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All Authors	Su Yin Htun
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Abstract

As Myanmar is multi-ethnic country, every ethnic has social custom and traditional culture for women. In tracing the Myanmar tradition, men hold the higher status than women as the heads of family and decision-makers for both financial and social affairs. As the custom, Myanmar married women are used to be housewife to do the house work and to nurture the children. They face the intimate partner violence, sexual violence by non-partners, trafficking in women, torture or cruel act, discrimination, socio-cultural attitudes, male authority on day-to-day function, dowry disputes, high risk of reproductive health and sexually transmitted infections such as AIDS. It can be said that eliminating the domestic violence against women remains the serious challenge in Myanmar. Even after the accession of CEDAW, Myanmar has no specific law even for violence against women and so far, for domestic violence. It is consistently sure that Myanmar government needs to take up the urgent and concrete measures to eradicate the violence against women and to manage for care and rehabilitation on the women suffered violence, i.e. domestic violence.

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Research Methodology

As my research paper is focused on the legal protections which are referred on the International law, conventions, rules and national regulations, the provisions will be described on the case study, observation of international agreements and survey results. Then, qualitative method is used as a method to organize and structure the data outside the legal provisions. So, the paper can be said to use the theory-led type because theory is very important in qualitative research. Based on the theory, observational provisions and analysis of literatures, the paper will be pure (academic) research because I could point out the weaknesses by legal sense and contribute as recommendation.

Research Finding

The paper focuses on the need for legislation to provide for empowerment, support

¹ HTUN SU YIN, Dr, Lecturer of Department of Law at the University of Mandalay, Myanmar.

and protection of the female victims or survivors. It leads to the adoption and enforcement of Myanmar national law on “Domestic Violence against Women”. Then, the paper critically recommends that the monitoring program for awareness raising campaign to the women in society by different sectors.

1. Introduction

Violence against women is not confined to a specific culture, region or country, or to the group of women within a society. The different manifestations of such violence and women’s personal experiences of it are, however, shaped by many factors, including economic status, race, ethnicity, class, age, sexual orientation, disability, nationality and culture. Gender-based violence refers to an act that results in or is likely to result in physical, sexual and psychological harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. In the society, gender equalities are visible in many areas, including politics, education, media, cultural norms and the workplace. These fundamental inequalities create a rationale for humiliation, intimidation, control, abuse, and even murder.

Some cultural norms and practices empower women and promote women’s human rights. Some customs, traditions and religious values are also often used to justify violence against women. Certain cultural norms have long been cited as causal factors for violence against women, including the beliefs associated with harmful traditional practices, crimes committed in the name of “honour”, discriminatory criminal punishments imposed under religiously based laws, and restrictions on women’s rights in marriage.² Domestic violence can affect anyone regardless of ethnicity, religion, class, age, sexuality, disability or lifestyle.

Economic inequalities can be a causal factor for violence against women both at the level of individual acts of violence and at the level of broad-based economic trends that create or exacerbate the enabling conditions for such violence. These economic inequalities can be found at the local, national and global level. Women’s economic inequalities and discrimination against women in areas such as employment, income, access to other economic resources and lack of economic independence reduce women’s capacity to act and take decisions and increase their vulnerability to violence.

2. Definitions and Forms of Domestic Violence against Women

Broader definitions include structural and cultural violence which limit women and girls in achieving their full potential, both personally and for the whole society. Domestic

²United Nation, Ending Violence against Women from words to action, 2006, pg.31.

violence is now commonly defined broadly to include "all acts of physical, sexual, psychological or economic violence" that may be committed by a family member or intimate partner.³ Some human rights activists prefer a broad-based definition that includes structure violence such as poverty and unequal access to health and education. Others have argued for a more limited definition in order not to lose the actual descriptive power of the term. In any case, the need to develop specific operational definitions has been acknowledged so that research and monitoring can become more specific and have greater cross-cultural applicability.⁴

The Declaration on the Elimination of Violence against Women, adopted by the United Nations General Assembly in 1993, defines violence against women as any act of gender-based violence that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life⁵. According to Article 2, "violence against women shall be understood to encompass, but not be limited to, the following;

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs".⁶

General Recommendation 19 of the Convention on the Elimination of All Forms of Discrimination against Women defines "gender-based violence as violence directed against a woman because she is a woman or violence that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts,

³ <https://en.wikipedia.org/wiki/Domesticviolence>.

⁴ UNICEF, Domestic Violence against Women and Girls, June 2000. Pg.2.

⁵ Art.1, General Assembly Resolution 48/104 *Declaration on the Elimination of Violence against Women*, 1993, <http://www.un.org/documents/ga/res/48/a48r104.htm>.

⁶ Art.2 of the UN Convention on the Elimination of all forms of Discrimination against Women, 1979.

coercion and other deprivations of liberty”.⁷ CEDAW Recommendation 19 also states that violence against women is a violation of the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment, as protected by Article 5 of UDHR and Article 7 of ICCPR. In recent years, the view has been affirmed by the Committee Against Torture, which is the monitoring body of the Convention Against Torture (CAT).

Violence against women is a global issue of pandemic proportions, which has an impact on all societies. It violates the rights and fundamental freedoms of the women whatever their religion is. Such violence can have a devastating effect on the lives of women and even on their families and communities. This gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men. The violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life”⁸.

In the research of the UNICEF in 2000, there are a lot of the different forms of domestic violence against women. They are physical, emotional, sexual, media and violence in armed conflict. The physical violence is covered with physical abuse by corporal punishment in homes, violence in a context of discipline, punishment or control. Emotional abuse encompasses a range of behaviours, on a continuum of severity, which are repeated and sustained in the abusive relationship. There is a consensus internationally that a heavy diet of media violence has a negative effect on child development, though the extent to which media violence causes children to become violent is a more controversial issue. Violence against women and girl in the context of armed conflict will not be covered by the present UN violence study. In this research, men who use physical violence against their partners also physically abuse their children.⁹

To sum up, these definitions refer to the gender-based roots of violence, recognizing that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men. It broadens definition of violence by including both the physical and psychological harm done towards women, and it includes acts in both the private and the public life. The Declaration defines violence against women as encompassing, but not limited to three areas; violence occurring in the family, within the

⁷ General Recommendation 19 of CEDAW.

⁸ The Beijing Declaration and Platform for Action (1995).

⁹ Domestic Violence against Women and Girls, UNICEF, No.6, June 2000, P.4.

general community and violence perpetrated or condoned by the State.

3. International Commitment on Domestic Violence against Women by Myanmar

Myanmar is a signatory to the Convention on the Elimination of Discrimination against Women (CEDAW) (1997), and is committed to international policy initiatives to improve the situation of women, including the Millennium Development Goals, The Beijing Declaration and Platform for Action (BPFA). In a very recent development, the Association of South East Asian Nations (ASEAN) has established the ASEAN Committee on Women and Children (ACWC) which Myanmar is anticipating as an active member.

In Article 2(e) of CEDAW requires its signatories to take all appropriate measure to eliminate discrimination against women by any person, organization or enterprise,¹⁰ which the CEDAW committee interpreted as the basis for holding states responsible for failing to prevent, investigate and punish acts of violence perpetrated by private citizens against women. Furthermore, CEDAW's Article 3 specifies that, State Parties shall take in all field, in particular in the political, social, economic and cultural field, all appropriate measures, including legislation, to ensure the full development and advancement of women for the purpose of guaranteeing them the exercises and enjoyment of human rights and fundamental freedoms on a basis of equality with men.¹¹ Article 4(c) imposes a duty upon states to exercise due diligence to prevent, investigate and in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private persons.¹²

The **Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women** (OP-CEDAW) establishes complaint and inquiry mechanisms for the CEDAW. The Optional Protocol is a subsidiary agreement to the Convention. It does not establish any new rights, but rather allows the rights guaranteed in the Convention to be enforced. Articles 8–10 create an inquiry mechanism. Article 11 requires parties to ensure that those complaining under the Optional Protocol are not subjected to ill-treatment or intimidation. Article 13 requires parties to inform their citizens about the Convention, the Optional Protocol, and the rulings of the Committee, so as to facilitate complaints. Articles 12 and 14 govern the procedure and reporting of the Committee in handling complaints. The Protocol was adopted by the United Nations General Assembly

¹⁰ Article 2(e) of convention on the elimination of all forms of violence against women.

¹¹ Article 3 Ibid.

¹² Article 4 (c) Ibid.

on 6 October 1999, and in force from 22 December 2000. As of October 2016, the Protocol has 80 signatories and 108 parties, but Myanmar is not yet signatory member¹³.

Adherence to the Convention on the Elimination of All Forms of Discrimination against Women, its **Optional Protocol** and other relevant international human rights treaties and the removal of reservations constitute measures to address violence against women. Similarly, the inclusion of the principle of equality of men and women in national constitutions or similar legislation, in accordance with international standards, enhances the framework for addressing violence against women. National plans of action to protect women's human rights and to improve the promotion and protection of women's human rights are part to compliance measures. States are also required to allocate an adequate budget to address violence against women. Myanmar doesn't yet enter into the Optional Protocol. So, Myanmar has not responsibilities to follow the provisions and to implement the measures on domestic violence against women.

Myanmar is one of the 189 members of the **Fourth World Conference on Women (Beijing, 1995)** which provides the women's rights to prevent and eliminate all forms of violence against women and girl children¹⁴. After participation, the Ministry of Social Welfare, Relief and Resettlement established the Myanmar National Committee for Women Affairs (MNCWA), in 1996 to enhance the advancement of women. The Myanmar national Working Committee for Women's affairs (MNWCWA) was subsequently formed, and was followed by the formation of State/Division, District and Township Levels Working Committees for Women's Affairs. The Myanmar Women's Affairs Federation (MWAF) was established in 2003 to assist the MNCWA to carry out its functions for the development and security of women, and to enhance cooperation with national and international organizations¹⁵.

The 2004 Declaration on the Elimination of Violence against Women in the ASEAN Region recognized that violence against women both violates and impairs their human rights and fundamental freedoms. It calls on member states to take necessary measure to eliminate all forms of discrimination against women and intensify efforts to develop and improve existing legislative, education and social measure and support services aimed at the

¹³ "[Parties to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women](#)". *United Nations*. Retrieved 11 October 2016.

¹⁴ Article 29 of the Fourth World Conference on Women, Beijing Declaration, 1995.

¹⁵ <http://mncwa.tripod.com/mncwa/id8.htm>.

prevention of violence against women.¹⁶ ASEAN Human Rights Declaration also affirms the equal dignity and rights,¹⁷ personal liberty and security¹⁸ and against torture or cruel, inhumane or degrading treatment or punishment of person¹⁹.

The **Declaration on the elimination of violence against Women (DEVAW)** was signed at the 37th Meeting of ASEAN Foreign Ministers in Jakarta on 13 June 2004- a milestone in the regional effort to address the issue of violence against women. In the context of strengthening regional cooperation, collaboration and coordination for the purpose of eliminating violence against women in the region, each Member Country, either individually or collectively, in ASEAN shall endeavor to fully implement the goals and commitments made related to eliminating violence against women and monitor their progress to encourage greater regional and bilateral cooperation in the systematic research, collection, analysis and dissemination of data, including disaggregated by sex, age, and other relevant information, on the extent, nature and consequences of violence against women and girls, and on the impact and effectiveness of policies and programmes for combating violence against women²⁰.

The International Bills of Human Rights comprised of the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and other international human rights conventions such as CEDAW and CAT protections for battered women. However, Myanmar is not yet member of CAT and ICCPR. In CAT, it focuses on domestic violence. The ICCPR guarantees to all person, the right to effective legal protection and remedies. International human rights instruments are flexible and can be invoked in various ways depending upon the situation of each victim. Furthermore, the application of human right instruments various depending upon possible reservations entered by each State party.

4. Historical legal protection on Domestic Violence against Women

In Myanmar history, the laws of ancient Myanmar are provided with three great elements: Yazathat, Dhammathat and Phyathton. The criminal legislation was the Yazathat which was issued by the Kings. The civil legislation and family affairs were governed by the Dhammathats that were somewhat similar with the customary laws of the land. It was written by famous monks and scholars and it was collected by the records of social customs. Phyathtons were the records of judicial decisions rendered by various monarchs and Judges.

¹⁶ Declaration on the elimination of violence against women in ASEAN region, 2004.

¹⁷ Article 2, ASEAN Human Rights Declaration.

¹⁸ Article 14, Ibid.

¹⁹ Article 14, Ibid.

²⁰ Declaration on the elimination of violence against women in the ASEAN region.

After the British rule came to Myanmar, British government ruled on criminal and civil matters by their laws such as Criminal Codes, Civil Codes, Contract Laws, etc. But, the family matters were decided by Myanmar Customary Law. So, Myanmar culture and traditions were prevailed very long time in Myanmar history.

In the Dhammathats which is Myanmar Customary Law, Myanmar women pay respect their husband by doing house works. Every Myanmar woman has five duties that she is guilty;

- (a) With regard to food, when she takes her meals before her husband does so; or when she often in her husband's absence in eating rich food; or when she gets up late in the morning and the first thing she does is eat; or when she eats the greater portion of any food obtained and leaves a little of it for her husband;
- (b) With regard to behavior towards men when her conduct towards all men she comes across is as free as towards her husband;
- (c) With regard to dress if she puts on inappropriate dresses when she attends feasts or stays at home, or goes on or attends to her duties as a wife and as a
- (d) With regard to property when she gives away, sells, or mortgages it without the knowledge of her husband; and
- (e) With regard to looking when she looks at a man with eyes as restless as those of a crow or when she is in the habit at men when they are dressing or undressing, or when they are bathing²¹.

If she makes any wrong behind her husband, he has the rights to beat on her back with stick or hand that the Myanmar society accepts as serving for warning. This usual acceptance is one of the reasons why women have lower status than men. But, these are outdated social norms of Myanmar society although some families use these norms. If a woman suffers physical and mental assaults by husband, she can sue in Court by criminal or civil suits or both. However, in the jurisdiction of the court, a woman could not get the protection as a victim of domestic violence because there is no specific provision about domestic violence against women in Myanmar.

However, women are entitled to claim the divorce by anyway pursuant to Myanmar Customary Law. There are mainly three kinds of divorce; divorce by mutual consent; divorce when the husband enters into priesthood or Rahan and divorce by matrimonial fault. In case of misrepresentation to marry, a girl had been induced by misrepresentation to marry a man,

²¹ King Wunmingyi U Gaung, Digest II, "Digest of Burmese Buddhist Law concerning Inheritance and Marriage; A collection of Texts From Thirty-Six Dhammathats", Yangon Hantharwaddy press, 1909, p.15.

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.²² 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 right.²³ If however, the wife commits adultery, the husband may divorce her or condone the offence.²⁴

Although Myanmar has not specific law on domestic violence against women, Myanmar women can get the fair jurisdiction by the Penal code and Myanmar Customary laws such as Burmese Buddhist Law, Hindu Law, Mohameden Law, Christian Law and the traditional customs of the ethnic groups. The main statutory laws which interact with the people in everyday life are the Penal Code (law relating to offences), the Transfer of Property Act (relating to the purchase, sale and other transactions of property), the Contract Act (relating to making agreements and contracts), the Partnership Act and the Companies Act (relating to business dealings), the Bar Council Act (relating the enrolment of lawyers to practice), and the Myanmar Medical Act (for practicing doctors). For procedural matters the Code of Criminal Procedure, the Code of Civil Procedure, the Evidence Act and the Court Manual are the primary laws upon which the legal system is based.

As mentioned above, there are Burmese women who are Buddhist, Muslims, Christian and Hindu in Myanmar. The laws regulating marriage, divorce and inheritance vary according to their respective customs. Buddhist laws do not discriminate women, save that bigamy or polygamy is allowed for men, while women can have only one husband. Buddhist Law does not explicitly regulate the provision of maintenance, in contrast to Islamic Law (But now, this polygamy status is repealed by the Monogamy Law 2015). Maintenance remedies for Buddhist women are to be pursued under the Code of Criminal Procedure. Buddhist women are protected by Myanmar Customary Law when they marry men of other religions or foreigners. Burmese women of other religions do not have this legal protection. In case of divorce, Buddhist women have equal rights to men in respect of property inheritance.

The Buddhist Dhammathat code does not give an age requirement for men to marry. It only specifies that the man must be 'mature': if he is mature, he can marry. This was decided in a 1975 case decision. As for women, they must also be mature, which means that they must

²² May Oung, U, A selection of Leading Case on Buddhist Law, British Burma Press, Rangoon, 1914, P 94.

²³ Ma Thein Nwe V Mg Kha (7 Ran 415), Ma Ein V Te Naung (5 LBR 87).

²⁴ Maung Maung, Dr., Law and Custom in Burma and the Burmese Family, TheHague, Martinus Nijhoff, 1963, P 77.

be at least 16 years old and they must have their parents' consent. (This is different from Burmese Customary Law, which stipulates that women can marry after the age of 14). If there is no such consent, parents are allowed to nullify the marriage. But if a woman and man have been living with the woman's guardian for a long time, then parents lose their power to separate them and must accept the marriage. The question remains whether guardians are different from parents in this case. If a woman is older than 20, or when she is married, she no longer requires permission from parents or guardians²⁵.

If Christian women in Myanmar want to marry, they have to go through a church ceremony or arrange for court marriage. For Muslim women, Islamic Law regarding marriage and divorce is strict with male preference. For men, only maturity is required. This basically means reaching puberty. If maturity is not evident, the man must be at least 15 years old. Regarding women, Islamic Law says, "Presumption of Law" without further details. For Hindu women, Hindu Customary Law gives no limit for the age of men to marry. But this is not the case for women: the age of sixteen is defined as mature. Under the Hindu marriage law, a man must be 18 to marry. Hindu parents sometimes arrange marriages for their children before puberty (at the ages of 10 or 12). Such marriages are not considered void in spite of the young age of the children.

Due to the different laws for different religions in Myanmar, the Special Marriage Act of 1872 regulates mixed marriages. According to this law, men must be 18 years old and women 14 in order to marry. If a couple share the same religion, they can follow the respective religious laws. Women in Myanmar do not usually feel discriminated due to tradition and customs. Main issues relating to women are the imbalance in workforce participation, the labour potential of women and their role in social and economic development.

Divorce is allowed under Myanmar Customary Law if one of the three following conditions are met: (a) there is a mutual agreement to divorce; (b) the husband becomes a monk; (c) a crime is committed by either the husband or wife. Crimes consist of the husband committing adultery (which is a normal criminal case), the wife committing adultery (which is a serious criminal case), cheating (although the law does not describe in detail what this involves), or 'fabrication in many ways' (again, the law does not say what this involves).

The Myanmar Divorce Act of 1869 is only for Christians. A husband can apply for the dissolution of marriage on the grounds of adultery, but a wife cannot. A wife may divorce if

²⁵ Andrew Huxley, "[The Importance of the Dhammathats](#) in Burmese Law and Culture," vol. 1, *The Journal of Burma Studies* (1997) pp. 1-17.

(1) her husband changes his religion or marries another woman; (2) the husband commits adultery which is incestuous, or bigamy with adultery; (3) the husband marries another woman with adultery; (4) the husband commits rape, sodomy or bestiality (although the law does not say toward whom, nothing is said about marital rape); (5) the husband commits adultery and the cruelty is so bad that it entitles the woman to divorce; (6) the husband is adulterous and deserts the wife for 2 or more years without excuse.

Following divorce, financial support may be required under the Christian Law, Section 36, which says that the husband is liable for payment depending on the order of the Court. But payment cannot exceed 20 per cent of the husband's average income in the three years prior to the Court's order. The wife's money is also taken into consideration. The Court will decide what is reasonable, with provisions regulated by the Code of Criminal Procedure. Regarding division of property, there are very few guidelines under Christian law. It will be necessary to look at case law, but basically it depends on the case and the reasons for divorce. The ratio in property division varies accordingly. Regarding the custody of children, customary law must follow the Guardians and Wards Act of 1890,²³ as here may be no different practices based on religious differences²⁶.

In Myanmar legal history, women faced the domestic violence in the cases of marriage, divorce and other internal affairs such as wife abuse, wife beating and sexual intercourses. However, they don't realize themselves that the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior as part of a systematic pattern of power and control perpetrated by one intimate partner against another are domestic violence. In the case study, some women are solved by negotiating by the elder people, parents and religious customs; some claimed the judicial proceeding by the civil court in accordance with Myanmar Customary Law; some took action by the Criminal law with the offences of causing hurt, rape, sexual harassment, etc; and some didn't take any action. It can be concluded that Myanmar women have opportunity to approach judicial access from the competent courts in Myanmar.

5. Settlement on Domestic Violence against Women by Myanmar Laws

The provisions relating to the fundamental rights including the equal rights of women and duties of the citizens are clearly enshrined in the State Constitution. Article 22 of the Constitution of the Union of Myanmar (2008) states that all citizens shall be equal before the

²⁶ S.30 of the Christian Marriage Act of 1872, "The Burma Code", Vol. XI, pp. 43-71.

law, regardless of race, religion, status, or sex, enjoy equal opportunities, enjoy the benefits derived from his labor in proportion to his contribution in manual or mental labor and, have the right to inherit according to law. In addition, Article 32 A of the Constitution states that the Union shall care for mothers and children²⁷.

The gender equality has never been a big issue in Myanmar mainly by the fact that Myanmar women traditionally enjoy high degree of equal rights with men. Their rights are being protected by Myanmar tradition and the existing laws. It ensures that Myanmar women will continue to have full privileges to enjoy these rights. The relevant provisions for the rights and responsibilities of the citizens guarantee that no citizen will be subject to discrimination because of his or her race, native, religion, position, status, culture, gender or financial status.²⁸

Forms of violence such as marital rape, physical abuse, verbal abuse, sexual abuse and psychological abuse have been confirmed from various sources. However, in Myanmar, there are a lot of provisions on the wrongful restraint, wrongful confinement, criminal force, criminal intimidation, rape, kidnapping²⁹, slavery³⁰, procurement of minor girls³¹, assault³², defamation³³ and grievous hurt³⁴ in respect of the violence related to criminal offences. But in practice, a woman doesn't ask the police's help and doesn't sue on any suit although she gets hurt due to her husband. Then, Myanmar society such as the family, community leader, the older people used to settle by negotiating ways and by taking bonds not to happen later. So, Myanmar women fall in the circle of violence again and again.

In Myanmar Criminal Law, every person has the right to defend on his/her own body and on his/her property. Nothing is an offence which is done in the exercise of the right of private defence³⁵. These provisions are protected not only women but also on men. In respect of rape, the legal definition of rape and the examination of rape and its process are not appropriate for rape survivors. Rape is defined in the Penal Code as "the penetration of man's organ (penis) into women's vagina"³⁶. So, when medical personnel examine a survivor by

²⁷ Constitution of the Republic of the Union of Myanmar, 2008.

²⁸ Mr. Kyaw Thu Nyein, check against delivery, 2012. Pg.1.

²⁹ S.369 of the Penal Code of 1861, "The Burma Code", Vol. VIII, pp. 1-142.

³⁰ S.370, Ibid.

³¹ S.366, Ibid.

³² S.358, Ibid.

³³ S.500, Ibid.

³⁴ S.323, Ibid.

³⁵ Ss. 96 and 97, Ibid.

³⁶ S.376 of the Penal Code of 1861, "The Burma Code", Vol. VIII, pp. 1-142.

inserting fingers or stick, it is like one more rape of women. This practice of “Finger Test of Rape” should be reconsidered. Also treating only the “penetration” as rape is insufficient to address the plight of survivor women. Hence the definition of Rape needs to be reviewed and modified.

In the case of Union of Myanmar Vs. Ma Mei Thee (a) Ma Than Nyo³⁷, Ma Mei Thee struck her husband with a tool which could not make sense as stick or knife while she was being beaten by him. She thinks that she can use the private defence as she hurt in body and mind. The Court decided that she had not enough time to do rational thinking for the use of private defence legally. Therefore, it is hard to say that she used the private defence beyond the provisions of S.100 of the Penal Code. So, she was not guilty of this criminal charge and she was completely acquitted.

Most of the cases relating to domestic violence are proceeded under section 323 of the Penal Code (voluntarily causing hurt). The Penal Code is very old which was enacted since British Colony and thus the penalty and fine provided in which was not consistent with the present period. According to section 323 of the Penal Code, the offender shall be punished with imprisonment of either description for a term which may extend to one year or with fine which may extend to one hundred kyats or with both. Thus it is considered that it is no effective punishment when the court made a decision to impose the offender only with fine. Therefore, to be more effective deterrent punishment, the amendment of Penal Code relating to the provisions of penalty and fine was made in 2016. According to section 22 of the Law amending to Penal Code the fine for section 323 is replaced with one hundred thousand kyats. The reason for divorce under Myanmar Customary Law is that the wife who is the victim of the domestic violence wants to claim the rights and remedies for her. As a court, there is no applicable specific law to solve effectively for domestic violence. So, the court cannot give the effective remedy and penalty for the action for domestic violence.

Here, Myanmar has the special laws to protect the women’s rights as well as to prevent the domestic violence against women. These are Myanmar Maternal and Child Welfare Association Law 1990, Myanmar Buddhist Women’s Special Marriage Law 2015, Monogamy Law 2015, Population Control Law 2015 and Religious Freedom Law 2015. Myanmar Buddhist Women’s Special Marriage Law is applied for Myanmar Buddhist Women and non-Buddhist men. The women can claim the rights from the court regarding the domestic matters such as marriage, divorce, partition, succession and guardianship of

³⁷ Union of Myanmar Vs. Ma Mei Thee (a) Ma Than Nyo, 1993.

children of Myanmar Buddhist women and non-Buddhist men³⁸. By this law, if the Court finds that Buddhist women suffers any physical or mental violence by men, the man shall waive the portion entitled to him from property owned by both parties, and pay compensation to the Buddhist woman; the guardianship of all children shall be with the Buddhist woman; and the man shall pay maintenance for children who are minors³⁹.

Monogamy Law, 2015 is concerned with all those who are living in Myanmar, Myanmar citizens who live outside of Myanmar, and foreigners who marry with Myanmar citizens while living in Myanmar.⁴⁰ After this law comes 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.⁴¹ The law prescribed the offences as well as the penalties. If a man or woman commits any offence, he or she will be liable the imprisonment which may extend to 7 years, and shall also be liable to fine⁴². The law prohibited the polygamous marriage for all of men and women as follows;

- Any man or woman who is already married with one spouse or more than one spouse in accordance with a law or a religion or a custom, shall not enter, while the original union is still legally recognized, into another marriage with another person or conduct an illegal extramarital affair.⁴³
- Any man or woman, if he or she was previously married, can enter into another marriage with another person, only after declaring the previous marriage and showing evidence of legal divorce with his or her previous spouse.⁴⁴
- Any man or woman who is already married in accordance with a law or a religion or a custom, shall not enter, while the original union is still legally recognized, into another marriage with another person or conduct an illegal extramarital affair.⁴⁵

With regard to this fact the Supreme Court had decided in the case of Daw Mee Mee Tun vs U Mg Mg Lwin⁴⁶ that: - “In this case U Mg Mg Lwin frequently committed sexual intercourse with other women. Moreover, he married with a second wife during the period of the first legal marriage. It was held that it is contrary to Myanmar custom and social life and

³⁸ Section 2 of Myanmar Buddhist Women’s Special Marriage Law, 2015.

³⁹ Section 27, Ibid.

⁴⁰ Section 2 of Myanmar Monogamy Law, 2015.

⁴¹ Section 4, Ibid.

⁴² Section 13, Ibid.

⁴³ Section 10, Ibid.

⁴⁴ Section 11, Ibid.

⁴⁵ Section 12, Ibid.

⁴⁶ Daw Mee Mee Tun vs U Mg Mg Lwin, Myanmar Law Report, 2012, P 48.

constitutes the grievous cruelty to Daw Mee Mee Tun. Therefore, the first wife has the right to divorce and the husband who commits a grievous matrimonial fault shall waive all his property rights.

In order to protect the rights of women and girls, Myanmar National Committee for Women's Affairs (MNCWA) was formed in 1996 as the fulfillment to implement the Beijing Declaration and platform of Action. The MNCWA has identified six areas of concern for the advancement of Myanmar women education, health, economy, culture, violence against women and girls. In addition, the Myanmar Women's Affairs Federation (MWAF) was established in December 2003 to take effective measures of women's affairs in implementing the principles and guidelines laid down the MNCWA. There are certain progressive steps taken by the State. State has assigned Gender Focal Department to Department of Social Welfare and assigned its staff to respond to violence against women in collaboration and coordination with Myanmar Women Affairs Federation (MWAF) and other INGOs/ NGOs⁴⁷.

Humanitarian response to women's protection and advancement throughout Myanmar is enhanced through the National Protection Working Group (comprised of three technical working groups: Child Protection, Women's Protection, and Displacement, Land and Relocation). The Women's Protection Technical Working Group (WPTWG) is a multi-agency network comprised of INGO, NGO, and UN Agencies. Also contributing to these efforts is the UN Gender Theme Group (GTG), comprised of UN gender focal points.

The National Plan of Action for the Advancement of Women is an expression of the Government of the Union of Myanmar's commitment to the protection, promotion, and realization of the rights of women and girls. This is an integrated Government approach to improving the circumstances of all women and girls in Myanmar. Actions combine to improve outcomes for women and their families in the public sphere, the workplace, the home, and the community.

The Ministry of Social welfare, Relief and resettlement will have increased capacity in recognizing, responding to, and reporting on the needs and rights of women. To strengthen capacity and systems for women's protection, in accordance with Myanmar's expressed commitment to international standards, treaties, and agreements, the DSW and its partners will establish multi-agency mechanisms to address key challenges Myanmar women face, as delineated in the Beijing Platform for Action. These include livelihoods, education and training, health, violence against women, emergencies, the economy, decision making,

⁴⁷ <http://mwaf.org.mm/en/mwaf-activities>.

institutional mechanisms for the advancement of women, human rights, media, the environment, and the rights of the Girl-child.

Traditionally working in the home, the worsening economic situation has brought women into paid employment, while maintaining the same level of household responsibility. Often daughters are forced to carry this burden, taking them away from school. Women work primarily in the informal sector – in factories, as street vendors, prostitutes and domestic help. Both in local workplaces, in forced labor, and as migrant laborers in factories and as housekeepers in neighboring countries, women report both being exploited as workers, and being exposed to sexual and physical violence, without recourse to legal protection.

6. Challenges for the Protection of Domestic Violence against Women in Myanmar

The Knowledge, Attitude and Practices (KAP) surveyed to the women and girls of Phyar-pon, Kayar, Meikhtilar and Rakhine with Myanmar Action Aid in 2014⁴⁸. The survey compared the knowledge of women and girls how to get assistance in the case of violence to the police station and the assistance of community leaders with the same knowledge. Then, they did that scolding was the suggested and reported action for teasing and forced sex within marriage. Respondents, however, stated that rape should be reported to the police, and 35.7 percent reported the actual abuse. Additionally, 23.1 percent of respondents suggested 3 to 7 years imprisonment for forced sex within a relationship, but 36 percent stated the actual action was a police report. Of the fourteen abuses identified through the KAP, forced sex within the relationship and trafficking solicited the most severe ideal actions imprisonment and death sentence respectively. The actual action in this case was the filing of police report. Respondents aged 60 and over wanted more severe actions for abuses than what is actually practiced. Data based on marital status show at least 50 percent of unmarried, married, or widow/divorced women agreed that scolding, as a way of punishment for forced sex within marriage, was on par with the actual action taken in the community⁴⁹.

In implementing the International commitments, budget, capacity building plans for all different levels and awareness-raising tools (example, developing learning tools for illiterate women in illustration with different ethnic languages, education sessions through radio, TV channel) should be set for the awareness raising of women all over the country. The state should have a protection and prevention mechanism, law and measures for all kinds

⁴⁸ Gender Analysis Brief in November 2014.

⁴⁹ www.actionaid.org

of women regardless of their religions, cultures and traditions. It is hoping to include the applicable definition on violence against women for both public and private sectors in its Protection of violence against women law. The National Strategic Plan for the Advancement of Women (NSPAW 2013-2022) outlines the need to develop and strengthen systems, structures, legislation, law enforcement, and practices to eliminate all forms of violence against women and girls and to respond to the needs of the vulnerable systems and services (i.e. medical, psychological and legal) available to women and girls who experience violence⁵⁰.

In order to protect the women against domestic violence, the specific law on violence against women, anti-rape law, anti-sexual harassment law are needed in Myanmar society. There is a need to sign the Optional Protocol to CEDAW. Myanmar is now on the way to enact the Protection on Violence against Women Law by consultation with NGOs, Women led Organizations and International Actors although the draft is still in process. The law should be provided the explicit definition of Violence against women which is covered with domestic violence, specific procedures, accessible service centers Clear implementing and accountability mechanisms in accordance with the UN General Recommendation 19. Then, there are some laws to amend the provisions what are discriminated on the rights of women such as the Law of Special Marriage of Buddhist Women.

Necessities to protect the women against domestic violence

Sr	Sector	Challenges
1	Legal Sector	<ul style="list-style-type: none"> - Drafting the laws such as Prevention the violence against women law covered with domestic violence, Anti-Rape Law, Anti-Sexual Harassment Law - Implementation of the laws by the concerned departments and Courts - Establishing the monitoring and reporting system in accordance with UN GR 19 and 23 - Forming the counselling council to facilitate the victims of domestic violence for the immediate protection - Building the legal and paralegal service provider for

⁵⁰ Behind the Silence; Violence Against Women and their Resilience Myanmar, The Gender Equality Network Yangon, Myanmar, 2014, P.72.

		the marginalized women victims
2	Education Sector	<ul style="list-style-type: none"> - Drafting the curriculum involved the women's rights and violence against women in the Universities - Holding the formal speech in the secondary and high schools about the violence against women and girls - Developing and implementing the nation-wide guidelines for teachers and school counsellors to recognize signs of child abuse, and respond to children's experiences of violence sensitively within and outside school, coordinating with local authorities and police
3	Media Sector	<ul style="list-style-type: none"> - Distribution the news about violence against women in all of the media sectors such as radio, television, journals, newspapers, videos and movies, social media network - Coordinating with media on ethical and safe reporting of domestic violence trends, as well as on-going efforts to address women's experiences of abuse - Conducting media training on how to ethically and safely report on violence against women, to ensure the rights of survivors and promote women's rights
4	Health Sector	<ul style="list-style-type: none"> - Contributing awareness raising campaigns about negative health impacts of social discrimination, - Improving women's access to reproductive health care service - Ensuring that strategic plans with effective mechanisms to collect data for monitoring and evaluation - Developing the training curricula for midwives and traditional birth attendants to recognize and

		sensitively recognize symptoms or risk factors linked to intimate partner violence, such as maternal depression
5	Human Resources Sector (Research and Development)	<ul style="list-style-type: none"> - Implementing the complementary quantitative surveys on women's experiences of sexual abuse - Doing research with men on their perceptions and perpetration of violence against women - Conducting the monitoring and evaluation research on existing prevention and response programme interventions, to build the evidence base of what works to prevent and respond to violence against women in Myanmar
6	Community Sector	<ul style="list-style-type: none"> - Leading the women roles by NGOs, GOs, Religious Community - Providing information to informal sources of women's help-seeking behaviours (e.g., family members, neighbours, etc.) on how to safely and effectively respond to violent incidents (e.g., bystander approach). - Continuing to support women's groups that provide safe and non-judgmental spaces for women to discuss and explore female sexuality.

Source: The Gender Equality Network Yangon, Myanmar⁵¹

It can be clearly seen in the above table that Myanmar government needs to protect the women from the different sectors. First of all, the specific law will be provided to criminalize the domestic violence as the offence by stipulating penalties as well as by providing civil remedies. Then, the sub-committees on the protection of domestic violence should be formed to monitor, report and take care on the victims of domestic violence. Next, women's rights, violence and domestic violence against women should be put as a subject in the syllabi of High Schools and Universities. The formal and informal awareness raising campaigns on domestic violence are needed to held around the country. Furthermore, all of the media channels should distribute the knowledge sharing program on domestic violence

⁵¹ Behind the Silence; Violence Against Women and their Resilience Myanmar, The Gender Equality Network Yangon, Myanmar, 2014, P.74.

against women. One of the considerable fact is that there should be para-legal services to help the women who were unwilling to cooperate with the prosecution because of fear of retaliation on their suffering of domestic violence.

7. Conclusion

Domestic violence such as physical, mental and sexual occurs in the family or community on the social relation as harmful traditional practices. Then, the reasons why the most women become the victims of domestic violence in Myanmar are poverty, lack or low of education, early marriage, less probability of work opportunity, religion and racial discrimination, low income of big family and so on. Currently, Myanmar is moving forward to gain the sustainable development in all sectors by closely monitoring the human rights impact through the National Human Rights Committee against women becomes not only a woman's issue but also the problems of the members of society and the state itself for overall development although it has been viewed as family issue since the older age. In International level, Myanmar cannot be successful to implement the CEDAW obligations without applying communication procedure and inquiring procedure which provide in Optional Protocol to CEDAW. It can be concluded that there is still a problem to solve the domestic violence urgently. If the domestic violence can not be solved, there are a lot of impacts on women and their children being secretive, silent and afraid to tell; inappropriately advanced maturity and regression towards the mother and siblings; being fearful, hyper-vigilant, mistrustful, anxious and sometimes excessively agitated; experiencing feelings of guilt and helplessness, and thinking the violence is their fault. Therefore, there is a need and must to stipulate the perfect legislation on domestic violence against women in Myanmar.

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Bibliography

Books

Andrew Huxley, "The Importance of the Dhammathats in Burmese Law and Culture," vol. 1, *The Journal of Burma Studies* (1997)

Behind the Silence; Violence Against Women and their Resilience Myanmar, The Gender Equality Network Yangon, Myanmar, 2014

King Wunmingyi U Gaung, Digest II, "Digest of Burmese Buddhist Law concerning Inheritance and Marriage; A collection of Texts From Thirty-Six Dhammathats", Yangon Hantharwaddy press, 1909

May Oung, U, A selection of Leading Case on Buddhist Law, British Burma Press, Rangoon, 1914

United Nation, Ending Violence against Women from words to action, 2006

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

UNICEF, Domestic Violence against Women and Girls, No.6, June 2000

United Nations, "Parties to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women". Retrieved 11 October 2016

International and National Laws

ASEAN Human Rights Declaration 2014

Beijing Declaration and Platform for Action (1995)

Declaration on the elimination of violence against women in ASEAN region, 2004

General Assembly Resolution 48/104 *Declaration on the Elimination of Violence against Women*, 1993, <http://www.un.org/documents/ga/res/48/a48r104.htm>.

General Recommendation 19 on CEDAW, 1992

UN Convention on the Elimination of all forms of Discrimination against Women, 1979

Christian Marriage Act of 1872, "The Burma Code", Vol. XI

Constitution of the Republic of the Union of Myanmar, 2008

Penal Code of 1861, "The Burma Code", Vol. VIII

Myanmar Buddhist Women's Special Marriage Law, 2015.

Myanmar Monogamy Law, 2015

Cases

Daw Mee Mee Tun vs U Mg Mg Lwin, Myanmar Law Report, 2012

Ma TheinNwe V Mg Kha (7 Ran 415), Ma Ein V TeNaung (5 LBR 87)

Mr. Kyaw Thu Nyein, Check against delivery, 2012

Union of Myanmar Vs. Ma Mei Thee (a) Ma Than Nyo, 1993

Websites

<http://mwaf.org.mm/en/mwaf-activities>

<https://en.wikipedia.org/wiki/domesticviolence>

www.actionaid.org