: Thaksin Shinawatra

In many jurisdictions, the courts are meant to act as an independent institution that underpins democracy. This has not been Thailand's recent experience. The once somnolent judiciary was impelled to activism by the king's call for judges to sort out a political impasse following elections in 2006. Since then, the judiciary, and the Constitutional Court in particular, has engaged in a judicial war with each of Thailand's elected governments: in 2007–08 and 2011–14.

Because the judiciary is now so highly politicised, decisions that defy legal logic have become the norm. Since 2006, the judiciary has consistently acted with clear political intent against elected governments. It has dissolved pro-Thaksin political parties, restricted the powers granted to parliament under the 2007 constitution and banned more than 200 politicians, almost all of them from pro-Thaksin parties. These decisions, sometimes based on flimsy accusations by opposition activists, undermine the democratic processes the judiciary is supposed to protect.

Constitutional Court judges sometimes declare their neutrality, claiming to be maintaining the rule of law, protecting minorities and checking the power of politicians. Few political observers believe them. There are not many points of agreement in Thailand's bitter and colour-coded political struggle, but almost everyone now assumes that the judiciary is a reliable ally of the conservative and royalist political faction. Pro-Thaksin politicians and his red shirt supporters naturally identify judges as unashamedly applying double standards.



### Red shirt demonstration

The judiciary had been accused of corruption and political bias before the 2006 coup. Indeed, Thaksin tried to influence it when he was prime minister. However, the judiciary's political influence was only recently enshrined in the 2007 Constitution. Born of both coup and military supervision, the 309-article charter weakened the executive branch, and removed considerable decision-making power to the bureaucracy and judiciary. It also transformed the senate from an elected body to one that was half-appointed and enhanced the military's political role and budget. Finally, it established a range of other 'independent agencies' that have proven to be as politicised as the judiciary, repeatedly ruling against pro-Thaksin governments.

The reason the Constitutional Court and the independent agencies have worked against elected governments and against pro-Thaksin political parties is to preserve the interests and power of the conservative elite. Other arms of the judiciary have been just as active in protecting the primary symbol of political conservatism, the monarchy. The principal means for this has been the use of the draconian Article 112 of the Criminal Code, known as the *lese-majeste* law, and the equally fierce Computer Crimes Act.

Conservatives see the monarchy as central to Thai identity and for the state. Hence, when the monarchy is criticised or lampooned, Article 112 is deployed. This law declares that anyone who defames, insults or threatens the king, the queen, the crown prince or the regent may be jailed for up to 15 years. Before the coup that overthrew Thaksin, this law was used relatively infrequently, with spikes in its use having coincided with the right-wing and military governments. However, since 2006 the number of cases has exploded.

The judiciary has responded to allegations and charges of *lese-majeste* with considerable gusto and some of the sentencing has been ferocious. Almost everyone who goes to court is found guilty, very few defendants get bail, and several cases have been tried in camera. In many instances, international organisations, foreign observers and some Thai academics and activists have expressed concern about the legal calisthenics that have seen the courts deny even constitutionally mandated rights.

The conviction that protecting the monarchy is crucial and demands legal vigilance blinds judges to the fact that the use of such a political law further undermines the judiciary. The use of the law now defines courts that are the political tool of conservatives.

While some consider that the judiciary has been jettisoned by the military, it seems more likely that the judiciary will be maintained and may even be strengthened in a post-coup regime. It is revealing that the military junta has maintained the judiciary and some of the 'independent' organisations. Alongside martial law, the courts are being used to expand *lese-majeste* repression as the military detains almost every person who has been convicted under the law, their families and lawyers, and even those who have called for the law to be revised. Those who oppose the coup risk being accused of anti-monarchy tendencies while the military demands that schools and local administrations implement pro-monarchy and pro-coup propaganda programs.

Because the judiciary has been generally reliable in the attacks on pro-Thaksin parties and governments, the military and other conservatives are appreciative of this. While it might become a junior partner for the moment, with the monarchy and military, it is likely that the judiciary will remain a primary institution for the maintenance of political conservatism.

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