

Installation of British Judicial System in Shan States

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Abstract

The Shan States which mentioned with several terms in monarchical periods was the integral part of Myanmar Kingdom since old times. Feudal lords of the States had practiced various types of administration with their preferences in their respective areas under Myanmar kings. The kings of Konbaung dynasty designated the Shan States into three parts viz. Northern, Southern and Western Shan States for the convenience of central administration. Albeit the Kings assigned Myanmar officials to supervise these designate areas, they did not interfere in the administrative and judicial affairs of the local chieftains as possible as they could. When the British annexed the whole country after three aggressive wars, Shan States also fell under colonial rule. Initially, the new rulers continued to allow the local chieftains to practice feudal rules if they pledged to submit to the authority of the colonial administrators. Then they formed the Shan States as federated one for their administrative convenience and excluded some areas to put under their direct control. Moreover, they also tried to apply their judicial system to overwhelm the feudal judicial practices by extending some laws and acts that they applied in India and other parts of Myanmar. In this contextual situation, local chieftains did not lose their privileges that achieved under Myanmar Kings, but the traditional judicial system distorted under new administration more or less. This paper is an attempt to examine the changes in judicial system of the Shan States under the British colonial rule.

Keywords: Judicial system, Shan States, British

Introduction

The Shan State is situated in the northeast part of Myanmar and an integral part of the country since the monarchical period. It is the largest state in the country and bordered with China (PRC), Laos and Thailand in exterior part. When the British occupied the area in late nineteenth century, the new rulers constituted the several parts of the State into Federated Shan States and excluded it from the administration of Myanmar proper. The British applied the indirect rule in this area via the Federal Council of Shan States chaired by a British Commissioner while the Myanmar proper was put under the direct colonial rule. The colonial rulers allowed Sawbwas and subordinate local chieftains to exercise their feudal powers relating to administration, taxation and jurisdiction to some extent under the British control. But the colonial rulers did not let the feudal lords to exercise their independent power in these fields for so long and inserted the authority of colonial administrators into the traditional system by several means. In the judicial administration, they extended the hands of British jurisdiction

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to the traditional system of local chieftains. The colonial rulers divided the judicial authority into two categories: criminal and civil justices. In criminal justice, the appointed officials of British administrative mechanism such as Commissioner, Superintendents and Assistant Superintendents came to overwhelm the authority of feudal lords by extending the provisions of criminal laws that applied in India Empire and Myanmar proper. Like in this area, they also spread their power in criminal justice by vesting the authority for civil justice to their appointed officials and reduced the judicial power of feudal lords.

Aim and Objectives

This paper is an attempt to examine the changes in judicial system of the Shan States under the British colonial rule. The gradual installation of British judicial system in the Shan States in early colonial period.

Installation of British Judicial System in Shan States

The Federated Shan States or Feudal Shan States was formally recognized by the British Government in accordance with the Notification No. F. 20 (A) dated 1st October 1922. These States were adjacent to China (now the People's Republic of China) in the northeast, and Laos and Thailand in the southeast and the east. In terms of absolute location, Shan States were situated between north latitude 19° and 28°, and east longitude 96°15' and 101°13'. The tropic line passes through the northern most areas of Shan States at Koukant, Theinni and Moemeik.¹

Of the total area of the Myanmar nation: 261,228 square miles, the Federated Shan States had the areas of 60,416 square miles. Hence, it can be said that the Federated Shan States occupied approximately one-fourth of the total area of the country. Though the area of the States was widespread, the population size was small. According to the official statistics, the Shan States had the population of nearly 1.4 million (1,433,542) in 1921 and 1.5 million (1,506,337) in 1931. Since the formation of the Federated Shan States, the British authorities excluded the areas that belong to it from the administration of Myanmar proper and ruled them as the separate administrative entities.²

In addition to exclude the administration of the Federated Shan States from Myanmar proper, the British authorities also excluded some subjects of Myanmar proper as reserved ones and put them under the control of the Governor. They were Defense, Foreign Affairs, Currency and Coinages, Ecclesiastical Affairs and Scheduled Areas, etc. The Governor of British-Burma (Myanmar) had to deal directly with these affairs and no need to consult with his cabinet. Under the control of the Indian

¹ ပြည်ထောင်စုမြန်မာနိုင်ငံ တိုင်းရင်းသားယဉ်ကျေးမှု ဓလေ့ထုံးစံများ၊ ရှမ်း *Traditional Custom of Ethnic Nationalities in the Union of Myanmar, Shan*), Yangon, Sarpay Beikman Press, 1968, pp. 1 – 2

² Sao Seng Mong Mangrai, *The Shan States and the British Annexation*, New York, Cornell University Press, Ithaca, 1965, p. 5 (Hereafter cited as Mong Mangrai, *The Shan States and the British Annexation*)

Central Government, the Governor only needed to consult with the Counsellors and formed the Defense Council which consisted of Counsellors and Ministers in dealing with these subjects.¹

In accordance with the new administrative pattern of the Federated Shan States, the British authorities formed Sawbwas into the Federal Council of Shan States and vested each of them with the power of administration, judiciary and taxation in their respective localities. But the specific subjects namely public works, health, agriculture, forest, education and police were put under the control of the Federal Council of Shan States chaired by the Commissioner of the Federated Shan States. Officials for administering these subjects were appointed by the Federal Council and hence, it can be said that these officials were put under the control of the Commissioner. In fact, these subjects which controlled by the Federal Council did not belong to the administration of Myanmar proper at all.²

In the judicial administration of the Federated Shan States, the British government vested the respective Sawbwas and chieftains of each locality with the authority to deal with the affairs of the maintenance of law and order, collecting taxes, allocating courts of law for criminal and civil jurisdiction, and appointing local officials.³ In relations with judicial affairs, the British authorities did not distinguish the criminal and civil powers of magistrates specifically. The British judges as well as Sawbwas and Myosars had the authority to hear and make judgements on criminal and civil cases alike. Offices of the Commissioner of Federated Shan States, Superintendents of Southern and Northern Shan States, Assistant Superintendents and Myoma Criminal Judges acted as the courts of justice for the Federated Shan States in different levels. Like the traditional courts that ran under customary laws, in fact, above-mentioned courts also distinguished the cases into two kinds: criminal cases and civil cases. Criminal justice of the Federated Shan States had to be dealt with by the provisions of Federated Shan States Laws and Criminal Justice Order, 1926.⁴ The most important officials in judicial affairs were the English national Superintendents and Assistant Superintendents. In accordance with the laws of criminal judicature, each Session Division was set up at Northern Shan State, Southern Shan State and Myei-latt area respectively.⁵

Superintendents of Northern and Southern Shan States had to serve as District Magistrates. Their offices also had to serve as the Session Courts of respective district. Consequently, they had to take the role of Session Judges while serving as the District Magistrates. Under them, Assistant Superintendents had to serve as the Magistrates of 1st Class. According to the provisions of the Code

¹ Mong Mangrai, *The Shan States and the British Annexation*, p. 5

² Ibid, p. 6

³ တိုင်းရင်းသားလူမျိုးများအရေးနှင့် ၁၉၄၇ အခြေခံဥပဒေ၊ ပထမတွဲ (The 1947 Constitution and *Nationalities*, Vol. 1), Yangon, Universities Press, 1990, p. 37 (Hereafter cited as *The 1947 Constitution*, I)

⁴ Political Department Notification No.33, 21. 6. 1926

⁵ *Shan States Manual*, Rangoon, Supdt., Govt Printing and Stationary, Burma, 1933, p. 35 (Hereafter cited as *SSM*)

of Criminal Laws, they also had similar authority with the District Magistrates in hearing and making judgements on criminal cases. Accordingly, their areas of judicial administration were defined as Subdivisions. As a result, Assistant Superintendents had to serve as Subdivisional Magistrates of their respective Subdivisions. In this contextual situation, the judicial authorities of Superintendents and Assistant Superintendents were separated into criminal jurisdiction of Myei-latt area; that of Southern and Northern Shan States; and civil jurisdiction of Southern and Northern Shan States.¹

On this occasion, it should be noted that the laws which applied in Upper Myanmar were enforced in Myei-latt area primarily. In fact, codes of criminal and civil laws were enforced in Upper Myanmar on 28 November 1889. Superintendents and Assistant Superintendents who appointed by the Governor had the authority to hear and make judgements on the people including British nationalities who lived in Myei-latt area. Since 1 January 1932, however, the criminal jurisdiction of Myei-latt area did not need to follow the judicial procedures of Upper Myanmar and changed to similar procedures with the criminal jurisdiction of Shan States.²

Criminal jurisdiction of Sawbwas of the Southern and Northern Shan States was administered by Superintendents and Assistant Superintendents who appointed by the Governor. They had authority to make reviews on the cases that heard and made judgements by the Courts of Sawbwas. They could also make amendments on the original rulings of the cases. Moreover, Superintendents and Assistant Superintends also had to act as the Justices of Peace in their respective localities. Under the provisions of the Foreign Jurisdiction and Extradition Act, 1881, they had the authority to exercise the power of magistrates too.³

In accordance with the provisions of the Code of Criminal Laws of 1926, the offices of Superintendents and Assistant Superintendents of the Federated Shan States had full authority to act as the courts of appeal. If the losing party at the lawsuit wanted to appeal against the decree or judgement passed by a lower court of law, they could appeal at the court of law of the Assistant Superintendents or the judges who were vested with the power of Magistrate of 1st Class by the Superintendents. If the losing party of the lawsuit wanted to appeal against the decree or judgement passed by the court of law of Assistant Superintendents and the Magistrate of 1st Class, they could appeal at the court of Superintendents.⁴

Superintendents could ask the case files of lawsuits from the courts of law of the Magistrates of 1st Class and 2nd Class. The Assistant Superintendents had to send the case files of lower courts to the office of Superintendent if the latter asked to do so. On these occasions, the Superintendent could make

¹ *SSM*, pp. 38 – 39

² *Ibid*, p. 7

³ *SSM*, pp. 40 – 41

⁴ *Ibid*. p. 42

decisions on such cases based on his own wisdom and opinion. If the losing party of the lawsuit dissatisfied with the judgement of the court of appeal, they could make complaint on the judgement. The court of appeal also had the authority to raise or reduce the extent of punishment that ruled by the lower courts.¹

If the losing party of a lawsuit dissatisfied with the judgement of the court of Superintendent or Session Judges, they could appeal at the office of the Commissioner of the Federated Shan States. Office of the Commissioner was the highest appellate court for the whole Shan States. Though the Lieutenant Governor's office was the highest appellate court before the formation of Federated Shan States, this authority was handed over to the Commissioner since the formation of Federated Shan States. Hence, it can be said that the Commissioner had the highest authority in criminal justice of the States.²

But there were exceptions in submitting cases to the appellate courts. In accordance with the provisions of Code of Criminal Laws and Amendment of Codes, in fact, any losing party had the right to go to the appellate courts. But if the courts of Superintendents or Session Judges or Assistant Superintendents sentenced the offenders with the punishment of less than six months imprisonment or lower than 500 kyats or floggings, the offenders would not have the right to go to any appellate court. Hence, it is evident that judicial authority of the Federated Shan States was in the hands of the British authorities totally. The courts of law of the British officials could hear and make judgements on the criminal cases that happened in the areas of Lashio, Kalaw, Taunggyi and Loilin, territories that possessed by the Railway Department in Northern Shan State such as Thibaw and North Theinni, and in Southern Shan State such as Nyaungshwe and Myei-latt. Those courts of law also had the judicial authority on the cases that involved by non-Shan people, Europeans, Americans and government servants which happened outside the municipal areas of Federated Shan States.³ On such cases, these courts of law applied the provisions of the Burma Criminal Law (Amendment) Act, 1922 in making judgements on the cases. This Law was also extended to the areas of Namtyoung and Bawdwin in Northern Shan States in 1922. It means that these areas were also put under the jurisdiction of the British officials.⁴

There was another discrimination in the criminal jurisdiction of the Federated Shan States. Judicial authority on military police and cantonment areas of Federated Shan States was vested to the Commandants of Northern and Southern Shan States Military Police Battalions. In accordance with the provisions of the Burma Military Police Act, 1928, and the Federated Shan States Criminal Laws, 1926, the Commandants were vested with the power of Magistrate of 1st Class. They had the authority to hear and make judgements on the cases that happened between fellow military polices and police officers

¹ *SSM*, p. 42

² *Report on the Administration of Burma, 1921 - 22, Rangoon*, Supdt., Govt Printing and Stationary, Burma, 1923, p. 15 (Hereafter cited as *RAB, 1921 - 22*)

³ *SSM*, p. 40

⁴ Political Department Notification No.181, 12. 7. 1922, *SSM*, p. 278

within their respective cantonment areas. The criminal cases that happened between military polices in Southern Shan State had to be heard and made judgements by Assistant Commandant of Loimwei Myoma Cantonment area as the Magistrate of 1st Class. On these occasions, they had to comply with the provisions of the Indian Criminal Laws, Police Act of 1861 and Burma Military Police Act of 1928.¹

In relations with the civil jurisdiction, Superintendents and Assistant Superintendents of the Federated Shan States were vested with the judicial authority for their respective localities. There were four level of civil courts that dealt with by the government officials and government appointed local chiefs, namely (1) Court of a Headman, (2) Court of the Assistant Superintendent, (3) Court of Superintendent, and (4) Court of the Commissioner. These courts had the different degrees of authority. The lowest level of these courts: The Courts of Headmen were set up at Taunggyi and Loilin, and headmen were appointed and vested with the authority of civil jurisdiction. They could hear and make judgements on the civil cases that worth less than 100 kyats. If the losing party of the lawsuit dissatisfied with the judgement of such court could appeal at the court of Assistant Superintendent not later than sixty days after losing at the former court. But the decision of the Court of Headman on the cases that worth less than 25 kyats would be final and conclusive. Moreover, this court could only make *zari* (execution of a civil court's decree) on the cases that made judgement by itself. The Courts of Headmen were only used by the British up to 1923 – 1924. The latter also abolished the Courts of Honorary Magistrates or Arbitration Tribunals in 1931 – 1932.²

Above the Courts of Headmen, the Court of Assistant Superintendent was set up at Kalaw. Only the ones who were appointed by the British authority could only act as the magistrate of the civil courts. This court could hear and make judgements on the civil cases without value limitation. The Court of Assistant Superintendent had the authority to ask the Courts of Headmen to hand over the cases that heard by them, and to suspend the hearing of the latter at any time. The ruling of the Court of Assistant Superintendent on the cases that worth not more than 100 kyats was conclusive and final. In the cases that worth more than 100 kyats, the losing party of lawsuit could appeal at the Court of Superintendent not later than sixty days after losing at the lawsuit at lower court.³

Above the Court of Assistant Superintendent, the Court of Superintendent was set up by the British authority. Superintendent himself had to act as the magistrate at this court. He had the authority to ask the case files of lawsuits that heard and made judgements by lower courts like Courts

¹ *SSM*, p. 52

² *Report on the Federated Shan States for the years 1931-32*, Rangoon Government Printing, 1933, App.vi, p. 50
(Hereafter cited as *RFSS*)

³ *RFSS, 1923 – 24*, App. VIII, p. 54

of Headmen or Assistant Superintendents to him to make review and suspend if he thought it is needed to do so. Superintendent also had the authority to confirm and amend the rulings and decrees of lower courts.¹

The highest civil court in Federated Shan States was the Court of the Commissioner. In other words, the Commissioner had the highest authority for general administration on the different levels of lower civil courts. Actually, the Court of Commissioner had the authority of the Supreme Court of the Federated Shan States and the Commissioner could make review, confirm, amend and annul on the judgements of the cases that dealt with by the Court of Superintendent. But one exception for this court was that it could not make amendment on the judgements of the appeal cases that dealt with by the Court of Superintendent.²

The ones who served as magistrates at the civil courts had to follow the provisions of civil laws. If they did not find exact instructions in the existing laws, the Commissioner of the Federated Shan States had to issue orders or instructions to be followed by the magistrates of lower courts in particular cases. By seeing this, it can be said that the Commissioner and his court had the highest authorities in the civil jurisdiction of the Federated Shan States.

On this occasion, it should be noted that Sawbwas and Myosars were vested with the authority on criminal and civil jurisdiction to some extent, but the conclusive and final decision-making power was in the hands of the British authorities. For instance, Assistant Superintendents and Superintendents had the authority to ask Sawbwas and Myosars to hand over their courts' cases to them (Assistant Superintendents and Superintendents) at any circumstances. On this occasion, Assistant Superintendents could exercise the power vested to them by the Superintendents if the latter assigned them to do so. Moreover, Superintendents could review, confirm, suspend and amend the decrees made by the Court of Sawbwas if they think it was needed to do so.³

But the Commissioner of the Federated Shan States had the authority to amend the decisions of Superintendents.⁴ If the ones got permission from the Governor for gem extraction from the land of Shan States, the Commissioner could assign a Superintendent or subordinated officer to issue license to them. As the mines of Shan States were defined as the government property, Sawbwas also had to apply the Commissioner for license if they wanted to engage in mineral extraction there. But in practice, Sawbwas did not have expertise in mining and could not use modern machines and methods in mineral extraction. Consequently, Sawbwas who got mining licenses did not enjoy substantial profits from this business, and some returned their licenses to the government.⁵

¹ *SSM*, p. 68

² *Ibid.*

³ *SSM*, pp. 67 – 68

⁴ *SSM*, pp. 145, 153 – 154

⁵ *SSM*, p. 154

For instance, Kyaingtong Sawbwa returned his license for ruby extraction from his locality to the government in May 1931 as he did not get substantial profit from it. Similarly, Yaksauk Sawbwa had to find a buyer for his mine as he could not extract minerals from it.¹ Hence, it can be said that the natives (Sawbwas) were not able to engage in the mining industry of their areas. On the other hand, however, foreign companies could make substantial profit from the mining industry of the Shan States. Especially, Burma Corporation could make considerable profits from its lead and silver mines. In the meantime, the government also tried to prevent the mineral extraction from the lands of Shan States without licenses. Burma Criminal Law (Amendment), 1922, was extended to Northern Shan States with the aim of preventing the license-less extractions of minerals at Namttu and Bawdawin areas. Under the close supervision of the British authorities, mineral extractions of Shan States enjoyed approximately 100 lakhs of rupees as profit annually.²

Land taxes also served as a source of revenue for the Federated Shan States. The government levied two kinds of land taxes namely (1) taxes that levied on the agricultural and dwelling lands, and (2) taxes that levied on the garden lands. The government also extended Section (26) of Land Revenue Regulation to Shan States in 1897.³ In accordance with this regulation, the Governor had to act as the Financial Commissioner of the Federated Shan States, and the Superintendent or Political Officer of Southern Shan State and Superintendent of Northern Shan State had to serve as Collectors. Moreover, the Governor had the authority to assign any official as Revenue Officer. Under him, Assistant Superintendents of Southern and Northern Shan States had to serve as the Assistant Collectors.⁴

After the annexation of the whole country, in fact, the British government took the place of the King as the sole owner of land and water of the country. Consequently, it also acted as the sole owner of land and water of Shan States. If the ones wanted to engage in cultivation or construction of buildings in the areas of Shan States, they had to rent the land from the government of Federated Shan States. On this occasion, the Collector of the Shan States had the authority to issue land-lease license to them for the duration not exceeding five years term. He also had the authority to fix the fees for land-lease per year at the time of license issuance. The area of land-lease must not exceed five acres. Either non-residents or residents of Shan States could rent the lands of the States. But if non-residents wanted to rent the lands, they had to get the permission or consent of the Superintendents of respective areas. Sawbwas and Myosars had the right to rent the vacant or virgin lands within their respective localities. They also had the right to allow the lease those lands to the natives under the

¹ *RAB*, 1930 – 31, p. 6

² *RAB*, 1922 – 23, p. 6

³ Political Department Notification, No.3, 28. 1. 1897, *SSM*, p. 119

⁴ *SSM*, pp. 120 – 122

provisions of regulations that prescribed in 1897. After leasing the lands to the natives, Sawbwas did not have the right to lease them to the others without the consent of the natives.¹

If the non-residents of Shan States owned or used the lands of the States without the permission of the government, the Collector could prevent or reject it. The Collector had the authority to lease the land that worth not more than 100 kyats without levying taxes if the renter applied it for public use with non-profit purpose. But the Collector did not have the authority to lease the land that worth more than 100 kyats without the special permission of the Commissioner of the Federated Shan States. If the cases that happened for the lands that worth more than 500 kyats, such cases had to be submitted to the Governor for final decision-making.²

In relations with land lease, the Collector had to lease the land that situated at least 100 yards away from the cemetery places. He had the authority to lease the land of one acre for construction of housing and three acres for the establishment of industry. Moreover, he can fix the renting fees based on the land situation and renting purpose. Maximum rate was 10 kyats per acre, and minimum rate was 1 kyat per acre. If the Collector wanted to reduce the renting fees, he had to submit the reason for the reduction to the Governor. On the other hand, the Collector had the authority to give exemption for the renting fees of the land that worth not more than 100 kyats if it was used to build the religious buildings. On this occasion, he had to ask the permission of the Commissioner in advance. In relations with the cases that exceeded the time limit or extent of land acreage or value of land, the Commissioner had to submit the cases to the Governor because such cases surpassed his authority. In fact, the British authorities allowed Sawbwas and Myosars with full insignia of offices, but the latter did not have substantial authority in land management of their localities as the former took total control of it.³

In levying taxes on agricultural lands, the government distinguished the tax on paddy land and tax on farmland. The ones who engaged in gardening got tax exemption from five to six years before bearing fruits from their gardens. After finishing tax exemption period, they had to pay 2 to 5 kyats per acre based on the soil situation of their garden lands. Major crops that grown in the Shan States were several kinds of pea, tobacco, sesame, paddy, tea, opium, potato, orange, etc. In growing opium, cultivators had to pay tax to the government. In 1923, the government achieved 249,802 kyats as paddy land tax, 46,546 kyats as farmland tax and 15,601 kyats as opium cultivation tax from Southern Shan State.⁴

¹ *SSM*, p. 124

² *Ibid*, p. 127

³ *SSM*, p. 135

⁴ *Report on the Administration of the Shan and Karenni States*, Rangoon, Superintendent, Government Printing and Stationary, 1923, App XXII, p. 70 (Hereafter cited as *RASKS*)

Conclusion

Though the British authority allegedly claimed that they practiced the indirect rule in the Shan States separated from Myanmar proper, they interfered in several aspects of that area viz. administration, taxation and judiciary as possible as they could. Of them, judicial aspect of the Shan States was the visible evidence of British interference in the traditional system of feudal lords under seemingly indirect rule. They divided the jurisdiction of the States into two classification namely criminal justice and civil justice and applied their laws by extending the provisions of Indian and Myanmar proper's criminal laws. They also enacted some laws like Federated Shan States Laws and Criminal Justice Order, 1926, by modifying existing ones to extend their authority over the local feudal lords. Thus, they undermined the judicial authority of traditional lords under the supervisions of colonial officials like Commissioner, Superintendents and Assistant Superintendents. On the other hand, the Judicial authority on military police and cantonment areas of Federated Shan States was vested to the Commandants of Northern and Southern Shan States Military Police Battalions. Apart from this, the Court of Commissioner of the Federated Shan States was the highest and final decision maker of the whole area in both justices: criminal and civil alike. Hence, it can be said that the British did not actually apply the direct rule in the federated Shan States, instead they interfered in the judiciary of it as far as they could.

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