

How Human Rights Law and Rhetoric Shielded the Military Junta in Myanmar

Theint Theint Thu

Abstract

This paper argues how human rights norms, practices, and language have clouded the real solutions to injustices in Myanmar by protecting the military junta from pressure. It will explore how the international human rights discourse has set out to merely deal with the symptoms of the problems rather than the root cause itself, providing negligible change in the long run. The paper explains how the current solutions for Myanmar ignore the institutional roots of the injustices (such as the constitution) as well as structural and societal causes. In addition, it explores how in recent years, the military has been able to hide its rights violations behind superficial developments as well as the regime change. Overall, the human rights discourse has provided a naive narrative for despotism in Myanmar by undermining the entrenched authoritarian rule in both government and society, even in the post-trauma era. In doing so, the discourse has unknowingly shielded the military junta and has dangerously looked over the true causes of rampant rights violations.

Keywords: Myanmar, Human Rights, Discourse, Democracy

The case study of Myanmar demonstrates how human rights, particularly as a legally centred objective, have masked and distracted prevalent injustices. The language of human rights in the international sphere have only hid and exacerbated the problem by providing unsustainable and insignificant change. With international eyes being placed on the expansion, mechanism, and awareness of human rights in Myanmar, many fail to unravel the true foundation of the violations in the country. Human rights violations in Myanmar exists as a symptom of a lack of true democracy, faulty constitutionalism, and the role of a despotic regime who has hid behind their opposing democratic party. Myanmar, still under the large influence of the military, has suffered from political instruments like the 2008 constitution, the superficial development of human rights, and from the structural oppression that goes behind the scope of human rights advocacy. This paper will argue how the current human rights language, rhetoric, and practices have clouded the true solutions to injustices in Myanmar, undermining its own ability to resolve the very issues it had set out to overcome.

The Problem with the Human Rights Language

In Myanmar, and in the wider world, the language of human rights has ironically been used as a weapon against those said rights. Unfortunately, as Baxi points out, the gaining popularity of the word 'human rights' mean that most arguments are framed to suit its language - even when the issue is not necessarily one of rights (Baxi, 2007: 2). The language of human rights gives the

impression that it is something governments can do to enact change by granting rights through legislation or allocation of resources (Carozza, 2018). However, in a system of faulty constitutionalism and lack of democratic accountability, the implementation of rights cannot be carried out as simply. The declaration of human rights and the founding of international human rights law essentially created a checklist for development for many NGOs and government officials by providing basic standards (Robinson, 2005: 35). However, the reality is that despite advances in the expansion of human rights, poverty and oppression will still override the effectiveness of rights. In Myanmar, the language of human rights has eclipsed the true issues, thus clouding the awareness of what is really at stake.

An Overview of Human Rights Violations and Developments in Myanmar

Under the military rule, initially brought in through a coup d'état by General Ne Win's party, the Burma Socialist Programme Party, the rights of both citizens and non-citizens of the country have been infamously violated against. From qualifying the right to expression to the lack of minority rights and religious freedom, the party committed human rights violations that continue to remain even in the current quasi-democratic regime. One of the greatest political shifts in contemporary Myanmar history is marked by the 8888 Revolution. The 8888 Revolution, a series of protests led by students and monks, was the first stand towards democracy, and against the socialist regime. For the Myanmar people, the notion of democracy encapsulates all forms of civil and political rights (Muang, 1999). Despite certain international media coverage, in Myanmar, the 8888 revolution is best understood not as a fight for the better establishment of human rights but as a protest to attain liberty from an oppressive government (ibid: 253). Even in the decades following the 8888 revolution, international media continues to utilize the language of human rights to frame the political and social situation in Myanmar, but it is interesting to note that it is not the dominant language used in the local political sphere (ibid). Despite the supposed victory of the National League of Democracy (NLD) in the 2015 elections, Myanmar citizens are still campaigning for greater democracy and liberty today. They believe that human rights cannot exist as a separate entity but can only be granted once true democracy is achieved (ibid).

The violations of human rights in the country has led states to sanction Myanmar in the past - believing that applying pressure to the military junta as per international human rights customs will pave way for the better establishment of human rights (Xuechang, 2010: 7). However, as countries like the United States view their sanctions as a righteous and a helpful stance on human rights, they are masking the vast problems that the sanctioning has caused. For civilians, the sanctioning of Myanmar led to economic devastations affecting businesses and job availability, limited access to the wider world, and exploitation for natural resources (Pederson, 2008: 229). Thant Myint-U remarks that the "current sanctions on the government are hurting ordinary Myanmar people more than the junta generals" (Xuechang, 2010). The sanctions left Myanmar in a dire state of socio-economic development, and left the people of Myanmar exposed to greater violations of human rights (Johnston 2009). Instead of being the premise of democratic change, the sanctions, in the name of human rights, hindered the democratic process by paving the way for a greater control on civil and political rights with less resources for political engagement.

The recent human rights violation that the current Myanmar's government is responsible for is the ongoing crisis of the Rohingya genocide. The language of human rights has made Aung San Suu Kyi at the centre of media attention, due to her previously seen role as a protector of the people and as a recipient of the Nobel Peace Prize. However, while the lady has not been wholly innocent,

she also cannot be held directly accountable for the crimes against the Rohingya that are occurring today (Barany, 2018). In shifting the spotlight towards Aung San Suu Kyi, international media had unknowingly masked the true culprits of the situation - the *tatmadaw* (Myanmar Armed Forces) and its commander in chief, General Min Aung Hlaing (Ibrahim, 2016). Today, the common person would speak about Aung San Suu Kyi, as the nobel laureate who has failed to intervene in an infamous mass genocide. However, they would be unsure about the role of the *tatmadaw* or of General Min Aung Hlaing (Barany, 2018: 13). The scrutiny of Aung San Suu Kyi in the international media gave the *tatmadaw* the opportunity to conceal behind their opposition, clouding accountability, and thriving without international pressure (*ibid*).

The Problem of Constitutionalism in Myanmar

The one-dimensional view on human rights, that the rule of law is essential in upholding human rights law (Robinson, 2005), is conflicted in the case of Myanmar, where the constitution is a perpetuator, not protector of rights (Renshaw, 2017: 221). By diverting the attention onto human rights laws in Myanmar, many are failing to recognize the underlying difficulty of enforcing these rights under an established legal institution. The rooted authoritarianism means that the Union Solidarity and Development Party (USDP) has guaranteed its power through all aspects of the legal and political sphere, especially in what can be seen in the international legal sphere as a righteous concept of a constitution (Cheesman, 2016: 67). The interchangeability of the words of constitution, rule of law and human rights in the Western political sphere has given the false impression that the establishment of one guarantees the establishment of the other (James, 2006). It is a catch-22 situation, unveiling the irony of holding human rights accountable under the rule of law, under the 2008 constitution.

On the surface, the constitution marked a milestone towards the recognition of human rights and its enforcement in Myanmar. Chapter 8 of the constitution lays out the “Fundamental Rights and Duties of the Citizen”, which recognizes the rights set forth by the Universal Declaration of Human Rights - including equal recognition under the law (Constitution of the Republic of the Union of Myanmar 2008: Art 347). However, further inspection of the constitution unravels a deceitful hierarchy that undermines true equality under the law. Article 445 of the same constitution provides legal immunity for members of the USDP in relation to any act done in the execution of duty (*ibid*: Art 445). Though it is unclear whether it would apply to genocide or crimes against humanity, the legality of their pardoning illustrates the difficulty in holding the political party accountable for violations of human rights.

Even if advocates work for better human rights accountability under a legal framework, effective enforcement under the law remains a challenge. The lack of accessible legal aid and “prevalence of corruption deters the majority of the population from accessing the judicial system” (Renshaw, 2017: 221). Even if the elitist nature of law is overcome through access to courts, competing principles and the dominance of military objectives in the constitution, make it difficult to access remedies and redress (*ibid*). While most thought that the development of the constitution marks an advancement towards better human rights, the overlooked problem is that the constitution still guarantees military power. While one could argue that the creation of the constitution marked the adoption of human rights into domestic law, the reality is that its undemocratic and unaccountable nature still does not signify a victory for the modern human rights regime.

Superficial Developments in Human Rights

While it is true that human rights law has been able to hold states accountable to particular violations, it has also provided false hope and blurred the lines of accountability. In Myanmar, the language of human rights has shielded the military party from the pressures of demilitarizing the government. While the previous military president, Thein Sein, received praise in the international community for his reformist laws, the reality is that his laws were still not an exceptional advancement for human rights (United Nations. General Assembly & Quintana, T.O. 2014). The recent developments of human rights in Myanmar has made people think that the quality of life has improved under the new regime, when in fact, there is no significant difference. The distinction between the superficial achievements of human rights and the actual oppression that takes place in Myanmar paved the way for the military to hide behind arbitrary notions of human rights.

Under the USDP president, Thein Sein, the party has expanded civil and political rights to allow for the establishment of a domestic human rights accountability body (Burma Partnership 2012), the release of political prisoners (Hlaing 2012), allowing parliament to address the issue of the military in land grabbing (Zaw, 2013), legalizing trade unions (BBC News, 2011), and allowing for more public political gatherings. However, the expansion of human rights in recent Myanmar has undermined the grave influence of the military under the rule. It is one thing to say that people now have a greater right to the freedom of speech - that people can now speak up more about politics in public areas than they were ever to in the past (Renshaw, 2017: 216), but it does not increase the fundamental purpose of the right-- the ability to be politically engaged. While people can now slightly raise their voice about change, it is false optimism to say that they can bring about substantial, meaningful change whilst doing so (Lakhdir 2016). Today, access to politics still remains as qualified as it was under Ne Win's government; it is just now masked behind the expansion of other civil and political rights.

The establishment of the Myanmar National Human Rights Commission, at first glance marked a triumph of human rights. Established in 2011, by President Thein Sein, the commission was created to further align Myanmar with the Paris Principles, endorsed by the UN General Assembly (Renshaw, 2017: 217). However, the creation of the commission and its execution has lacked in transparency. Although the chairman of the commission, Win Mra, stated that the commission would not be influenced by the government (Htun, 2011), civil society groups have doubts as to its true independence and its willingness to scrutinize the government (Burma Partnership, 2012). Unfortunately, their scepticism was met with some truth. In 2015, the commission urged for the release of student demonstrators who were involved in the Letpadan protests by releasing a statement declaring that excessive force was used against the demonstrators - undermining their right to protest (Lone, 2015). However, after publishing the report, the students were subjugated to further abuse and more students were imprisoned. Despite the aggravated situation, hunger strikes, and allegations of torture in the prisons, the commission declared that they would not pursue the situation further (Min & Kuan, 2016). The commission is a critical example of how Myanmar uses human rights bodies to create an illusion of enforceability, concealing the greater issues of oppression and demonstrating how a state can hide behind the popular language of human rights.

The Structural Issues in Present Day Myanmar

The human rights rhetoric and international human rights standards overlook the underlying social and cultural difficulty of the pursuit of such rights. As Renshaw states, “many are traumatized by the decades of subjugation to articulate their values on how society should pursue” (2017: 234). Renshaw highlights the difficulty in establishing a simplistic human rights order in the post-trauma era. It is not merely the government’s reluctance to change, but the hesitation and fear of Myanmar’s citizens to accept and embrace their slowly expanding rights. While organizations attempt to increase a knowledge of human rights in the country, they will find that the knowledge of human rights is not an issue. While most may not have formally heard of the Universal Declaration of Human Rights, they still understand the gross injustice that they have been subjected to (National Coalition Government of the Union of Burma. Human Rights Documentation Unit 1999). In Myanmar, even despite the lack of formal education in the social sciences, the population remains politically active and aware (Crouch, 2017: 157).

The greater problem is that decades of military rule and brutal enforcement measures have created a structural problem within society that goes beyond the scope of the state’s ability to recognize human rights (Pederson, 2008: 180). The trauma endured by generations under the military party will not only need the opportunity to heal but requires the activism to reshape it (ibid: 191). If Myanmar were to move forward, it would not only need to increase civilian and technocratic makeup at all levels of government, but to increase the population’s trust in the legal system and actors of the law (ibid). Myanmar would need to combat the corruption, move towards national reconciliation, and rearrange its entrenched authoritarian control. Even if Myanmar were to develop an effective human rights mechanism, it would not be enough to combat the deeply-rooted oppression and abuse of people by the state (ibid: 181).

Conclusion

The reliance of human rights on democracy has led to confusion with regards to the current situation in Myanmar. The problem is not the lack of human rights, but rather the rooted political mechanisms in which the violations of these rights are a symptom of. Creating more rights, expanding the scope of rights, or increasing awareness of human rights will not alleviate the situation if the problem is one of systematic oppression and an undemocratic constitution. However, due to the popular development of the language of human rights, the true solutions are being masked behind false developments of said rights. The lack of accountability brought by the language of human rights blurred the lines of scrutiny.

Believing that a democratic party in power entails a better human rights regime is merely incorrect. Not only are there power interests at conflict, but the mechanisms of upholding rights, like the constitution itself, is being used as a weapon to justify human rights atrocities. Adding to the complexity, the citizens themselves are living in the post-trauma era where the acceptance and personal adoption of human rights is met with hesitation and fear. In addition, the simplistic language of human rights does not account for the tension between human rights and the rule of law. The expansion of human rights does not mean the dissolution of an oppressive regime, nor does it mean that citizens are generally more content and freer. In fact, the expansion of human rights in Myanmar has only succeeded in diverting the attention away from the existing mechanisms of despotism. As Baxi (2007: 6) writes, “the notion that human rights regimes may, or ought to, contribute to the ‘pursuit of happiness’ remains the privilege of a minuscule of

humanity". As in the case of Myanmar, human rights have mistakenly been seen a cure for the vast injustices in the country today.

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