

# 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. Myanmar guarantees the freedom of expression in the press by Section 354(a) of Constitution of the Republic of the Union of Myanmar, 2008. However, many people including journalists are arrested and detained under the provisions of existing laws in Myanmar. The objectives of this paper is to analyze the weak points of existing laws relating to freedom of press and to make suggestions in promoting the freedom of press compared with international human rights standards. This paper uses a qualitative approach comparative legal analysis. Data collection was done mainly through international and domestic legal documents. The analysis showed that some of the provisions of existing laws (for e.g. Section 66(d) of the Telecommunication Law 2013, S.9 (b) of the Media Law 2014, S.3 and 5 of the Official Secrets Act 1923 and S.17(1) and S. 17(2) of the Unlawful Association Act 1908) which have restricted the freedom of the press should be repealed or amended and new laws or provisions in accordance with the international human right standards should be enacted.

**Key Word:** Expression, Freedom, Journalists, Media and Press.

## 1. Introduction

### 1.1 Background

Freedom of press is one of the vital components of the freedom of expression. As for freedom of expression, people can express their opinion as it is their rights and on the other hand, they also have the responsibilities to refrain affecting the rights and reputation of other person). Nowadays, most of the people in our country use internet (Facebook) but they have poor in legal knowledge about the freedom of expression (freedom of press). So, when a person expressed any information on internet, newspaper, magazines, etc, without legal knowledge, he will be arrested and detained under the provisions of existing laws. Therefore, in order to avoid unnecessary conditions, a person who wants to press his information in public, he should know what is the freedom of press and what is the prohibition need to respect.

## **1.2 Objectives and structure of the article**

Under such background, the objectives of this paper are to explore the main causes and affects of the existing issues, to find out the appropriate measures to protect the media workers and to provide suggestions for promoting freedom of expression. This paper is focused on the 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 freedom of press or media. 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**

1. Are the laws of Myanmar relating to freedom of press, in compliance with the international human rights standards(ICCPR)?
2. What will the government of Myanmar do to remove restrictions on the freedom of expression?
3. What measures can be done in order to ensure the safety and development of media freedom in Myanmar?

## **1.4 Methodology**

This paper used qualitative approach research methods. Law and case analysis is applied. Data collection was made from using the library, internet, Human Rights Center and academic journals. The study used relevant international instruments such as International Covenant on Civil and Political Right, Universal Declaration of Human Rights, General Comment from the Human Rights Committee, The Johannesburg Principles and domestic legal instruments such as Constitution of the Republic of the Union of Myanamr, Telecommunications Law, Media Law, Official Secrets Act and Unlawful Association Act.

## **2. What is freedom of press?**

The essential part of freedom of expression is the right to freedom of press. 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. It is not an absolute right. It needs to respect the rights and reputations of other persons and national control. It also needs to be subject to certain restrictions prescribed by law.

The right to freedom of press is a fundamental human right for every person around the world. It is a necessary condition for the realization of the principles of transparency and accountability that are essential for the promotion and protection of human rights. (paragraph 3 of the General Comment No.34 of Human Rights Committee, 2011) 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.

Governments around the world have attempted to limit the media and its ability to influence public opinion using a variety of laws. By adopting legislation creating regulatory boards, oversight commissions, journalistic codes of conduct and manipulate existing laws to weaken the media's watchdog capabilities. (Global Report 2017/2018)

Freedom of press is essential because most democratic countries hold free and fair elections for its citizens to elect the government. Since the government is elected by its citizen, they have the right to criticize it. Such acts of criticism when made by the press reduce the government's arbitrary acts and encourage accountability and transparency.

## **2.1 Key elements of the right to freedom of press**

Every state shall take necessary measures to protect the freedom of expression in accordance with International Human Right standards. Every State has the right to freedom of press and freedom of information if there is a clear threat to national security.

However, when such a threat does not exist, in order to implement the freedom of press in the country, the restrictions which control the freedom of press such as prior censorship, registration should not be imposed. Such acts can prevent media workers from expressing their information to the public freely.

Therefore, good press laws need to encourage freedom of expression by prohibiting registration and prior censorship. It is also essential for these press laws to protect the independence of journalists and maintain their freedom. To this end these laws 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 about them and the way they are running the government.

An independent and uncensored press, which is critical to informing public opinion, is considered a cornerstone of democratic society and essential to ensuring the freedom of expression as well as freedom of press. Under International Law, license requirements for the print media cannot be justified as a legitimate restriction on freedom of expression since they significantly fetter the free flow of information. (Freedom of Expression and Media in Singapore,2005)

There are a number of threats that journalists face. The treats that media can face include physical threats, such as physical violence, kidnapping and murder. Threats can appear when there is a question of whether or not States have the responsibility to grant media workers special protection. Threats and attacks on journalists are not merely limited to physical consequences, but violate their individual rights to freedom of expression, as well as, by extension, the same right of citizens as their ability to seek and receive information is undermined. (Katie Bresner, ---)

In spite of the above, several countries, even so-called "democratic" ones fail to ensure complete press by either requiring registering or licensing of media outlets or by censorship. In nondemocratic states governments may also utilize State-owned media, to control the news available to the public.

## **2.2 Overview of Domestic Laws**

According to Section 354 of Constitution of the Republic of the Union of Myanmar, 2008 every person has the right to enjoy freedom of expression unless any contrary to the laws enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality. Although the 2008 Constitution allows every citizen to freely express his or her convictions and opinions, some laws which are enacted under the colonial period of Myanmar limit the freedom of expression.

Under the colonial period, most of the laws in Myanmar were passed by the British Government. Therefore, provisions of these Law restricted freedom of expression. (such as the Emergency Act 1950, Unlawful Association Act and the Myanmar Official Secrets Act 1923). The President U Htin Kyaw repealed the Emergency Act 1950 on 4th October 2016. But the Unlawful Association Act and The Myanmar Official Secrets Act are still in force. Among these two Acts, the Unlawful Association Act the Unlawful Association Act of Myanmar was enacted by the British Colonial Government in 1908. This Law is still in force at the present. Section 17(1) and 17(2) of this Act continue to be used under the present Government. This Act is continuing to be abused to arbitrarily arrest and detain individuals for exercising their rights to freedom of expression. Myanmar journalists were charged under this Act in a recent well-known case in Myanmar's Northeastern Shan State. They were convicted under the provision of this Act.

In Myanmar, the Media Law was enacted in 2014. The purposes of this Law are to implement the new media industries which are freedom to express, publish or distribute freely as part of rights and privileges granted to every citizen in accordance with the Constitution of Myanmar 2008. 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 which are needed to be complied with by the media workers are mentioned in Section 9 of this law. News media workers have the responsibility to comply with the codes of conduct when incorrect news has been published and an amendment or revision is necessary, and when this takes place in the Print Media, this revision shall be printed in an eye-catching position of the page or if in other media, this should be published immediately. If a media worker fails to abide with this responsibility which is provided in the Media Law, he will be fined from a minimum of 300,000 kyats to a maximum of 1000,000 kyats.

The Official Secrets Act was first created by the British colonial government in 1923. This Act contains 15 Sections. In this Act, there is no definition about the meaning of "official secrets". In order to protect information from being published, this law needs to clearly define "what are official secrets" and "what are not official secrets" (for e.g. information about corruption and wrongdoing by a government organization may never become an official secret), (official secrets should include only information that would adversely affect the peace and security of people). Section 3 and 5 of this Law do not include any limitations. According to the provisions of this law, the accused person shall be punished without sufficient evidence. It is not necessary to prove any facts that he was guilty of any particular act. He may be convicted only upon a presumption that he intended to commit an act prejudicial to the safety or interests of the State.

A case which dealt with the matter of freedom of expression was the case of two reporters Wa Lone and Kyaw Soe Oo. They were detained on 12 December 2017, after they had been invited to meet police officer over dinner. Now 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.

In August 2012 the Government of Myanmar stopped pre-publication censorship under which the Government had previously required print media to be submitted for approval and censorship before publication. In order for the materialization of new media industries which were being offered freedom from censorship to express, publish or distribute information, granted to every citizen, the Pyidaungsu Hluttaw(Parliament) enacted the Media Law,2014. According to Section 5 of this Law, the publications of the news media industry shall be free from censorship.

Therefore, licensing schemes for the print media are inconsistent with International Law because they fail to meet the necessary test. Registration schemes are not illegitimate, but it is clear that any such scheme must minimally restrict the freedom of expression.

Another law threatening the freedom of press or media freedom is the Telecommunications Law,2014, especially Section 66 (d) of that law. The provisions of Section 66(d) of the Telecommunications Law prescribes 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”. Most of the people who have been charged under Section 66(d) were charged for postings on Facebook or other social media. Section 66(d) is treated as a non-bailable offence; many of those charged have been detained for months pending trial. This means that even those they are not guilty of violating the law suffer punishment for expressing their opinion. Section 66(d) raised a number of controversial questions as to whether, as statements that some people said, it should be amended or should be repealed.

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 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.

Most of people in Myanmar they don't want to give correct answers when an interviewer (a media worker) asks them questions. This is because they worry about being arrested and punished. Therefore, media workers face difficulties in the function of their duties. This is the element that prevents the freedom of press in Myanmar.



### **2.3 Overview of International human rights standards**

Concerning the International level, the right to Freedom of expression is mentioned in Article 19 of the International Covenant on Civil and Political Rights (ICCPR) as well as in Article 19 of the Universal Declaration of Human Rights(UDHR).

According to 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.

There is a special duty and responsibility to follow when the freedom of expression is exercised. It need to be respected of the rights or reputations of others and for the protection of national security or of public order or of public health or morals. (Article 19(3) of the ICCPR)

Thus, the ICCPR sets out that for restrictions to be legitimate they must be provided by law and must be for legitimate purpose. Such purpose is spelled out as being; respect of the rights or reputations of others or the protection of national security, public order, public health or morals.

Therefore, accordingly a State should recognize the freedom of expression within its country. But it can restrict this freedom for national security or public order or public health or morals. Freedom of expression (freedom of press) is not an absolute right. Although Myanmar has not ratified the ICCPR Convention, it needs to respect the freedom of expression in the country.

General Comment No.34 is a very useful document in studying the freedom of expression as well as freedom of press and development of media. It clearly explains the necessary factors concerning the freedom of expression. State often restrict the media, curb the freedom of expression of journalist and have even endangered their safety by citing national security as the reason for doing so. Such acts adversely affect the right of their citizens to information and are a violation of the human right to freedom of expression, when the excuse of national security is wrongly invoked. The Johannesburg Principles on National Security, Freedom of Expression and Access to Information is the good principle to provide the freedom of expression. This principle describes the necessary conditions when the State make a restriction relating to the freedom of expression.

### **3.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, a law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must provide sufficient guidance to those with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.

Laws must not provide for criminal penalties that are incompatible with the Convent. 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 in conformity 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 in conformity 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 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) critical 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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