

THE BIG INTERVIEW

112WATCH interviews Parit 'Itim' Wacharasindhu, a young rising Thai politician, who opens up on his view regarding the draconian lese-majeste law.

112WATCH: How important is the reform/abolition of Article 112 if Thailand is to move ahead as a normal democratic society?

Parit: Thailand cannot move ahead as a normal democratic society if Article 112 is still written and used the way it currently is. This is because Article 112 - or the Thai criminal law regarding defamations against the monarch - is not in line with international democratic standards on 3 dimensions, and is a key reason why many people feel 'unsafe' to talk openly about the monarchy.

The first dimension is the enforcement of Article 112. As seen from previous and ongoing enforcement of this law, Article 112 does not set a clear distinction between criticism and defamations. While the wordings of Article 112 only refers to acts of "defamations" "insults" or "threats", but in practice, we have seen cases of people being charged or even convicted with Article 112 despite the fact that their actions do not seem to constitute defamations, insults or threats, but are merely passing comments or (at most) criticisms of the monarchy (e.g., political activist, Pai Dao Din, was imprisoned due to 112 charges back in 2016 for sharing a BBC news article).

This ambiguity and inconsistency is partially due to the absence of explicit articles that protect comments or criticisms made in good faith regarding the monarchy to be exempted from defamation charges. This is unlike in the case of defamation against normal persons where Articles 329 and 330 clearly state that criticisms made in good faith or statements that are true and in the public interest are exempted from any defamation charges or penalties.

The second dimension is the severity of the prison sentence. Violating Article 112 currently carries a sentence of 3-15 years in prison, which is very high when compared with other benchmarks. Compared to other Thai laws currently, the penalty is equivalent to manslaughter or murder without intent. Compared to Thai laws in the past, the penalty is higher than penalties for defamation against the monarch even in certain periods where Thailand was under an absolute monarchy system. Compared to similar laws in other countries with a constitutional monarch, the penalty in Thailand is much higher. In countries where defamations are only a civil offence (e.g., UK, Norway), there is no imprisonment. In

countries where defamations are a criminal offence, defamations against the monarch carry a prison sentence much lower than that of Thailand (e.g., 0-2 years in Spain, 0-8 months in Denmark, 0-4 months in Netherlands).

The third dimension is the absence of limitations on who can file a complaint. Unlike defamation against normal persons where the injured party retains the sole right in filing complaints against the perpetrator, under current arrangements of Article 112, anyone is allowed to file a complaint against anyone for charges against Article 112. This has led to misuse of these proceedings for multiple reasons that have nothing to do with the protection of the monarch against defamation. One use case is the use of Article 112 for political gains - for example, a person may choose to file a complaint against his or her political opponents with Article 112 in order to overwhelm them with legal burden or fear. Another use case is the use of Article 112 to cover up corruption - for example, a politician or civil servant may choose to claim or lead society to believe that their project is being done in the name of the monarchy, in order to reduce potential scrutiny from those who may not wish to investigate into these projects for fear of being charged with Article 112.

Many countries have therefore put clear limitations of who can file a complaint, whether it is limited to the monarch himself or herself (e.g., United Kingdom, Norway) or whether it is limited to a position or authority that is specifically assigned to act on the monarch's behalf in these cases, such as the Prime Minister (e.g., Japan) or the Ministry of Justice. Therefore, while some democratic countries with constitutional monarchs do have specific defamation laws against the monarch, such law in Thailand (i.e., Article 112) falls short of normal democratic standards due to the three aforementioned issues, and Thailand cannot move forward as a democratic country if this law is not reformed or abolished.

112WATCH: As a politician, how do you see your role in tackling the problem of Article 112?

Parit: As a politician, it is my responsibility to identify existing problems, present viable solutions, and create a better change for the people in our society across all issues. Article 112 is no exception. Given the 3 problems stated above, I have a responsibility to develop and push through solutions that fix those problems caused by



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Article 112. I believe that any change requires efforts on 2 fronts, both of which I expect myself to play a role.

The first front is legal change - this means gathering sufficient support in Parliament to pass through legal solutions to reform or abolish Article 112 via parliamentary means. Specifically speaking, this may require securing support from multiple parties in Parliament or getting a larger direct mandate from the people at the next General Election via including the Article 112 agenda in the party's manifesto and getting an increased number of votes and seats.

The second front is social change - this means increasing popular support amongst wider society for the need to reform or abolish Article 112. Specifically speaking, this will require devising campaigns that help to raise awareness of the issues and help to convince people of the need to fix the problems of Article 112.

Pushing for change across both legal and social fronts are not mutually exclusive, but are both complementary and necessary. Legal change (especially on this issue which remains controversial to certain sections of society) without social backing is unlikely to be successful, while social awareness of the issue will mean very little in terms of protecting our democracy and the rights of the people if it does not lead to tangible legal reforms.

This ambiguity and inconsistency is partially due to the absence of explicit articles that protect comments or criticisms made in good faith regarding the monarchy to be exempted from defamation charges. This is unlike in the case of defamation against normal persons where Articles 329 and 330 clearly state that criticisms made in good faith or statements that are true and in the public interest are exempted from any defamation charges or penalties.

112WATCH: What is the view on Article 112 of the Move Forward Party?

Parit: Move Forward Party continues to reiterate our stance and our belief that Article 112 has problems that need fixing, in order to protect people's civil rights and liberties especially in relation to freedom of expression. In February 2021, as an opposition party, Move Forward Party submitted a package of 5 legislative drafts to

Parliament with the purpose of strengthening the protection of freedom of expression in Thailand.

One of the 5 drafts submitted covers extensive reforms of Thailand's defamation laws, including defamation against the monarch (Article 112). If passed, the draft will result in the elimination of imprisonment and criminal punishment for defamation against normal persons and other state officials (e.g., government staff, courts). For defamation against the monarch (which will be moved to a new section under the Criminal Code) the penalty will be reduced to a fine of up to THB 300,000 (or around USD 8,000) or a prison sentence of 0-1 year. To prevent misuse and improper enforcement, the draft will also include articles that explicitly state that comments or criticisms made in good faith are exempted from any wrongdoing, and articles that identify the Bureau of the Royal Household as being the sole authority with the right to file a complaint on behalf of the monarch.

Other drafts in the package include proposals to reform Computer Crimes Act of 2017 to prevent its misuse as a weapon to silence criticisms against the Government, proposals to pass a new Act that helps to prevent the state from pursuing a strategy of SLAPP (Strategic Lawsuit Action Against Public Participation) against civilians, and proposals to amend existing legislation in order to better protect citizens from abuse of power by state officials throughout the investigations, prosecution, or other parts of the judicial process.

Since submission, Move Forward Party has been working to push for this package to be tabled to Parliament as an agenda as soon as possible, and once presented to Parliament, the party members will be working to secure support from other parties needed for a majority in the subsequent parliamentary vote on these proposals.

112WATCH: As a young leader yourself, what can you bring to the table to help strengthen the youth movement in Thailand at the moment in dealing with sensitive/critical issues related to the monarchy?

Parit: In addition to helping to push through legislative proposals above, which is aimed at fixing the root cause of the current problems posed by Article 112, another important priority is to hold the Government to account regarding the protection of people's basic human rights during the judicial process (e.g., right to be presumed innocent until proven guilty, right to bail) that have often been neglected or have received insufficient protection when it comes to cases relating to Article 112.

For me personally, I am trying to continue to be vocal in raising awareness regarding the problems of Article 112 and broadening public support for reforming or abolishing Article 112.

We must admit that given Thailand's political history, any issues that are related to the monarchy (such as Article 112) tend to receive strong responses from both those who wish to see reforms and those who do not wish to

see any reform. As such, to ensure that ongoing problems are fixed and necessary reforms are made in order to uphold the principles of a constitutional monarchy under a full democratic system, I believe there is a strong need to 'de-polarise' and 'normalise' these issues.

On de-polarisation, I have been attempting to communicate more with those who are unsure or do not yet see the need for the country to undertake any reforms (or even any discussion on reforms). While many approaches are required simultaneously, one effective method that I found is to present the case for reform via objectively highlighting the problems and trying to establish common ground on the problems, before jumping to the proposed solution. On the issue of Article 112, before jumping to the solutions proposed by the party as laid out above, it is often helpful when talking to those who may be instinctively opposed to any discussion on Article 112, to start first by inviting them into a conversation about what they believe should be the underlying principles for defamation laws, and then unpacking the problems one-by-one to show them why the current laws contradict their principles. For example, if they agree with the principle that defamations against the monarch should not carry a punishment as high as manslaughter, then we can point out that the penalties for those 2 offences under existing Thai laws are the same, and that it means that they too agree with some reforms of 112, at least regarding the reduction of penalties. I believe the first step towards de-polarisation is to get people as wide across the political spectrum as possible to at least agree that there are certain problems about Article 112 that need fixing, even if they may differ on what the final solution should be (e.g., revision of which aspect, revision or abolition).

On normalisation, I believe that we should ensure that talks regarding reforming the monarchy should be treated in a similar manner with talks regarding reform of other institutions under the Constitution. Any use of state power (granted by the people via the Constitution) or any use of state money (granted by the people via taxes) must be open to public scrutiny, and whether any proposal to reform the monarchy (or any other institution) receives support from large parts of society or receives very little support, the country should still provide everyone with a 'safe' space to discuss these issues to ensure that the people involved in the decision-making take into account all opinions. A concrete example of my attempts to 'normalise' these issues is my efforts in the National Budget Committee in reviewing and scrutinising the Royal Office's proposed expenses by using the same standard and level of scrutiny used for other Government units or agencies that draw on the state budget. Attempts to de-polarise and normalise these issues in order to secure popular support for a democratic consensus on these issues and move this country forward is something towards which I am actively trying to work.

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112WATCH: Thailand has suffered from polarisation particularly as the faultline continues to be drawn on the monarchy? In your opinion, how can Thailand heal such a polarisation? In other words, is it possible for Thai society to come up with a consensus in regard to the issues of the monarchy and Article 112?

Parit While differences of opinion are inevitable in society on any issue, arriving at a consensus requires 2 pre-conditions. However, discussions regarding monarchy reform currently lack these 2 pre-conditions, which we must establish in our society.

The first pre-condition is ensuring a 'safe space' which protects everyone of the right to freely discuss all issues in a straightforward manner and share their opinions without fear of prosecution. This is currently under threat due to the current format and enforcement of Article 112 - any criticism or satire puts your action at risk of being classified as defamatory in the eyes of the judicial process that can be kick-started by anyone, and puts you at risk of at least 3 years imprisonment even for the smallest charge. Hence, fixing the Article 112 problem is often seen as significant, both as a pre-condition for discussing any other elements of monarchy reform, and as an element of monarchy reform that is most likely to gather the broadest consensus.

The second pre-condition is ensuring a 'fair' decision-making process that democratically considers all opinions equally. A right to free speech without a fair decision-making process will mean that people's demands are only heard, but not listened to. However, even the current Constitution (which is the highest laws in the country) did not come about via a fair decision-making process but were drafted by a few people affiliated with the military regime, passed through a referendum in 2016 that was neither free nor fair, and contained in it articles that increased the power of many unelected bodies that are under the direct and indirect control of the existing regime. While some proposals for monarchy reform go beyond changes in the constitution, but the drafting of a new Constitution by a democratically elected Assembly with contents that are in line with global democratic standards, is an important first step in creating a tangible 'safe space' that incorporates all demands for (and against) monarchy reform, and in

setting the tone and overall direction for subsequent changes in other legislation.

Hence, fixing the Article 112 problem and drafting of a new Constitution by the people are two important steps in healing previous polarisation regarding monarchy reform, and in finding a new democratic consensus to move the country forward.



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