

Domestic Violence against Women: Legal Responses in Myanmar

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要 旨

家庭における女性に対する暴力は、世界的に深刻な問題である。ミャンマーでは、家庭内暴力は個人的な問題として捉えられ、特別な法律はない。本稿は主に、家庭内暴力の被害に遭った妻の法的対応に焦点を当てている。近年の地方裁判所のデータによると、家庭内暴力による離婚訴訟が増えている一方、家庭内暴力を原因とする刑事訴訟は減少している。ミャンマーでは、刑事事件として訴追されるか、民事事件として離婚に訴えるかの2つの方法しかない。夫は妻に対して暴力をふるっても、暴力が深刻でない限り刑事事件として起訴されることは殆どない。妻が訴訟を起こさない理由は、恥や罪悪感、経済的理由、家族関係を維持したいこと、子どもの問題、そして裁判、法律について無知であるためである。また、一度訴えても取り下げてしまうので、加害者へは軽い刑罰にしかならない。被害者を保護・救済するためには、市民の意識や法律知識を高めるべきである。

Keywords: Myanmar, Legal Response, Customary Rules, Physical Assault, Judicial Decision

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Introduction

Domestic violence, men's abusive power and control over women in intimate relationships, is a widespread but still largely hidden problem. The violence is traditionally dismissed as a man's right, as part of what women must endure in marriage, as the result of the man's drinking or as an occasional aberration in men who are psychologically ill. But, domestic violence has only recently been accepted as a criminal behavior that must not be tolerated by a civilized society.

Like other countries, Myanmar has experienced the inevitable effects of domestic violence but it has existed as a hidden problem for several years. Through the endeavor to protect the rights of the women by implementing the guidelines of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the importance of protection for women's rights became an issue and the Government of Myanmar has been making out efforts to protect for the victims of violence. At present in Myanmar, most of the people are not willing to admit the existence of domestic violence as many people still perceived it as a normal aspect of daily life that is legitimized by traditional customs. Thus it has to educate the public awareness to those who suffer the bitterness of this violence and the perpetrators who commit it.

This paper, titled as the domestic violence against women and the legal response to it in Myanmar, firstly reveals the historical background of Myanmar laws and the societal attitude toward the violence. It also discusses the nature of the Myanmar family including the individual, men and women, parents and children and how to form the kinship in society and how relating with the violence and family nature. It then presents

the experience of domestic violence in Myanmar and the activities being carried out by the government. It finally discusses the legal responses to the violence in Myanmar, along with the existing laws relating to domestic violence, its procedures upon prosecution and adjudication for such offence. Through the case study on the nature of domestic violence in one of the subordinate courts, these will help accessing the actual nature of domestic violence in Myanmar and the attitude of the courts upon it. In any legal texts and papers, the people usually insist on saying that there is no inequality for women in Myanmar and no expression of domestic violence is found in these books. But it really exists. To tackle the problem of domestic violence it must first be acknowledged. Then domestic violence must be made a public matter to educate the entire people. Otherwise, it will remain a latent stigma hidden by widespread cultural acceptance. This is the main reason of writing this article.

What can this paper contribute to already existing literature and texts? It is strongly believed that, with this paper, it may contribute to a better understanding of domestic violence and its impact on women. In this paper, the attitude of the courts toward the violence is expressed as a normal aspect according to the data collected. These data may show the path of which is the right choice for the future. According to this data, it may be found that the quantity of civil suits for divorce claimed by the wife who are suffered from domestic violence was explicitly larger than those of criminal trials. It has no suspect in these civil suits that there were one or more of domestic violence by the male perpetrators. Why do not these victims take the hands of criminal action? Or is the relief of a divorce claims the only chance of victims? What will be the sequential affects after their divorce? Why do the victims easily withdraw their proceedings from the trial? Is slight punishment enough for the perpetrators? Or should the deterrent punishment be given to the perpetrators for ending this domestic? A lot of questions have come out for these problems. Whatever the situations are in Myanmar, it can be said that the specific law for combating domestic violence should be enacted to secure the rights of the women more and more. And at least domestic violence should become a hotly debated topic in the media and in society in general instead of hiding it as family matters. It is also hoped that the paper may contribute to the field of knowledge in Myanmar by analyzing the domestic violence from a different angle.

I. Origin and Development of the Myanmar Laws

The laws of ancient Myanmar may be said to be composed of three great elements: *Yazathat*, *Dhammathat* and *Phyathton*. The most important kind of legislation was the *Yazathat*: edicts issued by the

King. *Dhammathats* were somewhat similar with the customary laws of the land. Traditional and customary rules of personal and family character were codified in *Dhammathats*, written by famous monks and scholars. Those may be rightly called as collections and records of social customs. *Phyathtons* were the records of judicial decisions rendered by various monarchs and judges.¹

Then, British rule came to Myanmar in three stages; in 1824 when the lower maritime areas were taken by conquest; in 1852 when territory further north was seized and 'Lower Myanmar' became 'British Myanmar'; in 1885 when Upper Myanmar was annexed and the entire country consolidated as a province of the British Indian empire. Thus, gradually, the statutory laws which were designed on the British common law models for use in India were extended to Myanmar as well.² Even after independence in 1948, the wholesale adoption of codes made for India on British common law principles were still in use though some laws were repealed and amended.

After 1962, a group of military leaders (the so called Revolutionary Council) took over the State's sovereign powers and the judicial system was transformed into a socialist system. The Revolutionary Council abolished the Supreme Court and High Court and established the Chief Court instead. At that time, though the style of politics had been changed, the practice of legal system was not changed in its root. It formally became the Socialist Republic of the Union of Myanmar in 1974 and it changed its politics and economics to a socialist plan and many laws favored socialism were promulgated and some old laws not suitable for the socialist regime was repealed. Even at that time, the legal system and most of the pillar laws promulgated in British colony still remained and much intact and the practice of common law system was not abolished. Instead, the lay-judge system (participation of the working people in all levels of the courts) was established from 1974 to 1988.

Opposition to one-party rule and socialism grew, and demonstrations finally rocked the country in 1988. The Tatmadaw (the armed forces) took the State's power and practiced the market economy. From 1988 to now, though slight amendments in laws suitable for a market economy have been changed, the practice of legal system was changed back into career service and the present judicial system was adopted on the 26th of September 1988. Whatever the politics and socio-economic practices in the State, the original root of common law practice could not be abolished, and most of the prominent substantial laws are still in use today.

1.1. Historical Background and Mirror of Society

The prevailing Myanmar customary law, which has been substantially derived from Hindu law,

recognized the husband's power over his wife literally and legally. As a consequence, some kind of physical assault or harm was excused by the law up to now. Likewise, the societies, which always give favor to men and patriarchal role rather than women reflects on the possibilities of unequal treatment of men to its partners.

When the root of Myanmar customary law is observed, the Hindu Code of Manu was used more as a model for legal treatise than for its contents. By the time the Hindu influence – the stimulant was felt, Myanmar society had become well organized in the village communities, in the small cities and the small kingdoms, and these communities had developed their cultures and customs, their laws and their government, and above all, a capacity to borrow and receive from other migrant civilizations without being overwhelmed.

Hindu law dropped out of Myanmar jurisprudence much in the same way as Roman law came to be forgotten in England. The names of the several forms of adoption can be traced to Hindu law; but the Myanmar system has departed far from the prototype.³ Ancestor worship is absent in the Myanmar system; family names are unknown; inheritance does not depend on the capacity of the heirs to take part in offerings to the spirits of the deceased. There is no joint family as known to the Hindus. The chief difference between the two systems is due to the Myanmar Buddhist notion of the equality of the sexes which has resulted in marriage being a partnership in goods, vesting an equal interest in each of the spouses.⁴

“When greater races bound the feet or veiled the face of their women”, or doubted if she had a soul, the Myanmar held her free and enthroned her as chieftains and queen”.⁵ The equal status enjoyed by women is a feature that is shared by other countries of the region. Thus, in Myanmar and Thai, for example, “the doctrines of Buddhism have produced a striking, and to the lover of true civilization a most interesting result, viz. the almost complete equality of the conditions of women with those of men. In those countries, women are not miserably confined in the interior of their houses, without the remotest chance of ever appearing in public. Their social position is more elevated in every respect than that of the persons of their sex in the regions where Buddhism is not the predominating creed. They may be said to be men's companions and not their slaves. They are active, industrious and by their labours and exertions contribute their full share towards, the maintenance of the family. The marital rights, however, are fully acknowledged by a respectful behavior towards their lords. Therefore, the customary law of the Buddhist family in Southeast Asia is the common law of the region to a large extent.”⁶

The *Dhammathats* or treatise 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 principal 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 custom of the days, and expound rules of wisdom as guides for kings, ministers, and judges to rule by and for the people to live by. It may be said these are golden rules.⁷ The *Dhammathats* are useful, and used, as mirrors of the society of the day. They do not lay down the law, they reflect the customs and the rules which act and play in society, and when the reflections are clear, the customs and rules are accepted as having binding force. Thus, the *Dhammathats* are not the sole repository of Myanmar customary law, which is also to be ascertained from decided cases and the prevailing customs and practices of Myanmar.⁸

At an early period, the *Dhammathats* recognized the husband's power of moderate chastisement with a light cane or split bamboo. In the *Dhammathats*, there are five improprieties that a woman may be guilty of:

(a) with regard to food, when she takes her meals before her husband does so; or when she indulges 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 stealthily the greater portion of any food obtained and leaves only 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 a journey, or attends to her duties as a wife and as a mother;

(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 of looking at men when they are dressing or undressing, or when they are bathing.⁹

A guilty wife may not be given brutal punishment, but shall be gently chastised, "By beating her on the back and the buttocks with a cane, split bamboo, or the palm of the hand."¹⁰ But these are the outdated social norms of Myanmar society. At present, the Courts in Myanmar no longer recognize the husband's power of chastisement. Physical assault by the husband on his wife is now considered to be a matrimonial fault. Anyhow, the light punishment due to the wife's fault was recognized for a certain period.

1.2. Judicial Administration

The main aim of Myanmar traditional justice is to achieve harmony and peace in society. The

judges and arbitrators are there primarily give patient ear to the litigants and gently guide them to compromise. The procedures are neither formal nor rigid. In the village, the elders serve as mediators and arbitrators, and it is to them that villagers take their disputes or their family problems. Decisions are guided by considerations of what is good for the peace and harmony of the village or the family; often the decisions do not need to be handed down – they are arrived at as the disputants argue their anger out. Until now, the system of mediation and arbitration has survived in the village with some modifications. Outside the village, however, the system has been subjected to drastic change as laws get modernized and the judicial hierarchy becomes more formal and organized.¹¹

In the administration of justice in the ancient time to now, we have not seen any particular provisions or facts about domestic violence. These were administered like other kinds of suits or offences. Even if she is a victim of the domestic violence, she will not be protected in the trial. She has to be testified like other witnesses. But under the Myanmar Court's Manual, the exclusion of women as witnesses probably arose from the feeling that they were frail, not that their credibility was inferior to that of men, and that because of being frail, they might not be able to stand up to the stringencies of the oath. Many terrible punishments were invoked in the oath for the perjurer, including “death by vomiting clots of blood and by inflammatory diseases, “total destructing, as of an extinguished lamp, of children descendants, and property.” These and many more punishments and curses , even more terrible , are inscribed in palm leaf and encased in beautiful red velvet, and the Buddhist witness in the courts today hold the *Kyanza* and promises to tell the truth, the whole truth. The pregnant Buddhist woman does not touch the *Kyanza*, but with palms together in prayerful respect, makes the pledge of truth to it.¹² Moreover, nowadays, there is the practice of examining in camera of the child victim or young woman victim who has to testify as witness, e.g. in some case of rape or abduction, before the court so as to protect their future life and decency.

II. The Myanmar Family

As the type of Myanmar family is a nuclear one, all the family members used to stay in one family altogether. As long as the children do not get married, they usually stay with their parents. Even some married couples also stay with their parents and parents-in-law. When the father and mother are old, the duty to look after them is regarded as the part of their sons' and daughters'; they usually take these responsibilities willingly and let these elders stay in one family. So, the size of family in Myanmar is mostly big enough in

comparing with others. These are the unique features of Myanmar family. Whether the family members are more or less, the role of male partners such as grandfather and father are more crucial than female members in the family.

The word "family" may be rendered in the Myanmar language as ein-daung-zu: "the household group". Much has been said about the institution of family in Myanmar, that it is essentially a relationship based on specific duties and responsibilities on the part of husband, wife, parents and offspring. These rights and duties are taken seriously and adhered to closely. Love and respect, rights and responsibilities are the foundations of the Myanmar family irrespective of religious creed. This holds true today as it did in ancient times and is a tradition that we hold dear. But there is another basic element that knits a family together although it has not been given much prominence. And that is the love and humor that is very much a part of Myanmar family life. The ability of the Myanmar people to look on the lighter, if not funny side of life is carried over into the family relationship.

2.1. The Individual

2.1.1. Men

The Dhammathats – written by monks and men – sometimes describes the husband as the lord and master of the home. The term ain-oo-nat or spirit head of the house indicates the higher spiritual plane on which the man is placed. In practice what this means is that while women are denied no practical powers and the man is given no domestic or social advantages, the concept of male dominance is still accepted and often even eagerly embraced by women. This concept rationalized the importance of the position of the male in Buddhist terms. It means that the Buddha who, as a man, gained enlightenment and showed the path for all to follow. As a man he attained the highest spiritual level and only as a man can another human being hope to do likewise. Central to the notion of male superiority is the concept of 'hpon'. Hpon strengthens the spiritual elevation that men enjoy in Myanmar society, which is essentially a Buddhist society. All males have a hpon, an intrinsic quality that is accorded to few females, and even if it were, less than that accorded to a male. It gives men the advantage of a special status, higher than that of women. Moreover, a Myanmar proverb says of every man: 'three steps down and he is a bachelor'. These steps refer to his descent from the slightly raised front verandah of his martial home. Traditionally, the universal 'male' quality allows a man much sexual freedom, whether he is married or not. However, the constraints of religion and society make monogamy and marital stability the prevailing norms.¹³ Anyhow, by instilling fear in the abstract and unknown, the ideas and

practices regarding male hpon are perpetuated. Male chauvinism was found to exist and women had generally less choice in lifestyles.

2.1.2. Women

In many ways, historically and today, Myanmar women hold a unique and enviable position at home and in business activities. But, on the other hand, there is strong evidence of gender-specific cultural practices that undermine this apparent equality. Much work on women from a feminist viewpoint sees women as subordinate to men in varying degrees. Sexual inequities are found in diverse spheres ranging from economic activity to political participation to the domestic sphere.¹⁴

But, there is much evidence of Myanmar women in positions of egalitarianism that are clearly distinguishable in several major ways. The status of women throughout history seems to be high. Women could own property and dispose of it as they wished. Their rights to own property had never been challenged.¹⁵ They were the legal equals of their spouses and male dependents, enjoyed equal property rights, and had easy access to divorce. The very essence of a person's identity, the name, does not change when a Myanmar woman marries. Marriage also does not require a change of residence for the woman. Depending on the circumstances of the parents, financial, family size, the number of siblings, and so on, or that of the newly weds, flexibility and fluidity of spatial relationships are the norm rather than the exception. It is equally acceptable for the newly weds to live with the bride's parents, the groom's parents or on their own. There are several important indicators that testify to the special position that Myanmar women enjoy in society.¹⁶ On the other hand, in the "Theravada Buddhist" societies, women are inferior to men in religious status. Only a man can become a monk, to which is attached a high merit value. A woman can never be a monk. The overwhelming embrace of Buddhism has resulted in acceptance of female inferiority in religious matters. The spatial division is observed in pagodas and monasteries which dot the Myanmar landscape. In all pagodas, women are generally not permitted to climb the higher platforms. As well, women cannot go to certain parts of the monastery, or to have physical contact with a monk, or sit on a monk's bed, even if the monk were the woman's son or husband. These acts would be considered highly sacrilegious. Religion and religious institutions are inextricably linked to Myanmar Buddhist life. Myanmar is not a secular Buddhist society, but one in which religion is a part of daily life.¹⁷

The spatial connotations of spiritual inequality reinforce and determine women's position. The spatial division is a constant reminder of women's inferiority and a clear demarcation of what is not a

woman's place. Women's space within the home is clearly defined. The kitchen is primarily the woman's domain. Traditionally, and continuing to the present, women cook and sew, care for and nurture the family. The woman also looks after the family expenses and in most cases is the business partner to her husband. As the kitchen, or the back of the house, is women's space, certain parts of the house. While the boundaries are neither formal nor fixed, there are general rules which are followed by most people.¹⁸ The woman's clothes, especially the htamein or longyi (skirt or underwear) are never placed on the upper shelves of the wardrobe, nor thrown carelessly about the house. On the other hand, it is acceptable for a man's longyi to be anywhere.¹⁹ The separation of male and female spaces is linked to ideas of contamination.

Thus, at the spiritual level, the position of Myanmar women fares badly. Within the spatial realms of home and family among which the woman moves, her space is defined and delimited by her sex. This extends to outside the home, to religious buildings and in public gatherings. In public gatherings of a religious nature, there is again a gendered division of space. The boundaries cannot be transgressed, but remain to reaffirm woman's lower status level.

2.2. Parents and Children

A child grows old slowly in the Myanmar family. He may become an adult and a father, but in the eyes of the parents he remains a child. Puberty, when a son becomes competent and free to marry, generally marks his coming of age, but a girl remains longer under parental care to marry before she comes of age, she needs the consent of her parents, of the father especially, the Dhammathats say, though in fact it is the mother who usually prevails with her natural flair.²⁰

Myanmar parents also value their children as vehicles for the discharge of their duties as human beings. Children are also valued for the support they are expected to give to their parents in old age, although this expectation is not made explicit. Indeed, all through life the old give to the young and parents, for as long as they can, continue to give a great proportion of their assets to their children.²¹

In studies of Southeast Asian societies, the close familial link between the mother and the daughter has often been pointed out. In Myanmar society, while this tie is close, it is not the only one, nor is it always the strongest. The tie between two sisters may equal it and often outlast it. Although mothers and daughter are often seen together because they share domestic tasks and leisure activities, the ties between fathers and daughter and mothers and sons are also very strong.²²

The ideal set-up for the relationship of children to parents is a 'love-fear-respect' compound that

underlies the easy relationship of daily life and emerges to take effect in crisis. In poor families the help given by children in a variety of tasks is in response to the instructions of the parents. In better-off families requiring less help, the children still respond to the beck and call of their parents. The manners they acquire suggest respect in one form or another: they take second place in voicing opinions, often sit companionably silent (and without complaint) through long periods of adult gathering. These manners, like other junior-to-senior manners, are more or less ingrained because they are accorded to all elders and are not behavior personally demanded by a parent.²³

2.3. Kinship and Society

The Myanmar kinship system is completely bilateral in terminology as well as in actual practice. The duties of both paternal and maternal kin are the same. The greater closeness of one side or the other is not openly recognized. In practice, however, as the mother is more involved with family management, a closer attachment grows between the children and her own kin. There are frequent visits; a married daughter goes to her mother to have her first child, a woman's own relatives often live with her and help care for the family. But this is not always the case, and often paternal kin can be closer. Despite the absence of bonds created by ritual between kin, kinship ties are greatly valued, kept up by close and frequent association, and extended outside of the family.²⁴

The counting of kin extends both formally and informally and often friendship is clothed in kin terms and classed as a firm family tie. When my niece married, her husband became my nephew. A first cousin of his, as his brother thus also became my nephew. His own younger brother's wife was a beloved and special sister to him; hence, her sisters also became very affectionate and helpful nieces to me. Sex distinction operating on the principle of regard for the male "hpon" is present in all relationships. The belief in 'suitable' feminine behavior is very strong. Participation in every activity makes it all the more important to retain the ideal of modesty in deportment as depicted in the manners of a wife towards her husband.²⁵ One of the cultural mottos for women in treating men in her family is that 'treat son as masters and husband as god'.

According to this Chapter, it is no mistake to say that the Myanmar women hold some special positions within the society. They are legally and socially not restricted from participating as entrepreneurs and professionals and in the political arena. The bilateral kinship system, the right to win property, equal inheritance rights, the uniqueness of the naming system, absence of body ornaments to indicate marital status, all these show clearly the high degree of position and independence that women enjoy. On the other hand,

they are encountering with inequalities. Male chauvinism was found to exist and women had generally less choice in lifestyles, in dress, choice of careers and so on. Most importantly, however, the greatest inequality and one virtually impossible to surmount was in the area of Myanmar Buddhist life. In religion, women had been and continue to be in a subordinate position. In the multiplicity of social spaces that women are identified with and which reflect existing social conditions, it is in the realm of religious space that women's subordination is magnified²⁶. Therefore, there is no doubt that Myanmar society favors to male domination while the role of women is disregarded. Men always think that they are superior to women and women are inferior to men. This assumption leads men to bully their partners in some situations and women are at the same time used to keeping their pain and sorrow secretly.

III. Domestic Violence in Myanmar

In Myanmar, though there seems to have been few cases regarding violence against women, it has to be confessed that domestic violence exists in our daily life. This is mainly due to Myanmar traditions, culture and practices. The status of domestic violence is still underreported, even though it was the most common violence against women. But, on the other hand, violence against women, including spousal abuse, is infrequent because most of the married couples often do not live by themselves but rather in households with extended families, where social pressure tends to protect the wife from abuse. However, most women who are abused tend to ignore the situation once they reconcile with their husbands, especially if they are fully dependent on their husbands. If they bring their husband to justice, they may not have enough money to spend for their daily expenses particularly when they have children. One more factor is that women in Myanmar keep it in their mind that the nature of violence, or even in some cases, torture is a normal incident which usually occurs in a family and they regard it should not be displayed in public.

3.1. Experience of Domestic Violence

The thought and belief patterns in Myanmar society come from grand narratives, teachings, mottos and practices influenced by patriarchy. This leads to an imbalance of power between men and women. For instance, men are always the leaders; women, the followers. It has been accepted that a good wife should secret domestic violence as a private sphere and not to be discussed in public. The culture remains patriarchal in its institutions, its ideology, and in its distribution of power.

In Myanmar society, boys are taught to be brave, dominant and aggressive. They regard that household chores are concerned with women entirely and not the mens' business. Women are taught to be gentle and polite, to do the housework and to be strictly faithful to their husband. Myanmar women have to perform her household duties whether she likes it or not. After getting married or before getting married, she must be dutiful with these duties. If a woman does not want to be like this, the community marks her as a bad woman. According to Myanmar custom, women shall not dispute her husband's authority. She must respect and obey him. Women are not usually allowed to express their feelings even if they are hurt physically or mentally. Harm resulting from quarrelling between husband and wife is regarded as an ordinary family affair and no neighbor will try to interrupt it.

Until recently, domestic violence was considered largely as a private matter and hidden as a shameful secret. Since there are no official statistics on the problem, it is difficult to estimate any figures. However, in 1996, the Myanmar government created a national committee called the 'Myanmar National Committee for Women's Affairs' (hereinafter MNCWA). Violence against women has been included in the six areas taken by the Myanmar National Working Committee for Women's Affairs, the general goal of which is the reduction of all forms of violence suffered by women.

Findings from the MNCWA survey indicated that the main causes of violence in Myanmar are financial problems, alcohol, disharmony with in-laws and adultery. Other causes are unemployment, lack of education, early marriage, and large family size. In addition, in Myanmar some violence is related to males possessing more than wife. According to the battered women of case studies in Myanmar, violence often erupts when a wife realized that her husband has another wife as his first wife. When women learn of this martial problem, it often leads to arguments, resulting in violence. Moreover, the research findings revealed that psychological violence ranges from 4% to 21% and physical violence ranges from 3% to 15%. Violence against women is now increasingly recognized as a problem with serious medical and social consequences and has become a prominent issue in Myanmar.²⁷

According to the research by Dr.Nilar Kyu* in 2004, among 286 women who lived in Mandalay (the former capital of Myanmar), 27% of women experienced physical assault and 69% of women experienced psychological aggression from their intimate partner. When we look into the nature of violence in detail, 62% of the women had experienced minor psychological aggression and 33% were in suffered severe psychological aggression; while women who were having the brunt of severe physical assault were about 17%, there were 25% of women who had minor physical assault; while 52% of women were being shouted or

yelled, 40% of women were insulted and 38% of women were done or said something spiteful and stomped out of the room. However, 6% of the total sample had been up by their partners or, in some cases, their partners had actually used weapons against them. The fact that the incidence rate for total strife is equal to the rate for psychological aggression indicates that women who experience physical assault also experienced one or more acts of psychological aggression. Finally, only 6% of the abused women took formal action, and 35% simply stated, “I put up with the violence”. Moreover, 9% of the abused women reported, “I got bruises or lesions” and 19% said “I felt like I was dying”.²⁸ Whatever the nature of violence experienced by the victims, there are several causes likely to have happened. These results indicated that personal experience of parental violence, husband's unemployment, frequent alcohol use and being deceived into marriage without truly knowing the partner were associated with increased risk of violence.

Under the above mentioned data, the victim or the abused woman do not usually keep the violence in their mind and they sometimes spill out their feelings. But a few victims usually take a formal action of prosecution only when their husbands make torture her very seriously and when they cannot tolerate him anymore. That is the nature of women in Myanmar society and they had been taught to act in their life like that. When a victim encounters domestic violence, she always tries to content herself that it is all because of her karma in her past life.

3.2. Action of the Government for Domestic Violence

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 by the General Assembly. This convention was the first document to address women's rights in all areas of their lives, including political, economic, social, cultural, and family. The primary goal of CEDAW is to eliminate discrimination against women and to promote a respect for human rights throughout the world.²⁹ Currently 185 countries (over 90% of the members of the UN) are parties to the CEDAW and an additional State has signed, but not ratified the treaty, therefore it is not bound to put the provision of the Convention into practice.³⁰ Myanmar became a party to the CEDAW in July 1997.³¹

In order to promote and protect the rights of women and girls, the Government has established Myanmar National Committee for Women's Affairs (MNCWA) in 1996 as a national machinery to carry out the Beijing Declaration and platform of Action. In addition, the Myanmar Women's Affairs Federation (MWAFF) as established in 20 December 2003 to take effective measures of women's affairs in implementing the principles and guidelines laid down by the MNCWA. The Women's Affairs organizations were formed in

all States and Divisions down to the grass-roots level to carry out the activities in order to promote its functions comprehensively and widely for the advancement of women.³²

The National Committee enhances the cooperation between the Government and Non Governmental Organizations in implementing the National Plan of Action. An NGO namely, Myanmar Maternal and Child Welfare Association (MMCWA) which has branches and associations all over the country up to the grass-root level is dedicated to promoting health and the well-being of mothers and children. Similarly, the Myanmar Women Entrepreneurs Association (MWEA) has been active in enhancing the role of Myanmar women in business. In addition, the Myanmar Women Sports Federation (MWSF) has the aim of promoting the participation of women in sports and in the physical, mental and moral development of women.³³

The MNCWA has identified six areas of concern for the advancement of Myanmar women namely: education, health, economy, culture, violence against women and girls. Most of the critical areas of concern of the Beijing Platform for Action are interrelated and interdependent. Integrated programmes on the enhancement of the role of women in the health, education and economic sectors can benefit the areas of women and poverty, human rights of women and the media. The media is urged not to give a distorted image of women to the public but to enhance the awareness of their role and contributions to the family, the community and the country.

In Myanmar violence against women and girls do not pose a major problem. Although, it is one of the priority areas of concern of the MNCWA, as it can effect women's health and hinder the advancement of women. The Sub-committee on the violence against women has taken integrated measures to prevent and reduce violence against women, to provide help and to rehabilitate the victims of violence. Moreover, the Sub-committee has laid down strategies such as Raising awareness on the violence directed against women: Wide-spread dissemination of information on where to seek help for victims of violence, Upgrading the capacity for providing health care for the victims including establishment of drop-in centers, counseling centers and shelter homes.³⁴

Two counseling centers each in Yangon and Mandalay Divisions have been established to help the victims of violence. It is in the process of establishing at least one counseling center each in States and Divisions. The training workshops on Systematic data and Counseling Methodology were held in Yangon. The Department of Social Welfare conducts domestic science training courses in States and Divisions for young women and girls to carry out income-generation activities.³⁵

Non-governmental organizations like the Myanmar Maternal and Child Welfare Association (MMCWA) provides antenatal care at the (MMCWA) centers as well as family planning services. Deliveries are conducted at 33 maternity shelters all over the country. If there are other reproductive health problems, the patients are referred to the nearest hospital or Maternal and Child Health centers.

To achieve the aims of social welfare services six Residential Nurseries, 61 Pre-schools and Day-care Centers, 952 Voluntary Pre-primary School and Day-care center have been opened. Two Women's Homes have been opened in Yangon and Mandalay to look after Women age above 18 groups which are facing social difficulties. These Homes after the social needs give academic education and vocational training and arrange placement of employment. These women's Homes run by voluntary organizations have received grants from the Department of Social Welfare. Home-making Training Courses and Day-care Teacher Courses were also conducted in various States and Divisions.

In addition to providing vocational training and necessary equipment, credit and Loan Schemes are also being implemented in two ways. One scheme is, in the formation of co-operatives scheme, MCWA members are provided with loans. "Myit Tar Shin" co-operatives have been formed. Another scheme is to raise funds for credit and loan scheme, for the purpose of providing loans to members of township or branch associations. One hundred and forty six townships are now implementing these credit and loan schemes. MNCWA and MWEA are also disbursing loans to the women for income generating activities.³⁶

It has implemented activities with the advancement of women as its objective and has achieved tremendous progress for the last decade. Yet it was found that there were certain limitations to such as a committee when it was obliged to cope with broad and multi-faceted issues.

IV. Legal Responses of Domestic Violence in Myanmar

4.1. Laws Relating to Domestic Violence

Until now, in Myanmar, though there has been no precise or specific law to cure the domestic violence, some provisions in the general laws which have already been enacted could support equal rights with men. There are five laws relating to the protection of domestic violence and equal rights for women. They are the Constitution, the Penal Code and the Criminal Procedure Code, the Myanmar Customary Law and the Buddhist Women's Special Marriages and Succession Act. Apart from the Myanmar Customary Law, the rest of the laws are enacted laws. But the Myanmar Customary Law also has its legal binding force like

other laws. Most of the laws tend to the equal rights between man and woman. Only the Penal Code and the Criminal Procedure Code express its provisions for the commitment of violence against women. One thing is that there is no particular expression of "domestic violence" in these laws.

4.1.1. The Rights of Women in the Constitution

Under the Constitution of Myanmar, which was currently adopted in 2008, the Union shall guarantee any person to enjoy equal rights before the law and shall provide legal protection.³⁷ It is also stated that the Union shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth.³⁸ Women shall be entitled to the same rights and salaries as that received by men in respect of similar work.³⁹ Mothers, children and expectant women shall enjoy equal rights as prescribed by law.⁴⁰ Moreover, the Union shall, upon specified qualifications being fulfilled, in appointing or assigning duties to civil service personnel, not discriminate against any citizen of the Republic of the Union of Myanmar, based on race, birth, religion and sex. However, nothing in this Section shall prevent appointment of women to the positions that are suitable for men only.⁴¹ It is stated that, nothing shall, except in accord with existing laws, be detrimental to the life and personal freedom of any person.⁴² It may be seen that the Constitutions shows its equal rights between men and women which used to formally illustrate as other constitutions, but there was no specific definition for discrimination against women in the Constitution.

4.1.2. Provisions under Criminal Law

Under the Penal Code of Myanmar enacted in 1860, which has been prolonged for over 100 years, whoever assaults or uses criminal force against any woman, intending to outrage? Or knowing it to be likely that he will thereby outrage? Her modesty shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.⁴³ In practice, it is hardly seen in the courts filing for the offence to husband for committing assault or criminal force to his wife with intent to outrage her modesty because these are regarded as ordinary matrimonial quarrelling. The binding force of this section is mostly applied to a man who is not her husband.

Moreover, although the sections for wrongful restraint⁴⁴, wrongful confinement⁴⁵, criminal force⁴⁶, assault⁴⁷, criminal intimidation⁴⁸ are stated in the Penal Code. But in practice, when a husband commits one of these offences to his wife, she usually does not ask for help from the police or the courts. Only when she

gets hurt because of her husband, and in the termination of her patience, she goes to the police station or to the court for the offence that has been committed against her. But the practice is very rare. Before reaching the court or the police, the elders or the head of the community tried to settle it by their own ways, forcing her not to sue or by taking bonds from perpetrators not to commit again. But the circle of violence for wives never stops in its manners.

Again, according to the Penal Code, a man is said to commit “rape”⁴⁹ that has sexual intercourse with a woman against her will. If proved, he shall be sentenced to a stiff imprisonment. But there is an exception, it is stated that sexual intercourse by a man with his wife who is not under thirteen years of age, is not rape. So, it may make a conclusion that a husband is allowed sexual intercourse with his wife who has attained the age of thirteen even without her consent or even she is unwilling to do so. In the Penal Code, it is stated that the rape by a husband of his wife may be convicted to the sentence of imprisonment up to 2 years.

But, under the Code of Criminal Procedure, for the abduction or unlawful detention of a woman, the District Magistrate may make an order for the immediate restoration of woman to the liberty and may compel compliance with such order after such inquiry into the truth of the complaint as he may consider necessary⁵⁰. Moreover, in this Code, it is found out that only a District Magistrate may take cognizance of the offence of rape where the sexual intercourse was by a man with his wife⁵¹. In practice, when the data concerned was collected from our country whether any criminal trial was filed in the court under these sections, it has been observed that there was no case against the accused for these offences. So, it shall be deemed to interpret that these sections are sleeping in application.

Nevertheless, the suitable provisions for domestic violence are not found in the criminal law or Penal Code. Instead, when a husband commits violence to his wife, she has to complain like other people who have been injured in the incident. If she gets hurt due to his violence or if she is criminally intimidated or so on, she has to make a complaint to the police or court. The person in authority concerned will not pay special attention to these offences and victims. They usually regard these offences such a family’s ordinary affairs which do not need to intervene.

4.1.3. Myanmar Customary Law

When a Myanmar woman could not stand the violence made by his male partner or she cannot tolerate his behavior anymore, she usually tries to get a divorce from him. That is the only escape from her situation. 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. There is no need to emphasize the first two factors of divorce for this paper. Regarding with matrimonial fault to claim for divorce, there are two kinds of matrimonial fault: namely, ordinary matrimonial faults and grievous or serious matrimonial faults. Under 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.⁵² Concerning about divorce, there are several grounds for divorce in Myanmar Customary Law, but the main features are cruelty, desertion, the husband marrying a second wife without the consent of the first wife, and adultery. It is the evidence of the protection of women from cruelty even in a marriage tie. Therefore in Myanmar 'violence' against women seem to be protected accordingly to customary law.

However, the above mentioned chapter has said that the *Dhammathats* or Myanmar customary law recognized the right of giving light punishment to wife by husband. This right may be said to lead the precedents or rulings in the customary law that allows some act of violence not amount to right of divorce by women. In Myanmar customary law, it is found out that the word "cruelty" is used instead of describing the word "violence". A divorce is now granted to a wife, on the terms of a divorce by mutual consent, and on proof of a single act of cruelty on the part of the husband. But a single assault by a husband on the wife, which was provoked by the wife, is not sufficient ground for the granting of a divorce to a wife on any terms, when the character and habits of the husband are not of a nature to suggest any likelihood of a repetition of the offence.⁵³

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.⁵⁴ There ought to be evidence of such ill-treatment that shows the husband is a man of violent tendencies. The Court usually accepts that divorce ought not to be granted for mere trifling assaults and it cannot be obtained for physical cruelty only. It can only be obtained for cruelty in the legal sense. It has to show that the cruelty must be the matrimonial cruelty. In order to prove cruelty it is necessary to point to some definite words or actions as constituting it. A charge of a matrimonial cruelty is a serious matter and it is for the party who makes such a charge to prove it, if it is denied.⁵⁵

When the provisions and rulings in the customary law are observed, it may be found out that there were no clear definitions for divorce because of mental or psychological violence or mental pain in the *Dhammathats* or leading cases. In some cases, a false accusation of adultery persisted in by the husband

might be sufficient cruelty in the legal sense to justify divorce.⁵⁶ Husband's persistence in charging the wife with adultery when he is unable to prove it coupled with his physical assault on the wife for her declining to give up going to her parents' place entitles the wife to claim a divorce.⁵⁷ All sorts of mental tortures of an unbearable nature may be classed as cruelty in the legal sense.

Myanmar Customary Law is the law which applies to all Buddhists in Myanmar as the personal law which mainly concerns family matters, such as marriage, divorce, inheritance, and matrimonial rights.⁵⁸ Concerning with other religions residing in Myanmar, it was made applicable by section 13 of the Myanmar Laws Act 1898, which was still law today;

1. "Where any suit or other proceeding on Myanmar it is necessary for the Court to decide any questions regarding succession, inheritance, marriage or caste or any religious usage or institution.
 - a. the Buddhist Law in cases where the parties are Buddhists,
 - b. the Mohammedan Law in cases where the parties are Mohammedans, and
 - c. the Hindu Law in cases where the parties are Hindus shall form the rule of decision, expect in so far as such law has enactment been altered or abolished, or opposed to any custom having the force of law.⁵⁹

Accordingly, matrimonial questions involving marriage and divorce of the Buddhists, Hindus and Muslims are governed by their own customary laws. In case of criminal actions for domestic violence, they are to be governed by the Penal Code or any existing law.

4.1.4. Buddhist Women's Special Marriage and Succession Act (1954)

There is no provision that the Buddhist woman can not marry another religious man under Myanmar Customary Law. The Buddhist women who marry non-Buddhist men almost lose her legal status, rights relating to marriage, divorce, inheritance and property etc. All matter of those is mostly decided by the non-Buddhist husband's personal law. So it is unfair and unjust for Buddhist women. Accordingly, the Buddhist Women's Special Marriage and Succession Act (Burma Act No.24 of 1939 in English) came into force from the 1st April 1940.

The Buddhist Women's Special Marriage and Succession Act 1954 determined to govern the marriage between Myanmar Buddhist and non-Buddhist man to safeguard the rights of Buddhist women entitled under Myanmar Customary law in the case of a marriage, i.e. between Myanmar Buddhists. And

proprietary rights, rights of Inheritance, Divorce, Partition on Divorce and Guardianship of Children all are governed by Myanmar Customary Law. There were no specific provisions for domestic violence or other like definitions are not found in this Act.

But in practice, Myanmar Buddhist women are prohibited from marriage with foreigners by the Government Notification although there is no uttered provision in the law. The difference between the Buddhist Women's Special Marriage and Succession Act 1954 and the Myanmar Customary Law is that the Act is less strict in that, dependent on parental consent, it allows Buddhist girls above 14 years to marry non-Buddhist men while the Myanmar Customary Law grants the marriageable age of Buddhist girl of the age of 20 without the consent of parents or guardian.

Summing up, it can be said that the definitions for domestic violence were not be seen in the customary rules and cases cited on it. They used the word of 'cruelty' instead of using 'violence'. The meaning of cruelty itself is much narrower than the violence. All the cruelties are violence but not all the violence may be cruelties. The nature of domestic violence which is widely recognized as violation of human rights may not be in conformity with the practice of Myanmar customary law. But the Myanmar community or society accepted it because the Myanmar society is based on a patriarchal system and Myanmar women regarded their husbands as their spirit head of the house. Even if her husband committed cruelty or violence, the common relief she can claim is to get divorce from her husband in the courts.

4.2. Prosecution and Adjudication

In Myanmar, there are three ways of taking cognizance of an offence in the Criminal Court. Any magistrate, specially empowered in this behalf, take cognizance of any offence⁶⁰ –

- (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.

Sub-section (a) deals with the direct complaint to the Magistrate by the complainant through the complaint on oath. Upon the complaint, if the Magistrate thinks that there is sufficient ground for proceeding, he may issue summons or warrant, as the case may be, for the attendance of the accused. If he thinks there is no sufficient ground for proceeding, he may dismiss the complaint. Or he may postpone the case, before making judgment to take cognizance, to direct a police-officer to make an inquiry or investigation to ascertain

the truth of the complaint. According to the inquiry or investigation, the Magistrate may pass the order of taking the case cognized or dismissed.⁶¹

As for sub-section (b), when a case is informed to the police-station as a cognizable offence, the first information report is taken. After investigation, the case was filed to the court through the public prosecutor's suggestions.⁶² When a case is filed by the police-officer through public prosecutor, the Magistrate is not allowed to dismiss the case at once. Instead, after examining the witness and taking testimony from them, he may discharge or acquit the accused when there is no evidence for taking cognizance. If the accused is found guilty, the Court may make sentence of punishment of fine, or imprisonment or both as the case may be.

Sub-section (c) mostly relates to the case which the Court by itself makes a complaint at any other Court when he found out that an offence has been committed before him or when he received information from any person other than a police officer that such offence has been committed.⁶³

These three ways mentioned above are the roots of filing an offence to the Magistrate. Among them, the last one has been rarely used in practice. The other two are the most common ways for filing the offence to the Magistrate.

Therefore, when any women or a victim of domestic violence wants to complain her case, she may inform the police station if the case was cognizable. Otherwise, she may make a complaint to the Magistrate directly to take action to the offender if the offence is non-cognizable one.

In trying and making decisions in criminal cases, Judges or Magistrates at different levels have to strictly comply with the provisions of the Code of Criminal Procedure and the Law of Evidence. There are also special laws and rules which are not included in the Penal Code or the Code of Criminal Procedure.

All criminal Courts in Myanmar have to adhere strictly to the established procedure and practice of admitting documentary and material evidence, examining witness, examining complainant and accused. The basic legal principle to be observed in conducting criminal cases is that the burden of proof lies on the prosecution. Until and unless the prosecution can prove the guilt of the accused, the accused must be deemed to be innocent. Another principle is that no one shall be convicted without being given the right of defense. In other words, anyone accused of an offence must be given the opportunity of being heard. If there is a reasonable doubt for the guilt of an accused person, he is entitled to the benefit of doubt and cannot be convicted. Moreover, one of the judicial principles laid down by the judiciary law is that the case must be settled within the framework of the law.

Whether the case was filed by the police-officer or the injured person directly to the court, the injured or victim may apply for withdrawal of her accusation at any stage of the case. If the case is compoundable offences by permission of the court, the court may allow compounding the case and the accused may be acquitted from the offence.⁶⁴ If the case is not allowed for compounding and only permitted for withdrawal, the injured victim may apply for withdrawal of her case through prosecution side.⁶⁵ The strangest thing is that, whether the case is compoundable or withdrawal one, the Court easily allows the application and gives leniency to the offender due to the principle of settlement of the case within the framework of the law. In case of conviction the offender, Courts pass the sentence of light punishment to them with their dogmatism of ordinary family affairs.

4.3. Case Study on Domestic Violence

Before analyzing the facts of the case, the formation of the courts in Myanmar has to be explained. Under the Judiciary Law 2000, which is currently being used as the courts mechanism, there are four levels of courts in Myanmar. They are the Supreme Court, the State or Divisional court, the District Court and the Township Court. Though the Township Courts are the lowest courts to try the cases, they are the courts which are dealing with the public directly rather than other courts. There are 350 Township Courts in Myanmar. They can try both criminal and civil cases according to the jurisdiction vested upon them. Unlike other countries, they have no separate family courts. Whatever the case is related to marriage, divorce, adoption and inheritance, it needs to be filed to the court respectively.

The Court that was chosen for collecting data about domestic violence is named Madaya township court. Through these data, it has to be analyzed logically to the facts in other courts. The Madaya Township has its width 455 square miles and it locates in north east of the Mandalay Division, which is the second populated Division resided by last kingdom of Myanmar and it is 21 miles far from the Mandalay city. The population is about 214330 (according to 2006 census data), the male population is about 102945 and the female is 111385 and most of the residents work as farmers and agricultural producers. The data was collected from the cases filing to the court from 2006 to 2008. Due to the secrecy of the office and privacy of the parties, their real names in the cases are hereafter omitted.

For criminal regular cases filed in the Madaya Township Court, in 2006 there were 4 cases for domestic violence in the 1927 total criminal cases. There were 5 cases for domestic violence while there were 1367 cases totally in 2007. Recently, in 2008, there were 7 cases for the violence among 1835 total criminal

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cases. In such criminal cases, it includes both the cases sent by the police to the court and the complaints made directly to the court by the injured person.

Table 1: Domestic Violence Cases among Criminal Regular Trials

Year	Cases of Domestic Violence (Both Report by the police and the direct complaints to the court)	Total Criminal Cases of the Court
2006	4	1927
2007	5	1367
2008	7	1835

Source: Source: Madaya Township Court, Mandalay Division, Myanmar

According to the data mentioned above, the numbers of cases for domestic violence may be analyzed separately year by year as follow. In 2006, there were one case sent to the court by the police and three cases were directly complained to the court by the injured person regarding domestic violence.

In the case upon the report made by the police, the complainant or the injured person is the wife. She was about 40. The accused person was her husband and he was over 40. Before committing the offence, they had not divorced legally but lived separate. While she was at her home on the day, he came and suddenly stroke her with an iron rod, accusing her falsely of adultery. She got a severe injury in her head and one of her eyes was blind because of this injury. Then she made her report to the police station and informed the case. The accused person, her ex-husband was brought before the court under section 326 for accusation of grievous hurt which may be sentenced to imprisonment up to 10 years. While the witness for prosecution was examining in the court, the wife submitted her withdrawal of the case to the court. The court also allowed her withdrawal and discharged the accused. In this case, there are two issues for us why the victim wife withdrew the case easily or why the court allowed the case withdrawn.

There were 3 direct complaint cases filed to the court by the injured wife in 2006. When the accused husband was brought before the court, two cases were withdrawn and one was sentenced into fine. All the complaints based on the facts of accusations of her husband's drunkenness and making torture.

In 2007, three cases were sent to the Township Court by the police and two cases were directly complained to the court by the injured person. In the first case upon the report made by the police, the informant or the plaintiff was a man. While he was at home, his younger sister with injuries arrived and told

him that her husband made these wounds with knife. So he made his complaint to the police. In that case, the accused was a retired headmaster and he was of an unsound mind. The accused was charged with severe or grievous hurt. Before reaching the verdict, while the case was being heard, the injured person and the informant made their withdrawal of the case to the court. Like the case said above, the court also allowed their submission and discharged the accused.

The second trial was also filed in 2007. In that case, the informant was a third party. The strange thing is that the offence was committed in the street in front of the township court. The accused husband wounded her wife with a wooden rod while he was drunk. She also got severe injuries and seemed to be helpless in the public place. The informant who was the elder in the ward made his complaint to the police. In the final judgment, the Court passed the sentence of fine only to the accused because of the injured wife wish to forgive her husband.

The third case was between the complainant wife and the accused husband. It was happened in 2007. While she was cooking her dinner at home, her husband came back from his farm work and suddenly he cut her with his knife without saying anything. She got her severe injuries in her body. In the judgment, the Court passed fine only to the accused because of the injured wife's wish upon the accused. For two direct complaint cases in 2007, all were allowed to withdraw by the court in the trial because of the complainant's withdrawal and the accused were discharged or acquitted as the case may be.

In 2008, only one case was sent to the court by the police and there were six direct complaint cases to the court by the injured person. In the case upon the report made by the police, the case was informed by the accused person's father to the police station. While the accused was quarrelling with his wife, he cut her with the knife and she got severe injuries. So the father of the accused filed the case in the police station for the offence committed by his son. Like the cases mentioned above, the wife or the injured person withdrew her case and the accused was discharged from the trial. In 2008 six direct complaints were filed before the court, and four cases were allowed to withdraw because of the complainant's application for withdrawal and two cases were sentenced with a fine when the accused were found for guilty in the termination of trial.

When we look into the findings of the criminal cases mentioned above, it may be seen that the injured person usually applied for withdrawal for her claims after filing the case before the court and the Court easily granted her withdrawal or passed the sentence of light punishment upon the accused. On the injured person's side, she does not want to continue her case for one reason or another. On the other side, the Court has to follow the judiciary principle of dispensing the justice for the settlement of the cases within the

framework of law. Thus, it should be observed whether these practices really work or not.

It is not sure that the decrease of criminal cases for domestic violence amounts likely to increase the civil suits for divorce. It has already been mentioned in the above chapter that women in Myanmar usually try to get the divorce with her husband when she cannot tolerate his behavior anymore. Moreover, one obvious factor indicates that the numbers of claim for divorce become much higher than other civil suits.

Therefore, the number of civil suits for divorce claim should be checked out for this purpose. For civil regular suits filed in the Madaya Township Court, in 2006, there were 41 suits for divorce in the 86 total civil suits. There were 42 suits for divorce while there were 116 suits totally in 2007. Recently, in 2008, there were 34 suits for divorce among 139 total civil suits.

Table 2: Divorce Suits among Civil Regular Trials

Year	Suit for Divorce	Total Civil Suits	Percentage
2006	41	86	47.7 %
2007	42	116	36.2 %
2008	34	139	24.4 %

Source: Madaya Township Court, Mandalay Division, Myanmar

According to the data mentioned above, it is no doubt that there exists domestic violence or spousal violence firmly in the community. The Only way the injured wife can get relief from the court is to get a degree of divorce. In the study, it was found out that all of the suits for divorce were claimed by the wife for the reasons of the assault or getting hurt, adultery of husband and accusation of misconduct to wife without ground. Most of the suits were filed for all these grounds to get relief claimed and some were filed for two of these reasons. The grounds for getting hurt or criminal assault are mostly used to indicate in these suits as usual. Here, the question is why the injured wife or the claimant did not make complaint against him criminally. It has been observed that there were two reasons for doing so. After filing the case in criminal courts, the injured wife or the complainant usually apply for withdrawal of the case because the community or the relatives force her to do so and she herself gets nervous for being blamed. The other cause is that the courts are not used to give stiff punishment to the offenders or perpetrators for these cases are regarded as ordinary family affairs concerning with each individual person. It cannot be avoided noticing the fact that the suits for divorce are tremendously large among all the civil suits.

Actually, the offences were committed by the accused persons, or the sections they had been charged with the offence were the offence amount to some extent of imprisonment if in case they are third party. But the Court gave their mercy to the accused because the judges regarded that these were ordinary family matters which can occur in everyday. Moreover, these are the only cases which were filed to the court. It is no doubt that there were much more cases which may not be brought before the court and settled before the elders by themselves. The attitude of the courts toward the accused in such kind of cases should also be revised; whether it is really effective or not, or could we guarantee that the accused never commit again after taking the mercy from the court or the injured wife? Otherwise, should the court give imprisonment to the perpetrators to reduce the volume of domestic violence cases? At least, the better and proper way should be found for settlement of the cases of domestic violence. The silent sounds of the victims in the violence should not be neglected.

Conclusion

Globally, at the beginning of the 1970's, social policy toward female victims of domestic assaults has focused on improving legal responses to protect women and punish offenders. During this time, social control through law dominated theories on how best to reduce domestic violence, focusing on the effects of increasing the risks and punishment costs of violence toward intimate partners. Legal action was designed to exact a retributive cost, and to the extent that further violence was not evident, the suppression of violence was attributed to the intrinsic deterrent effects of legal sanctions.

In Myanmar, many of today's educational efforts and guidelines for remedying violence did not exist in 1996 or earlier years. In addition, women may have tolerated violence because they learned to accommodate being abused in a male-dominated society. Thus, this may have considered defending themselves or taking steps to rectify the situation only in exceptionally upsetting cases. Very few women took direct action to stop violence incidents across settings, even though many reported intense emotional reactions and grave consequences.

This paper started off with the information stated in our laws and customs that practiced the equal rights between men and women. But on the other hand, it has to be confessing that the violence exists in reality. It can be seen that Myanmar ancient custom allowed men to give light punishment to their wives. According to the data collected from one of the subordinate courts, it has been found that the volume of

criminal action for domestic violence is obviously lower than those of civil suits for divorce sued by the victim wife. The few amounts of criminal cases for domestic violence do not mean that male perpetrators no commit the domestic violence crimes. The victims may be unwilling to file criminal action upon them. Many domestic violence cases were not prosecuted; most domestic violence cases that were prosecuted ended with withdrawal of the victims and acquitted the perpetrators.

Moreover, victims were unwilling to cooperate with prosecutors and often refused to press charges to testify against the batterer because of fear of retaliation, a desire to continue the relationship, concerns about losing the economic support provided by the batterer, the community usually pressured the victims to withdraw the case, or they hoped that the battering would stop. Even after the termination of a trial, the court imposed lenient sentences on convicted domestic violence offenders, rarely including jail time.

In the trial of civil suits, on the other hand, the only relief she can claim from the court is to get the divorce degree. There is no practice of issuing protection order for offenders within the violence. Actually, the causes of action even in civil suits are mostly hurt, assault, abuse and her husband's adultery. It is convinced that most of the causes in civil suits are also allowed to file the case in criminal action in the court. But the victims usually do not take such action and they claim for relief of divorce only when she cannot stand for his committing anymore. In these civil suits, the victim women has to assert their plaint and has to prove her case by producing evidence supported to her case. The courts also scrutinize carefully upon her assertion whether it is falling under the frame of serious cruelty or not. Whatever the reason is, the relief claim she can get is only the divorce right with her husband.

This lack of assertive actions makes it obvious that education about the recourses available in all settings in which violence occurs was solely needed years ago. It is hoped that today improved violence policies and educational efforts will successfully increase women's awareness of their right to protect themselves against violence. Women are likely to feel more confident when they become informed about recourse available to them to benefit from learning effective strategies that ensure their safety.

It is not more than two decades that the Myanmar government has noticed to implement the rights of women and protect them from abusive situation. Coordinating with international, regional and intergovernmental organizations, the task for the protection of rights of women and the task for abused women in violence are being implemented effectively. It is no doubt that the government could stand for women and child victims in emergency than in any previous time. Anyhow, further research on domestic violence has to be initiated with a view to eradicating this phenomenon altogether and raising community

awareness in this regard. Especially, a suitable law which can protect for the abused victim women should be enacted in line with the changing situation.

Endnote

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- 3 *Ibid*, p.6.
- 4 *Ibid*, p.7.
- 5 G.E. Harvey, "History of Burma, London", 1925.
- 6 Dr. Maung Maung, *supra* n.2, p.7.
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