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Section 66(d), the newest threat to freedom of expression in Myanmar?

Section 66(d), the newest threat to freedom of expression in Myanmar?

Lun Min Mang 23 Nov 2016



Prominent National League for Democracy member U Myo Yan Naung Thein is on trial for defamation under section 66(d) following a post deemed inflammatory on his Facebook page. Photo: Zarni Phyo / The Myanmar Times

Section 66(d), the newest threat to freedom of expression in Myanmar?

The government is under mounting pressure from the public and from rights groups to amend its criminal defamation laws after a spate of cases against journalists and bloggers has raised questions about the administration's commitment to protecting free speech.

Persistent repression of criticism through section 66(d) of the Telecommunications Law has led lawyers [speech have continued to deteriorate](#) under the National League for Democracy-led government, despite freedom.

Arrests, prosecutions and long prison sentences were common methods of repression under the former military regime, and such practices continued under the former civilian government elected in 2010. The practice has not ceased and laws of dubious standing continue to be wielded against social media satirists, activists and journalists.

One such piece of legislation, the Telecommunications Law was [adopted in 2013](#) with the aim of improving the climate for foreign investors. But its section 66(d) has been used to crack down on individuals who express opinions on social media that meet with official disapproval.

Observers cite the cases of Ma Chit Tha Me aka Ma Chaw Sandi Tun, Patrick Kum Ja Lee and poet Ko Maung Saung Kha, all of whom faced legal action under the former government in relation to Facebook posts that criticised the former president or the Tatmadaw chief.

Even the ruling party has no respite from prosecution under 66(d). Earlier this month, prominent NLD member U Myo Yan Naung Thein [was arraigned for allegedly posting on Facebook](#) a call for the resignation of the armed forces chief.

According to lawyers, the legislation is vaguely and broadly worded, if narrowly enforced. Section 66(d) of the Telecommunications Law says anyone "extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening to any person by using any Telecommunications Network" faces prosecution and a possible prison sentence of up to three years, plus a fine. The measure appears to contradict section 354 of the constitution, which protects the free expression of opinion unless found to undermine "law and order, community peace and tranquillity or public order and morality".

Thura U Shwe Mann, chair of parliament's Commission for the Assessment of Legal Affairs and Special Issues, weighed into the defamation debate last week by [raising the question of amending the law](#). In his own Facebook post, he [invited public input](#). Then on November 21, he said that according to widespread opinion the law should remain in place, but the contentious section amended, specifically with regards to bail and sentencing.

"There has been criticism and suggestions that the law's section is a burden on reconciliation, and causes hardship and a waste of money, time and energy," the former Speaker said.

U Thein Than Oo, vice chair of the Myanmar Lawyers Network and an advocate for human rights, said the very point of section 66(d) was to pursue repression of political dissidents. He questioned the Yangon Region government's [recent move to sue Eleven Media Group](#) under that provision.

“The section is simply designed for repression by the former ruling party,” he said.

The Eleven suit arose from a story accusing the Yangon Region chief minister of accepting an expensive wristwatch and implying it may have been a bribe. The newspaper’s CEO and chief editor [are now behind bars at Insein Prison](#), awaiting trial.

Prominent human rights lawyer U Robert San Aung said, “It is not appropriate that a citizen who criticises someone more powerful should face legal action of this kind.” He has proposed that the law be amended, adding, “Defendants sued under this section should at least have the right to bail.”

Another frequent criticism is that the law has been invoked despite the absence of bylaws governing its application, a departure from normal parliamentary practice.

Patrick Kum Ja Lee, who [served a six-month jail term](#) for defaming the Tatmadaw chief on social media, said the section should simply be deleted from the law.

“Its only purpose was political repression. Now the government we elected is using it to sue us. That’s not good,” he said.

Criticism from international organisations has been blunt.

“Myanmar’s defamation laws, by being either vague or overly broad, also do not conform to the principle of legality. This undermines the rule of law as they are not formulated clearly and precisely to ensure that individuals can regulate their conduct accordingly,” said Daniel Aguirre, a legal adviser with the International Commission of Jurists in Myanmar. “Notions such as ‘disturbing’ or ‘causing undue influence’, as set out in the Telecommunications Law, are particularly vague and prone to arbitrary and highly subjective interpretation and application.”

He added that in order to ensure the law serves the interests of the people and does not pose a threat to free speech, parliament must “abolish or extensively amend its criminal defamation laws”.

“Civil liability proceedings should be the sole form of redress for complaints of damage to reputation,” Mr Aguirre said.

“The capacity of people to freely impart and receive information, including through free political discourse, is critical for a functioning democracy,” he added.

Pyithu Hluttaw MP Daw Khin San Hlaing (NLD; Pale) said the National League for Democracy would review the laws that are not beneficial to the public and amend them if necessary.

Unless the section of the law is amended, further defamation suits are likely, as Myanmar’s 10 million Facebook users grow increasingly willing to test the government’s commitment to freedom of expression.

Vani Sathisan, an independent legal expert who spent three years working in Myanmar, said, “The punitive impulse to jail someone, whose comment may be insulting but is made without malice and is certainly not defamatory, is a reflection of Myanmar’s deep institutional decay and incapacity.”

“The penchant to turn to criminal defamation laws to punish free expression, by both by the military government and the current administration, chills the exercise of free expression of opinion and stifles the exchange of information. This right to freedom of expression protects every form of expression, including electronic and internet-based,” she said.

“Free political discourse is critical for a functioning democracy under the rule of law. There should be no place for criminal defamation laws in a democracy. Parliament must abolish criminal defamation laws. If the NLD wants to be a legitimate, representative government, then it cannot continue to fail to establish domestic standards conforming to international human rights law,” she added.

Parliament should soon undertake a review of section 66(d) with a view to amending it, said Ko Maung Saung Kha, who [served time for a defamation charge](#) and is now leading a committee [lobbying for the reform](#) of the Telecommunications Law.

“On [November 25], we will hold an awareness campaign at the court hearing of U Myo Yan Naung Thein at Kamaryut Township Court,” he said.

His committee, made up mostly of activists who were prosecuted under the defamation section, is preparing a report to submit to parliament. So far, according to their research, 23 lawsuits have been opened under section 66(d) since the NLD-led government took office in 2012. The committee has also denied bail.

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ပိုးတွေ့လူနာ (Lab Confirmed) - **613,440**
ပိုးတွေ့သေဆုံးလူနာ (Death among Lab Confirmed) - **19,434**
ပိုးတွေ့ပြန်လည်သက်သာ (Recovered)- **592,423**
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