

Freedom of Press in Myanmar

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ABSTRACT

Every person has to enjoy freedom of expressing their opinion and information and they also have the duties to refrain from affecting the right and reputation of other persons. Since it is not an absolute right, the person who practices the right to freedom of press needs to respect the rights and reputations of others. This paper used a qualitative approach by reviewing relevant literature such as international legal instruments, domestic laws and reports regarding freedom of expression. This research mainly based on primary and secondary resources because the required information is obtained from Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), General Comment No.34, Johannesburg Principles on National Security and some Myanmar laws such as the Constitution of the Republic of the Union of Myanmar, the Telecommunication Law 2013, the News Media Law 2014, the Official Secrets Act 1923 and the Unlawful Association Act 1908. Although Section 354(a) of the Constitution of the Republic of the Union of Myanmar provides that every citizen has a right to express and publish freely their convictions and opinions, many people including journalists and news media men can be prosecuted under the provisions of the existing laws. Thus, when many people posted information in their own pages, they have been charged with the provisions of the existing laws. Therefore, the existing laws in Myanmar which contain restricted provisions for freedom of press should be repealed or amended and new laws should be enacted in line with the International Human Right standards.

1. Introduction

1.1. Background

Freedom of press is one of the vital components of the freedom of expression. As for the freedom of expression, people can express their opinions as it is their rights and on the other hand, they also have the responsibilities to refrain from the ones affecting the rights and reputation of other persons. Nowadays, most of the people in our country use internet (Facebook) but they lack sufficient legal knowledge about the freedom of expression as well as the freedom of press.

So, when a person expressed any information on internet, newspaper, magazines, own pages, etc. without legal knowledge, he or she will be charged of violating the provisions of existing laws in Myanmar. Therefore, in order to avoid unnecessary conditions, a person who wants to

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press his information in public, he or she should know what is the freedom of press and what is the prohibition needed to respect.

1.2. Objectives and Structure of the Article

Under such backgrounds, the objectives of this paper are to explore the main causes and effects of the existing issues, to find out the appropriate measures to protect the media workers and to provide suggestions for promoting the freedom of expression. This paper is focused on the right to freedom of press and development of media in accordance with International Human Rights Standards. It is divided into four main parts. The first one presents the definition of freedom of press and why it is important. The second part consists of freedom of expression under International Human Rights standards and key elements of the right to the freedom of press. The third one mentions the freedom of press in Myanmar under domestic laws. And the last part expresses the gaps and challenges in relation to the protection of freedom of press in Myanmar.

1.3. Research Questions

- Are the laws of Myanmar relating to freedom of press, in compliance with the International Human Rights Standards (ICCPR)?
- What can be done to reduce the restrictions on the freedom of expression by government of Myanmar?
- What measures can be done in order to ensure the safety and development of media freedom in Myanmar?

1.4. Research Methodology

This study used qualitative approach by reviewing relevant literature, such as international legal instruments, domestic laws and regulations and reports regarding freedom of expression. Law and case analysis is applied. Data collection was made from using the library, internet, Human Rights Center and academic journals. The international instruments used in this paper are such as International Covenant on Civil and Political Right (ICCPR), Universal Declaration of Human Rights (UDHR), International Convention on the Elimination of all forms Racial Discriminations (ICERD), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Right of the Child (CRC), General Comment from the Human Rights Committee, The Johannesburg Principles. Constitution of the Republic of the Union of Myanmar, the Telecommunications Law, the News Media Law, the Official Secrets Act and Unlawful Association Act are analyzed in this paper.

2. What is freedom of press?

The right to freedom of press is a fundamental human right for every person around the world. The right to freedom of press is the essential part of freedom of expression. It is not an absolute right. It is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights (General Comment No.34, 2011).

According to Article 19 of the Universal Declaration of Human Rights (UDHR), the right to freedom of expression consists of freedom to hold an opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Therefore, the “right to freedom of press” means the right to publish newspapers, magazines, books (professional or educational purpose) and any other printed materials without governmental control. But it needs to respect the rights and reputations of other persons.

Many countries in the world attempted to restrict upon the freedom of press as well as the freedom of expression by adopting legislation, creating regulatory boards, oversight commissions, and journalistic codes of conduct and manipulate existing laws to weak the media's watchdog capabilities (Global Report,2017/2018).

There are a number of threats that journalists are facing. Threats can appear when the government doesn't make a special protection upon the media workers. Threats and attacks on journalists are not only physically but also the violation of their individual rights to freedom of expression as well as the same right of citizens as their ability to seek and receive information is undermined (Katie Bresner, 2015).

In most of the democratic States, the public usually chooses its government through free and fair elections. The right to criticize the government naturally belongs to the public. The criticisms of government when made by the press can reduce the government's arbitrary acts. Moreover, it can make the government more accountable and transparent. This is an important feature of the freedom of press. The third of May has been designated as "World Freedom Press Day" in recognition of the important role the press plays in promoting human rights.

3. International Standards

3.1. Key Elements for Getting the Right to Freedom of Press

Concerning the International level, the right to freedom of expression has been recognized in several International Human Rights Instruments, such as the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of all forms of Racial Discrimination (ICERD), International Covenant on Economic, Social and Cultural Rights (ICESCR) and Convention on the Rights of the Child (CRC). In order to implement the freedom of expression as well as the freedom of press in the country, the restrictions which control upon the freedom of press such as prior censorship, registration or license should not be exist. Such acts can prevent media workers from expressing their information to the public freely.

Government can restrict upon the freedom of press but restrictions must be "be provided by law" and must conform to strict tests of "necessity" and "proportionality". Restrictions on the right to freedom of expression must therefore be "necessary" to achieve a legitimate purpose and must be "proportionate to the interest protected" (General Comment No.34, 2011).

The Johannesburg Principles on National Security, Freedom of Expression and Access to Information describes the necessary conditions when the State make a restriction relating to the freedom of expression.

3.2. Overview of International Human Rights Standards

Every State shall take necessary measures to protect the freedom of press in accordance with International Human Right standards.

Article 19 of the Universal Declaration of Human Rights (UDHR) as well as Article 19 of the International Covenant on Civil and Political Rights (ICCPR) includes the right not only to express opinions and ideas, but also to receive information (Katie Bresner, 2015). According to Article 12 of the Convention on the Right of Child, States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child. When the exercise of this right, it needs to follow certain restrictions mentioned under Article 13 of CRC. Article 15(3) of International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the freedom indispensable for scientific research and creative activity. Article 5 (d) (viii) of the International Convention on the

Elimination of all forms of Racial Discrimination (ICERD) guarantees that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin. So, the Government should follow the instructions of the international treaties in realizing freedom of expression.

Independence and uncensored publications which is critical to informing public opinion can be considered as one of the important and essential elements of freedom of press. License requirements for printing the news is not a lawful restriction for freedom of press because such license requirements restrain the free flow of information (Freedom of Expression and Media in Singapore, 2005).

A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society. The free communication of information and ideas about public and political issues between citizens, candidates and elected representative is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output (General Comment No.34, 2011).

Therefore, good press laws need to protect the independence of journalists and maintain their freedom. To this end, the laws relating to the freedom of press should provide for the right to protect the confidentiality of sources and ensure that the government can be held accountable for its acts by requiring that the press should have the right to access the various sectors of the government and to freely express its opinion.

4. Overview of Domestic Laws

Although Section 354 of Constitution of the Republic of the Union of Myanmar, 2008, includes protection of freedom of expression, some existing laws (such as the Unlawful Association Act, 1908, the Official Secrets Act, 1923, the Penal Code 1861, the Telecommunications Law 2013, the Electronic Transaction Law 2004, the Printing and Publishing Enterprise Law 2014) have measures to limit the freedom of expression. The main restriction appears to be the threat is criminal prosecution.

Section 16 of the Unlawful Associations Act empowers the President to declare groups to be “Unlawful” with far reaching consequences for those groups and individuals who interact with them. According to Section 17(1) of this Act: whoever is a member of an unlawful association, or takes part in meetings of any association, or contributes or receives or solicits any contribution for the purpose of any such association or in any way assists the operations of any such association, shall be punished with imprisonment for a term which shall be not less than two years and not more than three years and shall also be liable to fine. This Section has been frequently used in a highly arbitrary fashion to target journalists and activist working in conflict areas. The Unlawful Associations Act should be reformed in line with international human rights law and standards, including by providing clarity on the criteria for identifying which types of organizations may be deemed ‘unlawful’ and narrowing the types of interactions with such groups that are prohibited (Article 19, 2019).

According to the Johannesburg Principles, the law must be accessible, unambiguous, drawn narrowly and with precision, so as to enable individuals to foresee whether a particular action is unlawful. In addition, the Johannesburg Principles demand adequate safeguards against abuse, including prompt, full and effective scrutiny by an independent Court or tribunal of any restriction (The Johannesburg Principles on National Security, 1996).

Section 3(1) of the Official Secrets Act of 1923 establishes criminal penalties of up to 14 years' imprisonment for a range of activities including entering a 'prohibited place'; making sketches, plans, models or notes that may be 'useful to an enemy'; and obtaining, collecting, recording, publishing or communicating 'any secret official code or password, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy'. This extremely broadly language has been used frequently to prosecute journalists and others, often in relation to their reporting on sensitive issues. As stated above, the Official Secrets Act applies to a broad range of information and activities that could be relevant to journalism, academic research and other legitimate activities. Further, it penalises behaviour even when there is no proof of intent to harm the state or a risk of harm from the disclosure. So, the Official Secrets Act should be repealed in its entirety, and necessary protections for state secrets incorporated into a comprehensive right to information law in line with international human rights law and standards (Article 19, 2019).

Section 33 and Section 34(d) of the Electronic Transactions Law 2004 provides the offences for any act of using "electronic transactions technology" and offences are punishable imprisonment for a term from a minimum of five years to a maximum of seven years under the Law Amending of Electronic Transactions Law, 2017.

Sections 499-500 of the Penal Code provide up to two years' imprisonment for the crime of defamation. Under International Human Rights Standards, penalties for defamation should never include imprisonment and States should consider decriminalising defamation. Section 499-500 should be repealed (Article 19, 2019).

The least restriction and most protection are prescribed in the News Media Law formulated by the Interim Press Council of 2013. Under the News Media Law, there is no formal censorship of print media. In Myanmar, the News Media Law was enacted in 2014. Although this law is intended to protect the freedom of media in Myanmar, some of the provision restricts the rights of media workers to do their job freely. The responsibilities and codes of conduct for journalists are mentioned in Section 9 of this law. News media workers have the responsibility to comply with the codes of conduct and if they fail to abide with this responsibility which is provided in the Media Law, they will be fined from a minimum of 300,000 kyats to a maximum of 1000,000 kyats (News Media Law in Myanmar, 2014).

However, under the Section 4(a) of the Printing and Publishing Enterprise Law a person running a printing and publishing enterprise must apply for a certificate of recognition from the Ministry of Information which allows the government to delay publication of news reports.

Another law threatening the freedom of press or media freedom is the Telecommunications Law, 2014, especially Section 66 (d) of that law. Accordingly, a person who violated the provisions of Section 66 (d) of this law has been convicted the maximum period of three years in prison for his conduct. When many people posted their information on the Facebook or other social media, they have been charged under Section 66(d) of this law. The provisions of Section 66(d) of the Telecommunications Law prescribe penalties of up to three years in prison for "extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening any person using a telecommunications network". Thus Section 66(d) raised a number of controversial questions as to whether, as statements that it should be amended or should be repealed (Frontier Myanmar, 2017).

The Law Amending the Telecommunications Law, Pyidaungsu Hluttaw No. 26/2017, was enacted on 29 August 2017. According to this Law, Section 66(d) was amended. The previously provision stating a maximum imprisonment term of up to three years has now been

reduced to two years. At first the offence under Section 66(d) was a non-bailable offence because of its punishment. Schedule II of the Code of Criminal Procedure in Myanmar recognizes that an offence which is liable to imprisonment up to three years punishable with imprisonment for a term which may extend to three years or more shall not be allowed bail.

Under provisions of Section 66(d) of the Telecommunications Law, freedom of expression has been restricted and many people (especially journalists) have been arrested and punished under criminal proceedings. Section 66(d) of the Telecommunications Law still remains “the primary tool for censoring criticism and silencing critics” in Myanmar although it has been amended. It should not have any place in a democratic society. It needs to be completely repealed.

A case which dealt with the matter of freedom of expression was the case of two reporters Wa Lone and Kyaw Soe Oo. On 12 December 2017, they were arrested after they had been invited to meet police officer over dinner. They had been punished with imprisonment which extend to 7 years for committed of provision of Section 3(1) (c) of the Official Secrets Act. Now, they were pardon in May (The Irrawaddy, 2017).

In order to promote and protect the right to freedom of expression, the government should to –

- remove monopoly of State-owned media and install mechanism for a truly public service media (not State-owned media that broadcast or print only propaganda)
- remove tendency to abuse legal tools with a prompt decision to punish journalists for doing their jobs.
- amend or repeal laws that do not meet International Human Right Standard
- grant Independence of Press Institutions including media councils and governing bodies (now put under the Ministerial control). No one should undermine their function in safeguarding democracy, protecting the journalists and promoting the interest of the readers
- adopt a plan on safety of journalists
- adopt right to information legislation
- allow for the Myanmar News Media Council to become fully independent

5. Conclusion and Recommendations

According to the international human rights standards, States need to protect and guarantee the right to freedom of expression. But they can impose restrictions over that right. The restrictions however, must be necessary for a legitimate purpose and must conform to the test of necessity and proportionality. Under International Human Rights Standards, laws must be provided clearly and sufficient guidance to implement their provisions. Laws should not enact for criminal penalties that are incompatible with the International Human Rights Standards. Laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned.

In Myanmar some of the provisions of laws prevent the freedom of expression. For example, under the provisions of the Official Secrets Act, the maximum punishment may extend to 14 years’ imprisonment. This provision is inconformity with the international human right standard. According to this Act, people suffer arbitrary action without being given the right to a hearing.

Taking the above provisions into consideration, we can conclude that Myanmar should become a member of the ICCPR, which has a committee to investigate whether the functions of the government of a State are in line with the purpose of the covenant and whether the provisions of the laws of a state are inconformity with international human rights standards. Therefore, Myanmar should ratify the ICCPR.

In order to improve the freedom of expression in Myanmar, there should be a commission for settling questions concerning the media sector. Also, some of the provisions of laws which were enacted during the colonial period obstruct the freedom of press and need to be amended or repealed.

Furthermore, although Myanmar has enacted the News Media law in 2014, no rules and regulations for media workers have been published for implementing the provisions of this law. This causes confusion among them, often leading to unnecessary action being taken against them.

Another point of contention between the media and the authorities is that when caricatures (for e.g. cartoon illustrations) critics of a member of the government appear in a newspaper/magazine, action is taken against the author under the Telecommunication Law. Such criminal action is inappropriate and is a restriction on the freedom of expression. It should be discontinued. Criminal punishment should not be imposed upon media workers for their action criticizing the authorities. At the utmost they should be made to pay a reasonable compensation.

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