

Administration of the High Court and the Supreme Court in Myanmar (1948 - 1958)

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Abstract

With the emergence of the Union of Myanmar as an independent sovereign state, during the period from 1948 to 1958, the High Court and the Supreme Court, the two highest Courts, were established, the judges of the two Courts were appointed and their jurisdictions were prescribed in accordance with the 1947 constitution, the Union Judiciary Act and the existing Acts.

Key words: administration, High Court, Supreme Court

Introduction

After gaining independence on 4 January 1948, the Union of Myanmar was governed by Anti-Fascist People Freedom League (A.F.P.F.L) Government during the period from 1948 to 1958. In the ten-year period from the attainment of independence in 1948 up to 1958, a judicial system was adopted for the country in accordance with the 1947 Constitution and the various existing Acts and codes of Law.

The British had promised to give independence to Myanmar under the Nu - Atlee Agreement of 17 October 1947, signed between U Nu and the Labour Prime Minister Atlee of Britain. Consequently, Myanmar became an independent state outside the British Commonwealth of Nations on 4 January 1948. The first government of the Union of Myanmar was led by the Anti-Fascist People Freedom League (A.F.P.F.L) which commanded the majority support of the people. The administration of justice in the Union was entrusted to the judges who were appointed in accordance with the constitution and who headed the law courts officially established in the manner prescribed by the law and the constitution.

Under the 1947 Constitution, there were two types of law courts in the Union, namely courts of first instance and Courts of appeal. The Courts of first instance included a High Court for the Union consisting of Chief Justice and such number of judges as the President of the Union might fix. But until and unless a resolution in this behalf is passed by the Union Parliament at joint sitting recommending an increase in the number of judges, the number of puisne judges must not exceed ten. The High Court for the Union replaced the High Court of the Colonial Administration of Myanmar established on 18 December 1922 and was housed in the same High Court building of the colonial days in Yangon.

The High Court for the Union had the power to control and supervise judges of all the inferior (lower) courts throughout the Union. Inferior courts consisted of all the subordinate courts of the High Court of Sessions, Magistrates' Courts, Criminal Courts of first, second and third grade, and Court of District Judge, Court of Additional District Judge, Court of the Subdivisional Judge and Court of Township Judge. It was responsible for the appointments, promotions and transfers of these judges. Independence of the Judiciary was ensured by the absence of Executive interference and influence in judicial matters.

The High Court of the Union was made up of the Chief Justice and other Justices. The Chief Justice of the High Court was the Head of the High Court. All the Judges of the High Court were appointed by the President by an order under his hand and seal, with the approval of both Chambers of the Parliament in joint sitting. Only advocates of untornished names and many years standing were elected of High Court Judges. Once appointed by the President, these judges could not be demoted, dismissed or transferred, and their salaries could not be reduced, by the Executive. Being thus unobligated to the Executive, the Judges could freely discharge their duties and boldly make the right decisions. Yet, the rights of pardon were to be

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vested in the President. Besides, the President was not answerable to either Chamber of Parliament or to any court for any act done by him in the exercise and performance of his power and functions prescribed by the 1947 Constitution.

The High Court was to be a court of record and was to sit in the capital cities of the Union and at such other place or places as the President might, after consultation with the Chief Justice of the Union, appoint. Thus, on 5 November 1956 the Union President Agga Maha Tharay Sithu Dr. Ba U himself convened the High Court at Mandalay.

The High Court had exclusive original jurisdiction.

- (a) in all matters arising under any treaty made by the Union;
- (b) in all disputes between the Union and a unit or between one unit and another;
- (c) in such matters, if any, as may be defined by law.

If the High Court was satisfied that a case pending in any inferior court should be transferred to it, it could do so. It had the power to exercise ordinary original civil jurisdiction within such local limits as may from time to time be declared by the President, and until such local limits were so declared within the limits of the original civil jurisdiction of the High Court of Judicature at Yangon immediately before the commencement of the Constitution.

Moreover, the High Court in the exercise of its ordinary civil jurisdiction had power to receive, try and determine suits of every description. But provided that the High Court sat in Yangon, it had no such original jurisdiction in cases falling within the jurisdiction of any other court of civil judicature in such place. If the two sides agreed, or to ensure justice, it could remove and try and determine, as a court of extraordinary civil or criminal jurisdiction, any suit falling within the jurisdiction of any court subordinate thereto.

The High Court had and exercised all such civil and maritime jurisdiction as might have been exercised by the High Court of Judicature at Yangon had the Constitution not come into operation. Appeals against the decision of a single judge made in the exercise of the original jurisdiction vested in him by the Constitution could be made only to the High Court, which a Court of Appeal from all the Civil Courts of the Union other than the Supreme Court.

The High Court had the power of appointment to its own staff. The Chief Justice of the High Court might appoint as many such clerks and other ministerial officers as might be found necessary for the administration of justice and the due execution of all the powers and authorities granted to it.

The Court of final appeal in the Union of Myanmar during the period under study was the Supreme Court. Section 138 of the 1947 Constitution says that the discussions of the Supreme Court in all cases be final. Section 3, Part II of the Union Judiciary Act, 1948 states:

The Supreme Court shall consist of the Chief Justice of the Union and such number of judges as the President may deem necessary, but unless and until a resolution in this behalf is passed by the Union Parliament at a joint sitting recommending an increase in the number of judges, the number of puisne judges shall not exceed four.

The Supreme Court replaced the Judicial Committee of His Majesty's Privy Council (The highest judicial Court in London for British Burma) of the British colonial administration. The Supreme Court for the Union was established on 24 September 1947 with Chief Justice of the Union and two justices. The first person to become the Chief Justice of the Union was Sir Ba U and the two justices of the Supreme Court appointed under him were U E. Maung and U Kyaw Myint. The Supreme Court was a Court of Record and had supervision over all courts in the Union. It sat in the capital city of the Union and also at such other place or places as the President might, after consultation with the Chief Justice of the Union, from time to time appoint.

The head of the Supreme Court was called the Chief Justice of the Union as prescribed by Section 136 (2) of the Constitution of 1947. The Chief Justice of the Union was appointed

by the President by an order under his hand and seal, with the approval of both Chambers of the Parliament in joint sitting. Only judges of the highest calibre and unquestionable moral character were appointed to this post of greatest esteem. The Chief Justice of the Union was the leader or head of all the other judges of the Supreme Court. The positions of other judges of the Supreme Court were determined by their seniority of service in the Supreme Court. The Chief Justice of the Union made appointments to the staff of the Supreme Court. With the prior approval of the President, he might frame such rules as might be necessary for regulating their emoluments and other conditions of service.

Every judge of the Supreme Court or the High Court had to make the following declaration, or oath, on his appointment to that post:

"I ----- do solemnly and sincerely promise and declare that I will duly and faithfully to the best of my knowledge and ability execute the office of the chief Justice/Judge without fear or favour, affection or ill-will towards any man, and that I will uphold the Constitution and the laws.

This oath had to be made and signed by the Chief Justice of the Union in the presence of the President. Each of the other judges of the Supreme Court and of the High Court had to take the oath in the presence of the Chief Justice of the Union or the most senior available judge of the Supreme Court. Every judge must take the oath before entering upon his duties, not later than ten days after the date of his appointment or such later date as may be determined by the President. Any judge who declined or neglected to take the oath would be deemed to have declined to accept the appointment.

The Supreme Court had appellate jurisdiction from all decisions of the High Court and from such decisions of other courts as might be prescribed by law. The Supreme Court took over and concluded all appeals, applications or other proceedings what so ever pending immediately before the commencement of the Constitution before the Judicial Committee of His Britannic Majesty's Privy Council in the exercise of any jurisdiction vested in it by law as the appellate court for Myanmar. Notwithstanding anything contained in Section 5, the Supreme Court could, in its direction, grant special leave to appeal from any judgement, decree, (a decree is an order, ordinance or edict by one in authority, or a judicial decision, made absolute regarding the rights of litigants in whole or part of the subject matter of a case) or final order of any court, whether passed before or after the commencement of the constitution, in any civil, criminal or other case. The constitution gave the Supreme Court the power to issue directives in the nature of writs (a writ is a written command in the name of the state or the Supreme Court issued to official or other person, directing him to act or abstain from acting in some way) to protect the rights of the citizens guaranteed by it, such as

Habeas Corpus

Mandamus

Prohibition

Quo Warranto and

Certiorari.

The writ of Habeas Corpus requires a prisoner to be brought before judge or into court in person, and to state reason of his detention. It is intended to investigate the lawfulness of a person's restraint with a view to preventing arbitrary arrests and prolonged detention without due process of law. Mandamus is a command issued by a higher court to a lower court, or official thereof, to perform public or statutory duty. This writ is usually issued only a last resort. The writ of Prohibition is a command from superior court forbidding inferior court to proceed in suit deemed to be beyond its cognizance. It is intended to preserve justice by preventing its miscarriage. Quo Warranto calls upon a person to show by what warrant he holds or claims a franchise or office. It is intended to challenge the authority or competence of a person to do something. The writ of Certiorari is a command by higher court for records of case tried in lower court. In other words, it is a writ by which cases are removed from inferior

courts into the High Court of Justice. This writ is usually issued when the higher court deems the propriety of the conduct of lower court to be questionable. Out of the five writs mentioned, only the power to issue habeas corpus was given to the High Court, whereas the Supreme Court enjoy the power to issue all of them. By giving the powers to issue directives in the nature of writs for the High Court and the Supreme Court by the 1947 Constitution, it is assumed that these powers were to preserve justice by preventing its miscarriage as well as to be exact and right in the jurisdiction.

Conclusion

After gaining independence on 4 January 1948, the Union of Myanmar was governed by the A.F.P.F.L. Government. According to the 1947 Constitution, the Union Judiciary Act and the existing Acts, the establishment of the High Court and the Supreme Court, the appointment of the judges of the High Court and the Supreme Court, the provision of the jurisdiction power of the judges were provided. These laws were prescribed to preserve justice by preventing its miscarriage and to be exact and right in the administration of the justice. Moreover, independence of the judiciary was ensured by the absence of Executive interference and influence in judicial matters. Yet, although no interference from the Executive, the President using the power vested in him by section 60 of the 1947 Constitution, reversed the sentences and pardoned them. Moreover, according to the Section 62 (1) of the constitution the president was not answerable to either Chamber of Parliament or to any court for any act done by him in the exercise and performance of his power and functions prescribed by the 1947 Constitution. Giving the President the judicial prerogative of pardon in addition to his executive powers may be taken as one of the main weaknesses of the 1947 Constitution. If the President used the power of pardon according to his whims and direction, rather than to the law, it would adversely affect the rule of law in the country.

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