

## Practice on Monogamy of Myanmar

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### Abstract

Polygamy system was exercised among Myanmar Buddhists and community. The courts recognized the polygamy system that a Myanmar Buddhist man may take many wives. Now, Myanmar Buddhist Law changed from polygamy system to monogamy system legally under the Monogamous Law, 2015. Indeed, Myanmar Buddhist men practically exercised monogamous pattern only. Monogamous Law is to protect the Myanmar Buddhist women from marrying with non-Buddhist men. This Law prohibits a Myanmar Buddhist man from making second marriage. In previously, most people always used monogamy system in Myanmar. The Monogamous Law is one of the national race and religion Laws in Myanmar. It prevents the men from betrayal their spouse. According to the Monogamous Law, if a Myanmar Buddhist man takes a next wife, he will be punished with not more than 7 years imprisonment and also with fine. Each and everyone needs to be more aware, more understanding and to practice the law effectively.

**Key words:** Monogamy, protection, safeguard

### Introduction

There are two of the marriage systems in the World. They are polygamy system and monogamy system. Polygamy system means a man can have more than one wife simultaneously. Monogamy system means single marriage. Polygamy among Myanmar Buddhists is legal and it is recognized as an existing institution. Formerly, the courts recognized the polygamy system. So, a Myanmar Buddhist man can marry more than one wife. Now, Myanmar Buddhist Law exchanged from polygamy system to monogamy system legally under the Monogamous Law, 2015. Indeed, most of the Myanmar Buddhist men used to practice the monogamous pattern only merely although the polygamy system was recognized. According to the Monogamous Law, if a Myanmar Buddhist man marries another wife, he will be punished by imprisonment for a term which is not exceeding to 7 years and also with fine. The Monogamous Law is to protect the Myanmar Buddhist women from marrying non-Buddhist men. This Law prohibits a Myanmar Buddhist man from making second marriage. The Monogamous Law is one of the four National Race and Religion Protection Laws. Relevant cases with the Monogamous Law are cognizable offences.

This Law is intended to protect illegal marriage of non-Buddhists and not to lose the right of succession. In 1886, British imperialists stayed in Myanmar. They married Myanmar Buddhist women who did not have the rights of a legal wife and so did the mulattos. So, in 1954, Buddhist Women's Special Marriage Act was provided for the

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better interest of the Buddhist women and to prevent Myanmar women's grievances. Now, in 2015, Myanmar Buddhist Women's Special Marriage Law was enacted. The Monogamous Law prohibits polygamy and infidelity. In the case of the Monogamous Law, a spouse committed polygamous marriage or infidelity would forfeit all property rights. The Law plays a crucial role in influencing norms and values. The Law protects Myanmar Buddhists and eliminates needless and complicated problems in Myanmar.

### **Definition of monogamy and polygamy system**

Monogamy is a single marriage system. Monogamy means the custom prevalent in most modern cultures restricting a person to one spouse at a time. It is the fact of being married to only one spouse.<sup>1</sup> Polygamy is the practice of having more than one spouse.<sup>2</sup> Polygamy system is taking many wives at the same time.

### **Historical background of the Law**

During the British Colonial regime, the position of a non-Buddhist husband and Myanmar Buddhist wife was unfavorable. The Buddhist women who married non-Buddhist men almost lost her rights of divorce, inheritance, succession and their child's legal status. It was inequitable and injustice to Buddhist women. To protect those matters of Buddhist women who enter into contract to marry non-Buddhist man, the Legislative Council passed the relating Act, in 1939 and The Parliament of Union passed Myanmar Buddhist Women's Special Marriage and Succession Act, 1954. Indeed, the Law had a lot of weakness because Myanmar Buddhist women who were married with non-Buddhist men did not receive matrimonial rights. Myanmar Buddhist women who married non-Buddhist men were in highly disadvantageous position. So, Pyidaungsu Hluttaw passed Myanmar Buddhist Women's Special Marriage Law, 2015. At the same time, Monogamous Law, 2015 was enacted on 31<sup>st</sup> August, 2015 as Pyidaungsu Hluttaw No.54.

English courts have from time to time granted limited recognition to polygamous marriages. African countries permit polygamy.<sup>3</sup> In 1972, Parliament enacted the Matrimonial proceedings (Polygamous Marriages) Act, S-1(1), which provides; "a court in England and Wales shall not be precluded from granting matrimonial relief or making a declaration concerning the validity of a marriage by reason only that the marriage in question was entered into under a law which permits polygamy."<sup>4</sup>

In the middle ages, Polygamy defined by the overt presence of multiple ties of sexual access and legitimate reproduction used by the Middle East Countries in Europe (1926-1956). This system had formally outlawed polygamy and others had imposed judicial restrictions on this practice. But it had the reasons for the variation in the incidence of polygamy and monogamy and the motivation for the social imposition of universal monogamy regardless of status and resources. Monogamy means martial

<sup>1</sup> Black's Law Dictionary, Thomson, 2006, 3<sup>rd</sup> edition, p.464.

<sup>2</sup> Oxford Dictionary of Law, Elizabeth A. Martin, 1997, 4<sup>th</sup> edition, p.344.

<sup>3</sup> For a confusion of traditional legal categories it appears from Ohochuku v. Ohochuku , 1960 , 1W.L.R183 that a Christian marriage may nevertheless be polygamous , but as such would not be within the divorce jurisdiction of the High Court.

<sup>4</sup> Scottish (S-2) and Northern Irish (S-3) courts.

relationships and their attendant legal and social consequences are limited to single female partner. Monogamy is beneficial to most women. The system tends to favor many women, not many men. That monogamy is positively correlated with social cohesion and competitiveness that are in turn positively correlated with advances in development. Polygamy is contrary to the equal personal dignity of men and women who in matrimony give themselves with a love that is total and therefore unique and exclusive betrays modern sensibilities and does not appear to be directly derived from earliest Christian doctrine.<sup>5</sup>

In Christian Countries practiced the monogamy system. Polygamous marriage system is used in Muslim countries. Previously, polygamy system was used in Court of Myanmar. But, monogamy system was used to practice in social environment and customs of Myanmar legally. The Hindu marriage was potentially concerned with polygamy system generally. But, according to Hindu marriage Act, 1955, Hindus in India exercised the monogamy system.

### **Objectives of the Monogamous Law**

In order to help legally married couples set up peaceful and pleasant families on the basic of loyalty by practicing monogamy, to protect women from being co-wives, and to prevent crimes arising from polygamous acts of men, the Pyidaungsu Hluttaw hereby enacted Monogamous Law. This Law was enacted with intention to get advantages to Myanmar Buddhists.

According to the purposes of the Monogamous Law are -

- (1) to make sure the husband and wife lawfully solemnized live faithfully till the end of their lives;
- (2) to protect women from becoming illegal wives by practicing monogamous custom;
- (3) to prohibit matrimonial problems and faults by taking more than one couple which caused to marital affairs;
- (4) to preserve their dignity by men and women.<sup>6</sup>

The Monogamous Law purposes religious minorities and women. The provisions of the Monogamous Law intend to preserve the sanctity of marriage and to protect and avoid the problems of polygamy. The Law states that it applies to everyone living in Myanmar, including foreign nationals married to Myanmar citizens.

### **Monogamous marriage**

Monogamy system is against polygamy system. Myanmar Customary Law allowed the polygamy according to the Dhammathats. After the Buddhist Women's Special Marriage and Succession Act, 1954 enacted, the system was accepted in Myanmar. But, practically Myanmar Buddhist used the Monogamy system and accepted from Myanmar social surroundings. Now, according to the situations of the Monogamous law was enacted legally in Myanmar, 2015. This system protects Myanmar Buddhist women's matrimonial problems arising from marriage. For Myanmar Buddhist men

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<sup>5</sup> Walter Scheidel, Stanford University, Monogamy and polygyny in Greece, Rome and World History, 2008.

<sup>6</sup> Section-4, Monogamous Law, 2015.

prohibit to the complicated matrimonial faults, in the relating to the matters of divorce, succession, inheritance and so on. The Special Marriage Law protects National Race and Religion. The Monogamous Law protects for Myanmar women from becoming mistress and preventing emergences of family problems arising from men practicing polygamy.

Any man or woman can legally marry in accordance with the existing law or religion or custom if it is not contrary to the provisions of the Monogamous Law.<sup>7</sup> A man and woman in accordance with any Law or any religion or any custom shall be legitimate on marriage after the Law came into effect by practicing Monogamous Law.<sup>8</sup> Any marriage between two Myanmar Buddhists shall be legitimate if it is conformity with Myanmar Customary Law and it is not contrary to the Monogamous Law.<sup>9</sup> Any marriage between a Buddhist woman and non-Buddhist man shall be legitimate if it is conformity with Myanmar Buddhist Women's Special Marriage Law and it is not contrary to the Monogamous Law.<sup>10</sup> Any marriage between two non-Buddhists in accordance with their respective Laws, religions, customs shall be legitimate if it is not contrary to the Monogamous Law.<sup>11</sup> Whoever, who is guilty according to Section-10 or Section-12 of the Monogamous Law, shall be punished with imprisonment for a term which is not exceeding seven years and with fine.<sup>12</sup>

In the case of **Ma Htet Htet Aung v. Maung Nyein Chan Aung**<sup>13</sup>- facts of the case are as follows;- Ko Nyein Chan Aung and Ma Htet Htet Aung married in the Court of the State Peace and Development Council by affidavit on the date of 29<sup>th</sup> April, 2011. They lived together in his parent's house. They got a daughter, named Ma Ei Si Quay; over 3 years old. And then, Ma Htet Htet Aung stayed in her Parents' home in Monywa, by quarrelling with her mother-in-law. On 9<sup>th</sup> November, 2015 about 11:30 AM, she came back to her husband. He made a second marriage, called Ma Thida San (a) Ma Thae Thae. On 30<sup>th</sup> January, 2016, Ma Htet Htet Aung returned to meet to her husband in Sagaing. Her husband asked for permission to divorce but she did not allow him. So, she complained to the suit to take action under the Monogamy Law.

Ma Kyu (witness from alleged Party) said that Nyein Chan Aung and Ma Thae Thae were living together illegally, about ten days. Police Officer, Kyaw Win Naing said that he usually made the concerning with his police's works. He made and copied a photo which Nyein Chan Aung and Ma Thae Thae were living by renting Ma Kyu's house as a record. It was accepted and submitted as the evidence. According to the statements of witnesses from alleged person, the submitted evidence while the accused of Maung Nyein Chan Aung was cohabiting with Ma Htet Htet Aung legally, he lived together with other woman. According to the Section-13 of the Monogamous Law, 2015 he was ordered to charge. But the accused repudiated continuously no fault. So, the witnesses from accused party were examined continuously.

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<sup>7</sup> Section-5, Monogamous Law, 2015.

<sup>8</sup> Section-6, Ibid.

<sup>9</sup> Section-7, Ibid.

<sup>10</sup> Section-8, Ibid.

<sup>11</sup> Section-9, Ibid.

<sup>12</sup> Section-13, Ibid.

<sup>13</sup> 2016, Sagaing Township Court, Criminal No.319.

Maung Nyein Chan Aung (accused) said that he and Ma Htet Htet Aung lived together as husband and wife about the year of 2011. They got a daughter, three years old. After they had got marriage, they lived in Monywa about six months. He helped Ma Thae Thae without cohabitation. He said that, he carried Ma Thae Thae's goods by three wheels car in Ngahtartgyi Pagoda Pwetaw. He got her familiarity. According to the statements of both witnesses and produced evidence, they married legally. In the period, the accused had illegal cohabitation with Ma Thae Thae in Ma Kyu's house. The Police Officer in examining produced the accused, Ma Thae Thae's home and bed-room. He discovered that the accused infringed Section-10 of the Myanmar Monogamy Law. The witnesses from the accused party did not have affirmative statement. So, the accused infringed the case under the Monogamy Law, 2015.

The Sagaing Township Court held that the accused Nyein Chan Aung, (father) the son of U Thein Aung, infringed the case significantly to Section-13 of the Monogamous Law. So, he shall be punished with imprisonment for a term one year and six months by deduction detained dates to him.

### **Facts to abstain**

After the commencement of the Law came into force, any man or woman who is already married with one spouse or more than one spouse in accordance with any law or any religion or any custom shall not be cohabitation, while the original union is still legally recognized, into another marriage with another person or conduct an illegal extramarital affair.<sup>14</sup> Any man or woman, if he or she was previously married by showing evidence of legal divorce with his or her previous spouse, after declaring the previous marriage can marry again with another person.<sup>15</sup> Any man or woman who is already married in accordance with any law or religion or custom can not marry again while the original union is still legally recognized into marriage.<sup>16</sup>

It prohibits a married person from making second marriage or illegal living with another person while still married. Anyone can file a complaint and punishment for violations including loss of property rights upon divorce for the guilty party, up to seven years imprisonment and fine. By exercising the monogamy system, any marriage between a man and a woman in accordance with any Law or any religion or any custom shall be legitimate only. Monogamous Law is subject to question since it covers all the citizens of Myanmar living in and outside the Country.

### **Related Rights**

By practicing the Monogamous Law, anybody can get advantages in families and create peaceful and good environment.

According to any Law or religion or custom which is a married man or woman, while the said marriage was subsisting and the marriage was concealment, if he or she marries again with another person, the injured party shall be entitled to sue the civil

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<sup>14</sup> Section-10, Monogamous Law, 2015.

<sup>15</sup> Section-11, Ibid.

<sup>16</sup> Section-12, Ibid.

injury.<sup>17</sup> Before the enforcement of the Law, according to any existing law or religion or custom to the legally marriage shall not be affected by this Law.<sup>18</sup> The rights of getting children from illegal marriage or concealed marriage shall not be lost.<sup>19</sup>

### **Punishment**

Whoever, if any person shall be guilty according to Section-10 or Section-12 of the Monogamous Law, he shall be punished with imprisonment for a term which is not exceeding seven years and with fine.<sup>20</sup> According to any existing law or religion or custom, if any husband or wife marries again another person, while an original union is still legally recognized, he or she commits matrimonial fault and his or her spouse has the right to divorce.<sup>21</sup> If it was a divorce under Section-14, in respect of their properties, the person who commits a matrimonial fault shall be forfeited all his property rights.<sup>22</sup> According to any law or religion or custom, if a man who is married, he marries again with another woman while the original union is still legally recognized, the marriage is illegal and thus, the second wife shall not be entitled to inheritance when that husband dies. The husband who marries and lives together with another spouse shall also not be entitled to inheritance if that second wife dies.<sup>23</sup> Whoever any law or any custom which a married man or woman while the said marriage is subsisting, that marriage was concealed, if he or she marries again with another person, they shall be punished with imprisonment for a term which is not exceeding 10 years and also with fine.<sup>24</sup>

### **Conclusion**

Monogamy system is against polygamy system. Monogamous Law is to protect the Myanmar Buddhist women from marrying with non-Buddhist men. This Law prevents a Myanmar Buddhist man from marrying another woman. According to the Monogamous Law, if a Myanmar Buddhist man takes a next wife, he will be punished with imprisonment for a term which is not exceeding 7 years and also with fine.

Polygamy is quite difficult to control the marital issues. In the world, most of the countries in Europe and Africa use polygamy system. Most of the Christian countries use the Monogamy. Using the monogamy system avoids and eliminates the complicated problems in the cases relating to marriage, divorce, succession, inheritance and other matrimonial faults. Monogamous Law safeguards Myanmar Nationalities.

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<sup>17</sup> Section-18, Monogamous Law, 2015.

<sup>18</sup> Section-19, Ibid.

<sup>19</sup> Section-20, Ibid.

<sup>20</sup> Section-13, Ibid.

<sup>21</sup> Section-14, Ibid.

<sup>22</sup> Section-15, Ibid.

<sup>23</sup> Section-16, Ibid.

<sup>24</sup> Section-17, Ibid.

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Abstract

Polygamous system was exercised among Myanmar Buddhists and community. The courts recognized the polygamous system that a Myanmar Buddhist man may take many wives. Now, Myanmar Buddhist Law changed from polygamous system to monogamous system legally under the Myanmar Monogamy Law, 2015. Indeed, Myanmar Buddhist men practically exercised monogamous pattern only. Myanmar Monogamy Law is to protect the Myanmar Buddhist women from marrying with non-Buddhist men. This Law prohibits a Myanmar Buddhist man from making second marriage. In previously, most people always used monogamous system in Myanmar. Monogamy Law is one of the National Race and Religion Laws in Myanmar. It prevents the men from betrayal their spouse. According to Myanmar monogamy Law, if a Myanmar Buddhist man takes a next wife, he will be punished with more than 10 years in prison and also with fine. Each and everyone needs to be more aware, more understanding and to practice the law effectively.

**အကျဉ်းချုပ်**

မယားအများယူသောစနစ်ကို မြန်မာဗုဒ္ဓဘာသာဝင်များ လူအဖွဲ့အစည်းများက ကျင့်သုံးခဲ့ကြသည်။ ဤ စနစ်ကို တရားရုံးများက အသိအမှတ်ပြုခဲ့၍ မြန်မာဗုဒ္ဓဘာသာဝင် ယောကျား တစ်ဦးသည် နေ့များစွာ ယူနိုင်ပေသည်။ ယခု မြန်မာဗုဒ္ဓဘာသာ ဥပဒေသည် မယားအများယူသောစနစ် မှ တစ်လင်တစ်မယားစနစ် (၂၀၁၅) သို့ တရားဝင် ပြောင်းလဲခဲ့သည်။ အမှန်အားဖြင့် မြန်မာဗုဒ္ဓဘာသာဝင် ယောကျားများသည် မယားအများယူသောစနစ်ကို အသိအမှတ်ပြုထားခဲ့သော်လည်း လက်တွေတွင် တစ်လင်တစ်မယားစနစ် ပုံစံသာ ကျင့်သုံးခဲ့ကြသည်။ တစ်လင်တစ်မယားစနစ်သည် မြန်မာဗုဒ္ဓဘာသာဝင် အမျိုးသမီးများ ဘာသာခြား ယောကျားများနှင့် လက်ထပ်ထိမ်းမြားခြင်းမှ ကာကွယ်ရန် ဖြစ်သည်။ ဤ ဥပဒေသည် မြန်မာဗုဒ္ဓဘာသာဝင် ယောကျားများ နောက်နေ့များ ယူခြင်းကို တားမြစ်ထားသည်။ မြန်မာ တစ်လင်တစ်မယားစနစ် ဥပဒေသည် မျိုးစောင့်ဥပဒေများအနက် တစ်ခုအပါအဝင် ဖြစ်သည်။ ဤ ဥပဒေသည် ယောကျားများ သူတို့၏နေ့အပေါ် သစ္စာမှုခြင်းမှ ကြိုတင်ကာကွယ်ပေးသည်။ မြန်မာ တစ်လင်တစ်မယားစနစ် ဥပဒေအရ မြန်မာဗုဒ္ဓဘာသာဝင် ယောကျား တစ်ဦးသည် နောက်နေ့း ယူလျှင် ထိုသူကို ဝနှစ်ထက် ပိုနိုင်သော ထောင်းကဲ ချမှတ်နိုင်သည့် အပြင် ငွောက်လည်း ကျခဲ့ရောမည် ဖြစ်သည်။ ဤ ဥပဒေကို လူတိုင်းလူတိုင်း ပိုမိုသိရှိနားလည်ဖို့ လိုအပ်ပြီး အကျိုးရှိ ထိရောက်စွာ အားလုံး ကျင့်သုံးကြဖို့ လိုအပ်ပါသည်။