

LEGAL PROTECTION AGAINST DOMESTIC VIOLENCE IN MYANMAR

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Abstract

This research paper attempted to explore the prevalence of domestic violence in Myanmar. Domestic violence means all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim. Most of the victims are facing challenges such as forms of threat, verbal abuse, assault, rape and murder. It is observed how victims are assaulted in practice by their spouse or partner, while children are cruelly treated by their partners. In Myanmar, the relating to the victims of domestic violence protect under the related laws. As a result, this research evaluates that it is not comprehensive legal provisions in Myanmar to protect the victims who are suffering the mental violence. Accordingly, there is no adequate protection in Criminal Law concerning with domestic violence, Myanmar should enact the specific law to take measure to eliminate domestic violence and to ensure victims equal protection of law by putting clear definition of domestic violence into the law.

Keywords: Legal Protection, Penal Code, Domestic Violence

Introduction

Domestic violence is one of the forms of violence against the victims. Most of the women and children suffered the forms of threat, battering, rape, sexual assault, physical and mental violence. Domestic violence is a human rights violation that undermines the health, livelihoods and opportunities of women in Myanmar. Domestic Violence remains a key factor that undermines the ability of women to participate as full and equal citizens in society. This research paper analyses the legal protection against domestic violence in Myanmar. Firstly, it presents about the definitions and types of domestic violence. Secondly, it also mentions the prevalence of domestic violence in Myanmar. And then, it also prescribes the legal action against domestic violence under existing laws. Thirdly, it focus the enforcement measures and its procedures for domestic violence. Lastly, it also discusses the role of

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institutions and rehabilitation measures which assists the victims to protect from violence. For effective legal protection against domestic violence, the victims may prosecute an offender to get their remedy under criminal law and civil law.

Materials and Methods

This research is mainly focused on:

- Studying on related laws concerning to domestic violence
- Analyzing the cases
- Citing the other materials published by authors

Research Objectives

The primary purposes of doing this research is:

- To clearly know the legal awareness of the domestic violence to the society
- To protect the victims who are facing the domestic violence
- To enhance the victims how to get their remedies both criminal action and civil action
- To deter the domestic violence which can cause the mental violence

Definitions and Types of Domestic Violence

The definitions of domestic violence are prescribed in ASEAN countries except Myanmar. Moreover, the definition of the domestic violence was defined by other countries and by the Conventions.

“Domestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.¹

¹ Article 3 (b) of the Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011

A domestic unit consists of the members of a family who live together along with nonrelatives such as servants. The living spaces and possessions belong to such a unit.¹

“Domestic violence” means the commission of one or more of the following acts:

- (a) wilfully or knowingly placing, or attempting to place, the victim in fear of physical injury;
- (b) causing physical injury to the victim by such act which is known or ought to have been known would result in physical injury;
- (c) compelling the victim by force or threat to engage in any conduct or act, sexual or otherwise, from which the victim has a right to abstain;
- (d) confining or detaining the victim against the victim’s will;
- (e) causing mischief or destruction or damage to property with intent to cause or knowing that it is likely to cause distress or annoyance to the victim;
- (f) causing psychological abuse which includes emotional injury to the victim;
- (g) causing the victim to suffer delusions by using any intoxicating substance or any other substance without the victim’s consent or if the consent is given, the consent was unlawfully obtained; or
- (h) in the case where the victim is a child, causing the victim to suffer delusions by using any intoxicating substance or any other substance, by a person, whether by himself or through a third party, against-
 - (i) his or her spouse;
 - (ii) his or her former spouse;
 - (iii) a child;
 - (iv) an incapacitated adult; or
 - (v) any other member of the family;²

Domestic violence is referred to as violence that happens and could happen towards:

¹ <https://www.thefreedictionary.com/household>

² Section 2 of Domestic Violence Act, Malaysia, 1994

- husband or wife;
- dependent children; and/or
- persons living under the roof of the house and who are dependant of the households.¹

"**Physical violence**" means parties shall take the necessary legislative or other measures to ensure that the intentional conduct of committing acts of physical violence against another person is criminalised.²

"**Sexual abuse**" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman.³

"**Sexual violence**" means parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

- a. engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;
- b. engaging in other non-consensual acts of a sexual nature with a person;
- c. causing another person to engage in non-consensual acts of a sexual nature with a third person.⁴

"**Psychological violence**" means parties shall take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person's psychological integrity through coercion or threats is criminalised.⁵

"**Economic or Financial abuse**" with holding economic resources such as money or credit cards

¹ Article 2 of the Law on the Prevention of Domestic Violence and The Protection of Victims, Cambodia, 2005

² Article 35 of Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011

³ Section 3 (d) of the Protection of Women Form Domestic Violence Act, India, 2005

⁴ Article 36 (1) of Council of Europe Convention on preventing and combating violence against women sand domestic violence, .2011

⁵ Article 33 of Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011

- stealing from or defrauding a partner of money or assets
- exploiting the intimate partner's resources for personal gain
- withholding physical resources such as food, clothes, necessary medications, or shelter from a partner
- preventing the spouse or intimate partner from working or choosing an occupation.¹

In studying the types of domestic violence, the following four types can be found. These are physical violence, mental violence, sexual violence and economic violence. However, the types of domestic violence are not mentioned in Myanmar. Therefore, the types of domestic violence were provided by other countries.

Criminal Liability for Domestic Violence in Myanmar

In Myanmar, criminal law, the aggrieved party or on behalf of the aggrieved party can prosecute the offender. Concern with the domestic violence cases there are two legal actions against domestic violence in Myanmar. Domestic Violence is a crime to prosecute not only the criminal action but also the civil action.

Domestic violence also destroyed stability of family unit and it has negative impact on children. Children suffered from depression and shame of the social stigma of family problems. As the result, some dropped out of schools and run away from the family. It perpetuates a culture of violence in the mindset of those children who are exposed to domestic violence in their daily life.²

Domestic violence is prevalent forms of violence in Myanmar. Addressing domestic violence is complicated by many factors, among them victims' legal and emotional ties to, and often their economic dependence on, those who are abusing them. However, the greatest impediment to ending domestic violence is the cultural acceptance of it as a family matter. Domestic violence laws are a critical step in moving violence against women from the private to the public sphere. They affirm unequivocally that domestic violence

¹ www.helpguide.org

² www.helpguide.org

is unacceptable and should be punished. Ideally, a law on domestic violence should prohibit physical, sexual, emotional and economic violence, and extend protection to those in intimate relationships, irrespective of their marital status and living arrangements.¹

There is no legislation that specifically addresses the issue of domestic violence, which means that violence in the context of intimate relationships must be dealt with under the laws that address intentional infliction of injury and assault. While Sections 100 to 102 of the Penal Code provide the rights to self-defence, arising as soon as there is a reasonable apprehension of danger to the body, there does not appear to be case law dealing with women's self-defence in the context of domestic violence as exists in some other common law countries. Also, there are no mechanisms for restraining orders that would enable a woman to prevent a violent spouse, relative or boyfriend from having contact with her.²

According to Section 9 (a) of the Child Law, 1993 states that every child has the inherent right to life.

Maintenance, custody and care of children, cultivating and promoting the all-round physical intellectual and moral development of the child shall be the primary responsibility of parents or guardian.

The child shall be entitled to a monthly allowance for maintenance from his parents who fail or refuse to maintain him.³

According to Section 18 (a) of the Child Law, 1993 provides that mentally or physically disabled child -

- (i) has the right to acquire basic education (primary level) or vocational education at the special schools established by the Social Welfare Department or by a voluntary social worker or by a non-governmental organization.
- (ii) has the right to obtain special care and assistance from the State;

¹ The case for Anti-Violence against Women Laws, Gender Equality Network , 2013, P-10

² Section 3 of the Child Law, Myanmar, 1993

³ Section 11 of the Child Law, Myanmar, 1993

According to Section 15 of Monogamy Law, 2015 states in a divorce according to Section 14, the person who commits a matrimonial crime shall forfeit all his property rights.

If a husband who is married according to a law or a religion or a custom, enters into another marriage with another woman while the original union is still legally recognized, such marriage is not legal and thus the second wife shall not be entitled to inheritance when that husband dies. The husband who marries and lives together with another spouse shall also not be entitled to inheritance if that second wife dies.¹

Whoever if the married husband or wife according to a law or a religion or a custom that having enter into another marriage with another husband or woman while the original union is still legally recognized shall be punished with imprisonment for a term not exceeding 10 years and shall all be liable to fine.²

Concerning the domestic violence in Myanmar, Penal Code mainly protects the domestic violence cases under Sections 312, 313, 322, 340 and 375 respectively.

In relevant with the domestic violence, it can be found that the following case;

In case of Daw Aye Myint Yi Vs U Naing Aung (a) Ar Chan and Ma Saung Hnin Thit Oo, this case happened in Amarapura Township, Mandalay. The offenders open a tailor shop named Hein Arkar and employed Ma Aye Kyin as housemaid with salary, 55,000 kyats per month. A person who is living in the same ward with the offenders complained that Ma Aye Kyin is abused by her employers to the head of the ward. That's why Ma Aye Kyin was brought to the office of the head of the ward on 28th February, 2017 and kept her at U Myint's house, head the ward When they asked Ma Aye Kyin, she told that U Naing Aung hit her with rice cooker power cord, punched her and slapped her face and also stick needles in her skin. She also showed her bruises and wounds. U Hla Toe Naing, head of the ward complained it to the Amarapura Police Station as plaintiff and the offenders are charged with Sections 326/325 of the Penal Code.

¹ Section 16 , Monogamy Law, 2015

² Section 17, Monogamy Law, 2015

In the case of *Deputy Superintendent of Police Myo Thein Vs Tin Thu Zar and 5 others*¹ and *Deputy Superintendent of Police Toe Myo Vs Tin Thu Zar and 5 others*², this case happened in the Kyautdadar Township, Yangon. In this case, on 22th June, 2016, a reporter complained to the Myanmar National Human Rights Commission that the offenders who are the owner of the Ava tailor shop and her family members abused the minor housemaids: Ma San Kay Khaing, 17 and Ma Thazin, 16. On 20th September, 2016, Anti-Trafficking Unit 6, Yangon complained to the Kyautdadar Police Station as plaintiff and the police charged them with section 24/32 of the Anti-Trafficking in Persons Law. Moreover, the Social Welfare Department charged them with Section 66(d) of the Child Law on 21st September, 2016. The decision of the court is among the six family members, Daw Tin Thuzar and Daw Su Mon Lat were sentenced rigorous imprisonment for a term of 16 years and one month, U Yazar Htun was sentenced rigorous imprisonment for a term of 13 years and one month and U Tin Min Lat was sentenced rigorous imprisonment for a term of 9 years and 1 month.

By analyzing the cases, it can be seen that most of the victims seriously suffered the violence in society. It affects the health problem not only the physical harm but also mental harm to survivors. And, the survivors face the difficulties such as long-term health problem, lack of job opportunity, trauma and depression in long life. For legal protection against domestic violence, there is no specific provision relating to domestic violence, the offenders can be charged under the related laws.

Civil Claims for Domestic Violence in Myanmar

The advantage of pursuing civil remedies is also that a lesser level of burden of proof under is required. A civil order requires proof based on a balance of probabilities (i.e. which is the more likely or probable event), whereas convictions under criminal law require a higher standard of proof beyond reasonable doubt. However, treating all forms of violence against women as criminal offences may result in depriving women of the option of

¹ Criminal Case No. 110/ 16, Inn Sein District Court, Yangon

² Criminal Case No. 2/17, 3/17, 4/17, Inn Sein District Court, Yangon

obtaining civil orders only. (Criminal offence necessitates the initiation of criminal proceedings and mandatory reporting)¹

In most countries victim/complainants' rights are protected by taking a dual approach.- first to recognize victim's rights to services, which are broadly defined to include rights to legal assistance, counselling, assistance with gaining repossession, assistance in finding shelter, etc. Second, is to put in place mechanisms that facilitate victim's access to justice and support services.²

In Myanmar, in relevant with the civil claims for domestic violence;

According to Section 7 of the Civil Procedure Code, every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

The plaint in any such action or suit shall give a full particular of the person or persons for whom, or on whose behalf, such action or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.³

According to Section 27 of the Myanmar Buddhist Women's Special Marriage Law, 2015 states that notwithstanding any provision contained in law and custom, if a non-Buddhist man, who has contracted a marriage under this law, violates any provision under section 24, the Buddhist woman can divorce the non-Buddhist man. If the woman would divorce the man due to that reason –

- (a) the man shall waive the portion that he is entitled to from the property owned by both, and pay compensation to the Buddhist woman;

¹ Developing Anti-violence against Women Laws, Gender Equality Network, 2013, P- 4-5

² Developing Anti-violence against Women Laws, Gender Equality Network, 2013, P- 24

³ Section 3 of the Civil Procedure Code, 1908

- (b) the guardianship of all children shall be with the Buddhist woman;
- (c) the man shall pay maintenance for children who are minors.

According to Section 30 of the Myanmar Buddhist Women's Special Marriage Law, 2015 mentions that however, due to any religion, custom or any law that has effect on such religion or custom, and that does not allow the marriage between a non-Buddhist man and a Buddhist woman, the man can divorce the woman if he wishes. Due to such a reason, if the man divorces the woman, or forsakes, or behaves cruelly and causes mental harm, whether or not it amounts physical violence, notwithstanding the provision of the said custom or law –

- (a) the man shall waive the portion entitled to him from property owned by both parties, and pay to the Buddhist woman;
- (b) the guardianship of all children shall be with the Buddhist woman;
- (c) the man shall pay maintenance for children who are minors.

Traditionally, the Dhammathats provided that in cases of disagreement a husband could chastise his wife with a light cane or split bamboo. Case law suggests that a wife may submit to ill-treatment and condone it, but if she comes to Court, she is entitled to protection.¹

The Dhammathats, or treatises 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," are a principle source of Myanmar Customary Law. They are not codes of law in the strict sense, and there is wide variance among them in content and quality. They reflect the social customs of the day, and judges to rule by and for the people to live by. They record decisions, real or imaginary, to establish rules of persuasive force.²

Under Myanmar Customary Law, there are mainly three kinds of divorce. They are divorce by mutual consent; divorce by husband's entry into the priesthood; and divorce on account of matrimonial fault. Regarding with matrimonial fault to claim for divorce, there are two kinds of matrimonial fault: matrimonial faults and grievous or serious matrimonial faults. Under

¹ The case for Anti-Violence against Women Laws, Gender Equality Network , 2013, P-10

² Dr Maung Maung, Law and Custom in Burma and the Burmese Family , 1963, P- 7

ordinary matrimonial fault there are misrepresentations, adultery on the part of the husband, desertion, and ordinary cruelty. Adultery on the part of the wife and grievous cruelty are factors of serious or grievous matrimonial faults.¹

In the case of *Maung Kywe Vs Ma Thein Tin*², it was held that there is a distinction between mere ill-treatment or personal violence and cruelty. 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 the sufferer.

In the case of *Daw Pu Vs Maung Tun Kha*³, while a single act of cruelty will attract the rule of partition as of divorce by mutual consent, it has been ruled that where cruelty is aggravated by the guilty party who, instead of being repentant, is desirous of divorce or by it being committed with intent to force the other party to seek divorce or by frequent repetition of acts or cruelty or amounts to grievous hurt within the meaning of section (320) of the Penal Code, the guilty party forfeits his or her interest in the joint property of the couple.

In the case of *Daw Mee Mee Tun Vs U Mg Mg Lwin*,⁴ the Supreme Court had decided 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 legally marriage. It was held that it is contrary to Myanmar custom and social life and constitutes the grievous cruelty to Daw Mee Mee Tun. Therefore, the wife has the right to divorce and the husband who commits a grievous matrimonial fault shall waive all his property rights.

In the case of *U Jack Sue (a) U Than Shwe Vs Daw Aye Aye Maw (a) Daw Maw*⁵ it was held that Cruelty includes not only making to hurt physically but also mentally. It can be varied in form and done in various ways. U Jack Sue did cruelty physically in front of the son and also he did many acts in several times to cause mental cruelty to his wife. Thus, Daw Aye Aye Maw is entitled to get divorce. The original court considered

¹ Mya Sein, Myanmar Customary Law", 2004, PP 129-130

² I.L.R, 7 Ran, 790

³ 1946, Ran, 126

⁴ MLR 2012, P-48

⁵ MLR, 2013 P-54

the above mentioned facts in passing final decree in divorce is in accord with law.

In case of domestic violence, the abused women may complaint about the violence to get their damages under Customary Law and Civil Procedure Code. But, it can be seen that the protection orders for domestic violence do not enact for specific provisions in these laws.

Enforcement Measures

Concerning with the criminal cases to protect the domestic violence in Myanmar, the procedures are as follows:

Every information relating to the commission of a cognizable offence, if given orally to and officer in charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant, and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the President of the Union prescribe in this behalf.¹

In order to investigate into cognizable cases, any officer in charge of a police –station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of chapter XV relating to the place of inquiry or trial.²

Regarding the Cognizance of offences by Magistrates, except as hereinafter provided, any District Magistrate or Sub divisional Magistrate, and any other Magistrate specially empowered in this behalf may take cognizance of any offence –

- (a) upon receiving a complaint of facts which constitute such offence,
- (b) upon a report in writing of such facts made by any police-officer
- (c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.³

¹ Section 154 of Criminal Procedure Code, Myanmar, 1898

² Section 156 (1) of Criminal Procedure Code, Myanmar, 1898

³ Section 190, of Criminal Procedure Code, Myanmar, 1898

According to Section 200(A) of Criminal Procedure Code, 1898, a Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate.

The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal, and if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.¹

Under Section 494 of Criminal Procedure Code, 1898, any public prosecutor may without the consent of the court in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdraw,

- (a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;
- (b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences.

With regard to the civil suits to get the remedy for domestic violence in Myanmar, It can be applied the procedures as mentioned below;

If a woman wants to claim divorce under Myanmar Customary Law, she will apply to the court according to Civil Procedure Code. According to the provisions laid down in the Civil Procedure Code, 1908 and the Evidence Act, 1872, all Civil Court have to proceed the civil case relating to domestic violence. And then, All civil judges are vested the powers to examine the case in these laws. In adjudication of the civil cases and criminal cases, the procedures are the same such as examination of witness, examination of plaintiff and accused, admission of evidence.

¹ Section 493, of Criminal Procedure Code, Myanmar, 1898

According to Order IV Rule 1(a) of the Civil Procedure Code, 1908 every civil suit shall be instituted by presenting a plaint to the court or such officer as it appoints in behalf.

Under Order IV Rule 1(b) of the Civil Procedure Code, 1908 every plaint shall comply with the rules contained in orders VI and VII, so far as they are applicable.

The defendant may, and if so required by the Court shall at or before the first hearing or within such time as the Court may permit, present a written statement of his defence.¹

At the first hearing of the suit the Court shall, after reading the plaint and written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.²

In case of domestic violence, the victims have to access to complaint for their experience of violence. Enforcement measures should be more effective and applicable to protect the domestic violence in Myanmar. Domestic violence concerns not only the private issue but also the public issue. So, in order to prevent the domestic violence, enforcement measures like as prosecutor, judges and police officer should take action effectively in prosecuting process in accord with law.

The Role of Institutions and Rehabilitation Measures

In Myanmar, the role of institutions and rehabilitation measures protect the rights and enhance the advancement of the victims. Institutions include government organizations and non-governmental organizations.

The Myanmar National Human Rights Commission came into existence by the government notification No.34/ 2011 of 5 September 2011. Based Principles and composed of 15 members, it embraces the principles of plurality and ethic and gender balance in its composition.

¹ Order VIII Rule 1 of the Civil Procedure Code, 1908

² Order XIV Rule 5, of the Civil Procedure Code, 1908

The MNHRC stated that ‘any citizen may send complaint to the Commission’ when his or her fundamental rights in the Constitution of the Republic of the Union of Myanmar are violated. It stated that the citizens had to mention the necessary facts so that the commission could deal with the complaint effectively. Matters should not have been brought before, or be under, or have been finally decided by a court. The Commission would investigate the cases and contact the concerned person, company or government department. The Commission would tell them to change if they need to change and if they didn’t listen, the Commission would send a letter to the president advising him to take action’¹

In conducting an inquiry, the commission shall abide by the principles of natural justice. In addition, the commission may invoke the relevant provisions of the Code of Civil Procedure, the Code of Criminal Procedure and the Evidence Act as appropriate.²

If the Commission finds out the credible evidence, inquiry of a complaint, of the violations of the rights of an individual or individuals, the report submitted under sections 38 and 39 shall mention the recommendations on the following:

- (a) a determination that a violation of human rights has occurred and a recommendation that such human rights violation and similar violations should not be repeated or continued;
- (b) appropriate measures by a person or any agency to redress the violation of human rights;
- (c) obtaining due compensation for the victim of violation of human rights for any loss or damage suffered;
- (d) recommending for action to any department, organization, service, person or the relevant authority and to require the to inform the Commission within reasonable period of the steps that have been taken to give effect to that recommendation.³

¹ Affecting Women and Children in ASEAN: Myanmar, 2013, 614

² Section 29 of Myanmar National Human Rights Commission Law, 2014

³ Section 40 of Myanmar National Human Rights Commission Law, 2014

It can be concluded that Myanmar National Human Rights Commission protects the violation of the human rights. The powers and duties of the Human Rights Commission are visiting the scene of human rights violations, inquiries, received the complaint. Moreover, it promotes the awareness training of human rights and combating all forms of discrimination in Myanmar.

The Myanmar Women's Affairs Federation (MWAFF) was formed in 2003 in order to implement the policy of the MNCWA at the grass-roots level. Myanmar National Committee for Women's Affairs (MNCWA); Myanmar National Working Committee for Women's Affairs (MNWCWA) and Myanmar Women's Affairs Federation (MWAFF) have been established as the National Mechanism to implement the 12 tasks set down by the Fourth World Conference for the advancement of women. The president and the general secretary of MWAFF are members of MNCWA. MWAFF is partly funded by the Government and also gets funds from some small-scale business, fund-raising ceremonies and activities from well-wishers and volunteers. Human resources of MWAFF are mainly voluntary members from the various Ministries.

Complaint about gender-based discrimination can be lodged with the MWAFF. Groups at the Central, State, Division and District levels screen the letters of complaint and forward them to the department concerned for necessary action. According to the follow up report of Myanmar to the Committee's concluding observations, the concerned authorities receive the complaints and investigate the cases and take action against offenders according to the law.¹

In order to enhance the awareness raising , the government need to implement the violence against women including domestic violence effectively.

- to implement awareness raising activities on CEDAW which describe all forms of discrimination against women as a violation of human rights.

¹ Affecting Women and Children in ASEAN: Myanmar, 2013, P- 614

- to provide special training to judicial officers to ensure the upholding of dignity and human rights of women and girls affected by violence when taking legal action.
- to build the capacity of the Myanmar Police Force, judicial officers, health care staff and volunteers to actively respond to, and prevent all forms of violence against women and girls.
- to raise awareness of the general public through the media to eliminate all forms of violence against women and girls.
- to implement community –based initiatives in preventing and responding to all forms of violence against women and girls.
- to increase men's participation in preventing and responding to all forms of violence against women and girls.
- to take legal action against perpetrators as well as to provide them with counseling and other awareness raising.¹

Moreover, Myanmar Women Affairs Federation is combating the violence by legal protection with Myanmar Police Force, Courts and hiring lawyer. It can be seen that Myanmar Women Affairs Federation supports the survivors of domestic violence. It provides awareness training, counseling centre, legal protection and reception of complaint and scrutinizing the cases to protect the violence against women and girl including domestic violence.

On 25th November 1953, the name of the Division of Social Development was changed to the Division of Social Welfare. In 1972, Department of Social Welfare (DSW) was established. DSW has laid down the policies, objectives and programs based on social justice and integration strategies to provide welfare services to the community.²

The Department of Social Welfare (DSW) is providing essential social care and protection to children who are in need of special protection, such as orphans, street children, abused children, working children, and handicapped children. The staffs of the institutions and those who are involved in taking care of children have been given awareness-training courses on prohibition of all kinds of child abuse.

¹ National Strategic Plan for the Advancement of Women, MNCWA, P-13-14

² <https://www.dsw.gov.mm/en/about-dsw>

As the focal department, the major responsibilities of DSW are being taken measures on prevention, protection and rehabilitation programs for children and their families, youth, women, person with disabilities, elderly, ex-drug addicts and people who are facing with social problems. Moreover, organizing the contribution of the voluntary organizations and supporting them play the main roles in the implementation of DSW.¹

The Social Welfare Department shall lay down and carry out measures as may be necessary in order that mentally or physically or disabled children may participate with dignity in the community, stand on their own feet and promote self-reliance.²

According to Section 26 of the Child Law, 1993 states that every child may enjoy fully the rights mentioned in this Law -

- (a) the Government departments and organizations shall perform their respective functions as far as possible;
- (b) voluntary social workers or non-governmental organizations also may carry out measures as far as possible, in accordance with law.

The Social Welfare Officer has the following powers in respect of the investigation under sub-section (b) –

- (i) informing the parents, guardian or police officer and causing the child to be brought before him;
- (ii) entrusting the child to the parents or guardian on execution of a bond or sending the child to a temporary care station, before receiving the decision of the Director General.
- (iii) calling and examining necessary witnesses
- (iv) hearing the explanation of the parents, guardian or the child, if necessary.³

Concerning the domestic violence, Department of Social Welfare contributes to combat the domestic violence especially children. It also assists the livelihood of children such as job opportunity, health-care services,

¹ <https://www.dsw.gov.mm/en/about-dsw>

² Section 18 (b) of the Child Law, Myanmar, 1993

³ Section 33 of the Child Law, Myanmar, 1993

education, reconciliation with their family and awareness training by collaborating with other organizations. Department of Social Welfare also prosecutes the violence in respective courts on behalf of the victims.

Findings

Regarding the domestic violence in Myanmar, the victims should be more aware of the laws and how to protect their rights from violence. The nature of domestic violence consists of culture norm as a violation. Most of the victims who are facing domestic violence need to access legal protection such as criminal liability and civil claim. As a result, this research evaluates that it is not comprehensive legal provisions in Myanmar to protect the victims who are suffering the mental violence. So, in Myanmar, in order to ensure effective implementation a specific law should be enacted to prescribe the definition of domestic violence, to protect the victims who are living under the same roof of the house, to prescribe the protection orders for domestic violence in implementation the law and to set up the institution which prosecute the offenders in implementation the law.

Conclusion

Domestic violence can cause problems of physical, mental, sexual nature and has economic effects on the survivors. It occurs not only to rural women but also urban women in society. The victims of domestic violence may be a man or a woman or a child. Domestic violence actually occurs between the persons living under the roof of the house. So, it may affect the victim's dignity, economic and health problems. The results of domestic violence or abuse can be depression, low self-esteem, lack of trust in others, unable to work hard and sleeping problems. The victims who are facing domestic violence need to access legal protection. For legal protection against domestic violence in Myanmar, although there is no specific provision relating to domestic violence, the offender can be prosecuted under the related laws. In Myanmar, Penal Code is not prescribed the specific definition of domestic violence to prevent the violation. It protects the physical violence only but it is not adequate legal provision for mental violence. Therefore, according to the current situation in Myanmar, the specific law should be enacted to combat domestic violence and to ensure the rights of the human being.

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