

Guardians for Justice: Legal Protection in the Context of Fragility

Kyaw Kyaw

Abstract

In contexts of political upheaval, the justice system is expected to function as a protective institution safeguarding individuals against arbitrary state power. However, evidence from post-2021 Myanmar demonstrates a fundamental inversion of this role: law no longer operates as a shield but as an instrument through which vulnerability is produced. Drawing on mixed-methods analysis of more than 550 criminal cases documented between 2021 and 2025, this paper examines how legal protection collapses under conditions of authoritarian fragility. The findings show that core protective guarantees — protection from arbitrary arrest, the right to defence, evidentiary standards, and judicial independence — were systematically weakened across all procedural stages. Arrests frequently occurred without warrants, pre-trial detention replaced bail as the norm, and confessions extracted under coercion were accepted as primary evidence. Courts prioritized procedural speed over substantive examination, while sentencing patterns demonstrated a strong reliance on mid- to long-term imprisonment in politically sensitive cases. Even where acquittals occurred, prolonged detention and procedural violations rendered protection illusory. Rather than isolated violations, these patterns reveal a structural transformation of legal order. Criminal law became a mechanism for managing dissent, and judicial institutions shifted from adjudicating disputes to administering control. Within this environment, legal actors attempted to re-introduce protective norms — documenting abuse, invoking procedural safeguards, and negotiating limited mitigation — but these efforts operated within a system designed to neutralize them. The paper argues that legal protection in fragile authoritarian contexts should be understood not as the absence or presence of courts, but as the practical capacity of law to restrain power. Myanmar illustrates a model of “protective inversion,” where legal institutions persist formally while their protective function collapses substantively. Understanding this inversion is essential for rethinking rule-of-law assistance, transitional justice, and civilian protection strategies in contemporary conflict-affected societies.