

PROTECTING CHILD DOMESTIC WORKERS IN MYANMAR*

Khin Linn Aung¹

Abstract

This paper is an attempt to develop legal measures that protect violence against child domestic workers, fixed working hours and rate wages and bans debt bondage and slavery. Child refers to all persons below the age of 18. Domestic worker means housemaid who employs to perform domestic work such as cleaning, cooking, washing and ironing, taking care of children, the elderly, sick people or people with disabilities, etc., in or for third-party household except for own family. Being poverty, parents make their child as a domestic worker. Most of them are girls, and they have to face physical, sexual, and psychological violence and exploitation. This research examined whether national laws effectively protect child domestic workers from violence or not. It considered how the problems faced by child domestic workers to solve. By analyzing the provisions of international and national laws, this paper found that Myanmar's domestic laws can't fully cover on child domestic workers from violence. Moreover, there is no specific legal provision for protecting them like working children in factories and shops. It suggests that the legislator should enact a particular law on child domestic workers or add the most suitable rules and regulations for the child domestic workers in Child Rights Rule.

Keywords: *Child, Child domestic workers, violence, exploitation, child labour, debt bondage and slavery*

Introduction

Child domestic workers are all persons below the age of 18 employed to perform domestic work in or for a third-party household. Tasks of child domestic workers are cleaning, cooking, washing, and ironing, taking care of children, the elderly, sick people or people with disabilities, etc. Child domestic workers are prevalent in the urban areas of Myanmar. Most child domestic workers are girls in Myanmar.

Parents make their child employed as a domestic worker for the family's livelihood, and the repayment of outstanding debt caused a form of debt bondage. Employers may be the moneyed class, businessmen, people on high income, people on middle income included government officials and staff.

Employers make a child do the domestic works without rest time and weekly holidays. They treat them like a slave and subject to all forms of discrimination. Moreover, most child domestic workers are subject to physical, sexual, and psychological violence because of shielding from the public.

Because of occurring these matters, it will explore the weakness of legal measures and ways to solve child labor in domestic work by referencing the existing laws and cases. Consequently, it will give recommendations so that child domestic workers can work in a comfortable and healthy environment for themselves and their families. Their workplace becomes a safe place for them.

¹ Dr, Associate Professor, Department of Law, Taunggyi University

* Best Paper Award Winning Paper in Law (2021)

Objectives

- to protect all forms of violence against child domestic workers at the workplace;
- to fix working hours of child domestic workers;
- to be free from debt bondage and slavery
- to enjoy wages accurately;

Methods

It reviews relevant international instruments such as Convention on the Rights of the Child, 1989, the Minimum Age Convention, (No. 138), 1973, Worst Forms of Child Labour Convention, (No. 182), 1999, and Convention concerning Decent Work for Domestic Workers, 2011 (No. 189). It analyzes Myanmar national laws: The Child Rights Law, 2019, Child Rights Rule, 2001, Factories Act, 1951, and Shops and Establishment Law, 2016, the Anti-Trafficking in Persons Law, 2005, the Payment of Wages Law, 2016, the Minimum Wage Law, 2013, Leave and Holiday Act, 1951, and the Social Security Law, 2012. Besides, it takes information from journals and reports. It conducted case studies.

Findings

Myanmar is a member of the Minimum Age Convention, 1973, and the Worst Forms of Child Labour Convention, 1999, but Convention concerning Decent Work for Domestic Workers, 2011 are not ratified. A legal action includes both criminal and civil action in Myanmar relating to the physical, sexual and psychological violence against children. Concerning the exploitation of wages, and working hours of child domestic workers, the Factories Act, 1951, and Shops and Establishment Law, 2016, defined minimum age, kinds of work, working hours of working children in the factories and shops. Moreover, those laws authorized inspectors to check the conditions of workers whether they enjoy the benefits of the law or not. However, there is no specific legal provision for child domestic workers, and there is no person appointed to check the conditions of child domestic workers. In addition, the Leave and Holiday Act, 1951 does not recognize people who employ cleaning, cooking, taking care of children as a worker. Child Rights Rule 2001, notifications and directives issued under the Child Rights Law, 1993 may be applied in so far as they are not inconsistent with the provisions of the Child Rights Law 2019. Therefore, Myanmar national laws can't fully cover child domestic workers.

Discussion

Definitions

Child means every human being below eighteen years under the United Nations Convention on the Rights of Child.¹ The ILO Worst Forms of Child Labour Convention, 1999 (No.182), and Article 3(d) of the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (known as the Palermo Protocol) similarly

¹ Article 1 of the United Nations Convention on the Rights of the Child (UNCRC), 1989

define child with the CRC. Following the Convention on the Rights of Child (CRC), Myanmar Child Rights Law, 2019, provides a child as anyone under 18 years.¹

Child labour refers to employment or work carried out by children inconsistent with the standards enshrined in ILO C138 on the Minimum Age for Employment and C182 and the Worst Forms of Child Labour.² In other words, child labor means mentally, physically, socially, or morally harmful work to children, and interfered work with their schooling by depriving them of the opportunity to attend school, by obliging them to leave school prematurely, or by requiring them to attempt to combine school attendance with excessively long and heavy work.³

Moreover, as in article 1 of the Domestic Workers Convention, 2011 (No. 189), “**Domestic work** refers to work performed in or for a household or households. Domestic worker means any person engaged in domestic work within an employment relationship”.⁴ Therefore, **Child domestic workers** are all persons below the age of 18 employed to perform domestic work in or for a third-party household.⁵ The Settlement of Labour Dispute Law, 2012, Minimum Wage Law, 2013, and The Payment of Wages Law, 2016 recognize Domestic workers.

Child labour in domestic work refers to domestic work undertaken by a child below the minimum legal age for work or employment set by a country following ILO C138 and domestic work performed by a child below the age of 18 in situations that constitute the worst forms of child labour.⁶

Debt-bondage means employing or providing services until it has paid a debt without restrictions of appropriate labor value as a payment and a guarantee without uncertain timing and type of work.⁷ All forms of slavery and debt bondage are worst form of child labour according to article 3(a) of the Worst Forms of Child Labour Convention, No. 182 (C182).

Problems of Child Domestic Workers

A person on high income and middle income, including government officials, and staff hire a child. They make a child do domestic work. Problems of child domestic workers have no security for their safety and weakness of legal measures for effectively protecting them. Ministry of Labour, Immigration, and Population has a responsibility to specify types of hazardous work and the workplace by coordination with the relevant employer organization and labor organizations. And then the Ministry must coordinate with the respective Union Ministries to get the right to work, to be occupational safety and health including behavior that speech to insult the modesty of working children, in order not to be loss their entitle and to safeguard them.⁸

¹ Section 3(b) of Child Rights Law,2019

² International Labour Organization, (2017) “*Practical Guide to Ending Child Labour and Protecting Young Workers in Domestic Work*”, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS) - Geneva (First Published), p-11

³ ILO, (2002), “*Eliminating the worst forms of child labour: A practical guide to ILO Convention No. 182*”, Handbook for parliamentarians No. 3, p-15

⁴ Article 1 (a), (b) of the Convention concerning Decent Work for Domestic Workers, 2011

⁵ International Labour Organization, (2017) “*Practical Guide to Ending Child Labour and Protecting Young Workers in Domestic Work*”, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS) - Geneva, (First Published), p-12

⁶ Ibid p-14,

⁷ Section 3(a), explanation (3), of the Anti-Trafficking in Persons Law,2005

⁸ Section 49 of Child Rights Law, 2019

Unsafe Place of Work

Child domestic workers are very vulnerable to physical, sexual, psychological, or other forms of abuse, harassment, and violence because it shields their workplace from the public, and they generally lack co-workers. Factories Act, and Shops and Establishment Law, 2016, authorized inspectors to check the conditions of workers whether they enjoy the benefits of the law or not. However, there is no person appointed to check the conditions of child domestic workers.

Although most child domestic workers face all forms of violence, the reported cases are rare. The public needs to be aware that a child victim, their parents, guardian, or other person has the right to make a complaint in the relevant government department, organization, or court under section 20 of Child Rights Law, 2019. It will mention the following two well-known reported cases as an example.

In a **Case**¹, the 15-year-old victim girl from Wakeman Township in the Ayeyarwady region began working as a domestic worker in the house of the actor Min Yar Zar, Yangon, Tamwe Township, since she was ten years old. The actor committed sexual violence or abuse against the victim for several years. In addition, the lower part of the body was tortured with a knife and had acid poured. After that day, the father-in-law of the actor hit her with a hammer in the back of the head.²

In **Social Welfare Department and Anti-Trafficking Unit, Yangon VS Ava Tailor Shop, 2016, Western District Court, Yangon**, the family members of the Ava Tailor Shop beat, cut, and were forced to work for five years with little or no pay two-child domestic workers (housekeepers). These were torture and physical abuse of the two victims and exploitation without paying the wages fully. In Myanmar, according to these cases, there is child labour in domestic work.

Legal measure on Physical Violence

Sections 299 to 318 of the Penal Code are divided into different categories depending on the nature of the crime to impose the appropriate sentence on unlawful deaths. These are: murder, culpable homicide not amounting to murder, and causing death by rash or negligent conduct. The three homicide offenses attract very different penalties.

Moreover, in Penal Code, there is a specific definition of simple to hurt and grievous hurt and voluntarily causing hurt, voluntarily causing hurt by dangerous weapons or means, causing grievous hurt by dangerous weapons or means, voluntarily causing grievous hurt to extort property, or to constrain to an illegal act, and voluntarily causing grievous hurt to extort confession, or to compel restoration of property. The penalty is one year to twenty years imprisonment.

The Penal Code also prohibits one person from wrongful confinement another person. Section 340 of the Penal Code also mentions the definitions of wrongful confinement and section 342 provides for appropriate penalties for wrongful confinement such as tying a person to a tree, locking up a person in a room amount to wrongful confinement.

¹ Criminal Case No.177/2020, Yangon Eastern District Court

² Myanmar Mix, (2020 April 11), *Armed group-captures Myanmar actor accused of rape, acid attack on girl*, <https://www.myanmarmix.com/en/articles/armed-group-captures-myanmar-actor-accused-of-rape-acid-attack-on-girl>

In Social Welfare Department and Anti- Trafficking Unit, Yangon VS Ava Tailor Shop, 2016, Western District Court, Yangoon, Convicted family members have been sentenced to long prison terms for violating the Anti-Trafficking in Persons Law, 2005, the Child Law 1993¹, and certain sections of the Penal Code that carry the penalty for grievous bodily harm and child abuse.

According to section 100 (a) (iv), Child Rights Law 2019, corporal punishment is illegal in all settings. Concerning physical violence or abuse against children, torture and other cruel, inhuman, or degrading treatment or punishment against children is regarded as a punishable offense². However, there is no definition for which behaviors are torture and other cruel, inhuman, or degrading treatment or punishment against children.

Legal Measure on Sexual Violence

Under section 375 of the Penal Code, the followings are five requirements to constitute rape if a man has sexual intercourse with a woman.

- the first requirement is a man has sexual intercourse with a woman against her will.
- the second requirement is a man has sexual intercourse with a woman without her consent.
- the third requirement is a man has sexual intercourse with a woman with her consent when her consent has been obtained by putting her in fear of death or hurt.
- The fourth requirement is a man has sexual intercourse with a woman with her consent when the man knows that he is not her husband and that she consents because she believes that he is another man to whom she is or believes herself to be lawfully married.
- The last requirement is with or without her consent when she is under sixteen years of age.³

According to section 376 of the Penal Code, the highest penalty is twenty years or imprisonment for life⁴. For carnal intercourse committed against the order of nature, the punishment may extend up to twenty years or ten years imprisonment.⁵ Touching the sexual parts of a child's body is considered as a crime⁶, but making a child touch the sexual parts of another's body is not mentioned as a crime.

Outrage modesty is a crime punishable by a sentence of up to two years and a possible fine under the Penal Code.⁷ The word, gesture, or act intended to insult the modesty of a woman is a punishable offense for what punishment is simple imprisonment for a term which may extend to one year, or with fine, or with both as per instruction of section 509 of the Penal Code.⁸

¹ Child Law 1993 have been repealed by Child Rights Law, 2019

² Section 103 (a) (v) of Child Rights Law, 2019

³ Amended by the Law Amending the Myanmar Penal Code, 2016

⁴ Amended by the Law Amending the Myanmar Penal Code, 2019

⁵ Section 377 of the Penal Code

⁶ Section 100(c) (ii) of Child Rights Law, 2019

⁷ Section 354 of the Penal Code, 1861

⁸ Section 509, Ibid

Legal Measure on Minimum Age

Myanmar is a member of the Minimum Age Convention, No. 138, 1973, and the Worst Forms of Child Labour Convention, No. 182, 1999. The three age limits which are defined by Minimum Age Convention, No.138, for admission to employment or work, are

- 18 for hazardous work under article 3 of ILO Convention No. 138
- 15 for full-time employment in non-hazardous work under article 2(3)
- 13 for 'light' work that does not interfere with education under article 7(1)

Developing Countries like Myanmar may lower the minimum age for 'light' work to age 12 and other non-hazardous work to age 14.

In Myanmar, employers may hire child workers, but the minimum age for Child workers is 14 years. If the education age of the State for the free compulsory education system is over the age of 14, the working-age of the children attending school must not be less than that.¹

The Factories Act requires the certification of a medical practitioner person who has completed his fourteen years but has not completed his sixteenth year to do work.²

Shops and Establishment Law (2016) does not allow a person who has not completed 14 years to work in any shop or establishment. In addition, it does not allow a person who has not attained the age of 16 years to work overtime more than prescribed working hours in any shop or establishment.³

Myanmar Employment and Skill Development Law of 2013 mentions that "an employer may employ young persons who have completed 16 years of age as apprentices following the regulations made by the Skills Development Agency and train them in the various skilled occupations".⁴

There are no types of employment that are likely to jeopardize the health, safety or morals, and light work. Therefore, it assumes that the minimum age for Child domestic workers is 14 years under the Child Rights Law 2019.

Legal Measure on Wages

"Wage means the fee or salary entitled to be obtained by the worker for carrying out hourly work, daily work, weekly work, monthly work, or any other part-time work of the employer. This expression includes over-time fee or bonus given by the employer for the good work or character, or other remunerations or benefits determined as income".⁵

All forms of slavery and debt bondage are punishable offenses under the Anti- Trafficking in Persons Law, 2005. However, children work for the repayment of outstanding debt. It is **debt bondage, and the employer** treats the child as a slave. Forced labor, forced service, slavery, servitude, debt-bondage are exploitation.⁶

¹ Section 48 (b) of Child Rights Law, 2019

² Section 75 of the amended Factories Act,2016

³ Section 3(a)(b) of the Shops and Establishment Law,2016

⁴ Section 15 (b) of Employment and Skill Development Law, 2013

⁵ Section 2 of the Minimum Wage Law, 2013

⁶ Section 3(a), explanation (1) of, The Anti-Trafficking in Persons Law,2005

The Payment of Wages Law, 2016 mentions that the employer may deduct the advance payment from the wages.¹ In deducting from wages, the deduction made by the employer shall not exceed 50 % of the salaries.² The object of the Minimum Wage Law, 2013 is to meet with the essentials of the workers and their families, who are working at the commercial business, production business and service, agricultural and livestock breeding business. Section 2 of the Minimum Wage Law, 2013 and the Payment of Wages Law, 2016 mention domestic worker (housemaid) is a worker.

Therefore, the domestic worker has the right to enjoy the decent wages under the Payment of Wages Law, 2016 and the Anti- Trafficking in Persons Law, 2005.

Legal Measures on Working Hours

Limitation of working hours is also vital to protect the working child. Leave and Holiday Act, 1951 does not recognize people employed cleaning, cooking, taking care of children as a worker.

Myanmar Factories Act (1951) defines working hours for children 14 to 15 years³:

- the employer can make the child employ for a maximum of 4 hours a day, but the children are not allowed working overtime, working on Sundays, and working between 6:00 PM and 6:00 AM
- the employer can make the child work only two shifts allowed without overlap in one factory
- the employer cannot make the child employ in hazardous work (harmful to health, deterring the education and in a workplace wherein child would be exploited)".⁴

Under Factories Act (1951), working hours of adolescents (16-17 years)⁵:

- it requires a medical certificate of fitness required as an adult,
- the employer is unable to make the adolescent employ the cleaning, lubricating, or adjusting machinery while a machine is in motion, and
- the adolescent is prohibited from being employed in a factory where a cotton opener is at work
- the adolescent is prohibited from lifting, carrying, or moving heavy loads likely to cause injury

¹ Section 7 (c) of the Payment of Wages Law, 2016

² Section 9, Ibid

³ Section 79 of Factories Act, 1951

⁴ Nang Kay Si Kham, Ms. & Fabian Lorenz, Mr., 6 August 2018, "Myanmar Employment Law," Luther Law Firm Limited

⁵ Section 77 of Factories Act, 1951

Shops and Establishment Law (2016) defines working hours for 14 to 16 years age of the child:

- the employer can make the child employ not more than 4 hours a day working time, with 30 minutes rest each day, and it is no work between 6:00 PM and 6:00 AM
- the child must be allowed at least one rest day a week¹

For young people (17-18 years), working hour is

- it requires a medical certificate of fitness required as an adult,
- it is not allowed to work in hazardous conditions of work,

Working hours, therefore, are one of the problems for solving the exploitation of child domestic workers in Myanmar.

Contribution

According to section 20 of the Social Security Law, 2012, the domestic workers may contribute and collect the stipulated subscription voluntarily to the respective social security fund they prefer and enjoy the relevant social security benefits following the stipulations to enjoy the social security benefits under this Law.

Conclusion

In summary, as mentioned, the purpose of this research is to explore legal measures that protect all forms of violence against child domestic workers at the workplace, fix the working hour of child domestic workers, free from debt bondage and slavery, and enjoy wages accurately. As mentioned, child domestic workers work without breaks and holidays and face physical, sexual, and psychological violence because of shielding from the public and being no laws authorized inspectors to check the conditions of workers whether they enjoy the benefits of the law or not.

It has been described that legal action includes criminal and civil prosecution in physical, sexual, and psychological violence against children. Under the Penal Code, there are three homicide offenses. It also classifies types of hurt: simple hurt and grievous hurt. That brings very different effective, proportionate, and dissuasive sanctions. Moreover, as mentioned, the child rights law, 2019 bars physical violence against children such as corporal punishment, torture and it does not provide a specific definition of torture and acts of torture. Torture is one of the types of hurt mentioned in the Penal Code.

Moreover, Child rights law, 2019 mentioned that touching the sexual parts of a child's body is considered a crime, but making a child fondle the sexual organs of another's body is not mentioned as a crime. However, Penal Code provides rape, carnal intercourse committed against the order of nature, outrage modesty, and word, gesture, or act intended to insult the modesty of a woman are crimes punishable and its types of punishment.

In addition, it mentioned that national laws do not include provisions that determined the minimum age for domestic work, types of child domestic work, wages and working hours, etc. of child domestic workers. The Factories Act, 1951, and the Shops and Establishment Law, 2016

¹ Section 14 of Shops and Establishment Law, 2016

define working age, hour, rest time, holiday (day off), and types of work. The Leave and Holiday Act, 1951 does not recognize domestic workers.

Although the Child Rights Law, 2019, provides the minimum age for child workers is 14 years, this law does not define domestic workers, and a list of the types of employment that is likely to jeopardize the health, safety, or morals, and light work. Because of these situations, it assumes that the minimum age for Child domestic workers is 14 years. The domestic worker has the right to enjoy the decent wages the Payment of Wages Law, 2016 and the Anti- Trafficking in Persons Law, 2005. However, The Minimum Wages Law, 2013, concerns only domestic workers working at the commercial business, production business and service, agricultural and livestock breeding business.

As for recommendations, the Ministry of Labour, Immigration and Population, the main body responsible for domestic worker and social security affairs like other labor, should appoint inspectors. The workers' organizations should effort to protect child domestic workers. All domestic workers, employers, or service providers should be registered.

Because reporting suspected child violence or exploitation is the first step to preventing or stopping the violence or exploitation, the Ministry should establish call centers for assistance and referrals to children who require care and protection all over Myanmar. Besides, staff in the call center should be ready to take phone calls and respond to online messages 24 hours a day, 365 days a year.

Child Rights Law, 2019 should define not only touching the vagina, penis, anus, or breast of the child but also making the child fondle the vagina, penis, anus, or breast of such a person or any other person as a punishable offense. Penal Code, 1861 protected all persons, whether adults or children, more comprehensive than Child rights law, 2019, when it relates to physical violence.

Moreover, even if it is not yet enacting a specific law on child domestic workers like any other child workers, The Ministry of Social Welfare, Relief, and Resettlement should issue rules, directives and procedures for them to be safe and free from exploitation. The Rule, Directives and the Procedure should include:

- The minimum age for child domestic workers is 14 years
- The types of work the employer cannot make the child do,
- Registration as a domestic worker and employer,
- Regulation of the Working Conditions: Duties of the employer, Working hours, the time they cannot make the child do work (between 8; 00 pm to 6:00 am), and Wages for overtime work, Interval for rest, Weekly holidays, Minimum wages

On the other hand, if compulsory education is up to 14, it will reduce child labour in domestic work.

Acknowledgment

I would like to express my deep gratitude to Rector, Taunggyi University and Pro Rectors from Taunggyi University for their permission. Last but not least, I would like to express my heartfelt gratitude to Dr. Kyaw Kyaw Nyi, Professor and Head, Department of Law, Taunggyi University, for his encouragement and guidance for me to do this research paper.

References

Laws

- Child Rights Law, The Pyidaungsu Hluttaw Law No.22, 2019
 Child Rights Rule, Ministry of Social Welfare, Relief, and Resettlement Notification No. 1/2001
 Employment and Skill Development Law, The Pyidaungsu Hluttaw Law No.29, 2013
 Factories Act, No.65, 1951
 Leave and Holiday Act, No.58,1951
 Minimum Wage Law, The Pyidaungsu Hluttaw Law No.7/2013
 Payment of Wages Law, The Pyidaungsu Hluttaw Law No.17/2016
 Penal Code,1861, India Act XLV,1860
 Shops and Establishment Law, The Pyidaungsu Hluttaw Law No.18/2016
 The Anti-Trafficking in Persons Law, The State Peace and Development Council Law No. 5/2005
 The Law Amending the Factories Act,1951, The Pyidaungsu Hluttaw Law No.12,2016
 The Law Amending the Penal Code, The Pyidaungsu Hluttaw Law No.10,2019
 The Law Amending the Penal Code, The Pyidaungsu Hluttaw Law No.6,2016

Conventions

- Convention concerning Decent Work for Domestic Workers, 2011, ILO Convention No.189
 Minimum Age Convention, 1973, ILO Convention No.138
 United Nations Convention on the Rights of the Child,1989
 Worst Forms of Child Labour Convention,1999, ILO Convention No. 182

Books

- Amelita King Dejardin & Bijoy Raychaudhuri , (2017) “Practical Guide to Ending Child Labour and Protecting Young Workers in Domestic Work”, Fundamental Principles and Rights at Work Branch (FUNDAMENTALS) - Geneva, International Labour Organization (First Published)
 Jack Martin & David Tajgman, (2002), “Eliminating the worst forms of child labour: A practical guide to ILO Convention No. 182”, Handbook for parliamentarians No. 3, International Labour Organization
 Nang Kay Si Kham & Fabian Lorenz, (2018), “Myanmar Employment Law,” Luther Law Firm Limited

Cases

- Criminal Case No.177/2020, Yangon Eastern District Court, Myanmar
 Social Welfare Department and Anti- Trafficking Unit, Yangon VS Ava Tailor Shop, 2016, Western District Court, Yangon

Websites

- Myanmar Mix, Armed group captures Myanmar actor accused of rape, acid attack on girl, <https://www.myanmarmix.com/en/articles/armed-group-captures-myanmar-actor-accused-of-rape-acid-attack-on-girl>