

Protection of Women in Domestic Violence in Myanmar: differences between Civil and Criminal Proceedings

Abstract

Domestic violence is one of the most prevalent forms of violence in the world. Definitely, Myanmar women also are without avoidance from this kind of violence. There is no legislation that specifically addresses the offences and penalties concerning domestic violence. However, there are related laws for the protection of women from domestic violence. For example, like Myanmar Customary Law which provides the way of getting remedy to the victim who was suffered by domestic violence. Myanmar has ratified CEDAW in 1997 and has signed ICESCR in 2015 to protect women rights specially and to promote Human Rights in general. This research paper examines on different procedures, remedies and punishments concerning between civil and criminal proceeding related to the domestic violence of women especially in Myanmar. This analysis may produce how to make the effective procedure or mechanism in the litigation and how to implement preventive measures when suffering with the domestic violence both family level and in the community level. In addition, this analysis evaluates whether the actual protection of women for domestic violence in Myanmar is in line with international level or not, and then the next is what should be sound prevention to eliminate this kind of human torture

Introduction

Domestic violence can affect anyone regardless of ethnicity, religion, class, age, sexuality, disability or lifestyle. However, the vast majority of the victims of domestic violence are women and children, and women are also considerably more likely to experience repeated and severe forms of violence, and sexual abuse. Domestic violence does not discriminate and includes all diversity groups within community. Domestic violence is unacceptable behavior in civilized society .Some Myanmar women have faced with the domestic violence since ancient time but it has exited as hidden problem for several years. Nowadays, most of Myanmar women do not want to allow the domestic violence but some accept that it is a normal problems of daily life. Therefore, it needs to educate the awareness of those who did not understand the human rights.

The purpose of research is three fold. First, it may contribute a better understanding of domestic violence and its impact in Myanmar. Second, it explore how future effective procedure or mechanism out to be implement to get justice for victims. Finally, how to protect effectively the domestic violence in line with international and ASEAN standard of women rights.

The organization of the research paper is as follows: Firstly, part I explains the nature of domestic violence , kinds of divorce under Myanmar Customary Law ,and also presents the remedies of women who are victims of domestic violence under Myanmar Customary Law. Secondly, Part II discusses the protection of women for domestic violence under Criminal Law and Special Laws and obstacles to suit for the violent women. This part also analyses the decided

cases in 2015 about domestic violence in Kyauktan Township Court for accessing the actual nature of domestic violence on Myanmar and the posture (attitude) of the courts upon it. Lastly, part III comparative analyses with International and ASEAN standard relating to women for domestic violence. It is also hoped that the paper may contribute to the field in Myanmar by analyzing the domestic violence from a different angle.

1. Domestic Violence under Myanmar Customary Law

Myanmar Customary Law is the social and secular law based upon the custom and usages that are historically accepted by the ancient Myanmar. Moreover, Myanmar Customary Law is the law that is mainly based on rulings. The rulings are compiled by the State's Highest Courts such as High Court, Supreme Court and Chief Court in accordance with customs and ethics accepted by Myanmar Buddhist people. Myanmar women had enjoyed the remedies guaranteed by Myanmar Customary Law regarding the marriage, divorce, partition of property, custody of children, succession and inheritance. Sources of Myanmar Customary Law are the Dhammathats or treaties of rules which are in accordance with custom and usage and which are referred to in the settlement of disputes relating to person and property, Custom, Judicial precedents and legislative enactments. The terms "domestic violence" is not definitely found in Myanmar Customary Law. However, it can be found closely in the meaning of "cruelty" prescribed therein. According to Myanmar Customary law, cruelty means not only physical cruelty but for mental pain. In addition, in order to constitute cruelty ill-treatment in the shape of physical violence or infliction of mental pain must be done with indifference or delight in pain caused to suffer.¹

A Remedies for the women who are victims of domestic violence

In Myanmar Customary Law, there are mainly three kinds of divorce, they are; (1) divorce by mutual consent

- (2) divorce when the husband enter into priesthood or Rahan and
- (3) divorce by matrimonial fault.

There is no need to discuss the first two kinds of divorce in this research paper. In case of divorce by matrimonial fault, there are two kinds; ordinary matrimonial faults and grievous matrimonial faults. In former case, there are five kinds of faults;

- Misrepresentation
- Adultery on the part of the husband
- Taking another wife by the husband
- Desertion
- Ordinary Cruelty.

In addition, in later case, there are also two kinds; adultery on the part of the wife and grievous cruelty.

¹DawPu vs Mg Tun Kha,1946,BLR,P 125

In case of misrepresentation to marry, a girl had been induced by misrepresentation to marry a man, the deceived person may claim a dissolution of the marriage and a decree for divorce had been granted to a wife on the ground of misrepresentation.² Adultery by husband is not, in itself, a sufficient ground for divorce by the wife though the wife may be entitled to resist a claim by the husband for restitution of conjugal rights.³ If however, the wife commits adultery, the husband may divorce her or condone the offence.⁴ Generally, the mere adultery of a husband is not sufficient ground for divorce. But if a husband treats his wife with cruelty, the wife is entitled to a divorce. It can be seen that in case of *Mrs. R. Joubent Bwa vs Joubent Bwa*⁵ held that having the infectious disease from the husband to the wife is an apparent fact that the husband committed adultery with a prostitute. Infecting the wife by means of that way is another kind of cruelty and entitled the wife to claim a divorce.

As the Myanmar Customary Law recognized polygamy on the part of the husband, taking another wife or lesser wife would not itself constitute a ground for divorce but it would be a fault which might form a good ground if the circumstances of desertion, cruelty, ill-treatment or like coexisted.⁶ But Monogamy Law was enacted by Pyidaungsu Hluttaw (Parliament) in 2015. This law concerns with all those who are living in Myanmar, Myanmar citizens who live outside of Myanmar, and foreigners who marry Myanmar citizens while living in Myanmar.⁷ After this law came into effect, any marriage between a man and a woman in accordance with any law or any religion or any custom shall be legitimate only if monogamous.⁸ This law prohibits any man or woman who married with more than one spouse.⁹ If any husband or wife, while the original union is still legally recognized according to a law or a religion or a custom, marries with another person, that person is deemed to commit matrimonial faults and his or her spouse has the right to seek divorce.¹⁰

The Dhammathats recognize the husband's power of moderate chastisement with a light cane or split bamboo. Even in the early days of the British period it was thought that striking a wife only once or pulling the wife by her hair and abusing her was not sufficient ground for a divorce. But the Courts in Myanmar no longer recognize the husband's power of chastisement. Physical assault by the husband on his wife is considered to be a matrimonial fault.¹¹ Cruelty might be in any means. An isolated instance of ill-treatment or violence is not sufficient; there must be physical violence or infliction of mental pain with indifference to delight in the pain caused to the sufferer.¹² It includes any act of likely to cause endangerment of body, life or health.¹³

² May Oung, U, A selection of Leading Cases on Buddhist Law, British Burma Press, Rangoon, 1914, P 94, *Ma Khin vs Mg Gale* P.J 130

³ *Ma Thein Nwe V Mg Kha* (7 Ran 415), *Ma Ein V Te Naung* (5 LBR 87)

⁴ Maung Maung, Dr., Law and Custom in Burma and the Burmese Family, The Hague, Martinus Nijhoff, 1963, P 77

⁵ *Mrs. R. Joubent Bwa vs Joubent Bwa*, 1948 BLR .P132

⁶ Chan-Toon, U, The principles of Buddhist Law, 1894, Myles Standish & Co, Rangoon, Myanmar, P 36

⁷ Section 2, Monogamy Law, 2015

⁸ Section 6, Ibid

⁹ Section 10, Ibid

¹⁰ Section 14, Ibid

¹¹ Lahiri, S.C, Principles of Modern Burmese Buddhist Law, 6th Edition, 1957, p.97.

¹² *Daw Pu(a) Daw Pu Gyiv Mg Tun Kha*, 1946, BLR.P 125

