

## **LEGAL PROTECTION OF PERSONS WITH DISABILITIES IN SEXUAL ABUSE**

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### **Abstract**

Sexual abuse is the inducement or coercion of a person to engage in any sexual activity. It is a crime to knowingly cause another person to engage in an unwanted sexual act by force or threat. It can happen to any person such as children, men or women of any age. Among them, women and children, especially persons with disabilities are most likely to be sexually abused. Persons with disabilities often are excluded from the mainstream of the society and denied their human rights. Disability is a cross-cutting issue recognized in the sustainable development goals and no one left behind principle. This paper aims to prevent and protect the persons with disabilities who are abuse, neglect, exploitation and violence and experiencing harm. Because of the Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Convention on the Rights of Person with Disabilities (CRPD) are also ratified in Myanmar, the sexual abuse of the persons with disabilities are prevented by Criminal Law and Special Laws. However, it is necessary to provide the wide definition and how to protect in all forms of sexual abuse for persons with disabilities. To be able to prevent sexual abuse effectively, sexual offences law should be enacted or the provisions relating to sexual abuse should be inserted.

**Keywords:** sexual abuse; disability; violence; persons with disabilities.

### **Introduction**

Persons with disabilities comprise an estimated 15% of world's population or one billion people, of whom 80 % live in developing countries and are overrepresented among those living in absolute poverty. Persons with disabilities often encounter discrimination and exclusion on a daily basis. The Convention on the Rights of Person with Disabilities (CRPD) enhances the visibility of disabled people in international human rights law. Sexual abuse against persons with disabilities happens regardless of where they live, and regardless of their race, class, religion or culture. It is never justifiable. Sexual abuse is the inducement or coercion of a person to engage in any sexual activity. It occurs when the offender or coerces a person into any kind of sexual activity without consent. It can happen in all people of races, languages, religions and sexes. It is a serious crime which affects the community. It can also be said that sexual abuse is a secret if sexually abused person does not tell someone about it.

Sexual abuse includes a wide range of acts, including acts of physical and non-physical, such as vaginal, anal or oral rape, touching or fondling, showing or watching indecent photos and videos through internet, etc. Therefore, sexual abuse can be distinguished into two types, contact abuse and non-contact abuse. Contact abuse involves touching activities where an abuser makes physical contact with a person. It includes rape, cheating for sex, assault or criminal force to woman with intent to outrage her modesty, unnatural intercourse against the order of nature. Non-contact abuse involves non-touching activities, such as words, gesture or act intended to insult the modesty of a woman, pornography and sexual abuse in online environment.

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The Universal Declaration of Human Rights and the International Bill of Human Rights- the two International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights- underline that recognition and respect for human dignity is fundamental to ensuring the human rights of everyone. “Everyone” includes person with disabilities: they have an equal right to this respect. Concerning with the protection against exploitation, violence sexual abuse, there are international conventions ratified by Myanmar and local laws that have been enacted in Myanmar.

## **Materials & methods**

In drawing up this research, principles and legal norms of UDHR, ICCPR, ICESCR, CAT, CEDAW, CRC, CRPD and other relevant laws in Myanmar such as Penal Code of Myanmar (1861) and Other Special Laws are studied together with the data collection, events and cases.

## **Nature of Sexual Abuse in respect of Persons with Disabilities**

The purpose of the Convention on the Rights of Persons with Disabilities states to promote and ensure the full and equal enjoyment of the all-human rights and fundamental freedoms by all persons with disabilities. Person with Disabilities include those who have long-term physical, mental, intellectual or sensory, impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.<sup>1</sup> According to the 2014 Census and National Disability Survey, there were four kinds of disabilities: (1) physically impaired, (2) visually impaired, (3) hearing impaired and (4) intellectually impaired. “Person with Disabilities” refers to a person who has one or more of the long-term physicals, vision, speaking, hearing, mental, intellectual, or sensory impairment from birth or not.<sup>2</sup> Department of Social Welfare has already development the rights of the persons with disabilities law. “Disabilities” means being unable to fully participate in the society due to the various barriers/ hindrances in physical and environment, attitude and perspective and others.<sup>3</sup> Abuse is any control exerted by another person on women with disabilities against her will. There are many types of abuse. Some examples are physical abuse, emotional abuse, verbal abuse, sexual abuse, etc. Among them, there is no specific definition relating to sexual abuse in Myanmar. Sexual abuse is a crime. It includes any sexual activity imposed by a person on another of any age, against which he or she is entitled to protection by Criminal Law. Sexual abuse is a crime to knowingly cause another person to engage in an unwanted sexual act by force or threat. Sexual abuse can happen to male or female of any age. Among them, women and children, especially disabled persons are most likely to be sexually abused.

## **Types of sexual abuse**

There are two different types of sexual abuse. These are

- (a) Contact abuse and
- (b) Non-contact abuse.<sup>4</sup>

<sup>1</sup> Article 1 of the Convention on the Rights of Persons with Disabilities, 2008.

<sup>2</sup> Section 2 (a) of the Rights of Persons with Disabilities Law, 2015.

<sup>3</sup> Section 2 (b) of the Rights of Persons with Disabilities Law, 2015.

<sup>4</sup> <http://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/child-sexual-abuse>.

### **Physical (or) Contact Abuse**

Contact abuse involves touching activities where an abuser makes physical contact with a child or woman.

Contact abuse may include touching with the hand, mouth or other body part of the victim's body by the abuser, touching of private parts of the body with something other than the abuser's hand, rubbing up against the victim in a sexual way, forcing the victim to touch the abuser's genitals with hands, mouth or other body part, forced sexual intercourse and forced anal intercourse.<sup>1</sup>

Sexual abuse is generally regarded to include the following physical acts;

- (a) Sexual touching of any part of the body, clothed or unclothed, including using an object,
- (b) All penetrative sex, including penetration of the mouth with an object or part of the body;
- (c) Encouraging a child to engage in sexual activity, including sexual acts with someone, or making a child strip or masturbate;
- (d) Intentionally engaging in sexual activity in front of a child.<sup>2</sup>

Moreover, contact abuse is the touching of the sexual portions of the partner's body (genitals or anus) or touching of the breasts of the female or the child. Contact sexual abuse is of two types; penetration and non-penetration. Penetration includes injection of an object to the vagina, mouth or anus. Non-penetration includes fondling of sexual portions of the body and sexual kissing.

### **Non-physical (or) Non-contact Abuse**

Non-contact abuse includes such activities as forcing the victim to watch sexual acts, forcing the victim to perform sexual acts while being watched by the abuser, forcing the victim to listen to sexual talks.<sup>3</sup>

Sexual abuse is generally regarded to include the following non-physical acts;

- (a) Taking, making, permitting to take, distributing, showing or advertising indecent images of children;
- (b) Forced to watch sexual acts;
- (c) Forced to listen to sexual talks, including comments, tapes, and obscene phone calls;
- (d) Forced to look at sexual parts of the body includes buttocks, genital area, breasts and mouth;
- (e) Paying for the sexual services of a child or encouraging them into prostitution or pornography;
- (f) Showing images of sexual activity including photographs, videos, DVDs, magazines, or via webcams through the internet.<sup>4</sup>

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<sup>1</sup> [www.rebuildingyou.com/sexual-abuse-types](http://www.rebuildingyou.com/sexual-abuse-types).

<sup>2</sup> UNICEF, Analysis of Domestic Laws Related to Violence against Children in ASEAN Member States, 2015, p. 116.

<sup>3</sup> [www.rebuildingyou.com/sexual-abuse-types](http://www.rebuildingyou.com/sexual-abuse-types).

<sup>4</sup> UNICEF, Analysis of Domestic Laws Related to Violence against Children in ASEAN Member States, 2015, p. 116.

Sexual abuse encompasses a wide range of acts, including acts involving physical contact, such as vaginal, anal or oral rape, touching or fondling. Sexual abuse can also include non-physical acts, including showing children pornography, forcing children to engage in or watch sexual activities or encouraging children to behave in sexually inappropriate ways. An abuser may use force, coercion, threats, trickery or pressure to inflict sexual abuse on children, and may also use a tactic called grooming, whereby they befriend a child in order to lower his or her inhibitions and inflict sexual abuse on him or her.<sup>1</sup>

The rise of the online environment has not created crimes of sexual abuse and exploitation of children. But new venues for the content, contact or conduct online do allow much easier access to a wide range of children, increasing the scale of 'opportunity' and the potential for causing harm. Images of children are easier to create and distribute, viewers can easily turn into exchangers, and traders and producers of child abuse materials can open new arenas for distribution of their 'products'. The internet environment has allowed children themselves to initiate and engage in sexually explicit behaviours with an apparent degree of anonymity, and adults who seek to perpetrate online or offline sexual exploitation and abuse to make contact with children and young people.<sup>2</sup>

Sexual abuse and exploitation of children through images span material that is suggestive to images depicting explicit sexual activity. Although most international and much national legislation refer to these images as child pornography, there is increasing preference among law enforcement and child protection agencies for the term 'child abuse images', which places a stronger emphasis on, and recognition of, the abuse and exploitation of children perpetrated through such images.<sup>3</sup>

Non-contact sexual abuse includes activities as exhibitionism and the involvement in making of pornography and speaking obscene words and doing obscene behavior, and watching online images and videos.

For using online in the field of pornographic photos and videos, Section 66(d) of the Telecommunications Law provides for up to three years in prison for extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening any person using a telecommunications network.

Therefore, it is necessary to review the available research on the scale of online sexual abuse and exploitation, the forms they take, the children who are abused online, and the nature and numbers of online abusers.

### **Causes of Sexual Abuse**

Any person can be affected by sexual violence. But they may be more at risk if they are disabled person, isolated person, person from poor family or broken family.

Sexual abuse is very secret crime, and unless the victim is bold to tell someone about it, it can be hidden for a lifetime. Sexually abused children are often vulnerable children (e.g. children with disabilities, isolated children or teenagers from poor or broken family).<sup>4</sup>

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<sup>1</sup> UNICEF, Analysis of Domestic Laws Related to Violence against Children in ASEAN Member States, 2015, p.116.

<sup>2</sup> UNICEF, Child Safety Online: Global Challenges and Strategies, Technical Report, May 2012, p. 13.

<sup>3</sup> Ibid.

<sup>4</sup> <https://www.eschooltoday.com/child-abuse/sexual-child-abuse/causes-of-child-sexual-abuse.html>.

Young or disabled person may not be able to tell someone what's happening, or may not understand that they're being abused.

Disabled persons are more likely to be abused or neglected than non-disabled persons. Some disabled person may not understand that what is happening to them is abuse and that it is wrong. Even if they do, they might not be able to ask for help. If a disabled person is being abused by someone who looks after them or who they rely on to meet their needs it can be even harder for them to speak out or protect themselves.<sup>1</sup>

Some abusers target persons who are neglected by their parents, or persons who don't have many friends.<sup>2</sup>

Family poverty significantly increases the risk of sexual abuse. Persons with disabilities who grow up in poverty might live in a poorly maintained, unsafe or temporary home or have disruptive neighbours.<sup>3</sup>

In economically poor countries, young girls take to prostitution. It is a sign of poverty and economic distress. A study carried out in India (1995) showed that girl prostitutes are primarily located in low-middle income areas and business districts.<sup>4</sup>

In Myanmar, there have no sex education and that is important to lessen sexual abuse cases. The majority of sexual violence and abuse cases occur within poor and uneducated families and communities.<sup>5</sup>

Therefore, poverty is one of the causes of sexual abuse.

Moreover, there are girls and family characteristics that significantly heighten or lower risk of sexual abuse. Family structure is the most important risk factor in sexual abuse. Persons with disabilities who live with two married biological parents are at low risk for abuse. The risk increases when persons with disabilities live with step-parents or a single parent.<sup>6</sup>

Therefore, disabled person, isolated person, persons from poor or broken family can fall victim to abusers, who pretend to help them, but take advantage of them.

In the case of women, some forms of abuse are distinctive to women with disabilities. For instance, sexual abuse of a woman with a disability may include forced sterilization or forced abortion. Besides, failure to provide too constitutes abuse. For example, many women with disabilities miss out on sex education. When abuse occurs, they know something is wrong but are not sure what it is. The failure to provide places the woman in a more vulnerable position. Women with disabilities lack of opportunity to think about themselves as women, or be accepted as women first, can lead to lack of access to sexuality awareness and women's health issues.<sup>7</sup>

Moreover, persons with disabilities are particularly vulnerable to abuse. They may not have accurate knowledge about their bodies, abuse prevention and self-protection.

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<sup>1</sup> <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/child-sexual-abuse>.

<sup>2</sup> <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/child-sexual-abuse>.

<sup>3</sup> <https://www.pcar.org/poverty-and-sexual-violence>.

<sup>4</sup> <https://www.ncbi.nlm.nih.gov/poverty>.

<sup>5</sup> Unheard Voices, qualitative research on conflict-related sexual violence in Myanmar (2016-2021) 2022 1<sup>st</sup> ed, p-106.

<sup>6</sup> <https://www.cachouston.org/child-sexual-abuse-facts>.

<sup>7</sup> Dr. Rathin Bandyopadhyay, *Law and Gender: A Quest for Justice*, 1<sup>st</sup> edition, 2012, p.49.

Therefore, disability is factor that can be integrally linked with sexual abuse.

A woman may face sexual abuse as a daughter, a sister, a wife, a mother, a partner, or a single woman in her lifetime. They will be assaulted by someone who is known to them, will most likely be assaulted by a man and it will most likely be in private, in their place of residence, or in the home of a friend or relative.<sup>1</sup>

Besides, all working women, regardless of their age, physical appearance, social status and job security may encounter sexual harassment. Sexual harassment is a serious and insufficiently recognized problem at workplaces. A vast majority of women though at the receiving end of sexual harassment at workplace do nothing about it, mostly due to the fear of losing their jobs if they speak up.<sup>2</sup>

Sexual abuse inflicted against a woman by a person intimately connected to her through marriage, family relation, or acquaintanceship is universal. The perpetrators often been found to be males and the victims are their sexual partners. Internationally, one in three women have been beaten, coerced into sex or abused in their lifetime by member of her own family.<sup>3</sup>

Therefore, abuse is an actuality in the lives of numerous women and children (including persons with disabilities). It is still difficult to fully estimate the degree of the problem and lacking intelligence, poverty, disability and isolation can falls the victims easily to abusers. Besides, many persons with disabilities do not know how to respond to abuse and violence. Barriers to obtaining help may make it hard for persons with disabilities to escape and protect themselves from abuse. Identified barriers include: lack of knowledge of disability issues by domestic violence and sexual assault professionals, lack of accessible transitional housing and shelters.

### **International instruments for the protection of persons with disabilities**

Parties to the ICCPR, CERD, CEDAW, CRC and CRPD are obliged to take all appropriate legislative, administrative, social, educational and other measures to protect the persons whose rights are guaranteed by those treaties from all forms of exploitation, violence and abuse. Myanmar is a party to international human rights treaties. The right to protection from exploitation, violence and abuse is contained in article 20(2) of the International Covenant on Civil and Political Rights (ICCPR), article 10(3) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), articles 4 and 5(b) of the Convention on the Elimination of All Forms of Racial Discrimination (CERD), article 6 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), article 19(1) of the Convention on the Rights of the Child (CRC) and article 16(1) of the Convention on the Rights of Persons with Disabilities (CRPD). The ICCPR and CERD require that incitement to discrimination, hostility or violence through the advocacy of national, racial or religious hatred be prohibited by law. The CRC and the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography also require countries to take measures to prevent and suppress the abduction, sale of or traffic in children, to combat the illicit transfer and non-return of children overseas, to protect children from economic exploitation, to protect children from the illicit use of narcotic

<sup>1</sup> Dr. Rathin Bandyopadhyay, *Law and Gender: A Quest for Justice*, 1<sup>st</sup> edition, 2012, p.55.

<sup>2</sup> Dr. Rathin Bandyopadhyay, *Law and Gender: A Quest for Justice*, 1<sup>st</sup> edition, 2012, p.49.p.116.

<sup>3</sup> *Ibid*, p.144.

drugs and to protect children from all forms of sexual exploitation and sexual abuse. The CRC and the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography and CEDAW require countries to take measures to prevent and suppress the traffic in and exploitation of prostitution of women. The CRPD requires that positive measures be taken to prevent exploitation, violence and abuse of persons with disabilities.

In June 2019, at the Centenary Conference of the International Labour Organization (ILO), the Violence and Harassment Convention (No.190) and its accompanying Recommendation (No.206) were adopted. The Convention recognizes that everyone has the right to a world of work free from violence and harassment. The Convention defines violence and harassment as “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.” The Convention No. 190 and Recommendation No.206 provide a comprehensive framework for action capable of taking into account such specificities through prevention, protection, enforcement and remedial measures.

Myanmar has signed, ratified and acceded to the following international instruments relating to exploitation, violence and sexual abuse;

- (a) International Covenant on Economic, Social and Civil Rights (ICESCR), 1966.
- (b) Convention on the Rights of Persons with Disabilities (CRPD), 2006.
- (c) United Nations Convention on the Rights of the Child (UNCRC), 1989.
- (d) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1997.
- (e) Convention for the Suppression of the Trafficking in Persons and of the Exploitation of the Prostitution of other, 1950.
- (f) The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC), 2002.
- (g) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000.

### **National Laws for the Protection of Persons with Disabilities**

Protection against sexual abuse in Myanmar existing laws such as Penal Code of Myanmar (1861) and Other Special Laws. The Constitution of the Republic of the Union of Myanmar (2008) is the foundation of all existing laws, and includes a description of the principles of the constitution of a sovereign nation, civil rights and responsibilities.

### **Protection of Persons with Disabilities under Penal Code of Myanmar**

Problems of rape, cheating for sex, assault or criminal force to woman with intent to outrage her modesty, unnatural intercourse against the order of nature, word, gesture or acts intended to insult the modesty of a woman and pornography are assumed to be domestic violence. Nowadays, these cases tend to be sexual abuse. There are no specific laws relating to sexual abuse, it is taken action under the Penal Code.

Abduction, means taking somebody away illegally, especially using force.<sup>1</sup> Child abduction, sometimes referred to as kidnapping, is the unauthorized removal of a child from the custody of the person with whom the child lawfully lives. Abduction can occur when a member of the public removes the child from their place of habitual residence.<sup>2</sup>

In Sections 361,363,366,366 A of the Penal Code are provided in respect of abduction.

Therefore, the abduction is linked with particular types of violence against children and will normally be for the purpose of sexual abuse of the child, such as sex trafficking or the use of child for illicit activities.

For the protection against sexual abuse sections under the Penal Code are as follow;

In Sections 292, 293 and 294 states that sale of obscene books, objects and songs to young person. In Sections 354, 359, 360, 361, 362, 366, 371 and 372 provides that assault and criminal force, of kidnapping, abduction, slavery and forced labour.

Similarly, rape is the crime of forcing somebody to have sex especially threatening or using violence.<sup>3</sup> Rape is a type of sexual assault usually involving sexual intercourse or other forms of sexual penetration carried out against a person without that person's consent. The act may be carried out by physical force, coercion, abuse of authority, or against a person who is incapable of giving valid consent, such as one who is unconscious, incapacitated, has an intellectual disability or is below the legal age of consent. The term rape is sometimes used interchangeably with the term sexual assault.

Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman who raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.<sup>4</sup>

The expression "transportation for life" shall be substituted by the expression "imprisonment for a term of twenty years".<sup>5</sup>

In the event of the case, while Daw Sein Nu who is resided in Yangon Region was at home at around 2 o'clock in the afternoon, her sister Ma Khin Khin came and told the plaintiff, Daw Sein Nu that her daughter Ma Khin Than Myint (14 years) was taken Ng Hlaing (39 years) to his home about 10 days ago. Ma Khin Than Myint is mentally disabled. When Ma Khin Than Myint was asked, when she went to buy bread and eat on one day, she met Ng Hlaing and he said that he would pay for the bread. After saying that she was called, kissed and sexual abuse to his home. And then the mother, Daw Sein Nu sued a complaint in the Township Court.

In the above case, the accused is sentenced rigorous imprisonment for 8 years under Section 376 of the Penal Code.

Therefore, it was founded that the disabled girl is only 14 years of age and mentally disabled. As a result, there is difficulty in investigating the case, vulnerability to effective

<sup>1</sup> Oxford Advanced Learner's Dictionary, 9<sup>th</sup> edition, 2015, p.2.

<sup>2</sup> UNICEF, Analysis of Domestic Laws Related to Violence against Children in ASEAN Member States, 2015, p.164.

<sup>3</sup> Oxford Advanced Learner's Dictionary, 9<sup>th</sup> edition, 2015, p. 1272.

<sup>4</sup> Section 376 of the Penal Code of Myanmar, 1861. p.98.

<sup>5</sup> Section 7 of the Penal Code (Amendment) of Myanmar, 2016. p.2.



medical treatment and the weakness of special arrangements for disabled persons in the court and police stations, etc.

Thus, if the victim is mentally disabled, it was founded that the difficulties in investigation the case and in effective medical treatment. If the victim is disabled because of paralysis, it can be seen that she is unable to understand and answer when she was asked in court. It is necessary to make accessible for the disabled persons in court and easy-to-understand testing. In addition, it is necessary to examine the women victims of sexual abuse in ways that do not cause further trauma and to make special measures (temporary protection) so that the defendant and the plaintiff do not see each other in the courtroom. It was also considered that there is a need for legal staff, women staffs in the police force and the staffs who respect and understand women's right. Besides, it was founded that need for a special court and special procedures.

### **Protection of Persons with Disabilities under Myanmar Special Laws**

Problem of Trafficking women and children, online chatting from sexual abuse, human rights commit and other problem are assumed to be internal and external violence. Today, these cases tend to be sexual abuse, it changed variable types. Therefore, many types of sexual abuse, it is taken action under the special laws. The special laws relating to sexual abuse for the protection against persons with disabilities, such as;

- (a) The Rights of the Persons with Disabilities Law, 2015
- (b) The Anti-Trafficking in Persons Law, 2022
- (c) The Child Rights Law, 2019
- (d) The Telecommunications Law, 2013
- (e) The Suppression of Prostitution Act, 1949

Sex trafficking is human trafficking for the purpose of sexual exploitation. Sex trafficking is a global problem. Most events of sex trafficking are derived from human trafficking.

Myanmar has promulgated the Anti-Trafficking in Persons Law by a State Administration Council Law No.41/2022 on 16 June, 2022. In this Law, Section 4(b) aims in preventing and suppressing trafficking in persons to pay particular attention to women, children and youth including disabled person.

The Trafficking in Persons shall have jurisdiction on any person who commits any offence cognizable under this Law in the Union of Myanmar, or on board a vessel or an aircraft registered under the existing law of the Union of Myanmar, or on a Myanmar citizen or foreigner residing permanently in the Union of Myanmar who commits the said offence outside the country.<sup>1</sup>

‘Trafficking in persons’ means recruitment, transportation, transfer, sale, purchase, lending, hiring, harbouring or receipt of persons after committing any of the following acts for the purpose of exploitation of a person with or without his consent:

- (a) Threat, use of force or other form of coercion;
- (b) Abduction;

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<sup>1</sup> Section 2 of the Anti-Trafficking in Persons Law, Myanmar, 2022.

- (c) Fraud;
- (d) Deception;
- (e) Abuse of power or authority;
- (f) Abuse of power or of position taking advantage of the vulnerability of a person;
- (g) Giving or receiving of money or benefit to obtain the consent of the person having control over another person.<sup>1</sup>

Therefore, sex trafficking as the abuse of position of trust occurred from human trafficking.

Myanmar has ratified the United Nations Convention on the Rights of the Child, which includes four core principles- non-discrimination, the best interest of the child, the right to life, survival and development.

The Child Rights Law was passed by Pyidaungsu Hluttaw in July, 2019, appropriately sets 18 as the minimum age of marriage, regardless of gender. Disabled child is hard to track in Myanmar. Now, Myanmar should create a national action plan to end all child marriage, aligning implementation of the law to Target 5.3 of the 2030 UN Sustainable Development Goals. Relevant Ministries should work together and develop a comprehensive plan.

In 2013, Myanmar's Ministry of Social Welfare's, Relief and Resettlement (MoSWRR) sought to implement a cross-cutting development and humanitarian strategy, the National Strategic Plan for the Advancement of Women (NSPAW 2013-2022) and set-up four technical working groups, supervised by its Department of Social Welfare (DSW) – formerly the Myanmar National Committee on Women's Affairs (MNCWA) – to focus on violence against women, women's participation in politics and economics, women, peace and security, and gender mainstreaming.

The persons with disabilities are entitled to protection from abuse, exploitation and discrimination including coercion and various kinds of domestic violence.<sup>2</sup> A poor and disabled child shall be considered as children in need of care and protection.<sup>3</sup>

Whoever commits touching and groping the sexual parts of the child shall, on conviction, be punished with imprisonment for a term from a minimum of three months to a maximum of one year or with a fine from a minimum of three hundred thousand kyats to a maximum of five hundred thousand kyats or with both.<sup>4</sup>

Prostitution means the offering of her body by a woman for sexual intercourse or other sexual activities in return for payment.<sup>5</sup>

Child prostitution is defined as the use of child in sexual activities for remuneration or any other form of consideration.<sup>6</sup> The guardians or parents should not allow their children earning a livelihood by prostitution. In the case of prostitution, the Suppression of Prostitution Act prohibits for prostitution of children, women including disabled persons, etc.

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<sup>1</sup> Section 3(b) of the Anti-Trafficking in Persons Law, Myanmar, 2022.

<sup>2</sup> Section 50(d) of the Child Rights Law, 2015.

<sup>3</sup> Section 57 of the Child Rights Law, 2015.

<sup>4</sup> Section 100(c) of the Child Rights Law, 2015.

<sup>5</sup> Oxford Law Dictionary, 4<sup>th</sup> edition, 1997, p.364.

<sup>6</sup> UNICEF, Analysis of Domestic Laws Related to Violence against Children in ASEAN Member States, 2015, p. 123.

Moreover, it can be seen that women and children are commonly sold to Chinese men as wives and abused in many ways where they can raise more money than through any other work. Therefore, poverty, illiteracy, lack of job, can also fall victim to abusers, who pretend to help them, but take advantage of them. So, many women and children are abducted to earn money or have a job. And then, they are trafficked for sex or prostitution by the abusers.

For using online in the field of pornographic photos and videos, Section 66(d) of the Telecommunications Law provides for up to three years in prison for extorting, coercing, restraining wrongfully, defaming, disturbing, causing undue influence or threatening any person using a telecommunications network.<sup>1</sup>

Myanmar has promulgated the Rights of Persons with Disabilities Law by the Union Parliament Law No.30/2015 on 5 June, 2015. In this Law, it aims to protect the persons with disabilities, especially women and children from being abused and exploited including domestic violence and bullying.<sup>2</sup>

The National Committee is responsible for the protection of the persons with disabilities from discrimination, exploitation, violence, bullying, abuse, neglecting of either a person, organizations or business or departments in different means.<sup>3</sup> It was said that the actions and manners which would cause the physical and mental effect on the persons with disabilities are prohibited.<sup>4</sup>

Similarly, persons with disabilities shall have the rights of protection from the different types of abuse including bullying domestic violence, exploitation, and discrimination.<sup>5</sup> Therefore, no one shall abuse, use violence and force the persons with disabilities to work. Anyone who violates any of the prohibitions under S 77, shall, on conviction, be punished with imprisonment for a term which may not exceed one year or with the fine not exceeding fifteen hundred thousand kyats or with both.<sup>6</sup>

Although there is punishment for outrage of modesty against women, it has a low maximum penalty. Therefore, it should be passed serious penalty under the heading of sexual abuse.

### Finding

Although there are Conventions and Protocols for the protection of sexual abuse, it is the duty of State Party to provide necessary provisions in line with international standards. In Myanmar, there is no specific definition of sexual abuse, it can be taken action under the relevant national laws. Although there are provisions for abuse mentioned in the Penal Code and Special Laws, they are inadequate to protect effectively. There is punishment for outrage of modesty against women, it has a low maximum penalty. It should be passed serious penalty under the heading of sexual abuse. To be able to prevent sexual abuse effectively against persons with disabilities, sexual offences Law should be enacted or effective punishment system should be incorporated in the law. Furthermore, it is insufficient to protect legal provisions. So, it should be

<sup>1</sup> Section 66(d) of the Telecommunications Law, 2013.

<sup>2</sup> Section 3(h) of the Persons with Disabilities Law, 2015.

<sup>3</sup> Section 7(d) of the Persons with Disabilities Law, 2015.

<sup>4</sup> Section 10 of the Persons with Disabilities Law, 2015.

<sup>5</sup> Section 16(d) and 17(d) of the Persons with Disabilities Law, 2015.

<sup>6</sup> Section 82 of the Persons with Disabilities Law, 2015.

performed other methods such as awareness, education to all including disable persons might help to protect sexual abuse.

### **Conclusion**

Therefore, abuse is an actuality in the lives of numerous women and children (including persons with disabilities). Sexual abuse can happen to men or women of any age. By studying the cases, it can be seen that women, children and disabled persons are most likely to be sexually abused. It is difficult to fully estimate the degree of the problem and lacking intelligence, poverty, family structure, disability and isolation can fall the victims easily to abusers. Besides, many persons with disabilities do not know how to respond to abuse and violence. Barriers to obtain the help may make it hard for persons with disabilities to escape and protect themselves from abuse. Identified barriers include lack of knowledge of disability issues by domestic violence and sexual assault professionals, lack of accessible transitional housing and shelters. Thus, such barriers should be excluded with effective enforcement of legal measure.

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