

Legal Analysis on Gender Equality and Women's Rights in Myanmar

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Abstract

Gender equality is achieved when women and men enjoy the same rights and opportunities across all sectors of society including economic participation and decision-making. However, deeply rooted social stereotypes, some traditional cultural practices, and gender discrimination act as barriers to the rights of women in Myanmar. Nowadays, Myanmar is giving increasing attention to gender inequality as an impediment to the development and attainment of human rights especially women's rights. Myanmar's legal framework is drawn from a mix of colonial and traditional sources. There are also major challenges, which include contradictory messages in the legal framework, the plural legal system with different gender equality and women's rights standards. Nevertheless, there are related domestic laws of Myanmar such as Myanmar Customary law (family law) and Constitutional Law and other Statute Laws relating to protection of women's rights. Myanmar also acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1997 and is also committed to the Beijing Declaration and Platform for Action, 1995. As part of its treaty obligations, Myanmar has committed to ensuring that its laws uphold women's rights and advance women's equality. This paper will focus on the capability between Myanmar Laws and CEDAW to implement the obligations of CEDAW without barriers.

Keywords: Gender Equality, Women's Rights, Myanmar, Social Stereotypes, Gender Discrimination, Legal Framework, CEDAW

Introduction

Gender discrimination in Myanmar has historically not been acknowledged as a human rights issue. Within the former Myanmar society, harmful traditional or customary practices were used including widow and wife inheritance, forced marriage to perpetrator of rape, the practice of a rapist purging his crime through payment of compensation to the village or community, male child preference, men as head of household, bride price, women's ineligibility to inherit and women's lack of participation in decision making. These Practices are a form of gender discrimination and they violate the human rights of affected individuals, particularly women and girls which lead to unequal power relations in communities and societies and to violence against women and girls.

Gender roles arising out of cultural and religious stereotypes continue to underpin laws and practices that prevent women from enjoying their full rights to personal safety, health, education, employment, freedom of movement, and participation in leadership, recreation and community activities. The combination of government restrictions, religious demands and society's preconditions serve to ensure women face restrictions in every sphere.

Myanmar has a common law legal system that draws on a combination of legislation, case law, and customary law which refers to social and religious rules and practices traditionally used to sanction. In the role of International Law, Myanmar had ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1997. Some of domestic laws are not compatible with CEDAW, as they incorporate restrictive gender stereotypes and are inconsistent with the promotion and protection of women's rights to substantive equality. Therefore, this study aims to assess existing laws in Myanmar and their compliance with CEDAW norms relating to gender equality and women's rights.

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Traditional Practices and Gender Equality

Gender is an issue because of the fundamental differences and inequalities between women and men. Traditional practices also reflect the values and beliefs held by members of a community for periods often spanning generations. Every social grouping in the world has specific traditional practices and beliefs, some of which are beneficial to all members, while others have become harmful to a specific group, such as women.

In Myanmar, there are some traditional Burmese sayings such as “Husband is god, son is master.”, “The hen’s crow will never bring the dawn.” and “A male dog is higher in status than a woman”. And then, most of the religious teachings contain specific prescriptions and proscriptions for their congregations that typically differentiate between men and women.

In additions, women in Myanmar are generally perceived as weak, in need of protection, and incapable of making their own decisions. The prevalence of gendered stereotypes has a direct impact on the women’s confidence in their own abilities to lead and gendered discrimination which act as barriers to women attempting to advance in their fields.

Myanmar Customary law refers to social and religious rules and practices traditionally used to sanction or recognize relationships between parties, such as marriages, divorce, succession, inheritance and adoption and to resolve disputes.

However, some provisions of the Dhammathats provided that in cases of disagreement a husband could chastise his wife with a light cane or split bamboo which lead to gender inequality and domestic violence against women.¹ The CEDAW Committee noted, in paragraphs 46 and 47 of its 2008 Concluding Observations on Myanmar that discriminatory customary practices persist, especially in ethnic communities, with regard to marriage and its dissolution, as well as family relations, including inheritance. Under paragraphs 24, the Committee remains concerned at the persistence of patriarchal attitudes and discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and in society.²

Nowadays, Myanmar is giving increasing attention to gender inequality as an impediment to the development and attainment of human rights especially women’s rights. Myanmar acceded to the CEDAW and is also committed to the Beijing Declaration and Platform for Action. Although Myanmar had not ratified the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) has been ratified in 6 October 2017. However, Myanmar has been implementing a series of reforms simultaneously in the political, economic and social spheres about the women rights and gender inequality in line with these International Human Rights Conventions.

General Principle relating to Protection of Women Rights

Non-discrimination is considered as a general principle relating to the protection of human rights. The Human Rights Committee consider that “non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights.”³

According to UDHR, ICCPR, ICESCR and CEDAW, the rights granted to women and discrimination of any kind are prohibited. Article 1 of the Universal Declaration proclaims that “all human beings are born free and equal in dignity and rights”, while, according to Article 2:

¹ Ba Tun, Principles of Modern Burmese Buddhist Law (Calcutta: Eastern Law Hse [Priv.] Ltd., 1957), p- 97.

² CEDAW, Committee on the Elimination of Discrimination against Women, Concluding observations on the combined fourth and fifth periodic reports of Myanmar, Adopted by the Committee at its sixty-fourth session (4-22 July 2016), Para- 24,46 and 47.

³ Human Rights Committee, General Comment No. 18, Para. 1.

“everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. With regard to the right to equality, Article 7 of the UDHR stipulates that: “all are equal before the law and are entitled without any discrimination to equal protection of the law”.

The right to equality and freedom from discrimination is protected by several of the International Covenant on Civil and Political Rights. In Article 2(1), each State party: “undertakes to respect and to ensure to all individuals within its territory without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 26 states that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Gender equality is emphasized in Article 3, according to which States parties “undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant”.¹

Under Article 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, the States parties undertake “to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. The States also undertake under Article 3 “to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant”.

Myanmar acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1997. Myanmar has committed to ensuring that its laws uphold women’s rights and advance women’s equality. Article 1 of CEDAW, 1979 defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”. Article 1(1) autonomous right of equality and prohibits “any distinction, exclusion or restriction made on the basis of sex”.

Myanmar is giving increasing attention to gender inequality as an impediment to development and the attainment of human rights. In the National Strategic Plan for the Advancement of Women (NSPAW) 2013-2022, the Government has signaled its commitment to promoting and protecting the rights of women. Among the key objectives of the Plan, is ‘to ensure the protection and fulfillment of women’s and girls’ economic, social, cultural, civil and political rights’. The Minister for Social Welfare, Relief and Resettlement chairs the Myanmar National Committee for Women’s Affairs, which will guide the implementation of the Plan.²

In additions, the government of Myanmar efforts to improve its policy framework aimed at accelerating the elimination of discrimination against women and advancing women’s rights.

Constitutional Rights on Gender Equality

The Constitution of Myanmar (2008) and some related laws provide on the rights of women but some provisions still refer to gender inequality. Myanmar’s Constitution guarantees that “Every citizen shall enjoy the right of equality, the right of liberty and the right of justice”. Nevertheless, Section 32 of the Constitution also provides that “the Union shall care for mothers and children.....” which can be seen that the Constitution still contains references to

¹ Article 2(1), 3 and 26 of the International Covenant on Civil and Political Rights, (ICCPR), 1966.

² Raising the Curtain, Cultural Norms, Social Practices and Gender Equality in Myanmar, The Gender Equality Network, Yangon, Myanmar, November 2015, P-8.

women as mothers, which may reinforce the stereotype that the primary role of women is to bear children.

Especially, with reference to the legal protection of women rights, Section 347 of the Constitution of Myanmar clearly grants “any person shall enjoy equal rights before the law and equal legal protection. Moreover, section 348 also provides that “the Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth.”¹

Therefore, the Constitution of the Republic of the Union of Myanmar (2008) clearly ensure the gender equality right in line with the Human Rights Conventions especially CEDAW.

Rights to Work

In Myanmar, the ratio of female labour is 40.73% in 2017 according to the World Bank collection of development indicators, compiled from officially recognized sources.² Concerning with the right to work for women, Section 24 of the 2008 Constitution of Myanmar granted to enact necessary laws to protect the rights of workers. Section 349 ensures equal opportunities in public employment, occupation, trade and business, and matters related to technology and science, and Section 350 provides for equal pay for equal work. However, Section 352 of the Constitution specifically refers to “positions that are suitable for men only”, signifying that women are restricted in their occupational choices because of gendered societal concepts.

The Social Security Law (2012) ensures that women and men enjoy, on an equal basis, the benefits of new insurance programmes, including the provision of maternity insurance for women. According to Section 25 of the Social Security Law (2012), women who insured shall enjoy the rights to take medical treatment for pregnancy and confinement. Furthermore, under Section 21 (ii), the female workers who is insured, are able to enjoy the health and social care insurance system benefits such as health care, medical treatment and cash benefit in time of pregnancy and confinement.

Additionally, For both male and female workers who are working in the fields of commerce, production and service, agriculture and livestock breeding, the new Minimum Wage Law was enacted on 22 March 2013 and its rules was issued on 12 July 2013. In the chapter 8 of this Law, it is prescribed that both men and women are entitled, without discrimination, to be paid minimum wages as stipulated by the law in order to enjoy the same rights and salaries in respect of similar work.³

In order to provide skill training for Myanmar’s work force relevant to advanced technology and ensure job opportunities, the Employment and Skill Development Law (2013) also provides for the creation of internal job opportunities and the enhancement of worker skills, without discrimination on the basis of sex.

Gender equality is contained in Article 7(a) (i) of ICESCR, which guarantees “fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women.....”. Article 7(c) also secures the right to “equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence”.⁴

In the field of employment for women, Article 11 of CEDAW, 1979 clearly states that the appropriate measures to eliminate discrimination against women to ensure, on a basis of

¹ Section 327 and 348 of the Constitution of the Republic of the Union of Myanmar (2008).

² <https://tradingeconomics.com/myanmar/labor-force-female-percent-of-total-labor-force-wb-data.html>

³ United Nations, CEDAW/C/MMR/4-5, Convention on the Elimination of All Forms of Discrimination against Women, 2 March 2015, P-5.

⁴ Article 7 (a) (i) and 7(c) of Covenant on Economic, Social and Cultural Rights (ICESCR), 1976.

equality of men and women, the same rights, in particular: the right to work, the right to the same employment opportunities, the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, the right to equal remuneration, the right to social security and the right to protection of health and to safety at work.

Although there are some labour Laws of Myanmar that guarantees to protect the rights of women workers, most of the women working in the informal sector still facing the lack of social protection and benefits as well as legal mechanisms for redress.

Rights to Education

The education is important for all girls and women who contribute significantly to women's empowerment and to reaching their full potential in life. Once in Myanmar traditions, women were thought to be good enough with just literacy education. Only men could advance into higher education in monasteries by becoming monks. This kind of belief is still prevalent in some area of Myanmar.

Nowadays, most of the Myanmar women advance into higher education than man and they get better job opportunities. Article 28 of the Constitution of Myanmar also provides that "the Union shall: (a) earnestly strive to improve education and health of the people; (b) enact the necessary law to enable National people to participate in matters of their education and health; (c) implement free, compulsory primary education; (d) implement a modern education system that will promote all around correct thinking and a good moral character contributing towards the building of the Nation."

Under Section 366 of the Constitution of Myanmar, every citizen has the right to education in accord with the educational policy laid down by the Union and all shall be given basic education which the Union prescribes by law as compulsory. In additions, every citizen also have the right to conduct scientific research explore science, work with creativity and write to develop the arts and conduct research freely other branches of culture.¹

In the educational field, the outstanding citizens shall also be honour and assist irrespective of race, religion and sex according to their qualifications under Section 368 of the 2008 Constitution. Moreover, according to Child Law of Myanmar (1993) "every child shall have opportunity of acquiring education."

Therefore, the educational rights of women have been protected by respective National Laws and policy in Myanmar. Nevertheless, the lack of an adequate budget for the education sector, which, coupled with discriminatory stereotypes regarding the education of women and girls, limits their access to education, in particular in rural areas.

Rights to Health

Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. Women have the right to the enjoyment of the highest attainable standard of physical and mental health. Article 367 of the Constitution of Myanmar provides that every citizen shall have the right to health care in accordance with the health policy laid down by the Union.

For the health development of women and children in Myanmar, health services are carried out by prescribing health related laws, policies and health development plans. To protect the rights and enjoyment of health benefits of women and children, there are health related laws, policies and plans such as Union of Myanmar Public Health Law (1972), Myanmar Maternal and Child Welfare Association Law (1991), National Health Policy (1993), Myanmar Reproductive Health Policy (2002), Five-Year Strategic Plan for Reproductive Health (2009-2013), Adolescent Health and Development Plan (2009-2013), The 30 year Long

¹ Section 366 (a) (b) and (c) of the Constitution of the Republic of the Union of Myanmar, 2008.

Term Health Development Plan (2001-2030), National Health Plan (2011-2016), Myanmar National Strategic Plan on HIV/AIDS (2011-2015), National Strategic Plan for the Advancement of Women (2013-2022) and Standard Guide Line on Adolescent Reproductive Health (2013).¹

The National Strategic Plan for the Advancement of Women (2013–2022), Myanmar, aims to improve systems, structures and practices to protect, promote and fulfil women's and girls' right to equality and affordable health care.² However, at the prevalence of HIV and AIDS and unsafe abortions, which have contributed to the increase in the maternal mortality ratio. In recent days, the illegal abortions are in danger for the pregnant women and it is criminalized in cases of rape, incest and severe fetal impairment.

Therefore, it is important to give both health awareness and legal information to the women and girls on their sexual and reproductive health and rights, as well as their access to related services, including contraceptives.

Rights to Leadership

Myanmar society so far does not accept that “Women can be leaders and must participate as leaders in the national political decision-making process”. There is not much space for women to participate in the administrative, legislative or judicial decision-making processes from the state level to the grass root level.³ Nevertheless, the priority area “Women and Decision Making” in the National Strategic Plan for the Advancement of Women 2013-2022 provides a comprehensive framework to improve systems, structures and practices to ensure women's equal participation in decision making and leadership at all levels of society.

In additions, every citizen has the right to elect and right to be elected to the Pyithu Hluttaw, the Amyotha Hluttaw, and the Region or State Hluttaw subject to the Constitution and relevant laws under Section 369 (a).⁴ Women's participation in public life, as voters, community leaders and political representatives, has important benefits for societies and nations.

Some countries including Myanmar have relied on CEDAW to eliminate discriminatory laws and policies in the political sphere and to support “temporary special measures” to increase the representation of women where they have traditionally been under-represented. Article 7 describes for the elimination of discrimination against women in a country's political and public life, and Article 8 calls for equal participation of women as government representatives at the international level and in the work of international organizations.⁵

The CEDAW Committee has endorsed measures adopted by a number of states to ensure equal participation by women in senior cabinet and administrative positions, including preferential appointment of qualified women candidates; rules that neither sex should constitute less than 40% of the members of any public body; and quotas for women in cabinet and the legislature.⁶ Despite there are many challenges in Myanmar, women are overcoming

¹ United Nations, CEDAW/C/MMR/4-5, Convention on the Elimination of All Forms of Discrimination against Women, Committee on the Elimination of Discrimination against Women, 2 March 2015, P-25, Para-112.

² Ibid, P-117

³ The first Myanmar Women's Forum, jointly organized by the Women Organizations Network of Myanmar and the Women's League of Burma, and was held in Bahan Township in Rangoon at the Excel Treasure Hotel from September 20-22, 2013.

⁴ Section 369(a) of the Constitution of the Republic of the Union of Myanmar (2008).

⁵ UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 23: Political and Public Life, 1997, A/52/38, available at: <https://www.refworld.org/docid/453882a622.html> [accessed 8 December 2018].

⁶ Myanmar Laws and CEDAW, The Case for Anti-Violence Against Women Laws, Briefing paper: Background, Legal Analysis and Case Studies from Cambodia, Thailand and Vietnam, Gender Equality Network, January 2013, P- 21.

barriers to take up leadership positions. After the 2015 election, women account for only 13.6% of Parliamentary seats and 12.7% in State and Regional Parliaments.¹

Although the Myanmar Law such as the 2008 Constitution and CEDAW clearly provides the right to leadership for all women, most of the women (educated or uneducated) do not interested in the political role in Myanmar. Therefore, the participation of women in government at the policy level continues to be low in general.

Conclusion

Gender stereotypes and negative cultural practices are challenges to prohibit discrimination and ensure substantive gender equality in Myanmar. Although there is a general absence of policies and laws which prohibit discrimination and ensure substantive gender equality, the rights of women are given by 2008 Constitution and enacted laws. As a signatory to CEDAW,

Myanmar must fulfill its obligations to protect the right of gender equality for women by national laws. In order to implement the legal mechanisms relating to protection of women rights and to eliminate of gender inequality, the relevant Myanmar government agencies and organizations are responsible to amend the existing provisions that discriminate against women and to establish an independent and effective national level mechanism in line with the

International Human Rights Instruments especially CEDAW.

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