

A Study On Marriage And Divorce Cases During The Konbaung Period

Aye Aye Myaing*

Abstract

This paper is an attempt to assess the cases of marriage and divorce in the Konbaung Period. This paper also describes that parents could arrange the marriage of their daughters who were young and the young women were able to marry at their age of twenty in terms of laws by the *Dhammathats*. Moreover, it also presents that divorce cases such as the divorce by mutual consent are due to the one in the married couple who breached the bonds of marriage. This is the virtue for divorce.

Keywords: *Dhammathat*, marriage suit, divorce suit

Introduction

In Myanmar judicial administration, there were *Yazathat* and *Dhammathat*. In committing crimes, the judges had to monitor in terms of the royal orders or *Yazathats*. These were acknowledged as Myanmar criminal law that could be regarded as the modern penal code. In the Konbaung Age, in heritage arguments attentions, infidelity with a married lady, marriage, divorce, lack of loans payment, and disputes upon slaves ownership were drawn as civilian cases. In hearing these cases, the judges had to decide in accordance with the *Dhammathats* which was comparable to the modern Myanmar Customary Law.

Aim and Objectives

The objective of the study is to describe the arrangement of the parents about the marriage of their daughters. This paper also aims at trying to describe most of marriage and divorce cases which were decided in accordance with the *Dhammathats*. This paper could aid partially for the observers who are interested in the history of Myanmar society in the Konbaung Period.

Materials and Methods

Historical research method is employed. Data are collected from Yadanabon University Library, Mandalay University Library, Universities Central Library, National Library and Private Book Collectors.

* Associate Professor, Department of History, Yadanabon University

Findings and Discussions

In Konbaung Era, marriage case and divorce case which are under the category of civil case were decided according to the *Dhammathats*. In terms of the *Dhammathats*, the weddings of young female offsprings could be arranged by the parents in the Konbaung Era¹. In the article 33, Chapter 6, in 34 volumes written by Kingwun Mingyi U Kaung, in *Dhammathat*, the facts are described as followed: the girl over twenty can marry the one she loves without permission from her parents², the guardians have right to arrange marry for the girl if she was under their guidance³. So, offspring's marry can be arranged by parents and relatives⁴. In terms of Myanmar today customary laws, there is no right to arrange marry for a girl who is over ages or under by guardians or parents⁵. By looking this fact, in Konbaung Era, the girl has no right to accent in her marriage and she had to follow what arranged by the parents. Today can be assumed as the age which offers right to refuse to the girl.

Moreover, in the marriage at 1796, once-married lady was under guardian of parents if she lived with her parents so she could marry according to her will⁶. So, it can be said that the girl under parent guardian could not marry with their will. In Myanmar tradition, girls are under the guidance of parents until they are married.

By going against the *Dhammathats* at 1783, the edict preventing marriage between different social classes and unequal status service groups was issued⁷. However, there was documents that did not follow above edict. Likewise, in the marriage of different social classes, the judge asked whether they fell in love with mutual consent and granted them to marry after that⁸. By looking at this, the prevention of marriage between different social classes and service group was not intense. In the verdict relating to hereditary, son of the

¹ Manu Amat, *Manukye Dhammathat (The enlarged (Dhammathat) Code of Laws on Manu)*, Yangon, Hantharwaddy, 1903, p.158 (Henceforth: Manu Amat, 1903)

² Kin Wun Mingyi U Kaung, *A Collection of Texts from Thirty-six Dhammathats*, Vol.11, Yangon, Government Printing, 1899, p. 58-59 (Henceforth: U Kaung, 1899)

³ Kin Wun Mingyi U Kaung, *Addasankhepa Vanana Kyan*, Yangon, Government Printing and Stationery, 1936, section 3,4,6

⁴ U Kaung, 1899, 141

⁵ U Mya Sein, *Myanmar Dhalae Htonatam-upade* (Myanmar Customary Law), Yangon, Gonhtoo Sarpe, 2014, 12 printing, p.41 (Henceforth: Mya Sein, 2014)

⁶ Yantamaik Kyaw Htin, *Yezagy Khondaw Hpyathton* (Rulings by the Judge of Yezagy), Yangon, Hantharwaddy Press, 1964, p.18 (Henceforth: Kyaw Htin, 1964)

⁷ "Thetkarit 1145 Htopyandawmuthi Mahayazathat Ameindaw Tangyi" (Royal Order known as Mahayazatthat issued in 1783), Purabaik MS 1020, Yangon, National Library (Henceforth: Thetkarit 1145, Purabaik MS. 1020)

⁸ Kyaw Htin, 1964, 31

slave also included in the six persons to be inherited and he got to access the inheritance⁹. By that verdict, it can be seen that marriage between different service groups was allowed. Thus, in terms of the *Dhammathats* at Konbaung era, it is found that marriage could be accomplished although differences can be seen in race, religions, and status. Myanmar Buddhism women marriage and inheritance Act was imposed at 1954 to grant rights of Myanmar Buddhism women today. In terms of that act, a Buddhism woman can marry with a non-Buddhist man¹⁰. So, it can be assumed that Myanmar women have the right to marry in terms of their will in Myanmar society. In the marriage between a man and a woman of different social class, both of them were documented as those in the lower social class. In the case of marriage between members of varied service groups, it was documented that if the girl was born, she belonged to that of her mother's group. But for the boy, it was different from that of girl. He would be a member of paternal service group. Although edicts relating to marriage described marriage between different social classes bore unclean line, that does not the same with the cast system practiced in India.

In the reign of King Badon, there were punishments if customs of the marriage were not followed. In 1805, Nga Pwint and Pa Da Nar Ba did not follow the customs of Brahmin marriage customs. King Badon ordered to execute them¹¹. Today, marriage is recognized by worshipping parents and relatives, offering foods to friends, and monks.

In the Konbaung Period, divorce claims were occurred. Divorce could be obtained in three contexts: the agreement from both husband and wife, or from one of the spouses (petitioner) with or without giving the mistaken proofs done by the other spouse (respondent) as reasons for divorce, and due to sever infidelity. In mutual agreement divorce, the divorce could be accomplished even if they do not have any sins. In terms of *Dhammathats*, the assets and debts were divided equally. It was necessary for them to share the expenditures at court for their divorce case equally. Sons were belonged to the responsibility of husband and daughters are to the cost of wife¹². So, the division of possessions and the keeping of children were reasonable in consensual divorce. However, in terms of Today Myanmar customary law, the guardianship of offspring is arranged with the wills of parents and the offspring duty is only to follow their parents¹³.

⁹ Kyaw Htin, 1964, 27-30

¹⁰ The Myanmar Buddhist Women's Special Marriage and Succession Marriage Act, 1954, Section 20 (a)

¹¹ U Tin, *Myanmar -min-oke-choke-pon-sar-tan hnint Bodaw-hpaya-ei Yazathet-kho-tho-Ameint-taw-tan-gyi*, (Administration Under the Myanmar Kings and King Bodawphaya's Royal Order called Yazathat), Part.IV, Yangon Government Printing, 1976, p.253

¹² U Kaung, 1899, 353-357

¹³ Mya Sein, 2014, 183

In divorce case at 1833, both of them were agreed to divorce though none of them committed any mistaken case. It is found that they also agreed to pay their debts and cost the expenditures at court equally. Their two children could choose the parent who they would like to be with. The separation was allowed and their possessions were shared equally between them¹⁴. Therefore, the order from the court in above mentioned case was laid out in line with the *Dhammathats*. However, in terms of Today Myanmar customary law, even one of the spouses committed adultery, the family assets are equally divided between them if they divorce with mutual agreement¹⁵.

The request of divorce to the court could also be submitted even one of the spouse did not do any wrong in their relationship. However, in such kind of court dispute, the rights which respondent received were far more than that of its counterpart in terms of family assets as a complimentary and cost for the things he or she suffered. There were also conditions mentioned in the *Dhammathat* for the divorce case like above, the victim who was divorced without sin would get all family assets and the plaintiff had to take only clothes he wore and pay the costs of the court¹⁶. King Badon also delivered an order about no-fault divorces on 16 December 1784. He ordered flogging that was imposed as a corporeal punishment on the person who wanted divorce in about no-fault divorces. It can be drawn that King Badon reinforced and escalated the monogamy. Despite of the above case, in 1809 divorce case, it was decided as the imperial relative who wanted to divorce his wife done no-faults had to leave the house with only clothes he wore and paid the costs of the court. For wife, she would inherited all the good and bad things¹⁷. But, Badon Min's order was overlooked in this case and the *Dhammathat* was followed. According to today Myanmar custom, divorce due to the husband's marital infidelity, one-third of husband collection goes to the wife who commits nothing wrong¹⁸.

According to the *Dhammathat*, divorce due to severe marital infidelity, the committer do not have right to possess any assets. That one needs to pay the debts of the family. Providing that having no assets, pay *ko-bo-ngwe* (the amount of money equal to the value of one's body) had to pay for the spouse who did not commit any wrong¹⁹. In a divorce suit filed on 16 May 1790, the husband planned to sell his wife who was an adulteress to the bawds in accordance with the *Dhammathat*. However, it is decided by the

¹⁴U Thaug, "*Padetharit khit hma Kyeywa Tayayon Mya*" ("Village Law Courts in the Feudal Period"), Working People's Daily, 4 May 1970

¹⁵ Mya Sein, 2014, 171

¹⁶ Manuamat, 1903, 340

¹⁷ Kyaw Htin, 1964, 45

¹⁸ Mya Sein, 2014, 176

¹⁹ U Kaung, 1899, 374

court that she should not be sold even though she committed infidelity. The wife was to pay forty kyats as *ko-bo-ngwe* to him although a man was allowed by the *Dhammathats* to sell his wife if she was guilty of marital infidelity²⁰. In this condition, *Dhammathats* was unnoticed. Moreover, in the divorce case at 1832 in which was appealed by the wife because her husband was treating her brutally after taking a mistress. As the husband had no property in that case, the court dismissed the marriage and decided that husband was to give thirty kyats (the value of his body) to his wife²¹. Thus, this case was decided according to the *Dhammathat*. According to Today Myanmar Custom Law, the wife's adultery case is severe married crime. If the case is obvious, the husband has the right to get all assets both of them belong²². Moreover, if the wife do not commit the severe adultery case, there will not be right to divorce even if the husband gives the value of his body and relinquish his ration in both of them owned assets²³.

Conclusion

To sum up, in terms of the *Dhammathats*, the weddings of young female offsprings could be arranged by the parents in the Konbaung Period. Concerning the marriage, Badon Min forbade intermarriage between persons of different social classes. However, it was found that there were the marriages between the people of high and low social strata. Though the divorce cases were decided by the *Dhammathats*, it was also found that some decision was not conformity with the *Dhammathats*. On the whole, it can be said that most of the cases of marriage and divorce in the Konbaung Period were decided by the *Dhammathats*. Moreover, Badon Min issued an order to be caned on the person who sought a no-fault divorce. This order may be assumed that Badon Min wanted to appreciate the monogamy.

Acknowledgements

I would like to express my heartfelt gratitude to Rector Dr. Maung Maung Naing and Pro-Rectors Dr. Si Si Khin and Dr. Tint Moe Thuzar, Yadanabon University for their encouragement to do the research work. I also thank Dr. Tun Tun Shein, Professor and Head, Department of History and Dr. Khin Lay Yi, Professor, Department of History, Yadanabon University, for their guidance and constant encouragement in preparing this research paper.

²⁰ Kyaw Htin, 1964, 8-9

²¹ U Thaug, "*Padetharit khit hma Kyeywa Tayayon Mya*" ("Village Law Courts in the Feudal Period"), Working People's Daily, 4 May 1970

²² Mya Sein, 2014, 176

²³ Mya Sein, 2014, 146

References

Primary Sources

The Myanmar Buddhist Women's Special Marriage and Succession Marriage Act, 1954

Thaung, U, "*Padetharit khit hma Kyeywa Tayayon Mya*" ("Village Law Courts in the Feudal Period"),

Working People's Daily, 4 May 1970

"*Thetkarit 1145 Htopyandawmuthi Mahayazathat Ameindaw Tangyi*" (Royal Order known as Mahayazatthat issued in 1783), *Purabaik* MS 1020, Yangon, National Library

Secondary Sources

Kin Wun Mingyi U Kaung , *A Collection of Texts from Thirty-six Dhammathats*, Vol.11, Yangon, Government Printing, 1899

Kin Wun Mingyi U Kaung, *Addasankhepa Vanana Kyan*, Yangon, Government Printing and Stationery, 1936

Manu Amat, *Manukye Dhammathat (The enlarged (Dhammathat) Code of Laws on Manu)*, Yangon, Hantharwaddy, 1903

Mya Sein, U, *Myanmar Dhalae Htonatam-upade* (Myanmar Customary Law), Yangon, Gonhtoo Sarpe, 2014, 12 printing

Tin, U, *Myanmar -min-oke-choke-pon-sar-tan hnint Bodaw-hpaya-ei Yazathet-kho-tho-Ameint-taw-tan-gyi*, (Administration Under the Myanmar Kings and King Bodawphaya's Royal Order called Yazathat), Part.IV, Yangon Government Printing, 1976

Yantamaik Kyaw Htin, *Yezagyō Khondaw Hpyathton* (Rulings by the Judge of Yezagyō), Yangon, Hantharwaddy Press, 1964

