

How much freedom of expression is enjoyed in Myanmar

What is freedom of expression?

International law protects free speech. The right to freedom of expression is enshrined in Article 19 of the UDHR. Also Article 19 of the ICCPR guarantees this right.

It can take many forms, namely verbal, artistic, and physical expression. It is universally accepted as the cornerstone of any democratic society. It is also linked to other rights, including linguistic rights, freedom of assembly and association, freedom of the press, right to privacy, and freedom from State interference in correspondence and personal property. When issues arising from press and academic freedom and issues concerning freedom of religion are addressed, its relationship with freedom of thought and conscience is most obvious. The right to freedom of expression overlaps minority rights, the right to participation in public life, the right to vote, and the right to stand for election.

The freedom of expression is, in essence, an individual's right designed to protect the individual against arbitrary interference with the freedom of expression by both the State and other private individuals.

Today, the freedom of expression is enshrined in the constitutions of many States in the world. However, whether this right is fully enjoyed by the citizens is quite a different matter. Freedom of expression can serve many functions: dissemination of information; expression of the will of the people and generation of ideas.

Limitations on the exercise of freedom of expression

Although the freedom of expression is guaranteed in the UDHR, ICCPR and various other international legal instruments, the freedom of expression is not utterly unfettered. Many governments abuse their power to silence peaceful dissent. This is mostly done in the name of counter-terrorism, national security or religion. Some legitimate limitations on the exercise of the right are recognized in human rights instruments. It can be legitimately restricted when it violates the rights of others or advocates hatred and incites discrimination or violence. According to the Human Rights Committee, any restriction on the freedom of expression should not put the right itself in jeopardy. To prevent this, Restrictions are required to be prescribed by law and in furtherance of specified overriding aim and proportionate.

Limitations on the freedom of expression are accepted in most States. Even the UDHR provides for derogation when the exercise of freedom is contrary to the principles and purposes of the United Nations. Derogation from the freedom of expression is also permissible during times of wars or other public emergencies

.Article 19(3) of ICCPR specifies that the freedom of expression carries with it special duties and responsibilities and accordingly may be subjected to restrictions provided by law which are necessary for the respect of the rights or reputations of others and/or for the protection of national security, public order, public health, or public morals. However, as the definition of national security is the discretion of the State, it may be open to arbitrary abuse. However, under Article 20 of the ICCPR, the State's prohibition by law of any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence is permissible.

Freedom of expression underpins other human rights such as the right to freedom of thought, conscience and religion. It is also closely linked to freedom of association and freedom of peaceful assembly.

Legal framework for freedom of expression in Myanmar

Every country constitution contains provisions for the value of free speech. So does the Myanmar Constitution.

Section 354 of the Constitution of Myanmar provides that:

“Every citizen shall be at liberty to exercise the rights:

- to express and publish freely their convictions and opinions;
- to assemble peacefully without arms and holding procession;
- to form associations and organizations;
- to develop their language, literature ,culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths.”

However, any act which is intended or is likely to promote feelings of hatred, enmity or discord between racial or religious communities or sects is forbidden under section 364 of the Constitution. Therefore the exercise of the right to freedom of expression must not, knowingly or inadvertently, constitute an act promoting feelings of hatred. This section, accordingly, provides for the promulgation of a law to punish such acts. To effectively implement the provisions of these two sections, the government has taken steps such as the development of the Protection Against Hate Speech Bill, the issuance of the Notification on prevention of incitement to hatred and violence (or) prevention of proliferation of hate speech by the Office of the President in April 2020. Since then all government institutions and agencies have conducted awareness activities on hate speech. In Rakhine State where mistrust among communities is high, the anti-hate speech campaigns were conducted in 17 townships, with the participants from diverse communities.

Laws criminalizing free expression in Myanmar

There are laws that criminalize free expression in Myanmar and they are the following:

1. Article 66(d) of the Telecommunication Law
2. Article 33 and 34(d) of the Electronic Transactions Law
3. The Unlawful Associations Act of 1908
4. The Official Secrets Act of 1923
5. The Peaceful Assembly and Peaceful Procession Law
6. Penal Code sections 124 A (sedition) 295 A (defamation) and 505 (incitement)

In addition, there still exist problems such as the enforcement, lack of judicial oversight, and procedural ambiguity in applying these laws. These laws go beyond the restrictions permissible under international law.

The specific Articles in the above-mentioned laws are said to fail the three-part test which says restrictions must be prescribed by law, pursue a legitimate aim and necessary and proportionate. For instance, the provisions in the Telecommunications Law are not a necessary and proportionate response to the risks they are intended to prevent. Similarly, sections 33 and 34(d) of the Electronics Transactions Law impose restrictions not necessary and proportionate and target behaviours that should not be criminalized. It is therefore recommended that these Articles and relevant laws should be repealed or amended to comply with international law. Among these laws some are very recent legislation and certain amendments have already been made, but they are still considered to be insufficient. Certain legal actions by the Government against several individuals under these laws have made them widely unpopular. To amend or repeal them depends on strong advocacy work by all stakeholders. At present, the Government is considering to become a State Party to the ICCPR and as a party to the convention, it will become an obligation for the Government to amend or repeal the above-mentioned problematic articles and laws. In addition, at present, the Government is developing the National Human Rights Commission, pursuant to the recommendations of the Universal Period Reviews (UPR). That National Human Rights Mechanism is intended to address all human rights matters and the current issues related to the right to freedom of expression are expected to be addressed, among others, by the National Commission.

How to enhance the right to freedom of expression?

All laws criminalizing free speech and peaceful protests should be struck off the law books.

Although all laws against hate speech or other incitement to discrimination and violence are legitimate, they must not be used to repress peaceful dissent.

A State monopoly on information is an obstacle to the idea of a free press and consequently infringes the full enjoyment of freedom of expression. To end these monopolies contributes to the enhancement of the right to freedom of expression.

Conclusion

In today's Myanmar, the enjoyment of the right to freedom of expression has much improved, compared to the past. The freedom to use social media platform and uncensored permission of the publication of private newspapers and journals are favourable conditions. Despite some cases that infringe the right to freedom of expressions under specific circumstances, even the contents of social media that target the high-ranking officials of the Government are found to be free from any restrictions. Incredibly, the level of freedom achieved these days on this particular right is unprecedented in Myanmar. Encouragingly, the Government clearly seems unlikely to disrupt this positive trend. In view of the fact that freedom of expression is not an absolute right and some limitations on this right are commonly accepted, certain restrictions on this right cannot be totally ruled out. In Myanmar case, progress in the on-going reform of existing domestic legislation will certainly contribute to the enhancement of the freedom of expression. To justify the restrictions from human rights perspective will continue to be the most difficult challenge with freedom of expression for governments and international human rights community. However, under the circumstances, it is more incumbent on governments to strike a correct balance between their concerns and compliance with internationally accepted standards.