

History of Judicial System In the Reign of King Badon (1782-1819)

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Abstract

This paper deals with the history of judicial system in the reign of King Badon (1782-1819). It presents the establishment of the courts both at the royal capital and in the provinces including rural capital and in the provinces including rural areas for hearing legal cases, how the civil cases had to be decided according to the *dhammathats* or customary law, how the criminal cases had to be tried in accordance with the royal orders or *yazathats*. Moreover, it also puts up a judicial process that the four types of trial are exercised when there were no witnesses. With regard to the judicial administration in the Konbaung Period, the legal cases were traditionally heard at the *Hluttaw*, *She-yon*, *Nauk-yon*, *Taya-yon* and *pyin-ein*, *Wun-eins* but there was only one instance in which a case was tried at the *Byedaik* in the reign of king Badon. By highlighting the trial of *Byediak* during the reign of King Badon, this paper also contributes important informations to the observers who are interested in the Myanmar Judicial system of Konbaung Period.

Key words: different levels of courts, civil and criminal cases, four types of trial

Introduction

The administration of justice plays an important role for a country. The judicial system of Konbaung Period was categorized into the justice of the royal capital and the justice of the provinces. The justice of the royal capital was involved with the *Hluttaw*, *She-yon*, *Naung-yon* and *Taya-yon*. The justice of the provinces was consisted of *Khayaing-wun-yon*, *Myo-wun-yon* and *Myo-ywa-thugyi-yon*. Besides, the cases were classified into civil and criminal cases. The sound system of justice makes good governance. In the reign of King Badon, the system of justice had been utilized as a source of law and order. This paper is put up the judicial system (1782-1819) which is based on the royal orders issued by King Badon.

The administration of justice in the reign of King Badon was divided into two categories: the justice of the royal capital and the justice of the provinces. The courts had decided the legal cases that took place in the royal capital were: the *Hluttaw*, *She-yon*, *Nauk-yon*, *Taya-yon*, *Windaw Lemyethna Win-yon* (offices of the commander of troops guarding the four cardinal points of the palace) and the *Pyin-ein wun-eins* (the houses of the *pyin-ein wuns* of *She-yon* and the *Nauk-yon*, *Pyin-ein*, outside houses means concerned with the women) concerned.¹ The *Hluttaw* in the royal capital, where the legal cases were decided, had served of the Supreme Court, the appellate jurisdiction which was subordinate only to the king. It had jurisdiction in suits without pecuniary limit.² Concerning Criminal cases, from theft to lese majesty, the court had to refer a case to the *Hluttaw* if the crime called for a severe punishment. For imposing death sentence, confiscation of property, banishment and *maungkyawdan*, the court had to report to the *Hluttaw*. The *Yazawut-yon* had to inflict the punishments on the convicts as decided by the *Hluttaw*³. Although the *Hluttaw* was empowered to try suits of any value, appeals from it lay to the king in the cases with a value

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¹ "Myanmar Min Do Yon Asintsint Htubon" (How Myanmar Kings established different levels of Courts), *Purabaik*, MS 199, Yangon, National Library

² Maung Maung Bya, U, *Myanmar Min Mya Lethet Oakchoatpon* (Administration Under Myanmar Kings), TMS, Yangon, National Library

³ U Tin, *Myanmar Min Oakchoatpon Sadan Hnint Bodawphaya Ei Yazathat Hkawthaw Ameindaw Tam Gyi* (Administration under the Myanmar Kings and King Bodawphaya's Royal Order called Yazathat), Par IV, Yangon, Government Printing, 1976, p. 30-31 (Henceforth: Tin, 1976)

of 5000 *kyats* or more.⁴ Therefore, apart from the king, the *Hluttaw* was the highest court of appeal, and had unlimited civil jurisdiction. Moreover, it could inflict severe punishment.

The *She-yon* had served as a criminal court. For the crimes committed within the city limits, the criminal cases would be tried and determined in the *She-yon*.⁵ The *She-yon* was empowered to try the cases of the theft, robbery, armed robbery, concealment of weapons, arson, destruction of religious edifices, murder, rape, prostitution, fraudulent use of false weights, measures and scales, bootlegging, production of opium, marijuana, etc, slaughter of cattle and buffaloes and lese majesty⁶. Therefore, the *She-yon* had to inflict the penalties only after referring the cases to the *Hluttaw* and after receiving the orders from the *Hluttaw*. Moreover, the *She-yondaw* was the highest court where the *myowuns* could try other criminal cases.

Like the *She-yon* the *Anauk-yon* had jurisdiction over the civil and criminal cases involving palace ladies, such as assaults, thefts, kidnappings, disputes over debts etc⁷. The *Anauk-yon* only had to manage the chief Queen's personal possessions and dealt with matters connected with the chief Queen.⁸ Indeed, the *Anauk-yon* only had to deal with matters concerning palace ladies.

The *Taya-yondaw* especially had jurisdiction over *Kyunhmu* (disputes over the ownership of slaves), verbal abuse, land disputes, loan defaults, inheritance cases, *ein-hmu* (legal cases involving a family), etc⁹. All the civil cases had to be filed only at the *Taya-yon*, not at the *Hluttaw*. King Badon issued an order in 1786 that only the cases that were not settled by the *Taya-yon* were to be filed to the *Hluttaw*. Concerning civil cases, the judges of the *Taya-yon* heard the appeals from local courts.¹⁰ So the *Taya-yondaw* was a civil court that managed appellate jurisdiction from all over the country.

Traditionally, although legal cases were heard at the *Hluttaw*, *She-yon*, *Anauk-yon*, *Taya-yon* and *Windaw' lenyethna win-yon*, and *pyin-ein wun-eins* etc, there was an instance in which a case was tried at the *Byedaik*. The *Byedaik* was not a court of law. It was a Privy Council, where the *Hluttaw* officials, officials of the *She-yon*, *Anauk-yon* and *Taya-yon* and military officers gathered before entering the audience room.¹¹ Concerning a dispute over the crown land in and around Shwebo, King Badon was sued on 12 April 1807, and this suit was heard by the *Byedaik*. The *Taya-yon* and the *Hlut-yon* refused to hear the case because the king was the defendant, and denied the petition made by the plaintiff. Hence, U Paw Oo, an *atwin wun* of *Byedaik* who held the title Minhla Nawrahta, decided the case. The problem began when the king had the crown land in Shwebo re-demarcated, because the land owned by the king's uncles were included in the crown land. Therefore, the king's uncles sued the king. When Maha Minhla Nawrahta summoned the king, the king sent Minhla Thiri Thinkhaya, the Royal Herald, to appear before the judge. It was found that Maha Minhla Nawrahta heard the case and decided against the king.¹² Thus, although *Byedaik* was not a

⁴ U Tin, *Myanmar Min Oakchoatpon Sadan thint Bodawphaya Ei Yazathat Hkawthaw Ameindaw Tam Gyi* (Administration under the Myanmar Kings and King Bodawphaya's Royal Order called Yazathat), Part III, Yangon, Central Press, 1970, p 155 (Henceforth: Tin, 1970)

⁵ William J, Koenig, *The Burmese Polity (1752-1819)*, Centre For South and Southeast Asian Studies, University of Michigan, 1990, p.101

⁶ Tin, 1976, 30

⁷ Tin, 1976, 44

⁸ Tin, 1976, 37

⁹ Toe Hla, *Alaungmintayaygi Ei Konbaung Shwepyi* (The golden city of Konbaung of Alaungmintaya), Yangon, Sarpelawka Publication House, 2002, 2nd Printing, p.59 (Henceforth: Toe Hla, 2002)

¹⁰ Tin, 1970, 57

¹¹ Aung Than Tun, U, *Myanmar Minmya Taya Siyinye* (Judicial administration under Myanmar Kings), Yangon, Kalaungbyan publications, 1968, p.112-113 (Henceforth: Aung Than Tun, 1968)

¹² U Aung, *U Paw Oo Hlyathtone*, Vol.I, Mandalay Pitakattaw Pyant Pweye Press, 1957, p. 181

court of Law, as an *atwin wun* (a *Byedaik* official) decided this case, it can be assumed that the *Byedaik* also tried some legal cases. The *atwin wuns* of the *Byedaik* were personal advisers of the king. It seems therefore that U Paw Oo tried this case only because he was friendly with the king and because he knew the nature of this case well.

In the reign of king Badon the local courts in which civil and criminal cases that arose in the provinces of rural areas were tried, from lowest to the highest were: the *myoywa thugyi yon*, *myowun yon*, and *khayaing wun yon*. The *myo-ywa thugyi-yon* which was the lowest court in the provincial judicial administration, was a court that could try not exceeding 500 *kyats* in value and criminal cases. Appeals against the decisions made by the *myoywa thugyi yon* could be filed to the *myowun yon*.¹³ The *myowun yon* had jurisdiction over the civil cases not exceeding 1000 *kyats* in value and the criminal cases except the case of succession to hereditary offices, lese majesty, armed robbery, *einyehteinchanmu*, (reducing the number of households under one's jurisdiction in the reports) *myowun* and *sitkes'* taking graft. Appeals against the decisions made by the *myowun yon* could be filed to the *khayaingwun yon*.¹⁴ The *Khayaing wun* was empowered to decide the legal cases not exceeding 10000 *kyats* in value¹⁵. The people could not file suits to the *Khayaing wun yon* for the legal cases that arose in the towns and villages. They had to take the matters to the *myo-yon* first. For the oppression of the *myo-thu-gyis*, however, the people could bring the matters directly to the *Khayaing-wun-yon*.¹⁶ So, the *myo-ywa thugyi-yon* which was the lowest court and the *khaycuing wun yon* was the highest court in the provincial judicial administration during the reign of King Badon.

The cases also were classified as civil and criminal cases in the judicial administration of King Badon.¹⁷ In the reign of King Badon, cases concerning inheritance disputes, adultery with a married woman, marriage, divorce, defaults on loans, and disputes over ownership of slaves were defined as civil cases. As both parties-the plaintiff and the defendant involved had to appear in court, the civil cases were also referred to as *myethna-sanuyi-mhu* (plenary cases).¹⁸ King Badon issued that in hearing the civil cases, the judges had to decide in accordance with the *Dhammathats* or customary law and *phyat-hton* (judicial ruling). The major aim of judicial system of king Badon was to reduce the major cases to minor ones and the minor cases to disappear.¹⁹ So the essence of Myanmar judicial administration was to apply the arbitration method to peace and order in the villages and towns if the people would be involved the disputes.

In a civil case, first the plaintiff had to prepare a bill (ie. his formal written complaint) and the defendant had to prepare his answer, (ie his reply to the plaintiff's complaint). As to the procedures for a civil case, first, a person would have to file, a petition for legal action to the court; and, thus, he would become a plaintiff. Then the judge would order the court herald (*nahkan*) to question the plaintiff and the defendant to make their pleadings (complaint, plea, counter plea or replication, rejoinder, etc.), and the particulars of the case would have to be

¹³ Taw Sein Ko, *Hluttaw Hmattan* (*Hluttaw* Records), Yangon, The Socialist Republic of the Union of Burma Printing and Publication Enterprise, 1977, 5th printing, p.29 (Henceforth: Taw Sein Ko, 1977)

¹⁴ Taw Sein Ko, 1977, 29-30

¹⁵ Tin, 1976, 263

¹⁶ Taw Sein Ko, 1977, 45

¹⁷ Tin, U, *Myanmar Min Oakchoatpon Sadan Hnint Bodaw* "Phaya Ei Yazathat *Hkawthaw Ameindaw Tan Gyi* (Administration under the Myanmar King and King Bodawphaya's Royal Order called Yazathat), Part III, Yangon, Central Press, 1965, p-161 (Henceforth: Tin, 1965)

¹⁸ Tin, 1976, 255

¹⁹ *The Royal Orders of Burma (A.D. 1598-1885)*, compiled, edited, translated and annotated with long preface by Dr. Than Tun, Part Four (A.D 1782-1789), Kyoto, The Center of Southeast Asia Studies, Kyoto University, 1986, p. 275 (Henceforth: ROB, IV, 1986)

presented. The court then would be adjourned to a future day, on which both the plaintiff and defendant were to be accompanied by their lawyers. When the court resumes, the lawyers would examine and cross-examine the litigants and their witnesses. The judge would make deductions and decide upon whom the burden of proof was placed. After that, the witnesses would have to take the stand, and then the judgement would be passed. If both parties agreed to the court decision, they would eat *lahpet* (pickled tea) to accept the decision formally. The decision would become final and immutable once both parties had eaten *lahpet*. If a litigating party was dissatisfied with the decision, the party could refuse to eat *lahpet* and file an appeal against the decision to a higher court.²⁰

The lawsuits filed in the reign of King Badon included disputes over the rights of inheritance: that in the property or the hereditary office of another following the latter's death. The hereditary offices were those of *htaungke*, *winhmu*, *thwethaukyee*, *myedaing thugyi* etc.²¹ To prevent the disputes over the succession to hereditary offices, King Badon issued a royal order in 1784 that succession to hereditary office was the right of primogeniture (ie. a hereditary office was to descend through eldest sons). However, he must be adept in performing the duties of the office concerned. If someone was appointed to perform the duties jointly with him, disputes over the succession to the office could arise; therefore joint administration was not permitted. If a *thugyi* passed away and if his son was underage, the office can be transferred *pro tem* to a relative who would serve as a caretaker. However, he would have to hand over the office to the legitimate heir when the later attained the age of legal maturity.²² King Badon issued an order in 1789 in violation of the *Dhammathats* that the hereditary offices were not to be transferred by inheritance.²³ Thus, the king was presumably attempting to control the succession to hereditary offices.

The property of a commoner passed to his or her spouse following the former's death if he or she had no descendants; if both husband and wife passed away, the property could be inherited by the siblings of the deceased persons. If there was no sibling the ancestors of the deceased persons could inherit the property. If there were no ancestors or descendants alive, the property of the deceased persons would be appropriated by the crown in accordance with the *Dhammathats*.²⁴ When Yazakyawthu, the *Thandawsint* (Royal Herald) and his wife Mi Min Oo passed away in 1805, as they had no heir, their property was appropriated by the crown, and was given to princess Thinza, a daughter of the King²⁵. If a deceased person had an heir or heirs, however, his or her property would not be confiscated by the crown. When a certain Pan Nyo died on 12 October 1795, the *ywasa* of Kyaukpon reverted Pan Nyo's property to the crown. Lun Hpyaw, the adopted son of Pan Nyo, complained to the Atula *Sayadaw*, saying that he had a right to inherit the property of his adopted father Pan Nyo as he was adopted as an *apathita* (adopted son) by Pan Nyo. The Atula *Sayadaw* decided the case in favour of Pan Nyo, announcing that as an *apathita* son also qualified to inherit according to the *Dhammathats*, the *ywasa* of Kyaukpon was to return the property- all animate and inanimate things-of Pan Nyo that he had confiscated to Lun Hpyaw.²⁶ Thus,

²⁰ J.G Scott, *Gazetteer of Upper Burma and Shan States*, 5 Vols, Vol.II, Part i, Yangon, Government printing, 1900, p. 484

²¹ Toe Hla, 2002, 61

²² "1146 *Htoutpyanathi Ameindaw*" (Royal Order Promulgated in 1784), *Purabaik* MS 1497, Yangon, National Library (Henceforth: 1146 *Ameindaw*, *Pu* MS 1497)

²³ Tin, 1965, 156

²⁴ ROB, IV, 1986 a, 232

²⁵ *The Royal Orders of Burma (A.D.1598-1885)*, compiled, edited, translated and annotated with long preface by Dr. Than Tun, Part Five (A.D 1788-1806), Kyoto, The Center of Southeast Asia Studies, Kyoto University, 1986 , p. 807 (Henceforth: ROB V, 1986 b)

²⁶ "Atula *Sayadaw Hpyathton*" (Rulings of Atula *Sayadaw*) Palm-leaf MS 1021, Yangon, Universities Central Library

according to King Badon's royal order, the property of a deceased person was to escheat to the crown only if he or she had no heir. In the reign of King Badon with regard to marriage, the king issued a royal order in violation of the *Dhammathats* to forbid intermarriage between persons of different social classes.²⁷ However, evidence indicates that this order was violated sometimes. For instance, concerning the marriage of Mi Rambhi, Nga Htwe's daughter and Nga Oo, on 16 May 1806 the governor of Saku decided that they were to consummate marriage only after Mi Rambhi received permission from the *Kala Sayas* (Muslim Clerics) at the royal capital.²⁸ Therefore, according to the *Dhammathats*, intermarriages and mixed marriages were not strictly forbidden in the reign of King Badon.

In the reign of King Badon, crimes were categorized into major and minor crimes. Major crimes included the crimes that would stun the entire country such as rebellion or lese majesty, having sexual relationship with a palace lady, theft, robbery, armed robbery, rape etc.²⁹ In 1784, King Badon issued an order to class adultery (with a married woman) as a major crime³⁰. Causing disorder or turmoil in a region also was a major crime.³¹ Minor criminal cases were those called *myethnanyihmu*, which had a complainant or an accuser and a defendant or an accused person such as involuntary manslaughter, assault, verbal abuse etc.³² In trying criminal cases, the judges had to follow the royal orders or *yazathats*. The royal orders collectively served as Myanmar criminal law which was comparable to the modern penal code. The offenders were punished by death, banishment, Imprisonment and *maung kyaw-dan* (proclamation) depending on the severity of the crime.³³ In the reign of King Badon, in trying major crimes - theft, robbery, armed robbery, rebellion or lese majesty, first the judges would instruct the accused persons to confess. As no judgement could be passed unless the accused himself or herself admitted to the crime, the officials would torture the accused to extort a confession. He would be confined in the stocks which normally had four holes, by holding his legs in adjoining holds or by holding his legs a hole apart. Then, he would be tortured by holding his legs tightly in a bamboo clamp, by driving a needle under his finger nail, by holding his head in a clamp with betel nuts between his temples and the clamp, by flogging him with a cane or bamboo stick, and by *khwesigyin* (a kind of torture when two hands and two legs were bound together and forcing down the rod inserted between hands and legs in order to exact information from the victim.) If an accused person died, a report would be made to the *Hluttaw* and the corpse would be set up on a cross for the public to see³⁴. Only when the accused admitted to serious crime, the judge could inflict a penalty allowed by law.

In the reign of King Badon, causing disorder or turmoil in a region also was a major crime. On 7 June 1801, Nga Shwe Htin and his son Nga Aung Hmat were sentenced to death for committing a serious crime that caused disorder or turmoil in the locality. However, for humanitarian reasons, their lives were spared, and they were made to serve in the *Lamaing* (group of crown cultivators) at Aungpinle together with his or their families and were placed under Thiriweyan, the *Lamaing Wun* (the *wun* in charge of crown cultivators).³⁵ By seeing

²⁷ "Thet Karit 1145 Htoatpyandaw muthi Mahayazathat Ameindaw Tangyi" (Royal Order Known as Mahayazathat issued in 1783), *purabaik* MS 1020, Yangon, National Library

²⁸ Yantamaik Kyaw Htin, *Yezagy Khondaw Hypathton* (Rulings by the judge of Yezagy), Yangon, Hanthawaddy Press, 1964, p. 31

²⁹ Tin, 1976, 255

³⁰ Aung Than Tun, 1968, 79

³¹ ROB, V, 1986 b, 696

³² Tin, 1976, 255

³³ Tin, 1976, 254

³⁴ Tin, 1976, 267

³⁵ ROB, V, 1986 b, 696

this order, it was found that king Badon used the labour of those criminals to improve the agriculture which was the main occupation of the country.

In the reign of King Badon, the prince of Sitha, the younger brother of King Badon, who attempted to usurp the throne, and Mahathihathura, who was famous in the Sino-Myanmar war, and his followers who sided with the prince of Sitha, were arrested and sentenced to death.³⁶ In 1783, Nga Myat who held the title *Inyi Theinhka*, Nga Myat Tha who held the title *Kyawgaungpyanchi* and Nga Hmaing who held the *Yethkaye* title, were executed for attempting to dethrone King Badon. Nga Hme, the astrologer, who helped them was deported to a forest. Those who failed to inform the king although they knew this attempt were also imprisoned.³⁷ It is learnt that Myanmar kings sentenced everyone who rebelled against them to death. It seems that this was what a man in power normally did to liquidate anyone who posed a threat to his throne.

A royal order was issued in 1784 as to how to punish those who were guilty of rape or of other sexual offences, which were serious crime as follows;

If a man has sex with young maiden who is still under the care of her parents, reduce the number of Lashes and punish him with *maungkyawdan* (proclamation).³⁸

In the reign of King Badon, an order was issued that rape carried death penalty.³⁹ Pursuant to this order, Hkinlubo and his lackeys who raped the wives and daughters of the villagers were sentenced to death on 15 October 1806.⁴⁰ The promulgation of royal orders to penalize rape and sexual offences was to protect the women in the society. It can be assumed that these orders were issued in accordance with Myanmar, ethics which attached importance to women's propriety.

Concerning major crimes, the punishment imposed on a thief depended on the value of the stolen property.⁴¹ Local administrative officials were responsible for the arrest of thieves. If they failed to catch a thief, they would have to make recompense for the loss suffered by the victim⁴². As to robberies too, the administrative officials of a town or village had to recompense the victim for a robbery committed within their jurisdiction if they failed to catch the robbers⁴³. The administrative officers, such as *myowuns* and *sitkes* were responsible to apprehend the criminals including thieves for the thefts and crimes committed within the localities under their charge and to send them to the royal capital. If they failed to catch the criminals including thieves, they would be punished.⁴⁴ If the criminals and thieves who were arrested stated the names of their accomplices, the *myowuns* would have to arrest those accomplices too. If a *myowun* failed to catch the criminals and thieves, he not only would be removed from office, but also would be imprisoned at the royal capital.⁴⁵ Theft

³⁶ Dr. Kyaw Thet, *Pyidaungzu Myanmar Nainggan Thamaing* (History of the Union of Myanmar), Yangon, Khit Myanmar Press, n.d, 330

³⁷ ROB, IV, 1986 a, 311

³⁸ 1146 Ameidaw, Pu MS 1497

³⁹ Dr Yi Yi, "Konbaung Khit-Oo Myone Oakchoatpon" (Township administration in the early Konbaung Period), Journal of literature and Social Science, Union of Burma, Vol.1, no-11, 1968, p.384 (Henceforth: Yi Yi, 1968)

⁴⁰ ROB, V, 1986 b, 1006

⁴¹ 1146 Ameidaw, Pu MS 1497

⁴² *The Royal Orders of Burma (A.D.1598-1885)*, compiled, edited, translated and annotated with long preface by Dr. Than Tun, Part Seven (A.D 1811-1819), Kyoto, The Center of Southeast Asia Studies, Kyoto University, 1988, p.692 (Henceforth: ROB, VII, 1988)

⁴³ ROB, V, 1986 b, 802

⁴⁴ 1146 Ameidaw, Pu MS 1497

⁴⁵ *The Royal Orders of Burma (A.D.1598-1885)*, compiled, edited, translated and annotated with long preface by Dr. Than Tun, Part Six (A.D 1807-1810), Kyoto, The Center of Southeast Asia Studies, Kyoto University, 1987, p.683 (Henceforth: ROB, VI, 1987)

carried a penalty off death⁴⁶. In 1806, Nga Mauk and his accomplice who committed the robberies were sentenced to death⁴⁷. Moreover, administrative officers responsible for apprehending thieves and robbers would be imprisoned, removed from office, or sentenced to death if they failed to catch the thieves and robbers who committed crimes in the locality under their charge. When Kyawswa at Pyanchi Village caught the robbers named Nga Kauk and Nga Shwemin on 8 June, 1810, the robber informed him that their accomplices were in Saku Township. Kyawswa demanded Nga Kyaing, the *myo-oak* of Saku to hand those persons over to him. However, Nga Kyaing failed to do so, and Kyaw Swa reported the matter to the *Hluttaw*. The *Hluttaw* sentenced Nga Kyang to death for this case⁴⁸. After appointing security officers in towns and villages, it is stated in a royal order that the officer in charge of towns and villages would be sentenced to death if thefts and robberies occurred because of their derelictions of duty.⁴⁹

In 1789, King Badon issued a royal order as to murder, a serious crime like lese majesty, theft, armed robbery, rape, etc. According to it, the murder of a person should not be solved by making the murderer pay compensation to the victim's family; murder carried death penalty.⁵⁰ The punishments to be inflicted for the crimes such as assault, verbal abuse, bribery and embezzlement also were prescribed King Badon issued an order on 5 October 1789 as follows:

If someone was assaulted in the royal capital, give the offender 50 severe lashes and make him clean elephant dung and horse manure. Also require him to give one, two, or three slaves to the victim depending on the injuries the latter has sustained. If someone is attacked by two, three, four or five persons, punish the person guilty of assault with fifty strokes of the lash, and make him clean elephant and horse dung. The accomplices are to be required to give slaves to the victim in compensatory damages.⁵¹

As to cases of bribery and embezzlement, King Badon issued an order in 1783 that the offenders were to be punished by *maungkyawdan* both inside and outside the city and molten silver, the amount of which equaled to the amount an offender had taken as bribes, was to be poured into the offender's mouth so that everybody who saw it would be afraid to commit these crimes⁵².

In the reign of King Badon, apart from the issue of royal orders concerning the criminal cases, the system of the four ordeals *Kaba leyat* such as *ye-ngoate* (submerging in water) *mipyaing* (lighting tapers), *san-wa* (chewing rice), and *hkehtauk* (dipping one's finger in molten lead) had been used to judge for a criminal case which had no witness. A royal order was issued that in legal case where there was no sufficient evidence or witness, the court would have to recourse to a trial of ordeal.⁵³ Of the four ordeals, *ye-ngoate* is a form of trial to determine whose statement was right by making both the accuser and the accused to submerge under water. First they would be taken to a waterside, and jail officers would search them for amulets and cabalistic squares which they might have in their hair, between their fingers or toes. Then, a sacred book would be placed on each of their heads, and they would have to swear an oath.⁵⁴ After that, ropes would be tied around their waists. Then the words of *achokatadethtan* (the binding oath) would be read out three times, and with the

⁴⁶ ROB, VII, 1988, 217

⁴⁷ ROB, V, 1986 b, 1006

⁴⁸ ROB, VI, 1987, 764

⁴⁹ Yi Yi, 1968, 384

⁵⁰ ROB, V, 1986 b, 445-448

⁵¹ ROB, V, 1986 b, 488

⁵² ROB, IV, 1986 a, 284

⁵³ ROB, IV, 1986 a, 230

⁵⁴ ROB, IV, 1986 a, 426-427

achotadeithtan document wrapped around each of their necks, they would be brought down to the water. A bamboo pole would be placed upon their shoulders and pushed down. The person who surfaced first would lose, and the litigant who came out later would win the case. If both the litigants stayed under water for the prescribed period of time, they would be taken out of the water, and the litigant who was in a worse condition would lose the case.⁵⁵

As the case could be decided by water ordeal when there were no witnesses, they could also be determined by *mipyaing* (the ordeal of lighting). In a trial by this ordeal, the litigants would have to pay obeisance to the guardian spirits of the stupa and the *Sasana* on the plinth of a stupa, and would have to take an oath that they would not use magic potions, sorcery, charms, amulets, cablistic squares, etc. Then, they would have to 21 light candles of the same size and weight. The litigant whose candle left the wick would lose the case, and the litigant whose candle burnt out completely would win. If the sizes of the stumps of both candles were the same after they had gone out, the litigant whose candle left more wick would lose the case⁵⁶.

One of the *kabaleyat* (four types of trial by ordeal) was *san-wa* (chewing rice). First, the litigant would have to pay obeisance to the guardian spirits of the stupa and of the *Sasana* on the plinth of a stupa and would have to take an oath. Then, the *achotadeithtan* document (blinding oath) would be wrapped around each of their necks.⁵⁷ Then, the same amount of unbroken rice would be poured through a cone-shaped leaf into their mouths, and both litigants would have to chew the rice at the same time.⁵⁸ If a litigant finished first within the prescribed period of time, he or she would win. If both the litigants finished together, they would have to gargle with water and spit into spittoons. The litigant whose spittoon had clearer water would be the winner, and the person who had broken scraps remaining would be the loser⁵⁹.

Another type of trial by ordeal was *hkehtauk* (the ordeal by lead). First, the litigants would have to pay obeisance to the spirits as in the *San-wa* ordeal, and would have to take an oath that neither they nor those accompanying them had magic potions, amulets, etc. with them and the *achot-adeithtan* document (binding oath) would be wrapped around each of their necks.⁶⁰ The litigant would have to pay for the cost of 3 *viss* 30 *kyats* 3*mu* and 3 *ywe* needed for this ordeal. The *letmayunt* (armed messengers) would melt the lead.⁶¹ Then, an index finger of each litigant would be covered with a thin palm-leaf; and they would have to thrust their fingers into molten lead. A litigant would win if the palm-leaf covering his or her finger was not burnt and if his or her finger was not injured. The litigant who burnt his or her finger would lose the case.⁶² If the injury was not clearly visible, the litigants would be put under observation for seven days. The litigant whose finger became blistered would lose the case. If it is not noticeable till then, their fingers would be pricked. The litigant whose blood flowed freshly would be the winner, and litigant whose blood flowed dark would lose the

⁵⁵ Tin, 1976, 273-274

⁵⁶ Tin, 1976, 268-270

⁵⁷ ROB, IV, 1986 a, 428-429

⁵⁸ *Yazatheikpa Thatta Kyangyi*, Inn-ywa Myothit, Pylonhmancku Press, 1929, p.141-142 (Henceforth: *Yazatheikpa Kyan*, 1929)

⁵⁹ Manu Amat, *Manukye Dhammathat* (The enlarged (*Dhammathat*) Code of Laws on Manu), Yangon, Hanthawaddy, 1903, p.258

⁶⁰ Tin, 1976, 271

⁶¹ ROB, IV, 1986 a, 425

⁶² Rever and Father Sangermano, *A Description of the Burmese Empire*, Rangoon, Government Press, 1962 (Reprint), p.72

case⁶³. The *hkehtauk* ordeal differed from the other types of ordeals in that the accusers were not subjected to this ordeal; only the accused had to be subjected to *hkehtauk*.⁶⁴

Thus, in criminal cases which were no witnesses, the four types of trial would be restored to in the reign of king Badon. But, there was no direction and to which ordeals should be used for which cases. Hence, the type of trial by ordeal was decided by the judge for each case. Compared to modern judicial system, the four types of trial by ordeal (*kabaleyat*)- *ye-ngoate* (submerging in water), *mipyaing* (lighting tapers), *san-wa* (chewing rice), and *hkehtauk* (dipping one's finger in molten lead) were not the reliable methods to determine guilt or innocence of an accused person, and were primitive and uncivilized methods. Although lighting and rice- chewing ordeals would not cause suffering to the litigants, the ordeal by water and that of lead could result in serious injury or death, and the court decisions would not be well-founded. However, as the cases had to be heard and decided even though there were no witnesses, the Myanmar probably used these ordeals (*mipyaing*, *san-wa*, *ye-ngoate*, and *hkehtauk*) as they traditionally believed that justice would be guarded by the *nats* (spirits or deities).

The cases which would be presented by the four types of trial by ordeal in the reign of King Bandon. The water ordeal was resorted in a case heard at the *Sheyondaw* (Eastern Court, ie, the criminal court at the royal capital) in 1793 (Nga Myat Ya vs. Mi Toat). As Mi Toat surfaced first, Nga Myat Ya was taken out of water, and the case was decided in favour of Nga Myat Ya. Therefore, Mi Toat lost this case. However, it is not known what the case was about⁶⁵. A case involving ten ticals of gold (Mi San vs Nga Hla) was decided in 1792 by the lighting ordeal because there was no evidence or witness. In this trial, both litigants had to swear an oath as follows:

"The people from our side including me do not use magic potions, sorcery, charms, amulets, cabalistic squares."

Then, the *achotadeithtan* (binding oath) would be wrapped around each of their necks, and they had to take two candles of the same weight and size and plant them in two bowls at the Singyo Shwegu temple. The name of each litigant was written on the candle that would represent him or her, and an illiterate child was made to stand in front of the candles. Then, Nga Paw Tha, a jail officer ordered the litigants to light their candles, and neither of the candles burnt down till the end. Therefore, the wicks of these candles were weighed. The wick of Nga Hla's candle weighed one *mu*, while that of Mi San's candle was three *mat*. As the unburnt wick of Mi San's candle was heavier, she lost the case.⁶⁶ The rice- chewing ordeal was used in a case of rape (Mi Nyein, aged 12.Vs Nga La, aged 33) in 1797, during the reign of king Badon. Mi Nyein won the case because she finished chewing the rice completely. Nga La did not finish, and broken scraps remained in his mouth; hence he lost the case⁶⁷. In 1807, during the reign of King Badon, Nga Maung and Thapaw accused Nga Myat Ya and Nga Shan of stealing their possessions-gold, silver, fabrics, etc. As there was no evidence, the case was decided by *hkehtauk* (the ordeal of lead), and Nga Myat Ya and Nga Shan had to dip their fingers into molten lead. As their fingers were not burnt by molten lead, they won the case and were acquitted⁶⁸.

⁶³ Tin, 1976, 271

⁶⁴ *Yazatheikpa Kyan*, 1929, 137

⁶⁵ *Yazatheikpa Kyan*, 1929, 129-130

⁶⁶ *Yazatheikpa Kyan*, 1929, 133-134

⁶⁷ *Yazatheikpa Kyan*, 1929, 141-142

⁶⁸ *Yazatheikpa Kyan*, 1929, 137-138

Conclusion

To sum up, the history of judicial system in the reign of King Badon, the courts had decided the legal cases that took place in the royal capital were: the *Hluttaw*, *She-yon*, *Anauk-yon*, *Taya-yon*, *Windaw Le myethna win-yon* and the *Pyin -eins wun-eins* concerned. Moreover, in the reign of King Badon, the *Byedaik* tried the legal case which was the king uncles' land dispute. In this case, it was found that the decision made by U Paw Oo tried this case justly. In the towns and villages in the provinces, the courts such as the *myoywa thugyi yon*, *myowun yon*, and *Khayaing wun yon* were established. With regard to the civil cases referred to as *myet-hna-nyi hmu* (cases between parties meeting face-to-face) such as disputes over inheritances, adultery, marriage, divorce, and disputes over loans or the ownership of slaves, etc, were decided in accordance with the *dhammathats*. The civil cases were tried by written statement and by plaint. Besides, in the reign of King Badon, it was found that, royal orders for the civil cases were also issued. With regard to the criminal cases, crimes were categorized into major and minor crimes. King Badon provided the adultery (with a married woman) as a major crime. Moreover, causing disorder or turmoil in a region also was a major crime. Many *Yazathats* of royal orders were issued and the legal cases were decided according to the *Yazathats*. It is not surprising that the pretenders to throne, those who rose in rebellion and those who had sexual encounters with palace ladies were sentenced to death in the reign of king Badon. From the royal orders concerning theft, it seems that the king's intention was to deter the people from committing theft and robbery, and to make the administrative officials arrest and punish thieves and robbers. Moreover, from the royal orders concerning bribery and embezzlement, it seems that the king's intention was to disappear the bribery and embezzlement. In the cases where there were no witnesses, the litigants had to under go *Kabaleyat* (the four ordeals)- *yengoate* (submerging in water), *mipyaying* (lighting tapers), *san-wa* (chewing rice), and *hkehtauk* (dipping one's finger in molten lead). In some cases both the litigating parties had to undergo the ordeals; in *yosuthmu* (allegations), however, only the accused had to undergo such ordeals. It is impossible to regard these four kinds of trial by ordeal as just. However, as the people in those days customarily believed the judicial administration, it seems that these four ordeals had been tried.

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