

University of Mandalay

HISTORY OF JUDICIAL SYSTEM IN KONBAUNG PERIOD

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Mandalay, Myanmar
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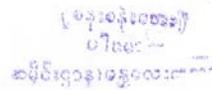
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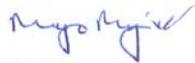
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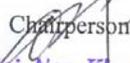
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ABSTRACT

This dissertation, entitled "History of Judicial System in Konbaung Period" is written in four chapters: (1) Different Levels of Judiciary, (2) Criminal Cases, (3) Civil Cases, and (4) Legal Cases Involving Buddhist Monks. Chapter one deals with the different levels of courts established in Myanmar for trying and determining civil and criminal cases, and the jurisdiction they had. Chapter two discusses criminal cases. How the crimes were classified into major and minor crimes, how the criminal cases had to be tried in accordance with the royal orders or *yazathats*, and how the four types of trial by ordeal were resorted to when there were no witnesses are discussed in this chapter. Chapter three discusses how the civil cases had to be decided according to the *dhammathats* or customary law and how the litigants had to submit bills (ie. formal complaints) and answers (ie, replies to these complaints). How learned Myanmar monks and lay scholars had written various *dhammathats* or Myanmar Buddhist Laws are also explained in this chapter. Chapter four is on the cases involving Buddhist monks. How different levels of arbitrators, from the abbot of a monastery to the *Thathanabyu Sayadaw* (Supreme Patriarch), had to hear and determine the cases involving monks, how the cases were decided in accordance with the Vinaya texts, and how the cases involving both monks and laypersons were decided according to the *dhammathats* if the litigating monks agreed are dealt with in this chapter.

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List of Abbreviations

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- TMS Type Manu Script
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Abbreviations of *Palm-leaf* and *Purabaik*

- “*Atula*”, *Pa* MS 118115 “*Atula Hpyathton*” (Rulings of *Atula*), *Palm-leaf* MS 118115, Yangon, Universities' Central Library
- “*Sangha Vinicchaya*”, *Pa* MS 41 “*Sangha Vinicchaya Hpyathton*” (Rulings made by *Sangha Vinicchaya*), *Palm-leaf* MS 41, Mandalay University Library
- “1145 *Ameindaw*”, *Pu* MS 45218 “1145 *Ameindaw*” (Royal Order of 1783), *Purabaik* MS 45218, Yangon, Universities' Central Library
- “1146 *Ameindaw*”, *Pu* MS 1497 “1146 *Htoutpyanthi Ameridaw*” (Royal Order promulgated in 1784), *Purabaik* MS 1497, Yangon, National Library
- “*Khondaw Upade*”, *Pu* MS 249 “*Khondaw Do Peyan Upade Hpaya*”, *Purabaik* MS 249, Yangon, National Library
- “*Min 6 pa Upade*”, *Pu* MS 379 “*Ameindaw Hnint Min 6 Pa Upade*” (Royal and Laws of six kings), *Purabaik* MS 379, Yangon, National Library
- “*Thathanaye Amein*”, *Pu* MS 626 “*Thathanaye Ameindaw (1855)*” (Royal Order on religious affairs), *Purabaik* MS 626, Yangon, National Library
- “*Thetkarit 1145*”, *Pu* MS 1020 “*Thetkarit 1145 Htoatpyandawmuthi Mahayazathat Ameindaw Tangyi*” (Royal Order known as *Mahayazathat* issued in 1783), *Purabaik* MS 1020, Yangon, National Library

GLOSSARY

Achoat adeithtan	The binding oath
Acu	Crown service group
Adhikaron	Pali adhikarana "case, dispute". Procedures for dealing with disputes (vivadahikarana), accusations (anuvadahikarana), offences
Ahmadawye	Writer of instructions
Ahtet-oatsa	Same as payin
Ahtet-tha-thami-mye-myt	The descendants of the first wife
Akyidawsaye	a clerk to the akyidaw (a steward or elder attached to a Prince)
Ameindawya	Lawyer, pleader
Ameindawye	Writer of orders
Amwe-hlwe-at-sa	A deed by which one's property was left to an heir, ie a will.
Anaukwun	The highest officers of the Anauk-yon or Western Court
Anaukwun saye	secretaries to the anaukwun
Anauk-yon	Western Court or Women's Court, which had jurisdiction over the civil and criminal involving palace ladies, such as assaults, thefts, kidnappings, disputes over debts, etc
Anuvadadhikaron	Pali anuvadadhikarana . Cases involving accusations
Apatitha,	See tha

Apattadhikaron	Pali apattadhikarana. Cases involving the commission of offences
Apyodaw	Ladies-in-waiting
Asi awe win hmu mat	Councillors
Athisaye	Clerk of the athiwun
Athiwun	Officer in charge of the crown department responsible for administering the athi (the people were not registered in crown service groups and who lived permanently in one locality)
Athonsaye	General clerk
Atwin wun	Privy councillor
Aukma-wun	Officer of the Elephant catching men
Auk-oatsa	Same as let-hete-pwa
Auk-tha-thami-mye-myeit	The descendants of the deceased person's second wife or lesser wife or wives
Awemyowun yon	Office of awemyowun (outstation wun, i.e. provincial governor)
Aweyauk	Officer in charge of visitors or strangers
Awhan ngetha.	jailors
Bandazos	Controller of the Treasury
Byedaik	Privy Council, which was responsible for the administration of the inner palace and the privy affairs of the king
Cetiyangaka wut	Sweeping the platform of a stupa (to atone for one's misdeeds)
Dhamma	Doctrine, i.e. the Teachings of the Buddha
Dhamma-sambhoga	Prohibiting a monk who had committed a serious offence from associating with good monks (samvasa)
Dhammathat	“law book” or “code of laws”; customary law

Dinnako	See tha
Dubbhasita apatta	Offence of wrong speech
Dukkata.	“Wrong-doing”, which was the lightest offence for a Buddhist monk.
Eingye hteinchanhmu	underreporting the number of households under one's jurisdiction
Ein-hmu	Legal cases involving a family
Gadaw saye	Wives' secretaries
Gaing-choat	Head of a Buddhist sect
Gaing-dauk	Assistant to a gain-oat
Gaing-oat	Head of a Buddhist fraternity in a locality
Ganthadhura	One of the two duties of a monk— <i>ganthadhura</i> (the duty of study) and <i>vipassanadhura</i> (the duty of meditation)
Garu-bhanda	Sanghika or communal property
Gaug	Leader
Hetthima	See tha
Hkehtauk	See kaba le yat
Hlutsaunt thwethaukkyi	The thwethaukkyi (military officer) for the hluttaw guard
Hluttaw	Supreme Council, which also served as the Supreme Court
Hmudaw mattaw	Ministers and Councillors.
Hnigaukne	Courtier of the lowest rank
Hnoatlunhu	Verbal abuse
Hpayakyun	Pagoda slave
Hpaya-kyun	Slave donated to a temple or a stupa
Hpe-15	Auction pinochle

Htaunghmu	(1) prison directors; (2) an officer in charge of 1,000 men. There were some htaung-hmùs in charge of villages with the same rank as thu-gyis during the early Kòn-baung period
Htaungke	an officer in charge of 1,000 men
Htaung-sachi	Prison secretaries
Joti view/Joti vada	A doctrine of annihilation, according to which, when a man died, both his soul and body ceased to exist and he could not continue to exist by reincarnating
Kaba le yat	Four kinds of trial by ordeal—ye-ngoat (submerging in water), mipyaing (lighting tapers), san-wa (chewing rice), and hkehtauk (dipping one's finger in molten lead).
Kala wun	Officer in charge of foreigners
Kathaungmyaungtaikso	Controller of the national treasury
Khayaing-wun	Wun in charge of a division
Khettaja	See tha
Khon	Judge; penal of judges
Khondaw	Judge or arbitrator
Khonyon or	Court of law
Khonyondaw	
Kiccadhikaron	Pali kiccadhikarana. Cases involving duties
Kilita	See tha
Kin	Watch post, custom post
Kindaing	Officers of a kin (watch post or customs post) the leader of the servicemen posted at a kin (or watch post) who were responsible to collect customs duties.
Kin-oat	Leader of a group of watchmen
Kin-zaung	Watchman

Kittima	See tha
Ko-bo	Value of a slave
Kunbo	Court fees
Kunbodein	Collector of court fees
Kyaungdaing sayadaw	The head of the monastery
Kyaung-kyun	Slave donated to a monastery
Kyethabauk	Slave (by descent)
Kyunhmu	Disputes over the ownership of slaves
Lahpet	Pickled tea, eaten by opposing parties in a lawsuit if they agreed to the decision passed by the court. By eating it, the court decision would become final and immutable
Lahu-bhanda	Personal possessions of a monk
Lamaing Wun	The Wun in charge of crown cultivators
Let-htet-pwa	The property a person (and his or her spouse) acquired after his or her marriage
Letmayunt	Armed messengers
Letnettaik wun	The wun in charge of the armoury
Letnettikso	Controller of the armoury
Letsaungyutaiksaye	Clerk of the gifts repository.
Letsaungyutaikso	Controller of the gifts repository
Lulan	Errand boy
Luluhmu	Cases concerning the custody of the children of married couples, marriages without the consent given by the women's parents, etc.
Mahadanwun	Officer of Religious Affairs
Maungkyawdan.	“Proclamation”. Maungkyawdan was of two types: ordinary maungkyawdan and the maungkyawdan with

flogging. If maungkyawdan was inflicted on a convict, he would be taking along a road with the officials striking two gongs in front of him and two behind him. The court decision stating why the maugkyawdan was inflicted on him would be read out at every junction. He would be taken back to the court only after going a long the road as prescribed by the court. If flogging was attached, the convict had to be flogged after reading the court decision.

Mayahko-hmu	“wife stealing”, ie, lawsuits involving committing adultery with married women
Min-hmudan	Crown serviceman
Minkyun	Crown slave
Mipyaing	See kaba le yat
Mi-tun	Same as mipyaing, see kaba le yat
Myedaing	Officer responsible for arranging and recording the sale of all immovable property. Sometimes, he would also perform the functions of ywathugyi (village headman)
Myedaing amat	An officer for land survey
Myedaing-thugyi	A myedaing performing also the functions of headman
Myethnanyihmu	Minor criminal cases which had a complainant or an accuser and a defendant or an accused person, such as involuntary manslaughter, assault, verbal abuse, etc.
Myinsayegyi	Clerk of the cavalry units
Myinzi	A cavalry officer who, with the same rank as thugyi, had to rule a locality inhabited by cavalrymen.
Myinzu wungyi	The wun in charge of cavalry units
Myi-tet-chin chauk-pa	Six kinds of debts or debts incurred in six ways

Myogyi dagabo	Gate warden for the whole city
Myomyint-maya	Wife of high social class
Myoneint-maya	Wife of low social class
Myo-oat	Officer in charge of a small town
Myosas	Governors of towns (Shan States)
Myo-saye	City clerk
Myothugyi	Headman of a town
Myo-wun	Wun in charge of a district, ie provincial governor
Myo-yon	“town office”, the seat of local administration which also serves as a local, court
Myosa	(1) A person who held a town in fief; (In the Shan state) a hereditary Shan chief ranking next below a sawbwa
Nagandaw	Receiver of orders
Nat	Spirit or deity
Naukyon	Same as Anaukyon
Naukyon sayedaw	secretary of Naukyon (Western Court)
Neyadaw nga thwe	Five places of honour in the Audience Hall of the Palace
Orassa	See tha
Paccaya-sambhoga	Prohibiting a monk who had committed a serious offence from sharing things with other monks (paccaya-sambhoga)
Pacittiya apatta	Ninety-two offences that can be cleared by formal “confession” to another bhikkhu
Parajika apatta	Four Defeater Offences, ie the four heaviest, irremediable offences that automatically and irrevocably end the Bhikkhu-life. These offences are: sexual-intercourse, murder, major-theft, or falsely

	claiming supernatural abilities
Pariyatti	Study of the scriptures, one of the three aspects of Buddhism-Pariyatti, study, Patipatti, the practice, and Pativedhi, the realization
Patidesaniya apatta	Four Offences that had to be cleared by “acknowledgement”, ie formal confession to the entire monk community
Patimokkha	The basic code of monastic discipline, consisting of 227 rules for monks (bhikkhus) and 310 for nuns (bhikkhunis)
Patipatti	Practice of meditation, one of the three aspects of Buddhism--Pariyatti, study, Patipatti, the practice, and Pativedhi, the realization
Payin	(the property that a person) acquired before his or her marriage
Pitaka	One of the three collections of the Buddhist Canon: Sutta, Vinaya and Abhidhamma Pitakas
Pubbaka	See tha
Puggalika monastery	A monastery donated to a monk as his person possession.
Punanubbhava	See tha
Pwe	Public entertainments
Pwedet-maya	The wife who accompanied/was entitled to accompany him on ceremonial occasions
Pyaw neyacha	Pyaw usher
thwethaukkyi	
Pyin-ein	“Outside-house”, ie concerned with the women
Pyin-ein wun-ein	The houses of the Pyin-ein Wuns of the She-yon and

	the Nauk-yon. Pyin-ein, “outside house” means “concerned with the women”
Sabyan	Translator
Sagyun or sagyundaw	Royal order of appointment written on palm-leaf
Saholla	See tha
Samvasa	Prohibiting a monk who had committed a serious offence from associating with good monks
Sanghadisesa apatta	Thirteen very serious offences which had to be cleared through confession and supervised probation. The monk needs to be reinstated by a specially convened Community (Sangha) meeting of at least twenty monks
Sanghika monastery	A monastery donated to the Sangha community
Sanghika property	Same as garu-bhanda, property owned by the Sangha community
San-wa	See kaba le yat
Sawbwa	Hereditary Shan chief
Sayeidawgyi	Head clerk
Sekhiya	Seventy-five Training Rules concerned with various aspects of etiquette in dressing, public behaviour, accepting and eating alms food, teaching Dhamma, etc.
Shene	Lawyer, pleader
She-yon	Eastern Court or Criminal Court
Shwemyodaw dagabo	Golden City gate warden
Shwepyiso	Alderman of a City
Shwetaik wun	Officer in charge of the Shwe-taik (Royal Treasury)
Sitke	(1) deputy of a myo wun responsible for judicial and criminal matters;2) the deputy commander on a military expedition

Sittan	Report on interrogations made from time to time by a central administrative officer to a local headman on the current situation of his area
Son-ya	A sort of arbitration board formed for each case on an individual basis with two or three villagers who knew the case well
Sudein	Leader of the crown service group
Su-oak	Leader of the crown service group
Sushin nganshin	group or division leader
Svanutta	See tha
Taik-choat sayadaw	Abbot or the presiding monk of a monastic complex
Taik-kyat	Assistant to a taik-oat
Taik-oak	Presiding monk of a group of buildings in a monastery complex or head monk of a group of monasteries
Tathmu	Captain, District Superintendent of Police
Tawneya	First out of the five blocks of seats to which countries attending an audience given by the king area assigned according to protocol.
Taya htanagyoad	Department of justice, formed in the reign of King Thibaw.
Taya Yon	Civil Court
Tayahmupaing ayashingyi	Judicial officer
Tayama Yon	Civil Court
Taya-nagan	Clerk in a court of law acting as an executor of a judge's decree
Taya-saye	Clerk of the Tayama Yon (Civil Court)
Tayathugyi	Judge

Tha	Son or daughter including adopted son or daughter and stepson or stepdaughter. The Dhammathats classified the tha (son or daughter including adopted son or daughter and stepson or stepdaughter) into twelve types: six who were qualified to inherit and six who were not qualified to inherit. The six tha who were qualified to inherit were: orassa, one's own offspring who was legitimately born, khattaja, one's offspring born by one's union with a female slave or employee, hetthima, one's offspring born of a lesser wife, pubbaka, an offspring of one's spouse by a previous marriage, i.e. a stepson or a stepdaughter, kittima, a person formally adopted as one's heir, and apatitha, an adopted son or daughter. The six tha who were not qualified to inherit were: dinnako, a tha who was given to one by someone else, saholla, a tha who was bought, punanubbhava, an adulterine offspring of one's wife, kilita, one's offspring born by one's promiscuity, svanutta, an offspring who was like a dog
Thangan	Interpreter
Thatanabaing	Supreme Patriarch
Thathanabaing Sayadaw	Supreme Patriarch
Thathanabyu Sayadaw	The Supreme Patriarch
The dan	Requiring an earring monk to carry sand to pave paths in the precincts of a pagoda or monastery as a penance
Thetkayit	A general term for various kinds of written contracts, bonds or agreements between two or more individuals or groups

Thitsadawkyan	Treatise of oaths
Thitsadawye	Writer of oaths
Thudhamma hall	Assembly hall for religious purposes, where cases involving monks were tried
Thudhamma Sayadaws	Monks appointed to assist the Thathanbyu Sayadaw (Supreme Patriarch)
Thugaung	Noble
Thugyi	Headman of a village or a town
Thugyi	Town or village headman
Thullaccaya	“Grave offence”, a 'derived offence' from the most serious rules of parajika and sanghadisesa. The rule covers the circumstances when the full offence is not quite carried out but the conduct is still grave enough to be at fault
Thwethaukkyi	Commander of a troop fifty strong
Twe-hpetyon	A mixed court with the British commissioner and a Myanmar minister serving as judges
Vinaya	Code of monastic discipline
Vipassana	Insight meditation
vipassanadhura	One of the two duties of a monk-ganthadhura (the duty of study) and vipassanadhura (the duty of meditation)
Vivadahikaron	Pali vivadakarana Cases involving disputes
Windaw Lemyethna	Offices of the commander of troops guarding the four cardinal points of the palace
Win-yon	cardinal points of the palace
Winhmu	Commander of troops guarding a cardinal point of the palace
Wun	(1) an appointed official in charge of a department;(2) governor (of a district or division)

Wundauk	Assistant Minister, a minister of the second rank at the hluttaw
Wun-ein	Wun's house
Wungyi	A minister of state at the hluttaw
Wunzuwun	A wun in charge of a department
Yaw dan	Requiring an offender to give compensation for damage or loss sustained
Yazathat	“Ruling by King”, a fresh enactment of the king
Yazawut Yon	Criminal Court
Ye dan	Requiring an earring monk to carry water for the monastery as a penance
Ye-ngoat	See kaba le yat
Yon	Office, Court of Law
Yondaw	Court of law
Yosuthmu	Allegations
Ywathugyi	Headman of a village
Ywaza	A person who held a village in fief

PREFACE

The objectives of writing this dissertation are to prove that different levels of courts were established in the judicial system of the Myanmar kings, that legal cases were categorized into criminal and civil cases, that civil cases were decided according to the *dhammathats* and criminal cases were tried and determined according to the royal orders or *yazathats*, and that the Konbaung period judicial system was a fair judicial system which was in conformity with Myanmar culture and customs and was accepted by the people. In writing this dissertation, I got permission to copy the primary sources such as palm-leaf and *purabaik* manuscripts as well as books from the Mandalay University Library, Universities' Central Library, National Library and the Library of the Myanmar Historical Commission. I was able to complete this dissertation only because of the help, advice and guidance of my *sayagyis* and *sayamagyis*. All the shortcomings are of course my own responsibility.

INTRODUCTION

Although Myanmar was an absolute monarchy from the Bagan period until the end of the Konbaung period, Myanmar society had a fair judicial system which was in conformity with Myanmar culture and customs. To establish such a fair judicial system, Myanmar scholars had produced *dhammathats*, and Myanmar kings had issued *yazathats* or royal orders. Although the periods—Bagan, Pinya, Innwa, Taungoo, Nyaungyan and Konbaung – differed, Myanmar administrative system was a system that pivoted on the king, and there were no fundamental changes till the Konbaung period. There were, however, a few changes in Myanmar judicial system in the later Konbaung period.

The king was at the apex of the judicial machinery in the monarchical days. The King himself was a judge according to the *Dhammathats*. Therefore, the kings endeavoured to be regarded by the citizens as just kings. It seems that the reason was because the people accepted a King and held him in high regard only if he was a just King and because the people believed that the judicial system would be fair.

In the Myanmar judicial system, there were two legal standards *yazathat* and *dhammathat*. Cases involving the king's personal matters had to be decided according to the king's orders, and cases involving common citizens – theft, disputes over the succession to hereditary offices, family cases and inheritance disputes, etc., – had to be determined in accordance with the *dhammathats*. The Myanmar had systematic administrative system and various courts of law for trying legal cases were established since the Bagan period. Concerning the

administration of justice, central and local judicial organs were established.

The civil cases that arose among the people in the capital and surrounding areas were tried in the civil courts at the royal capital. The buildings in which such courts were held were referred to as *kunthaya*.

The major goal of the judicial administration in the Bagan period (1044-1287) was to establish a fair judicial system by using rulings and *dhammathats*. Therefore, in hearing civil cases, the judges paid special attention to the statements made by witnesses and to the exhibits, and made their decisions after considering those statements and exhibits depending on the nature of the cases. In deciding civil cases, the customary law represented by the *dhammathats* served as guiding civil laws. For trying criminal cases, however, the royal orders known as *yazathats* had to be mainly relied on. These royal orders or *yazathats* are comparable to modern criminal law. However, modern criminal laws were codes enacted especially for administering criminal justice. The royal orders or *yazathats* are comparable to criminal code, which is the aggregate of statutory enactments pertaining to criminal law. The royal orders called *yazathats* were not a code of law. They were just instructions (the judges had to follow) in trying criminal cases. Therefore, the *yazathat* was the most important law in determining criminal cases for the ancient Myanmars. In trying the criminal cases with no witnesses, the litigants had to undergo one of the *kaba le yat* (the four types of trial by ordeal) – *ye-la* (submerging in water), *san-wa* (chewing rice), *hkehtauk* (dipping one's finger in molten lead), and *mipyaing* (lighting tapers). An inscription from Nyaungbintha village, Nahtogyi township, Myingyan district, refers to a trial by *ye-la*. Although the accused persons should be acquitted in cases when there were no witnesses or when there was no sufficient evidence, the trials by ordeal were resorted to as the people of those days accepted them as fair trials. Although the trials by ordeal (*kabal le yat*) were not just, they were followed as they were accepted by the majority of the people in those days.

Although no strong evidence has been found as to the administration of justice in the Pinya period (1312-1364), the poems of the Innwa period (1364-1555) mention the ethics of judicial administration. According to these poems, when the litigants approached a judge for making a legal decision, the judge would have to decide the case honestly, without hoping for bribes, without considering the influence of the litigants, without fearing the wrath of his superiors, without anger or folly, with integrity, and in accordance with the pledges one had made.

As the *Dhammavilasa Dhammathat* was in existence in the Taungoo period (1531-1597), there is evidence that the legal concepts mentioned in this *dhammathat* were followed. This *dhammathat* explains which witnesses are trustworthy and which witnesses are not. It values the statements made by the witnesses who has firsthand knowledge of a case, i.e. who himself or herself has seen what happened or has heard what the litigants themselves said. As regards hearsay evidence, it states that a witness whose testimony is based on what he or she has heard from another person “should not be relied on, such a witness should not be questioned as he or she is not a witness who has direct personal knowledge of the case. “ It also asserts that the number of witnesses is not important; even if there is only a single witness, his or her testimony could be trusted if he or she is trust-worthy. If both parties have the same number of witnesses, however, the statements agreed to by more witnesses should be accepted. The administration of justice based on witnesses can be regarded as fair.

In the Nyaungyan period (1597-1752), too, legal cases were categorized into criminal and civil cases as in the Bagan period judicial administration. The words used in the Nyaungyan period, however, were: *yazawut-kyauung* (criminal) and *taya-gyaung* (civil) cases. In trying the cases when there were no witnesses, the *kaba le yat* were resorted to as in the Bagan period. Moreover, the word *tayathe* (final judgement) was used in the Nyaung-yan period.

There is evidence that the idea of *tayathe* was accepted as an advanced idea. For instance, it is stated in a royal order issued in 1001 that *tayathe* means the end of a legal case.

Moreover, there is an explanation on the legal principle: *dhammathat ko yazathat choat thi, yazathat ko gatiwut choat thi* (*Yazathat* or royal order supersedes the *dhammathat* or customary law; a promise or agreement overrides the *yazathat*). Hence the saying “*Dhammathat ko yazathat choat thi*” came into being. Even when a decision was to be made in accordance with the *yazathat*, if the litigants had made an agreement, they could not litigate the matter, but would have to follow the agreement whether it agrees or contradicts with the *yazathat*.

The guiding principle of Myanmar judicial administration was “to mitigate major cases and to dissolve minor cases” so that the common citizens would not be burdened. The ancient principle that justice had to be administered justly with a view to please the citizens was followed in the Nyaungyan period too. Moreover, as there were the *hluttaw*, the *she-yon*, the *nauk-yan*, the *taya-yan* and the *byedaik* in the Nyaungyan period, this period can be regarded as a period for which the literary evidence concerning the *hlut-yon nga yat* (the five officers of *hlut-yon*), which served as the pivot of Konbaung period judicial administration, has been discovered.

In the Konbaung period judicial administration, there were two legal standards: *yazathat* and *dhammathat*. Cases involving the king’s personal matters had to be decided according to the king’s orders, and cases involving common citizens—theft, disputes over inheritance of hereditary offices, family cases and inheritance disputes—had to be determined according to the *dhammathats*.

For the smooth and expeditious administration of justice, different levels of courts were established both at the royal capital and in the provinces in the Konbaung period. The courts in which the civil and criminal cases that arose at the royal capital were tried and determined were the *hluttaw*, the *she-yon*, the *nauk-*

yon, the *taya-yon* and the *pyin-ein wun-ein* concerned. In the towns and villages in the provinces, the courts of the town or village headmen, of the *awemyowuns* (outstation *myowuns*), and of the *khayaing wuns* (provincial governors) were established.

Although the judiciary remained unchanged in the early and middle Konbaung period, more courts of law were constituted in the later Konbaung period. Moreover, in the reign of King Mindon, Myanmar had to yield to the political pressure from the British and form a mixed court jointly presided over by Myanmar and foreign judges. Furthermore, for the speedy administration of justice, King Mindon appointed legal experts as *khondaws* (judges). In King Thibaw's reign, however, the *khondaws* (courts) established in the reign of King Mindon were abolished, and a *taya htanagyoat* (Department of Justice) and the court of the *asi awe win hmu mat* (councillors) were constituted in addition to the *hluttaw*, *she-yon*, *nauk-yon* and *taya-yon* which were established customarily at the royal capital.

Thus, it is learnt that various classes of courts were established in the Konbaung period, and justice was administered in these courts in conformity with the Myanmar traditional principle: "to mitigate major cases and to dissolve minor ones" especially practised in civil cases.

CHAPTER ONE

DIFFERENT LEVELS OF JUDICIARY

The essence of Myanmar judicial administration was to “reduce the major cases to minor ones and by admonishment make the minor disappear” in order to avoid causing hardship to the citizens¹. The goal of judicial administration was not only to have justice done, but also admonish the litigants so that they would see the light and become friendly again. In Myanmar judicial administration, there were Yazathat and Dhammathat. All personal matters of the king had to be decided in accordance with the king's wishes and the cases involving common citizens, such as theft, legal cases involving a family disputes and inheritance suits, had to be decided according to the Dhammathat. An important point in Konbaung period judicial administration was the establishment of various courts of justice for hearing legal cases. For administering justice expeditiously and unerringly, different levels of courts were established both at the royal capital and in the provinces including rural areas as follows: the courts of *thugyis* (town and village headmen), *myo-wuns* (district wuns) and *khayaing-wuns* (divisional wuns), the *She-yon* or *Yazawut Yon* (Criminal Court), the *Anauk-yon* or Western Court (Women's Court), the *Taya Yon* or *Tayama Yon* (Civil Court) and the *Hluttaw* (Supreme Court).

The administration of justice in the Konbaung period fell into two categories: that in the royal capital and that in the provinces. The courts that

¹ Frank N. Trager, and William J. Koenig, *Burmese Sit-tans 1784-1826: Records of Rural Life and Administration*, Tucson, University of Arizona Press, 1979,p.375 (Henceforth: Trager and Koenig, 1979)

decided the legal cases that took place in the royal capital were: the *Hluttaw*, *She-yon*, *Nauk-yon*, *Taya-yon*, *Windaw Lemyethna Win-yon* and the *pyin-ein wun-eings* concerned². The *Hluttaw* in the royal capital where the legal cases were decided served as the Supreme Court, the appellate jurisdiction of which was subordinate only to the king. It had jurisdiction in suits without pecuniary limit. The *Hluttaw* stood to the left of the Dagoni gate, within the teak stockade surrounding the palace, and faced east towards the Tooth-Relic Tower. It had four stairways: one for the king and the queen leading inside the Dagoni gate, one on the north side for the *wungyis* and *wundauks*, one on the east side for the king, and one on the south side for common citizens. It had two buildings: the one on the west was the main building with a three-tiered roof and was gilded. The eastern building was with a two-tiered roof. The four *kunzin* posts were gilded. Other posts were two-third gilded and one-third painted red. The eastern building, where the *wungyis* met, was two-third gilded and one-third painted red³.

She-yondaw was so-called because it stood to the east of the palace, just outside the teak stockade. As criminal cases were tried there, it was also called *Yazawut-yon* or criminal court⁴. It was situated between Ywedawyu Gate (the eastern gate of the stockade) and the U-hteit Gate (the eastern gate of the walled city), to the south of the main road connecting these two gates. It stood to the

² “*Myanma Min Do Yon Asintsint Htabon*” (How Myanmar Kings established different levels of courts) *Purabaik* MS 199, Yangon, National Library (Henceforth: “*Yon Asintsint Htabon*”, *Pu* MS 199)

³ U Maung Maung Bya, *Myanmar Min Mya Lethtet Oakchoatpon* (Administration under Myanmar Kings), Yangon, National Library, TMS., pp.281-282 (Henceforth : Maung Maung Bya, TMS)

⁴ U Tin, *Myanmar Min Oakchoatpon Sadan Hnint Bodawhpaya Ei Yazathat Khawthaw Ameindaw Tam Gyi* (Administration under the Myanmar Kings and King Bodawhpaya's royal order called *Yazathat*), Part iv, Yangon, Government Printing, 1976, p.26 (Henceforth : Tin, 1976)

southeast of the palace between the eastern city wall and the stockade. It was a building with a three-tiered roof and was 35 cubits square. The one cubit-high raised floor within the *kunzin* posts was surrounded by a corridor (*maungmale*), and there were three stairways on the south, north and west sides⁵.

The *Nauk-yondaw* lay to the west of the stockade and to the south of the main road connecting the western gate of the stockade and the Sishin gate of the western city wall. It was called *Anauk-yon* because it was where the *Anauk-wun* decided matters concerning the western part of the palace where the palace ladies dwelt. The shape of this *yondaw* was the same as that of the *she-yon*, though it was slightly smaller. There were three stairways on the south, north and east sides⁶.

The *Taya-yondaw* was a court established so that the *tayathugyi* (judges), *taya-nagans*, *taya-sayes*, *shene ameindawya* (lawyers), and *khons* (jurats) could try the civil cases according to various Dhammathats and Yazathats. The *Taya-yondaw* stood to the north of the road connecting the eastern entrance to the stockade and the eastern city gate (U-hteit). It stood to the north of the *She-yon*. It was similar in shape to the *she-yon*, but a bit smaller. There are three stairways on the south, north and east sides⁷.

The *Hluttaw*, which was the highest appellate court came into being, in the reigns of Myanmar kings⁸, and it is learnt that the *Hluttaw* was dissolved after King Thibaw (1878-1885) was sent into exile. Concerning the administration of justice, provincial governors had to follow the instructions issued by the

⁵ Maung Maung Bya, TMS, 283

⁶ Tin, 1976, 36-37

⁷ Maung Maung Bya, TMS, 284

⁸ U Tin, *Myanmar Min Oakchoatpon Sadan Hnint Boodawhpaya Ei Yazathat Khawthaw Ameindaw Tam Gyi (Administration under the Myanmar Kings and King Bodawhpaya's royal order called Yazathat)*, Part iii, Yangon, Central press, 1970 , p.26 (Henceforth : Tin, 1970)

*Hluttaw*⁹. The officials of the *Hluttaw* were: four *wungyis*, the *myinzu wungyi* (the wun in charge of cavalry units), the *athiwun* (the wun in charge of other service units), the *myedaing amat* (the amat for land survey), four *wundauks* (deputy wuns), four *nagandaws* (receivers of orders), two *Sayeidawgyis* (head clerks), two *myinsayegyis* (clerks of the cavalry units), four *ameindawyes* (writers of orders), four *ahmadawyes* (writers of instructions), four *athonsayes* (general clerks), four *aweyauks* (officers in charge of strangers), four *Myanmar thangans* (Myanmar interpreters), three *Shan thangans* (Shan interpreters), two *Yun thangans* (Yun interpreters), two *Kathe sabyans* (Khasi translators), two *tayoke sabyans* (Chinese translators), four *athisayes* (clerks of the athiwun), four *ameindawyas*, the *thitsadawye* (writers of oaths), the *pyaw neyacha thwethaukkyi* (Pyaw usher), the *hlutsaunt thwethaukkyi* (the thwethaukkyi for the Hluttaw guard), the *letnettaik wun* (the wun in charge of the armoury), two *letnettaikss* (controllers of the armoury), the *kathaungmyaungtaikso* (controller of the national treasury), the *letsaungyutaikso* (controller of the gifts repository) and the *lessaungyutaiksaye* (clerk of the gifts repository)¹⁰. All these officials were appointed by the king, and the number of *Hluttaw* officials varied with the wishes of the king¹¹. The kings also had to hear some cases at the *Hluttaw*. If the reigning king was not present, the crown prince had to preside over the *Hluttaw*. If there was no crown prince, the king's younger brother or elder sons had to attend the *Hluttaw* to decide matters concerning state affairs and to judge serious criminal cases. The *wungyis* could pass judgements at the *Hluttaw* only if neither the crown

⁹ Dr. Htin Aung, *A History of Burma*, New York, Columbia University Press, 1967, p.190 (Henceforth: Htin Aung, 1967)

¹⁰ Tin, 1970, 171-172

¹¹ Ma Kyan, "King Mindon's Councillors", *Journal of the Burma Research Society*, Vol. XLIV, part I, June 1961, pp.43-59 (Henceforth: Ma Kyan, 1961)

prince nor the *minthagys* were present¹². In the reign of King Thibaw, the king himself presided at the *Hluttaw* to try legal cases¹³. A land dispute involving Minkyaw Theinhkathu, the headman of Yinba village and the *akyidawsaye* of the Lecha queen, who was from Lecha township, Lwelin district, Southern Shan State, and Mi O, an inhabitant of Yinba village, was decided by the Myanmar *Hluttaw* headed by Crown Prince Kanaung in 1861¹⁴. The *wuns* of the *Hluttaw* could object to one another's decisions. They were to criticize and discuss with one another before making a decision, and the decision had to be agreed by all four *wuns*.

When a legal case is filed at the *Hluttaw* by the people, the official should not regard that they should not object to a decision made by another official. They are to let one another to have his say in conformity with the legal procedures and the royal orders. If a decision made by an official is against the legal procedures or against the royal orders, the officer should not hesitate to object to one another. The four officers should seek a decision acceptable to all of them after discussing the matter, considering whether to accept a decision made by one of them and saying whether the conclusion each of them has come to is in conformity with or against the legal procedures or the royal orders¹⁵.

¹² Tin, 1970 , 155

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.13 (Henceforth : Taw Sein Ko, 1977)

¹⁴ Sein Shwe, “Myanmar *Hluttaw Ei Lemye Ahmu Siyinbon*” (“How the Myanmar *Hluttaw* decided a land dispute”), *Working People's Daily* ,17 August 1970 (Henceforth : Sein Shwe, 17 August 1970)

¹⁵ Dr. Than Tun, *The Royal Order of Burma, AD 1598-1885, Part - iv (AD 1782-1787)*, Kyoto, The Centre For South East Asian Studies, Kyoto University, 1986, p.292 (Henceforth: Than Tun, 1986 a)

In the reign of Badon Min, (1782-1819) the *tayathugyis* could attend the *Hluttaw* only if they were ordered to do so to hear legal cases¹⁶. While the persons holding the positions of *wunzuwuns* were not allowed to plead the cases at the *Hluttaw* was explained as follows:

if the *hmudaw mattaws* who are holding official positions plead the cases, their ranks may prejudice the judges in making judicial decisions¹⁷.

According to a royal order issued during Badon Min's reign in 1786, only the civil cases that could not be settled by the *Taya-yon* were to be filed to the *Hluttaw*¹⁸. In the reign of King Mindon, (1853-1878) an order was issued on 24 April 1853 that territorial disputes, disputes over successions to hereditary offices and inheritance suits were to be heard by the *Hluttaw*¹⁹. King Mindon issued another order on 10 May 1860 that only the *Hluttaw* could inflict capital punishment on a criminal²⁰. In King Thibaw's reign, pecuniary disputes, territorial

¹⁶ Than Tun, 1986 a, 510

¹⁷ "1145 Ameindaw" (Royal order of 1783), *Purabaik* MS 45218, Yangon, Universities Central Library, (Henceforth: "1145 Ameindaw", *Pu* MS 45218)

¹⁸ Tin, 1970, 57

¹⁹ Ohn Kyi, "*Thibaw Min Lethtet Oakchoate Twin Pyupyinyan Kyobanchetmya*" ("Attempts for administrative reforms in King Thibaw's reign"), *Thetkatho Pyinnya Padetha Sazaung*, Vol. IV, Part iv, Yangon, Universities press, 1972, pp.69-100 (Henceforth: Ohn Kyi, 1972)

²⁰ Myint Myint Than, "*Mindon Min Lethtet Oakchoatye Hnit Sibwaye Ache Ane*" ("Administration and economic conditions in the reign of King Mindon"), *Journal of literature and social science*, Vol. II, Part iii, September 1969, pp. 59-102 (Henceforth: Myint Myint Than, 1969)

disputes, disputes over succession to hereditary offices, and *luluhmu*²¹ were not triable by the *Taya-yon*, but were only to be heard by the *taya htanagyot* (Department of justice) and the *yon* of the *asi awe win hmu mat* (councillors); only if the cases were not solved by them, these cases were to be taken to the *Hluttaw*²². 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*²³, the court had to report to the *Hluttaw*. The *Yazawut-yon* had to inflict the punishments on the convicts as decided by the *Hluttaw*²⁴. Although the *Hluttaw* was empowered to try suits of any value, appeals from it lay to the king in the cases with a value of 5000 kyats or more²⁵. Therefore, apart from the king, the *Hluttaw* was the highest court of appeal, and had unlimited civil jurisdiction. Moreover, it could inflict severe punishments such as death penalty, banishment, *maungkyawdan* and confiscation of property.

With regard to the judicial administration in the Konbaung period, although legal cases were heard at the *Hluttaw*, *She-yon*, *Nauk-yon*, *Taya-yon* and *pyin-ein wun-eins* and at the offices of the *sushins* and *nganshins*, there was only one

²¹ Cases concerning the custody of the children of married couples, marriages without the consent given by the women's parents, etc.

²² Ohn Kyi, *Thibaw Min Lethet Myanmar Nainggan Oakchoatye (Myanmar administration in King Thibaw's reign)*, M.A. thesis, Mandalay Arts and Science University, 1968, p.84 (Henceforth : Ohn Kyi, 1968)

²³ *Maungkyawdan* was of two types: ordinary *maungkyawdan* and the *maungkyawdan* with flogging. If *maungkyawdan* was inflicted on a convict, he would be taking along a road with the officials striking tow gongs in front of him and two behind him. The court decision stating why the *maugkyawdan* was inflicted on him would be read out at every junction. He would be taken back to the court only after going a long the road as prescribed by the court. If flogging was attached, the convict had to be flogged after reading the court decision.

²⁴ Tin, 1976, 30-31

²⁵ Tin, 1970, 155

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*, *Nauk-yon* and *Taya-yon* and military officers gathered before entering the audience room²⁶. Concerning a dispute over the crown land in and around Shwebo, Badon Min 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 Thinkkaya, the Royal Herald, to appear before the judge. Maha Minhla Nawrahta heard the case and decided against the king.

The decision made by U Paw Oo, an *atwinwun* of the *Byedaik* who held the title Minhla Nawrahta on 12 April 1807 as follows is not to be litigated anymore. The decision should be immutable:

“In this case involving a land dispute, the person whose title is engraved as “Thiri Pawara Tilawka Pandita Maha Dhammarajadhiraja and who is of royal lineage, the son of a king—Lord of Earth and Lord of the People—is to be put down in history as Maung Mawtha, a crook and a thief; and he is to recompense the plaintiffs who are the owners of the land and who are of Tamonso Gama village, for the legal expenses incurred by them in suing him including the court fees, lawyer's fees and the expenses for summoning the witnesses”²⁷.

²⁶ U Aung Than Tun, *Khit Le Khit Myanmar Taya Upade (Myanmar laws in the four periods)*, Yangon, Kalaungbyan Publications, 1968, pp.112-113 (Henceforth: Aung Than Tun, 1968 a)

²⁷ Thwe Thwe Sit, *Badon Min Lethet Myanmar Nainggan Oakchoatye Thamaing 1781-1819 (A history of administration in Myanmar during Badon Min reign 1781-1819)*, M.A. thesis, Mandalay Arts and Science University, 1968, pp.202-203 (Henceforth : Thwe Thwe Sit, 1968)

Thus, although *Byedaik* was not a 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.

The *She-yon* 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*²⁸. 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 majesty²⁹. King Mindon ordered in 1853, about a year after he ascended the throne, that all the criminal cases were to be tried at the *Sheyon*³⁰. This clearly indicates that the cases were heard elsewhere formerly. In addition, King Mindon issued orders so that legal proceedings would become systematic. In the reign of King Thibaw, the king issued an order that the crimes committed within the city limits were only to be tried at the *She Yon* in accordance with the criminal law, and were not to be tried in the *Hluttaw*, *Nauk-yon*, *Taya-yon*, or the *Pyin-ein wun-eins* concerned. Violation of this order carried a penalty of 15 days in prison (*tan*)³¹. The officials of the *She-yon* were four *myowuns*, four *htaunghmus* (prison directors), four *myo-sayes* (city clerks), four *shwepyisos*, (alderman of the city) four *htaungsachis* (prison secretaries), twelve *shwemyodaw dagabos* (Golden City

²⁸ William J. Koenig, *The Burmese Polity, 1752-1819*, Center for Southeast Asian Studies, University of Michigan, 1990, p.101 (Henceforth: Koenig, 1990)

²⁹ Tin, 1976, 30

³⁰ “*Ameindaw Hnint Min 6 Pa Upade*” (“Royal and Laws of six Kings”), *Purabaik* MS 379, Yangon, National Library (Henceforth: “*Min 6 pa Upade*”, *Pu* MS 379)

³¹ Taw Sein Ko, 1977, 30

gate wardens), and the *myogyi dagabos* (gate wardens for the whole city). However, the number of officers varied according to the wishes of the kings. The officials appointed in King Thibaw's reign were: three *myowuns*, four *htaunghmus*, seventeen *myo-sayes*, sixteen *htaung-sachis*, twelve *shwemyodaw dagabos* and the *myogyi dagabos*³². The cases triable by the *She-yon* would be examined by the *She-yon* officials either by themselves or together with the *wundauks* and *sayegyis* of the *Hluttaw*, and their findings would be submitted to the *Hluttaw*. The *Yazawut-yon* had to inflict punishments as decided by the *Hluttaw*³³. Therefore, concerning major crimes – robbery, armed robbery, murder and rape, the *She-yon* had to inflict the penalties only after referring the cases to the *Hluttaw* and after receiving the orders from the *Hluttaw*. However, the *She-yondaw* was the highest court where the *myowuns* could try other criminal cases. As the *myowuns* were appointed by the king at his will and as they were not hereditary officers, they could take bribes in administering justice. As they were appointed officials, they might be required to have some legal knowledge.

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, etc³⁴. The officials of the *Nauk-yon* were: four *Anaukwuns*, four *Anaukwun sayes*, (secretaries to the *anaukwun*), four *gadaw sayes* (Wives' secretaries) and four *anaukyon sayedaws* (*Nauk-yon* secretaries). However, the number of officers varied according to the wishes of the kings. The officials appointed in King Thibaw's reign were four *Anaukwuns*, seven *Anaukwun sayes*, four *gadaw sayes* and two *sayedaws*. The *sayegyis* (secretaries to the Chief Queen) and *bandasos* (controllers of the Treasury) of the Nanmadaw Queen were also regarded as *Nauk-yon* officials. However, there was no place for them in the *Nauk-yon* and they had

³² Tin, 1976, 28

³³ Tin, 1976, 30-31

³⁴ Tin, 1976, 44

no duties either. They only had to manage the Chief Queen's personal possessions and deal with matters connected with the Chief Queen³⁵. In the reign of King Thibaw, the king abolished the earlier custom and ordered that all the civil cases were to be decided in the *Taya-yons* (courts) under the *Taya Htana* (Department of Justice), and that the criminal cases were to be tried by the *She-yondaw*³⁶. It is probable that the king ordered that the criminal cases involving only palace ladies were to be tried at the *She-yon* so that the queens or Chief Queen would not be able to influence the judges. It can be assumed that that was the reason why the *Nauk-yon* was deprived of its criminal jurisdiction. Indeed, the *Nauk-yon* only had to deal with matters concerning palace ladies.

The *Taya-yondaw* was a civil court that possessed appellate jurisdiction over *myowun*'s courts. In the cases involving common citizens, both parties would have to be present at the court. The *Taya-yondaw* especially had jurisdiction over *kyunhmu* (disputes over the ownership of slaves), verbal abuse, land disputes, loan defaults and assaults, inheritance cases, *ein-hmu* (legal cases involving a family), etc³⁷. All the civil cases had to be filed only at the *Taya – yon*, not at the *Hluttaw*. Badon Min issued an order in 1786 that only the cases that were not settled by the *Taya-yon* were to be filed to the *Hluttaw*³⁸. The officers of the *Taya-yon* were four *tayathugyis* (judges), four *taya-nagans*, four *taya-sayes* (clerks of the court), four *ameindawyas* (assessors), and a *kunbodein* (collector of court fees)³⁹. However, only two judges were appointed in the reign of King Mindon⁴⁰. Therefore, it can

³⁵ Tin, 1976, 37

³⁶ Tin, 1976, 44

³⁷ Toe Hla, *Alaungmintayagyi Ei konbaung Shwepyi (The golden city of Konbaung of Alaungmintaya)*, Yangon, Sarpelawke Publication House, 2002, 2nd printing, p.59 (Henceforth : Toe Hla , 2002)

³⁸ Tin, 1970, 57

³⁹ Tin, 1976, 50

⁴⁰ Maung Maung Bya, TMS, 66

be assumed that the number of judges depended on the reigning king's wishes. Concerning civil cases, the judges of the *Taya-yon* heard the appeals from local courts⁴¹. The original civil suits would be decided at the *Taya-yondaw* only if they occurred within the city limits. When the civil jurisdiction of the various classes of courts was defined in the reign of King Thibaw, appeals from local cases lay to the *Taya-yon* at the royal capital in the case of suits from 500 kyats upwards in value⁴².

When King Thibaw introduced a new administrative system with ten departments in 1883, both the *wun-eings* of the queens and princesses and the *khons* of the *mingadaws* and *apyodaws* (ladies-in-waiting) ceased to have judicial power. Hence, they had to refer all the civil suits to the *Taya-yondaw*. Formerly, the queens, princess, *mingadaws*, *apyodaws*, etc, had to decide the civil cases that occurred in the towns and villages they held in fief. The *Myosas*, *ywasas*, *mingadaws* and *apyodaws* established their own *khons* (courts) to hear the civil cases that occurred in the towns and villages they held in fief. The litigants could appeal against the decisions made by these *khons* to the *Myosas*, *ywasas*, *mingadaws* and *apyodaws* concerned. Appeals from the *mingadaws* and the *apyodaws* lay to the queens and princesses, appeals from who still lay to the officer empowered by the king to administer justice. Appeals from this officer lay, through other courts, to the king, whose decision was final⁴³. There also were some civil courts with jurisdiction over small cases in the royal capital; they were: *pyin-eins*, *wun-eins* and the courts of the *sushins* and *nganshins*. The *pyin-eins* and *wun-eins* exercised judicial powers in the reigns of successive Konbaung kings. However, this custom was abolished in the reign of King Thibaw probably

⁴¹ Tin, 1970, 57

⁴² Tin, 1976, 52

⁴³ U Tin, *Myanmar Min Oakchoatpon Sadan Hnint Bodawphaya Ei Yazathat Khawthaw Ameindaw Tam Gyi (Administration under the Myanmar Kings and King Bodawhpaya's royal order called Yazathat)*, Part ii, Yangon, Central Press, 1965, p.26 (Henceforth : Tin, 1965)

because he believed that the judgements would be fair only if the legal cases were decided at the *Taya-yon* by the *tayathugyis* who were experts in law. Although the judges could try suits of any value, if the value exceeded a thousand kyats, a litigant could appeal against a judge's decision to another judge. It was prescribed in King Thibaw's reign that if the decision of one judge agreed with that of the other, the decision would be final, and if the decisions differed, the two judges were to discuss the matter and to jointly hear the case again⁴⁴. However, in a suit of one thousand to five thousand kyats in value, a litigant could appeal against the decision made by a judge or could accept the decision. If a litigant was not satisfied with the decision made by the second judge, he or she could appeal against the decision to the judge with civil jurisdiction at the fourteen departments. His decision would be final⁴⁵. All cases from five thousand kyats upwards had to be tried by two judges jointly⁴⁶. Therefore, the *Taya-yon* was just a court which had civil jurisdiction over the original civil cases that occurred within the city limits and which possessed appellate jurisdiction over the decisions made by local courts in civil suits from one thousand kyats upwards.

In the reign of King Mindon, the Myanmar government arranged so that the decisions over the legal cases involving both Myanmar and British citizens would be acceptable to both sides. Formerly, the British were dissatisfied with the Myanmar officials' deciding the disputes between Myanmar and British subjects. Complaining that Myanmar laws were inhumane, they asked the Myanmar government to let them decide such cases according to British laws⁴⁷. This demand was solved two years after the Anglo-Myanmar Trade Treaty was signed in 1867 during the reign of King Mindon. It was stipulated in article 5 of this

⁴⁴ Taw Sein Ko, 1977, 29

⁴⁵ Taw Sein Ko, 1977, 29

⁴⁶ Tin, 1976, 53

⁴⁷ Nisbet, *Burma Under the British Rule and Before*, Vol.I, London, Archibald Constable, 1901, p. 32 (Henceforth: Nisbet, 1901)

treaty that a British Resident or Political Agent was to be posted at the Myanmar capital, and the legal cases arising between British subjects and Myanmar subjects were to be tried by a mixed court formed with the British representative and Myanmar judges. Accordingly, the joint court (*twebet-yon*) formed with Myanmar and foreign judges was established at the capital to try the legal cases involving both Myanmar and foreigners. The Anglo-Myanmar court was established at the royal capital of Mandalay on 22 August 1869. Mr. Manook, the *kala wun*, and Captain Sladen served as the court officials representing the Myanmar and British governments respectively. Both English and Myanmar languages were regarded as official languages⁴⁸. The first Myanmar judge of the *twebet-yon* was Ela Zayathein *Myosa*⁴⁹. The cases tried by this court included fraud⁵⁰, *kyengwehmu* (a pecuniary dispute)⁵¹, *Kyetpaungzehmu* (a case involving rubber—a royal monopoly⁵²), *seinhmu* (a case involving diamonds)⁵³, *dobikalahmu* (a case involving an Indian laundryman)⁵⁴, *nwayaunghmu* (a case arising from the sale of cattle)⁵⁵, *pyitsitheinhmu* (confiscation of property)⁵⁶, *lokethahkakyanhmu* (failure to pay the wages fully)⁵⁷, *winmyehmu* (land dispute)⁵⁸, etc⁵⁹. The establishment of the *twebet-*

⁴⁸ Myint Myint Than, 1969, 59-102

⁴⁹ *Hluttaw Purabaik Ahmat Atha Atogauk Hmatpon (Abbreviations of the purabaik manuscripts of the Hluttaw)*, Vol.I, Yangon, Government Printing, 1901), p.206 (Henceforth: *Hluttaw Purabaik, 1901*)

⁵⁰ Ko Hpo Mya vs. Thayet Kasin.

⁵¹ Issaman In vs Maung Shwe Tha.

⁵² Dapadu Husin vs. Mogaung Myowun and an officer.

⁵³ Myi Mamattaki vs Hazi Adulatit (alias) Zigyan.

⁵⁴ Dolasanbi Lamasanbi vs Maung Kyoat and Maung Yan Nyein.

⁵⁵ Maung Tha Aung and Maung Shwe Aung vs the *sitke* of Myitsin.

⁵⁶ Kasin and the clerk of a British Dy. Commissioner / the British Resident vs Ibrahim.

⁵⁷ Hpanyet Kala (alias) Tabat vs Taung Dawe Bo.

⁵⁸ Kalagarati vs Myizamat.

yon indicates that Myanmar had to grant extraterritorial jurisdiction to the British. It seems that the mutual resentment of the British and Myanmar subjects would have been abated by the establishment of this court. The *twebet-yon* which came into being in King Mindon's reign continued to exist in the early days of King Thibaw's reign. However, it ceased to exist after the administrative machinery was reformed with nine departments as against fourteen departments before in August 1880. The *twebet-yon* was just a court established in King Mindon's reign under pressure from the British.

Although legal cases were decided at the royal capital by the *Hluttaw*, *She-yon*, *Nauk-yon* and *Taya-yon* during the reigns of the successive kings from the early days of the Konbaung period onwards, two new courts – the *tayahtanagyoat-yon* and the *asi awe win hmudaw mattaw mya yon*- were established in the reign of King Thibaw. There were eight classes of courts as follows: *myoywa thugyi yon* (Myothugyi's Courts), *awewun yon* (outstation Awemyowun's Courts), *khayaingwun yon* (Khayaingwuns' Courts), *Taya-yon* (Department of Justice), *tayahtanagyoat-yon* (Chief Courts), *asi awe win hmudaw mattaw mya yon* (Court of the Council of Ministers), *Hluttaw* and *min ekarit shedaw* (Appearance before the king)⁶⁰. Although appeals from the *Taya-yon* formerly lay to the *Hluttaw*, in the reign of King Thibaw, the *tayahtanagyoat-yon* was placed above the *Taya-yon*. When the courts were classed in this way in King Thibaw's reign the *tayahtanagyoat yon* became a court of law at the capital. Two *tayahtanagyoats* were appointed at this court, and they were empowered to decide suits without restriction as to money value. In a suit exceeding one thousand kyats in value, the

⁵⁹ Ohn Kyi, *Myanmar Thamaing Ahpwewin Daw Ohn Kyi Ei Letywezin Sadamma* (Selected papers by Daw Ohn Kyi, member of the Myanmar Historical Commission), Yangon, Universities' Press, 2004, p.51 (Henceforth: Ohn Kyi, 2004)

⁶⁰ U Tin, *Myanmar Min Oakchoatpon Sadan Hnint Bodawhpaya Ei Yazathat Khawthaw Ameindaw Tam Gyi* (Administration under the Myanmar Kings and King Bodawhpaya's royal order called Yazathat), Part v, Yangon, Central Press, 1983, p.221 (Henceforth : Tin, 1983)

litigants could appeal against the decisions made by the *Taya-yon* to the *tayahtanagyoat yon*. The *tayahtanagyoat yon* also had to try the cases that arose in the provinces if the value exceeded a thousand kyats, as the local courts had no jurisdiction over them. Similarly, armed robbery, lese majesty, or disputes over succession to hereditary offices were not triable by the *myo-yon*. Hence these cases had to be tried by the *tayahtanagyoat yon*. In case of suits exceeding five thousand kyats in value, appeals from the *tayahtanagyoat lay* to the *asi awe win hmudaw mattaw mya yon*⁶¹, the appeals from which lay to the *Hluttaw*. It can be assumed that King Thibaw, following the example of the constitutional monarchs in the West ruling their kingdoms jointly with ministers, established the *asi awe win hmudaw mattaw mya yon*. It is also possible that the *tayahtanagyoat yon* and the *asi awe win hmudaw mattaw mya yon* were established in King Thibaw's reign so that judicial administration would become more systematic and legal cases would be settled speedily.

The local courts in which civil and criminal cases that arose outside the city limits of the royal capital were tried, from lowest to the highest, were: the *myoywa thugyi yon*, *myowun yon* and *khayaing won yon*. The cases also were classified as civil and criminal cases. The civil cases had to be first decided by the lowest local courts. The appeals could be taken from these courts through different levels of courts to the king⁶². Cases of verbal abuse, assault, trespass, adultery with a married woman, rape and voluntary manslaughter, which are now regarded as criminal cases, were formerly classified as civil cases. Before the Konbaung period, in the reign of King Thalun (1629-48), any contempt against the king was regarded as a crime⁶³. In the Konbaung period, lese majesty, sexual intercourse

⁶¹ Ohn Kyi, 1972, 69-100

⁶² Tin, 1965, 161

⁶³ Than Tun, "*Thalun Min Lethtet Oakchoatye*" ("Administration under King Thalun"), *Journal of the Burma Research Society*, Vol. XLIX, part i, June 1966, pp. 51-66 (Henceforth: Than Tun, 1966)

with a palace lady, theft, robbery, armed robbery, rape and murder were classed as serious crimes, and manslaughter, assault and verbal abuse were classed as minor crimes⁶⁴. With regard to criminal cases, after charging a person with crime at a village-level court, the accused had to be referred to the King, i.e. taken to the authorities—the governor, *myowun* or the *Myosa* concerned⁶⁵. The village headmen heard all the legal cases without discriminating between civil and criminal cases⁶⁶. Before the reign of King Mindon, legal cases were tried at the courts of the town and village headmen, *myowuns* and of the *khayaingwuns*. In the reign of king Mindon, however, *khonyondaws* (courts of law) were established on 28 April 1866 so that legal cases (both civil and criminal) would be tried expeditiously and justly. King Mindon gave the reason for establishing these courts as follows:

When the impecunious people of the towns and villages appear before a town or village headman concerned to file lawsuits, as the headmen could not hear legal cases, it would take days ie.would be a waste of time, and the headman would not be able to examine the pleadings thoroughly. As they would be hurried into decisions, the decisions may not be correct. Legal cases that are brought before the courts had to be tried without wasting time. Only if they are examined, interrogated and decided expeditiously, the legal decisions would be sound and the impecunious litigants would not be troubled⁶⁷.

The cases triable by these courts also were defined as follows:

⁶⁴ Khin Maung Hte, *Konbaung Khit Myanmar Oakchoatye Thamaing (History of Myanmar administration in the Konbaung period)*, M.A. thesis, Mandalay Arts and Science University, 1975, p.88 (Henceforth: Khin Maung Hte, 1975)

⁶⁵ Tin, 1965, 161

⁶⁶ Tin, 1965, 163

⁶⁷ “*Sintsoyan Upade Hpaya*” (Instructions to be issued), *Purabaik* MS 335, Yangon, National Library (Henceforth: “*Sintsoyan Upade*” Pu MS 335)

1. Cases of assault by one assailant against a single victim, involving bloodshed
2. Cases of forced sexual intercourse in a dwelling or out of any town or village
3. Verbal abuse
4. Abduction of a virgin daughter
5. Wife stealing ie . adultery with a married woman
6. Attack by a group, without weapons
7. Cases of debts
8. Cases involving mortgages
9. Payment for goods supplied
10. Entrustment of property
11. Trespass by buffalos, cattle, or horses upon arable or garden land
12. Collisions between boats, going up or down stream
13. Attack on and killing of one animal by another
14. Attack by an animal instigated by its owner
15. Divorce cases
16. Pawning of gold, silver, or roles of cloth
17. Freehold lands, arable, gardens and enclosures
18. Cases of unreported destruction of houses
19. Court fee cases
20. Failure to abide by an order of a court
21. Trade credit
22. Failure to give security
23. Deprivation of hereditary rights in toddy and coconut palm gardens
24. Cases of false accusation
25. False accusation concerning property
26. Inheritance cases⁶⁸

⁶⁸ Tin, 1976, 256

These cases could be tried at the courts of town or village headmen, the appeals from which lay to the *khondaw*. Alternatively, the cases could be taken directly to a *khondaw*⁶⁹. Defining these rules, four *khon-yonsdawk* were established in the four quarters of the capital, each with a judge and two clerks. More *khon-yon*, each with a judge and two clerks, were set up in the provinces depending on the number of the towns and villages⁷⁰. Although these *khon* originally were empowered to try twenty six classes of cases, their jurisdiction was reduced on 4 March 1871, and they only had jurisdiction over the following cases: bloodshed, verbal abuse, abduction of a virgin daughter, theft, cases involving land mortgages, divorce, cases involving debts, defamation, and entrustment of property (breach of trust) and destruction of houses⁷¹. Thus, the cases triable by the *khondaws* were reduced. Although it is possible that the government's attempt was to lighten the *khondaws*' workload so that they would be able to perform their duties thoroughly, it is also possible that the attempt was to lessen the judicial power of the *khondaws*.

The administrative officials of towns and villages also were empowered to try some legal cases: theft of buffaloes and cattle, destruction of religious buildings, bootlegging, and slaughter of cattle, bribery, and robbery provided the value of the property involved was low⁷². Although it was prescribed by law that "legal cases arising among the people in the towns and villages were not to be tried limitlessly by the *myowuns*, *sitkes*, *myo-oaks*, *myothugyis*, *ywathugyis*,

⁶⁹ Tin, 1976, 257

⁷⁰ "Tayahmu Hnint Saingthi Upade"(Law concerning civil case), *Purabaik* MS 200, Yangon, National Library (Henceforth : "Tayahmu Upade", *Pu* MS 200)

⁷¹ Dr. Yi Yi, "Judicial System of King Mindon", *Journal of the Burma Research Society*, XLV, part i, June 1962, pp. 7-27 (Henceforth : Yi Yi, 1962)

⁷² "Ayatyat Khondaw Do Sintsoyan Salethkan Hpaya", *Purabaik* MS 249, Yangon, National Library (Henceforth: "Ayatyat Khondaw", *Pu* MS 249)

sudiens and *su-oaks*” when the *khondaws* were introduced, reinvesting the local administrative officials with judicial powers indicates that the *khondaw*’s jurisdiction had shrunk⁷³. The reason probably was because the litigants took the disputes to local notables for arbitration as it would be cheaper than litigating in the *khon-yons*. It is probably that the *kunbo* (legal fees) collected by the *khonyons* was high.

As regards the civil cases, each *khondaw* could refer a case to another court in two ways. It was prescribed by law as follows:

If a litigant desires to appeal to a *khondaw* near his or her town or village, the *khondaw* in which the controversy was first adjudicated i.e., the trial court must send a *lulan* clerk and the litigant together with the original records of the litigants pleadings and the court’s decision i.e., the proceedings wrapped in a cloth and sealed, to lodge the appeal⁷⁴.

Another instruction was as follows:

If legal cases arise among the people living in the same locality, ie same town or village, local courts are not to let the people to appear before the king lit under the golden foot to litigate. Make them petition to the *myo-yon*. If a litigant is dissatisfied with the decision made by the *myo-yon*, (the *myo-yon*) is to give the original records of the litigants’ pleadings and the court’s decision wrapped in a cloth and sealed to the litigant to lodge his or her appeal. No clerk is to accompany the litigant⁷⁵.

⁷³ “*Khondaw Do Peyan Upade Hpaya*”, *Purabaik* MS 249, Yangon, National Library (Henceforth: “*Khondaw Upade*”, *Pu* MS 249)

⁷⁴ “*Khondaw Upade*” *Pu* MS 249

⁷⁵ “*Khondaw Upade*”, *Pu* MS 249

However, that the number of cases the *khondaws* were empowered to hear was reduced and that the *khondaws* were abolished and the town and village headmen were reinvested with judicial powers in King Thibaw's reign clearly show that the judicial system with *khondaws* was not successful. Thus, although the king attempted to reform the judicial system, his attempts failed presumably because he could not abrogate the traditional system of appointing chiefs and because he could not decentralize the government.

In the reign of King Thibaw, the *khondaws* were abolished, and justice was administered by the *myo ywa thugyi yon* (the office of the *myothuigyi* or *thugyi*), *awemyowun yon* (the office of the Awei-wun) and *khayaingwuns* (the office of the *khayaing wun*). The *myo ywa thugyi yon* had to hear civil suits. In general, they had to arbitrate between the opposing sides. In addition to civil suits, they also had to try minor criminal cases, such as those of theft and misdemeanours. Serious criminal cases had to be referred to the *myo-yon* after investigation. They had jurisdiction over cases up to a value of 500 kyats. However, appeals from these courts lay to the *myo-yon* in cases exceeding 20 kyats in value⁷⁶. Therefore the *myo-ywa thugyi yon*, which was the lowest court in the provincial judicial administration, was a court that could try minor civil and criminal cases. In cases between 20 kyats and 500 kyats in value, appeals against the decisions made by the *myo-ywa thugyi yons* could be filed either to the *myo-yon* or to an arbitrator acceptable to the opposing parties without incurring any expenses. If a litigant failed to appeal to a higher authority, he would lose his case. If the decision made by the appellate court was the same as that made by the trial court, the decision would become final. If they differed, however, the litigants could take the matter to another arbitrator acceptable to both parties. This is prescribed in the Civil Jurisdiction Law on 6 December 1878 as follows:

⁷⁶ Tin, 1976, 262

In case of suits from 20 kyats 500 kyats in value, the decision of the trial court would be final if it satisfies both parties. If a litigant is dissatisfied with it, do not let litigants incur expenses, and do not send a clerk with them. Give them the records of the pleadings and the decision placed in a sealed bag, ask them to sign a pledge which bears the date, and send them to file their appeals either to the *myo-yon* concerned or to an arbitrator acceptable to both the litigants. If they fail to go either to the *myo-yon* or an arbitrator to appeal as they have promised, the litigant who fails to do so would lose his case. If the decision made by a court before which both the litigants appear to appeal is the same as that made by the trial court, the decision would be final. If the two decisions differ, the litigants may take the matter to another arbitrator acceptable to both sides to appeal as stated above. The decision made this time has to be final⁷⁷.

In case of suits from 500 kyats to 1000 kyats in value, the decision made by the trial court would be final if both parties agreed to it. If a litigant was dissatisfied with the decision, he or she was to go the *tayahmupaing ayashigy* at the royal capital and file an appeal to a judge. If the judge's decision was acceptable to both contestants, the case would be concluded. Otherwise, the litigants could appeal to another judge, whose decision would have to be final. They would have to pay court fees at this court. This is prescribed in the Civil Jurisdiction Law in 1878⁷⁸. It also prescribed by law in 1878 that the criminal cases that arose among the people in towns and villages, in the provinces were not to be decided by the *myothugyis*, *ywathugyis* or *sushin nganshin*, but was to be tried by the *myo-yon* according to criminal law⁷⁹.

⁷⁷ Taw Sein Ko, 1977, 29

⁷⁸ Taw Sein Ko, 1977, 29-30

⁷⁹ Taw Sein Ko, 1977, 30

In administering justice, a *myowun* should not hear a legal case at his residence or at the home of a *khonsaye*, unless it was a matter of urgency. The legal cases had to be heard only when the *myowun* was in his office⁸⁰. The *myowuns* had to be at the *awemyowun yon* daily except on the Sabbath days to try the civil and criminal cases. The *awemyowun yon* was a court with a jurisdiction over the suits not exceeding 1,000 kyats in value⁸¹.

If the *myoyon ayashi* (officers of the *myoyon*), the *myothugyi*, *ywathugyi* or the *thwethaukkyis* took bribes, they could be sued in the *myowun yon* concerned. If the *myowun's* decision was not acceptable the offender could be sent to the *ayashigyi* and the two *sayegyis* would have to try him, and their decision would be final⁸².

As to the civil cases that arose among the inhabitants of the towns and villages distant from the capital, the officer in charge of a locality (either a *myothugyi* or a *ywathugyi*) had to decide the cases that fell within his jurisdiction. If the litigating parties in a case belonged to different localities, the *myoyon* concerned would have to try the case. This is prescribed by law as follows:

As to the civil cases that arise in the towns and villages distant from the capital, the officer in charge of a locality (either a *myothugyi* or a *ywathugyi*) has to decide the cases if both parties dwell in the locality under his charge. If the litigants are from different villages within the same *myo* (township), the case must be tried by the *myoyon*⁸³.

⁸⁰ Taw Sein Ko, 1977, 30

⁸¹ Tin, 1976, 263

⁸² Taw Sein Ko, 1977, 29

⁸³ Taw Sein Ko, 1977, 29

In the reign of King Mindon, a law was issued to prescribe the judicial fees⁸⁴. However, the legal costs recorded by a litigant⁸⁵ in a land dispute litigated at Powa village, which was situated to the north of the river at Madaya, in 1859 show that this law was violated by some officials⁸⁶. When King Thibaw ascended the throne in 1878, a law was issued to fix the rates for legal fees collected from the litigants. As the rates fixed by King Thibaw were almost the same as those fixed by King Mindon, it can be assumed that King Thibaw based his law on the law enacted by King Mindon. After promulgating this law, orders were issued to the officers of the *myoyon*, the *khayaingwuns* and the courts at the royal capital that they were not to collect more than the amount prescribed by law⁸⁷.

The officers of the *myowun's* court, after hearing the civil and criminal cases, were not empowered either to imprison or release the defendants. They had to refer the matter to the *khayaingwun*, and could inflict prison sentence on the defendants or release them only if the *khayaingwun* ordered to do so⁸⁸.

Appeals against the decisions made by the *myowun yon* could be made to the *khayaingwun yon*, the appeals from which lay to the *Hluttaw*. The appellants had to file his or her appeal by presenting the examinations and decision made by the *khayaingwun yon*. The people could not file suits to the *khayaingwun yon* for the legal cases that arose in the towns and villages. They had to take the matters to the *myoyon* first. For the oppression of the *myothugyis*, however, the people could bring the matters directly to the *khayaingwun yon*⁸⁹. The *khayaingwun* was

⁸⁴ See Appendix (1)

⁸⁵ See Appendix (2)

⁸⁶ U Thaung “*Myeya Kyukyawhmu Taya*” (“Legal case on land trespassing”), *Working People's Daily*, 23 February 1971 (Henceforth: U Thaung 23 February 1971)

⁸⁷ Ohn Kyi, 1968, 281

⁸⁸ Taw Sein Ko, 1977, 45

⁸⁹ Taw Sein Ko, 1977, 44

empowered to decide the legal cases not exceeding 1000 kyats in value⁹⁰. Each *khayaing wun* had to send bi-monthly reports on all the cases tried by the *myoyons* under him to the king stating how the officers of the *myoyon* examined legal cases, how they made their decision, whether they followed the procedures properly, whether they worked hard and whether they were competent in trying the cases⁹¹. It seems that the *khayaingwuns* were given this duty so that they would inspect how the officers were carrying out their duties in administering justice, and so that their decisions would be just.

To sum up, in the Konbaung period various classes of courts were formed at the royal capital and in other towns and villages so that the administration of justice would be speedy and fair. The courts that could try the civil and criminal cases that arose in the capital city were the *Hluttaw*, the *She-yon*, the *Nauk-yon*, the *Taya-yon* and the *wun-eings* and *pyin-eings* concerned. The courts where the legal cases were tried in other towns and villages were the courts of the *myothugyis* and *ywa thugyis*, of the *awemyowun* and of the *khayaingwun*. The courts at the capital – the *Hluttaw*, the *She-hon*, the *Nauk-yon* and the *Taya-yon* tried the cases that occurred at the capital, heard the appeals against the decisions made by local courts, and decided the civil and criminal cases that were not under the jurisdiction of the *myowun yon* and *khayaingwun yon*.

Among the courts of law, the *myoywa thugyi yons* were the lowest courts and were empowered to try the cases up to 500 kyats in value. Appeals from these courts lay to the *awemyowun yon*. 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, *eingye hteinchanhmu* (reducing the number of households under one's jurisdiction in the reports), *myowun* and *sitkes*' taking graft. Appeals against the decisions made by

⁹⁰ Tin, 1976, 263

⁹¹ Taw Sein Ko, 1977, 45-6

the *myowun yon* could be filed to the *khayaingwunyon*. The *khayaingwun* was empowered to try civil suits up to 10,000 kyats in value. Except for cases of oppression by the *myothugyis* and *ywathugyis*, the people could not file their petitions directly to the *khayaingwun yon*, which was the highest provincial court.

The *She-yon*, which served as a criminal court at the royal capital, tried the criminal cases. The *myowuns* heard criminal cases at the *She-yon*, and they were required to seek permission from the *Hluttaw* if they needed to inflict severe punishments. However, they were empowered to inflict pecuniary penalty, flogging, detention, or imprisonment for a short period by themselves. The *Anauk-yondaw* had jurisdiction over some cases—verbal abuse, assaults, thefts, kidnappings and disputes over debts—that arose among the members of the *Anaukwun wunsu*. They also had to enquire into and decide upon the criminal cases involving queens. As King Thibaw abolished the custom and prescribed that all the civil cases were to be tried by the *Taya-yons* and the criminal cases were to be tried by the *She-yondaw*, the *Nauk-yondaw* ceased to have judicial powers. Concerning the cases arising among the common citizens, the *Taya-yon* summoned both parties to appear before the court for examination. The *Taya-yondaw* had jurisdiction especially over the following cases: disputes over the ownership of slaves, verbal abuse, land disputes, disputes over debts, assault, cases involving a family member, inheritance suits, etc. The civil suits had to be filed to the *Taya-yon* and only the cases that were not concluded by the *Taya-yon* were to be referred to the *Hluttaw*. The *Hluttaw* was the highest appellate court subordinate only to the king himself, and had unlimited civil and criminal jurisdiction.

Although the judiciary was the same in the early and middle Konbaung period, more courts were established at the close of the Konbaung period. In the reign of King Mindon, the Myanmar government had to give in to the British

demand to establish the *twebet-yon*, formed with Myanmar and foreign judges. In addition, King Mindon appointed judges who were versed in the law so that judicial administration would be effective. It can be assumed that such reforms made by King Mindon would have improved the judicial administration and sped up the judicial process.

More reforms were made in the reign of King Thibaw. He abolished the *khondaws* established by King Mindon, and established new courts—*tayahtanagyoat yon* and *asi awe win hmudaw mattaw yon*—at the royal capital. In the early days of the Konbaung period, appeals against the decisions made by the judges of the *Taya-yon* had to be filed to the *Hluttaw* to be tried by the *wungyis*. In the reign of King Thibaw, in contrast, the appeals from the *Tayayon* lay to the *tayahtanagyoat yon*, the appeals from which again lay to the *asi awe win hmudaw mattaw yon*. Only the appeals against this court could be made to the *Hluttaw*.

It can be assumed that King Thibaw formed the *tayahtanagyoat yon* and the *asi awe win hmudaw mattaw yon* following the system of the kings' ruling their kingdoms after consulting with the ministers in the West. Moreover, in King Thibaw's reign, Lower Myanmar was occupied by the British, who were finding some pretext to annex Upper Myanmar, causing the *Hluttaw* to focus on administrative and security matters. Therefore, King Thibaw was probably trying to lighten the *Hluttaw's* workload by reducing the number of legal cases it had to try. The establishment of the *tayahtanagyoat yon* and the *asi awe win hmudaw mattaw yon* at the capital for the administration of justice was a new innovation in the administration of justice.

Although the Myanmar judiciary did not change much in the early and middle Konbaung period, new courts were established in the later Konbaung period. This would have expedited the judicial process. It was probably done to move with the times.

CHAPTER TWO

CRIMINAL CASES

In the Konbaung period, 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.¹ In 1784, Badon Min issued an order to class adultery (with a married woman) as a major crime.² Causing disorder or turmoil in a region also was a major crime.³ Minor criminal cases were those called *myethnanyihum*, which had a complainant or an accuser and a defendant or an accused person such as involuntary manslaughter, assault, verbal abuse etc.⁴

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 *maungkyawdan* (proclamation) depending on the severity of the crime.⁵

¹ Tin, 1976, 255

² U Aung Than Tun, *Myanmar Min mya Taya Siyinye (Judicial administration under Myanmar Kings)*, Yangon, Kalaungbyan, 1968. p. 79 (Henceforth: Aung Than Tun, 1968 b)

³ Dr.Than Tun, *The Royal Orders of Burma, AD 1598-1885 Part v. AD 1788-1806*, Kyoto: Centre for Southeast Asian Studies. Kyoto University, 1986, p.696 (Henceforth: Than Tun, 1986 b)

⁴ Tin, 1976, 255

⁵ Tin, 1976, 254

In a criminal case with no witnesses, one of the four ordeals (*kaba le yat*)–*ye-ngoate* (submerging in water), *mipyaing* (lighting tapers), *san-wa* (chewing rice), and *hkehtauk* (dipping one's finger in molten lead) would be resorted to, or the trial would be conducted by means of oaths upon the scriptures. 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 as follows:

If the two litigants' statements differ, and both sides failed to call witnesses because the incident happened along time ago or to present old records including inscriptions as evidence, and if the documentary evidence presented was not trustworthy, the precedent was to conduct the trial by one of the four ordeals...⁶

If a trial was conducted by one of these four ordeals despite there was sufficient evidence, the responsible officers would be punished:

It came to my notice that Sithu Thinkkaya, the judge, decided to conduct trial by *ye-ngoat* (water ordeal) even though there was a witness who knew the matters concerning the dispute over the ownership of a slave between Dhammawethu's mother-in-law Mi Ya and Mi Yaw. If there is a witness, the decision must not be made by water ordeal. It was breaking with precedent. Moreover, the pleaders, who would have to record the matter and report if the judicial process was improper, they failed to do so they had followed a wrong judicial process. Prosecute judge Sithu Thinkkaya and the pleaders.⁷

Thus, the judge Sithu Thinkkaya and the pleader were punished for deciding this case by *ye-ngoat* (water ordeal) although there was a witness.

Of the four ordeals, *ye-ngoat* is a form of trial to determine whose statement was right by making both the accuser and the accused to submerge

⁶ Than Tun, 1986 a , 230

⁷ Than Tun, 1986 a, 772

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 as follows:

I vow that neither I nor anybody on my side would use tattoos, amulets, cabalistic squares, charms, sorcery or mantras. If my statement is false, may I fall under the curse contained in this book. If it is true, may I be able to submerge under water.⁸

After that, ropes would be tied around their waists. Then the words of *achuat adeithtan* (the binding oath) would be read out three times, and with the *achuat adeithtan* 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.⁹

Of the four ordeals used by the courts at the royal capital, the ordeal by water was also used in the Shan States in the Konbaung period. In 1763, during the reign of King Sinbyushin, a dispute arose between the *Sawbwa* of Thibaw and *Thonse-sa* the hereditary chief who held Thonze in fief over the control of the frontier regions of Tikyit, Naungdaw, Naunghlaing, Pyingyi, and Lonka. The case was determined by *ye-ngoat* ordeal, and the *sawbwa* of Thibaw lost the case because he came out of the water first, and had to cede the frontier regions of

⁸ Than Tun, 1986 a, 426-427

⁹ Tin, 1976, 273-274

Tikyit, Naungdaw, Naunglaing, Pyingyi, and Lonka to *Thonse-sa*.¹⁰ The water ordeal was resorted in a case heard at the *Sheyondaw* (Eastern Court, i.e. 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 Nag Myat Ya. Therefore, Mi Toat lost this case. However, it is not known what the case was about.¹¹

In using the ordeal by water to decide the cases if there was no evidence, a litigant could ask someone else to submerge under water on his or her behalf. In a legal case Pondaung Kyawhtin, the *kyunthidawgyi* (pagoda slave) of Shwe Yin Hmyaw pagoda vs Nga Kaung Pye who held the title Shwedaung Thura Kyawswa that arose in 1777, during the reign of King Singu, the court allowed an outsider to submerge under water on behalf of litigant to determine whether Pondaung Kyawhtin was a *hpayakyn* (pagoda slave) or a *minkyun* (crown slave).¹² In King Mindon's reign, a Shan trader lost his money bag while he was inspecting fabrics in a Chinese store, and he took the matter to court. Then, as the Chinese shopkeeper and the Shan customer could not present evidence, they were ordered to undergo *ye-ngoat* (water ordeal), although the Chinese shopkeeper objected saying that it was not a custom among the Chinese. But, the court did not change its decision, but let the Chinaman ask someone else to submerge under water on his behalf.¹³ It seems that litigants were allowed to nominate proxies to undergo the ordeal for them because the ordeal was severe and could kill them. Therefore,

¹⁰ Tetkatho Winthan, “*Nemye Asu Anyin Hpyatsa Dazaung*” (“A written decision on territorial disputes”), *Hanthawady Daily*, 18 June 1978 (Henceforth: Tetkatho Winthan, 18 June 1978)

¹¹ *Yazatheikpa Thatta Kyangyi*, Inn-ywa Mothit, Pylonhmanu press, 1929, pp.129, 130 (Henceforth: *Yazatheikpa Kyan*, 1929)

¹² Ba Thaug, *KonbaungKhit Taya Upade (Law of the Konbaung period)*, M.A thesis, Mandalay Arts and Science University, 1975, p.155 (Henceforth: Ba Thaug, 1975)

¹³ Ludu U Hla, *Thadinzamyathi Thanaingko Pyawpyaneyathi (Newspapers reflect history)*, Mandalay, Kyipweye press, 1963, p.277 (Henceforth : U Hla, 1963)

when there were no witnesses, the water ordeal was used in every case, whether it involved only natives or both natives and foreigners. According to the court fees prescribed in 1878 during the reign of King Thibaw, the fee for *ye-ngoat* to be collected from the litigants was only 5 *mu* for compiling the binding oath.¹⁴ Therefore, it is clear that *kaba le yat* (that four types of trial by ordeal) were practiced till the reign of King Thibaw.

As the cases 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 of 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, cabalistic squares, etc. Then, they would have to 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 case.¹⁵

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.”¹⁶

Then, the *achuat adeithtan* document (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

¹⁴ “1240 *Ameindaw*” (Royal Order of 1878), *Purabaik* MS 286, Yangon, National Library (Henceforth: “1240 *Ameindaw*”, *Pu* MS 286)

¹⁵ Tin, 1976, 268-270

¹⁶ *Yazatheikpa Kyan*, 1929, 134

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 1 *mu*, while that of Mi San's candle was 3 *mat*. As the unburnt wick of Mi San's candle was heavier, she lost the case.¹⁷ In this case, if both the candles burnt down till the end, the litigant whose candle went out first would win the case. However, they did not. Hence, the unburnt wicks had to be weighed, and the person whose candle left the most wick lost the case.

One of the *kaba leyat* (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 *achuat adeithtan* document (binding oath) would be wrapped around each of their necks. 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. 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 loser.¹⁸

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 Badon Min. 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 case.¹⁹

¹⁷ *Yazatheikpa Kyan, 1929, 133-134*

¹⁸ Manu Amat, *Manukye Dhammathat (The Enlarged (Dhammathat) Code of Laws on Manu)* Yangon, Hantcharwady, 1903, p.258 (Henceforth: Manu Amat, 1903)

¹⁹ *Yazatheikpa Kyan, 1929, 141-142*

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 *achuat adeithtan* document (binding oath) would be wrapped around each of their necks.²⁰ The litigants 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.²¹ 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.²² 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 case.²³ 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*. In 1807, during Badon Min's reign, 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 acquitted.²⁴

²⁰ Tin, 1976, 271

²¹ Than Tun, 1986 a, 425

²² Reverend Father, Sangermano, *A Description of the Burmese Empire*, Yangon, Government Press, 1962 (Reprint), p.72 (Henceforth: Sangermano, 1962)

²³ Tin, 1976, 271

²⁴ *Yazatheikpa Kyan*, 1929, 137-138

Thus, in criminal cases where there were no witnesses, the four types of trial by ordeal would be resorted to in the Konbaung period. However, there was no direction as 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 (*kaba le yat*)–*ye-ngoat* (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-ngoat*, and *hkehtauk*) as they traditionally believed that justice would be guarded by the *nats* (spirits or deities).

Some criminal cases could also be decided by means of oath upon sacred texts²⁵ if there were no witnesses. Cases involving loans between 10 and 60 *kyats* were not to be decided by *kaba le yat*, but the litigants were to be ordered to take oaths. The judges normally believed the statements of the litigants under oath. The methods of taking an oath varied according to the value of the cases and the social status of the litigants. There were fifteen ways to take an oath. The litigants would be categorized into low, middle and high classes. There were five different places where an oath could be taken: *nemye neya* (wherever the litigant was), *myebaw* (upon the ground or below a pagoda), *hlega-oo* (at the head of the stairway) leading to a pagoda, *hlegayin* (at the foot of the stairway) leading to a pagoda, and *zedidawdwin* (at the pagoda). As there were five places for men of each of the

²⁵ The Buddhists had to swear upon the Tipitaka, and the followers of other religions had to swear upon their own sacred texts. U Tin , 1976, 264

three social classes (high, low and middle), there were altogether fifteen different methods of taking an oath.²⁶

For a case the value of which was ten *kyats*, a man of low class, of middle class, or of high class would have to swear an oath at the pagoda, on the ground below the pagoda, or at the place where he was, respectively. For a case of 30 *kyats* in value, a man low class, of middle class or of high class have to take an oath at the Natye Zedi, at an ordinary pagoda, or at the place where he was, respectively. In a case the value of which was 60 *kyats*, the places where a man of low class, of middle class and of high class would have to take an oath were at a famous pagoda, at the Natye Zedi (a pagoda with a fierce guardian spirit) and at an ordinary pagoda, respectively.²⁷

In the courts of law, not only the litigants, but also witnesses had to testify under oath. The oath was written as follows:

May the ills mentioned befall on the witness who testifies that he or she did not know, did not see, or did not hear although he or she knew, saw or heard, that he or she knew, saw or heard although he or she did not, that there were not many things although there were many, that there were many things although there were not, because he or she dislikes one of the litigants, because he or she is biased in favour of or against a litigant who has a high or low social position or a litigant who has or has not done much favour to him or her, or because he or she has taken bribes from a litigant.²⁸

However, there were some who were exempted from taking an oath: monks, the king, queens, princes and princesses and high-or low-ranked *wuns*. It seems that they were exempted from swearing an oath because they were regarded as the ones who would not give false statements. In other words they were

²⁶ Tin, 1976, 265

²⁷ Tin, 1976, 265

²⁸ Khin Maung Hte, 1975, 100

exempted from taking an oath because of their positions of honour, because swearing an oath amounted to being convicted and the person who had to take an oath would normally be shunned by the people. According to the royal orders King Mindon and Thibaw issued to fix court fees, the practice of deciding a case on the basis of an oath was followed in their reigns.

Concerning trials conducted by means of oaths, the law was inequitable as some persons were exempted from taking an oath and the methods to take an oath varied according to the ranks of the litigants or witnesses. In fact, the law should be equitable and nobody should be above the law. Therefore, it seems that the law in the Konbaung period was not equitable, and there was discrimination of the grounds of social class.

As the cases were decided by *kaba le yat* if there were no witnesses, the persons accused of being witches were thrown into the water to torture the truth out of her. The difference between this and *ye-ngoat* (the trial by water ordeal) of the *kaba le yat* was that here only the accused was thrown into the water.²⁹ In 1795, a certain Mi Thu was accused as a witch. However, when she was thrown into water, none of the knots of the rope tied around her waist submerged under water. Hence, she was acquitted.³⁰ Concerning the ducking of witches, the accused person had to undergo personal suffering.

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 holes or by holding his legs a hole apart. Then, he would be tortured by

²⁹ When a person accused as a witch was thrown into the water a robe with seven knots would be tied around her waist, and whether she was a witch or not would be decided by the number of knots submerged under water.

³⁰ *Yazatheikpa Kyan, 1929, 132*

holding his legs tightly in a bamboo clamp, by driving a needle under his fingernail, by holding his head in a clamp with betel nuts between his temples and the clamp, by flogging him with a cane or a bamboo stick, and by *kwesigyin*.³¹ If an accused person did not survive torture and died, a report would be made to the Hluttaw, and the corpse would be set up on a cross for the public to see.³² Only when the accused admitted to a serious crime, the judge could inflict a penalty allowed by law. The punishments for different crimes- lese majesty, murder, rape, armed robbery, and theft-differed: flogging, confinement in iron chains, severance of a limb, banishment, etc.³³

Concerning major crimes, the punishment imposed on a thief depended on the value of the stolen property.³⁴ 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 victim:

The record of investigation submitted indicates that a thief broke into Nga Ku's house to steal at night in Palaing ward, northern part of the city of Shweku, and the responsible personnel of the ward failed to catch the thief. The person whose possessions have been stolen is to say what he has lost. The *htaunghmu*, *kin-oat*, *kin-gaung*, *kin-zaung*, *kinne thwegyi thwesaw* and the inhabitants of the ward are to recompense the victim for the loss of his possessions as he says.³⁵

³¹ 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.

³² Tin, 1976, 267

³³ U Aung Than Tun, *Myanma Taya Upade Ei Ahittaramya (Essence of Myanmar Law)* Yangon, Shwezigwet Upade Publications, 1987, p.20 (Henceforth: Aung Than Tun, 1987)

³⁴ "1146 *Htoatpyanthi Ameindaw*" (Royal Order promulgated in 1784), *Purabaik* MS 1497, Yangon National Library (Henceforth: "1146 *Ameindaw*", *Pu* MS 1497)

³⁵ Dr. Than Tun, *The Royal Order of Burma, AD 1598, 1885, Part vii, AD 1811-1819*, Kyoto, The Centre For South East Asian Studies, Kyoto University, 1988, p.692 (Henceforth: Than Tun, 1988)

When the house of Taungbet Taikwun was broken into, the thieves were not caught because the people in the ward did not help catch them. Therefore, the people had to compensate the victim for his losses. The watchmen of the Taungbet Taik also were punished with five strokes of the lash for being remiss in their duties.³⁶

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 robbers. For instance:

Law Haluk, Lawran, Law Twin and Law Ma, the merchants from the town of Tali, Law Sho, Lawsa, Lawwe, Lawwin, Lawyanngin and Lawteinton from Yonsin town who hired out packs bullocks, were robbed of their possessions—gold, silver and fabrics in Thibaw township, while they were on their way to royal seat for trade, and they reported the matter to the *Shwetaik Wun*. The *Shwetaki Wun* ordered: The town of Thibaw (ie the administrative officials and the inhabitants of Thibaw town collectively) is to arrest the robbers and hand them over to the responsible personnel; otherwise, it was to recompense the Chinese merchants for everything robbed.³⁷

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.

Within Tabayin township, the *myowun* and *myothugyis* of Tabayin are to arrest the thieves and robbers. Within Bagan Township, the *myo-oak* and senior

³⁶ Than Tun, 1988, 278

³⁷ Than Tun, 1986 b, 807

and junior thugyis are to catch them in Bagan Township. If they failed to catch the criminals, bring criminal charges against them.³⁸

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.

Yehla Kyawswa, the *myowun* of Tabayin, did not apprehend and hand over all the accomplices mentioned by the thieves and rebels. Shwedaung Nandameit Sithu the *myowun* of Yadanatheiga failed to report that the *thugyi* of Mutha obstructed the efforts of the officers responsible for apprehending thieves. Remove Yehla Kyawswa and Nandameit Sithu from the office of *myowun*, and bring them over to the royal capital and put them in jail.³⁹

Thus, the punishments were not commensurate with the crimes.

Theft carried a penalty of death.⁴⁰ In 1806, Nga Mauk and his accomplices who committed the robberies were sentenced to death:

Execute Nga Mauk and his accomplices-Nga kyi, Nga Thanyogyi, Nga Ywegyi and Nga Hkwegyi-and a band of robbers.⁴¹

Moreover, administrative officers responsible for apprehending thieves and robbers would be imprisoned, removed from office, or sentenced to death if they

³⁸ “1146 *Ameindaw*”, *Pu* MS 1497

³⁹ Dr. Than Tun, *The Royal Order of Burma, AD 1598, 1885, Part vi, AD 1807-1810*, Kyoto, The Centre For South East Asian Studies, Kyoto University, 1987, p.683 (Henceforth: Than Tun, 1987)

⁴⁰ Than Tun, 1988, 217

⁴¹ Than Tun, 1986 b, 1006

failed to catch the thieves and robbers who committed crimes in the locality under their charge. When Kyawswa of Pyanchi village caught the robbers Nga kauk and Nga Shwemin on 8 June 1810, they 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 Kyawswa reported the matter to the Hluttaw. The Hluttaw sentenced Nga Kyaing to death for this case.⁴² After appointing security officers in towns and villages, it is stated in a royal order that the officers in charge of towns and villages would be sentenced to death if thefts and robberies occurred because of their derelictions of duty as follows:

Thiri Sithukyaw is to be attached to the Shwepandan boat (Boat squadron) and is to be ordered to go from Thawa to any towns or villages downstream if he learnt that there were thieves, robbers and criminals to arrest them. No thief or robber is to be allowed to enter the towns and villages in Pyi, Thayarwady, Kanaung, Shwedaung, Myede, Taungoo, Yamethin and Taungdwin. The headmen of the towns and villages are to arrest the criminals for the security of the towns and villages. If there are thieves and robbers or if the thieves and robbers enter a town or village and if they were not caught, the headman of the town or village are to be executed.⁴³

If the criminals pledged that they would not commit crimes anymore, they would be pardoned would be allowed to become crown servicemen:

⁴² Than Tun, 1987, 764

⁴³ Yi Yi, “Konbaung Khit-Oo Myone Oakchoatpon” (“Township administration in the early Konbaung period”), *Journal of literature and social science, Union of Myanmar*, Vol I, no.ii, 1968, pp.343-395 (Henceforth: Yi Yi, 1968)

The lives of Netmyaung Nga Aye, Nga Aye of Wayon, Nga Pon, and Nga Luyi and their accomplices, who had pledged that they would not commit no more crimes as thieves or robbers and that they would serve for the crown, would be spared. Let them serve under the crown prince.⁴⁴

Thus, those who expressed repentance for their crimes and expressed their desire to expiate for their wrongdoings, they were not only pardoned, but allowed to become crown servicemen. However, when the king needed labour for nation building, the criminals who were arrested were made to scoop out sand with iron chains fastened around their necks.

Bring the thieves and criminals imprisoned at the capital and, after fastening iron chains around their necks, let them scoop out sand. Make the thieves and robbers interrogated in remote village scoop out sand too, after fastening iron chains around their necks.⁴⁵

When the king needed labour for reconstructing the palace, although he believed that those criminals should be sentenced to death, he made them atone for their crimes by prying out rocks to be used in building the Glass Palace.

Nga Kyaw Oo, Nga Po and others have been made to dig rocks after pardoning their crimes. They are to obtain more than eight lakhs of rocks for building the Glass Palace by the month of Tabodwe. If they failed to deliver the rocks fully, inflict penalties on them.⁴⁶

Thus, the criminals were to be executed only if they failed to deliver rocks fully within the stipulated period; and hard labour was imposed on them, to utilize

⁴⁴ Than Tun, *1988*, 163

⁴⁵ Than Tun, *1987*, 659

⁴⁶ Than Tun, *1987*, 853

their labour. On 7 June 1801, Nga Shwe Htin and his son Nga Aung Hmat were sentenced to death for committing a serious crime that caused uproar 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 their families and were placed under Thiriweyan, the Lamaing Wun (the *wun* in charge of crown cultivators).⁴⁷

Although the punishments for theft and robbery were severe, the punishments varied according to the nature of these crimes. Moreover, the punishments were not proportionate to the crimes. Although someone who stole from crown revenues was to repay ten times what he had stolen, Nga Kan Pe, a minister who stole from crown revenues was pardoned on 19 October 1810 because this was his first offence.⁴⁸

All the kings of the Konbaung period sentenced the persons who were guilty of lese majesty—an attempt to usurp the throne or rebelling against the reign king to death. In the reign of King Alaungmintaya, the person who held Dawe in fief, was sentenced to death because he rose in rebellion.⁴⁹ The prince of Sitha, the younger brother of Badon Min, 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.⁵⁰ 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 Badon Min. Nga Hme, the astrologer, who helped them

⁴⁷ Than Tun, *1986 b*, 696

⁴⁸ Than Tun, *1987*, 780

⁴⁹ *Alaungmintaya Ameindawmya (Royal Orders of Alaungmintaya)*, Yangon, Myanmar Historical Commission, 1964, p.149 (Henceforth: Laung Mein, *1964*)

⁵⁰ Dr. Kyaw Thet, *Pyidaungzu Myanmar Nainggan Thamaing (History of the Union of Myanmar)*, Yangon, *Khit Myanmar Press*. nd, p.330 (Henceforth: Kyaw Thet, *nd*)

was deported to a forest. Those who failed to inform the king although they knew this attempt were also imprisoned,⁵¹ and those who instigated them to rebel were sent into banishment.

Kyaik Bandaing, Thawuthti, Sipa and Htadabin, although they should have observed the *vinaya* rules with a view to attaining the Path to *Nibbana* and the Fruition *Nibbana* as they were monks, and live peacefully, they failed to do so. They mixed up with laypersons, and discussed secular matters as to kingship. Defrock Kyaikbandaing, make him wear white robes and send him to Kankaw Kalaw. Send each of the remaining three—Thawuthti, Sipa and Htadabin—to the remaining three of the four forests used as penal colonies.⁵²

Thus, although they were monks, they were defrocked and banished to Gangaw Kalaw because they had abetted the pretenders to the throne. In the reign of King Mindon too, Padein Mintha (the prince who held Padein in fief) was executed for rebelling against the king in 1867.⁵³

It is learnt that the successive kings of the Konbaung period 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 crimes as follows:

If a man has sex with a young maiden who is still under the care of her parents, reduce the number of lashes and punish him with *manugkyaw dan* (proclamation).⁵⁴

⁵¹ Than Tun, 1986 a , 311

⁵² Than Tun, 1986 a, 233

⁵³ *Konbaungzet Maha Yazawidawgyi (Great Chronicle of Konbaung Dynasty)* edited by U Maung Maung Tin, Vol.III, Yangon, Universities Historical Research Centre, 2004,5th printing, pp.243-244 (Henceforth: *Konbaungzet, 2004 b*)

⁵⁴ “1146 *Ameindaw*”, *Pu MS 1497*

As to adultery, which was a major crime, the judgement pronounced on 12 September 1787 in the case involving Nga Taloat, who had an adulterous relationship with Mi Naw, wife of Thayewun Minhla Kyawswa as follows:

Hand over Nga Talop, who had an adulterous relationship with Thayewun Minhla Kyawswa's wife and Mi Naw, the wife of Thayewun Minhla Kyawswa to the grave-diggers, and make them stay at the open-hall at the cemetery unclothed so that they would be noticeable, let all those who come to the cemetery see them.⁵⁵

However, the punishments were mitigated on 13 September 1787—Mi Naw was imprisoned and Nga Talop was made to gather elephant food.⁵⁶ On 8 November 1788, Nga Tha Mya who had raped his step daughter who was only eight years old was punished by proclamation and banishment.⁵⁷ In the reign of Badon Min, an order was issued that rape carried death penalty.⁵⁸ Pursuant to this order, Hkinlubo and his lackeys who raped the wives and daughters of the villages were sentenced to death on 15 October 1806.⁵⁹

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. A list of serious criminal cases is given in appendix (3) .

In 1789, a royal order was issued as to murder, a serious crime like lese majesty, theft, armed robbery, rape, etc. According to it, the murder of a person

⁵⁵ Than Tun, *1986 a*, 59

⁵⁶ Than Tun, *1986 a*, 595

⁵⁷ Than Tun, *1986 a*, 646

⁵⁸ Yi Yi, 1968, 343-395

⁵⁹ Than Tun, *1986 b*, 1006

should not be solved by making the murderer pay compensation to the victim's family; murder carried death penalty.⁶⁰

Thugyi Nga Pe, beat Nga Nyo, an inhabitant of Konkan village in the tract of Sinyin Town, to death on 3 July 1801. Nga Pe was found guilty, and pursuant to the royal order issued in 1789, was sentenced to death.⁶¹

The punishments to be inflicted for the crimes such as assault, verbal abuse, bribery and embezzlement also were prescribed. Formerly, if the victim of an assault was a poor person, the offender would have to give three slaves⁶² to the victim in recompense for the injury: and if the victim was a wealthy man, the offender would have to give six slaves⁶³ to victim in compensation for the injury he had suffered.⁶⁴ Badon Min 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.⁶⁵

As to Nga Hpyu and Nga Thu assault on Nga Paw Tin of Ma-u village, Maung Hmaing, judge and *myowun* of Yadanatheinga, decided on 20 August 1796 that the offenders were to give the value of two *asume* slaves⁶⁶ to the victim.⁶⁷ In

⁶⁰ Than Tun, *1986 b*, 445-458

⁶¹ Than Tun, *1986 b*, 735

⁶² or 180 *kyats* as the value of a slave was fixed at 60 *kyats*.

⁶³ or 360 *kyats* as the value of a slave was fixed at 60 *kyats*.

⁶⁴ Tin, *1967*, 45

⁶⁵ Than Tun, *1986*, 448

⁶⁶ The value of an *asume* slave was fixed at 60 *kyats*.

another case (Nga Tha vs Nga Hle), which arose in 1798, Nga Hle, the offender, had to give ten *asumes* slaves to Nga Tha whom he had attacked.⁶⁸ In 1805, Yandameit Kyaw Htin decided that Nga Bya Hin who had beaten up Nga Sandayaw was to give the latter the cost of *asume* slave.⁶⁹ Therefore, the punishments for assault varied with each case. The punishment probably depended on the judge.

Insulting someone harshly or coarsely, falsely accusing someone, or traducing someone's character was *hnoatlunhmu* (verbal abuse), and was legally punishable. Verbal abuse was compoundable by giving gold, cloth, tea, *ondwe* and bolts of fine calico to the victim who was an officer of the "five ranks" (*neyadaw nga thwe*) honoured by the king, depending on his rank. The compensation to be given to an officer of *tawneya* (first out of the five blocks of seats to which courtiers attending an audience given by the king area assigned according to protocol) was five ticals of gold and that be given to a *hnigaukne* (or courtier of the lowest rank) was half a tical.⁷⁰ Thus, the compensatory damages an offender was required to pay for the same offence depended on the victim's rank. Moreover, the *thugaungs* (or nobles) who were honoured by the king enjoyed some privileges, and the Dhammathats prescribed the punishments based on the ranks of the peoples.

On 29 November, 1789, Mi Nyein Aung was found guilty of verbal abuse because she used the pronoun *nin* (meaning 'you') in addressing Mi Min Aung. In this case, Hmaung Hmaing, the *myo-oak* of Halin pronounced his judgement, as follows:

⁶⁷ Yantamaik Kyaw Htin, *Yezagyō Khondaw Hpyathton (Rulings by the Judge of Yezagyō)*, Yangon, Hantharwati Press, 1964, p.28 (Henceforth: Kyaw Htin, 1964)

⁶⁸ Kyaw Htin, 1964, 24

⁶⁹ Kyaw Htin, 1964, 26-27

⁷⁰ Tin, 1967, 43

As Mi Nyein Aung has offended Mi Min Aung, she was to be required to pay compensatory damages. However, the legal expenses incurred by Mi Min Aung exceeded compensatory damages awarded to her. Revoke the compensation awarded to the victim, and let Mi Nyein Aung pay Mi Min Aung all the legal expenses incurred.⁷¹

In 1795, Nga Shwe Bin sued Nga Hpyu and wife Mi Kaung, for defaming his wife Mi Oo by saying that she had an abortion. Maung Hmaing, the *myowun* of Yadanatheinga decided as follows:

There were three, five or ten ways of attacking someone with verbal abuse; in deciding on the punishment that seems to suit the offence in conformity with the ruling that “if the compensation exceeds legal expenses, all the legal expenses are to be paid by the offender, Nga Hpyu and wife Mi Kaung are to compensate Nga Shwe Bin for the legal expenses incurred.⁷²

As to cases of bribery and embezzlement, Badon Min issued an order in 1783 that the offenders were to be punished by *maungkyawdan* (publicizing their crimes) both inside and outside the city, and molten silver, the amount of which equalled 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 crimes.⁷³ However, in a case of bribery committed by a group of people, the following judgement was pronounced on 13 June 1795:

The *myinzi*⁷⁴—Nga Nyo, Naga Ein, Nga Hmaing, Nga Htwe, Nga Kyan, Tuyinpyanchi Letya Thiri Kyawgaung, Nga Wa, Nga Nwe, Nga

⁷¹ Kyaw Htin, 1964, 2-3

⁷² Kyaw Htin, 1964, 11-13

⁷³ Than Tun, 1986 a , 284

⁷⁴A *myinzi* was a cavalry officer who, with the same rank as *thugyis*, had to rule a locality inhabited cavalrymen.

Myatkaung, Nga Oo, Nga Tha Tun Nyo, Nga La, Nga Chin Hlaw and Nga Tha—who were sent to bring the *atwinwuns* (privy councilors) from Taungoo took bribes though they should not. They should be executed. However, as this was the only crime they have committed, release them after publicizing their crimes by striking gongs and flogging them brutally so that everybody who see them being punished would be afraid.⁷⁵

It is learnt Badon Min's edict dated 22 March 1806 that the *kindaings*⁷⁶ had embezzled the duties collected from the boats which the Kyauktalon *Kin* (custom post) had permitted to pass through it. Therefore, the *kindaings* were made to return the funds that they had embezzled. It is stated in the royal order issued four months later, on 22 August 1806 that “*Kindaing* Nga Thu, together with his family and his relatives⁷⁷ were to be burnt alive in a fire chamber,” and that “Naratheinhka, the *kindaing* of Kyauktalon, was to be removed from office”.⁷⁸ Moreover, it was decided on 10 November 1807 that the *tathmu* (commander), *sitke* (second-in-command) and military officers who had embezzled the funds from Mone regiment were to be executed so that others would be afraid.⁷⁹ The persons who took bribes had to return whatever they had taken to the persons who had bribed them.

Among the statements made by Nga La, Nga Taw and Nga Mauk when they were questioned, there are inconsistencies in Nga Mauk's statement. It should not be regarded as true. Nga La and Nga Taw's statements must be true. Nga pu,

⁷⁵ Than Tun, 1986 b, 535

⁷⁶ A *kindaing* was the leader of the servicemen posted at a *kin* (or watch post) who were responsible to collect customs duties.

⁷⁷ The Myanmar word used in this document is *swe hkunnit set* “seven degrees of ancestors and seven degrees of descendants removed from oneself.”

⁷⁸ Toe Hla, 2002, 148

⁷⁹ Than Tun, 1987, 525

the chief clerk of the *athiwun*⁸⁰, who took bribes and who produced the statements from the prisoners, is to be removed from office. Make him return all the money, horses, cattle he had taken as bribes.⁸¹

Moreover, on 5 August 1813, Badon Min issued an order that the hands of the officers who collected imposts in excess of the prescribed rates at markets, brokerage or landing stages, were to be severed.⁸² It seems that this order had to be issued to protect and safeguard the interests of the people because some officers tried to circumvent the rules by overcharging the taxpayers so that they would not be accused of taking bribes. The Myanmar Criminal Code was compiled in 1864, during the reign of King Mindon, and the crimes and the prison sentences for each crime were laid down clearly.⁸³ The Indian criminal code was introduced in British Myanmar (Lower Myanmar) since 1861. As the Myanmar criminal law was compiled only three years later, i.e. in 1864, it can be assumed that it was based on the Indian criminal code. Moreover, the Myanmar also followed the system of punishing the criminals by imprisoning them. However, the principles underlying imprisonment in British law were not fully practiced. In the British legal system, the inmates were trained in a vocational subject systematically so that he or she would be able to earn his or her keep after he or she was released. However, that no vocational training was given to inmates in Konbaung period Myanmar suggests that the Myanmar had not been able to follow the principles of imprisonment in the British legal system. The prison sentences to be imposed on the servicemen and officials who took bribes, based on the amount of bribes and

⁸⁰ Officer in charge of the crown department responsible for administering the athi (the people were not registered in crown service a groups and who lived permanently in one locality).

⁸¹ Than Tun, *1986 b*, 1006

⁸² Tin, *1970*, 128

⁸³ Ba Thaug, *1975*, 141

the ranks of the offenders, are prescribed in this criminal code.⁸⁴ The enactment of this law suggests that the punishments for bribery varied. Some offenders got prison sentences too severe for the crimes they had committed. Sometimes, however, a convict would be imprisoned for an unlimited period, and would be released only when the king gave his order. It can be regarded that new law was promulgated to eliminate these flaws and to protect the convicts from the sufferings caused by the weaknesses of the existing laws.

Punishments for taking intoxicants, illegal slaughter of horses, buffaloes or cattles and gambling also defined. As to taking intoxicating, King Alaungmintaya issued an order that those who drank liquor were to be beheaded.⁸⁵ A royal order was issued in 1837 when Prince Thayarwady was rebelling against Bagyidaw that bootleggers and those who drank liquor were to be executed.⁸⁶ According to a royal order issued on 10 February 1869, whoever dealt in or took any intoxicants—opium, liquor and fermented toddy, etc.—was to be confined in chains and to be banished to Bamaw, and to be made to clean the platform or flat ground around pagodas for a year; those who were guilty of slaughtering horses, buffaloes or cows also were to be punished in the same way; the gamblers, who played cards, playing pachisi, gambling in cock fights, etc., were to be punished with *maungkyawdan* for a year.⁸⁷ Concerning cardplaying, a decision was made on 31 July 1872 as follows:

⁸⁴ “*Min 6 Pa Upade*”, *Pu* MS 379

⁸⁵ *Laung Mein*, 1964, 137

⁸⁶ *Ba Thaug*, 1975, 139

⁸⁷ Dr. Than Tun, *The Royal Order of Burma AD 1598-1885, Part ix, AD 1853-1885*, Kyoto, The Centre For South East Asian Studies, Kyoto University, 1989, p.691 (Henceforth: Than Tun, 1989)

To determine whether the report made by Nga Yan Nin and his son Nga Thaik that Nga Theinnaw, the village headman of Kaungkwe village, without abiding by the law and without fear, has been playing *hpe-15* (auction pinochle) as a banker, responsible personnel summoned Nga Theinnaw and questioned; and Nga Theinnaw admitted that he has been playing *hpe-15*. As Nga Theinnaw was a person who did not abide by the law and was disloyal to the crown by playing *hpe-15* even though he was a village headmen, he was to be removed from office. Imprison him for three months as playing *hpe-15* was punishable with three months' imprisonment by law.⁸⁸

A decision was made on 30 January 1873 that Nga Aung Kala and Nga Po Oo who distilled and drank liquor were to be punished according to the law concerning liquor by publicizing their offences in the wards in and outside the golden city; and Nga Aung Kala and Nga Po Oo were to be imprisoned for six and three months respectively.⁸⁹

Although the persons who violated the rules laid down in the royal orders were punished as criminals, receivers of stolen goods were not punished, and involuntary manslaughter was not regarded as a crime. A court decision in a case of theft was made as follows:

Fasten iron chains around the necks of Nga Po Tu and Nga Myat Hla and make them dig canal by handing them over to the persons responsible for digging the western canal. As to Mi Shwe Pu, Mi Shwe At, the persons who sold the stolen gold jewellerys, and the goldsmiths, as the sellers of gold and goldsmiths sold and made gold jewellerys because they deal in gold, do not let them incur any expenses, but free them.⁹⁰

As regards involuntary manslaughter, the court decided as follows:

⁸⁸ Than Tun, 1989, 691

⁸⁹ Than Tun, 1989, 691

⁹⁰ Than Tun, 1987, 822

It is stated that Nga Hke, who lived in the Atwin Yan Aung ward in the northern part of the Golden City, was drunk, and he and Mi Hkwe had a fight. Mi Hkwe, grabbing the sword Nga Hke was holding, hurt Nga Hke; Nga Hke's injuries went septic and consequently, Nga Hke died. The decision that Mi Hkwe was not to be charged with a crime is acceptable.⁹¹

Thus, Mi Hkwe was not charged with a crime.

As the kings themselves pardoned some convicts, they also let princes, queens and princesses to absolve some convicts from time to time. In making works of merit, the kings normally granted a free pardon to many prisoners. In 1795, Badon Min pardoned the people who had stolen royal treasures as his *athet ahludaw* ("donation of lives").⁹² Moreover, he issued an order as follows:

From now on, spare the life of a convict if Prince of Sagaing, my grandson, absolves him or her even though he or she has been sentenced to death deservedly.⁹³

Similarly, he ordered as follows:

I will give the *kathe kalas* (khasis) of Weapon to the consort of the crown prince. Let the consort of the crown prince redeem the Indians from prison.⁹⁴

He also issued an order on 29 October 1817 as follows:

⁹¹ Than Tun, 1988,413

⁹² Yi Yi, 1968, 343-395

⁹³ Ba Thaug, 1975, 151

⁹⁴ Yi Yi, 1968, 343-395

A couple had a fight in Zegyo ward of the Golden City, and the wife was killed, and it has been ordered that Nga Ye was to be executed. I will spare Nga Ye's life. Let the princess of Badaung, my granddaughter, redeem the convict.⁹⁵

As the princes, queens and princesses absolved some convicts, the monks also requested the king to pardon some convicts who were on death row. When Nga Nu and his minions were arrested for criminal concealment concerning a cattle theft at Hkanseit village in the tract of Myedu town in 1869, the *gaing-oak* of Myedu saved them by making a request to the king.⁹⁶ Moreover, when Nga Aung Myat, who stood surety for Letwe Myingaung, was imprisoned when the latter led downstream without paying taxes in 1872, the *gaing-oak* of *Shwepyi Yan Aung* (West) saved him by requesting the king for his release.⁹⁷

Many *yazathats* or royal orders were issued in the Konbaung period, and legal cases were decided according to them. However, in the cases where there were no witnesses, the litigants had to undergo *kaba le yat* (the four ordeals)— *ye-ngoat* (submerging in water), *mipyaing* (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 in the *adeithtan-choat* (binding oath) and *thitsadawkyan* (Treatise of Oaths), some decisions could have been just because the wrongdoers would feel insecure and their lack of confidence could lead to their failure.

⁹⁵ Than Tun, 1988, 466

⁹⁶ U Thaug, "Mindon Min Lethet Shwebo Tawaik Hmuhkinmya" ("Legal cases around Shwebo in King Mindon's reign"), *Working People's Daily*, 2 February 1970 (Henceforth: U Thaug, 2 February 1970)

⁹⁷ Win Maung, "Mandalay Khit Yahan Hnint Pyithu" ("Monk and people in the Mandalay period"), *Than Tun, 75 Mwene Letsaung, shasha Hpwephwe Myanmar Thamaing, Vol.II*, Theinhteik Yadana Press, 1999, pp.219-236 (Henceforth: Win Maung, 1999)

Many *yazathats* were issued in the Konbaung period for trying criminal cases. As the kings were absolute monarchs, 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. However, there were some weaknesses in the royal orders concerning thieves and robbers. The administrative officials were ordered to apprehend thieves, robbers and their accomplices. However, whether the persons implicated by the criminals in those crimes really were their accomplices should be investigated. If the criminals incriminated law-abiding citizens as accessories to their crimes, the matter should be considered carefully and investigated. Sometimes, such investigations might take time. Therefore executing the local administrative officials for their failure to catch and hand over the alleged accomplices of the thieves and robbers was unfair to them. 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. However, it seems, that the kings were using violent means to prevent theft, rather than finding out the cause of theft. As poverty begets hunger, and hunger begets crime, some people must have become thieves or robbers because of poverty.

As a thief was indistinguishable from an upright person, it would not be easy for the administrative officers to know whether a person was a thief or an honest man. It seems that when the kings heard the news about thefts and robberies, they issued royal orders to punish the administrative officials, thinking that these crimes resulted from their failures to catch criminals.

To sum up, although the successive kings of the Konbaung period issued many orders for judicial administration, and made the judges try and determine criminal cases in accordance with those orders, the people would not have much faith in the Konbaung period justice system in criminal cases because of the administrative officer's corruption and incompetence in administering justice.

CHAPTER THREE

CIVIL CASES

According to the judicial system practiced in Myanmar, civil cases—disputes over the succession to hereditary offices, legal cases involving a family, disputes over inheritance, etc are judged according to the *Dhammathats*. In the Konbaung period, 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-sonnyi-mhu* (plenary cases).¹ In hearing these cases, the judges had to decide in accordance with the *Dhammathats*.

The word *Dhammathat* derives from the *Pali* word *dhammasattha*, meaning “law book” or “code of laws.”² It is defined in the preface to the *Dhammathat Thonze Chauk Saung Dwe*, compiled by Kin Wun Mingyi U Kaung, as follows:

“The *Dhammathat* is a law for adjudicating the controversial issues such as inheritance in conformity with customs.”³

¹ Tin, 1976, 255

² Hoat Sein, *Pali Myanmar Abhidan (Pali Myanmar Dictionary)*, Yangon, Government Printing, 1954, p.498 (Henceforth: Hoat Sein, 1954)

³ Kin Wun Mingyi U Kaung, *A Collection of Texts from Thirty-six Dhammathats*, Vol.I, Yangon, Government Printing, 1898, p.1 (Henceforth: U Kaung, 1898)

Many *Dhammathat* texts were compiled in the monarchical days, both by monks and lay scholars. Some Myanmar jurists hold that the Myanmar had three *Dhammathats* that were their own, even before they had contacts with the Mons in the 11th century. These three law texts were *Duttabaung Dhammathat* (5th century BC), *Atitya Dhammathat* (1st century AD) and the *Pyuminhti Dhammathat* (2nd century AD). These *Dhammathats*, however, have not been found, although there are references to them in literary sources.⁴ The earliest *Dhammathat* that became famous in Myanmar legal history was the *Dammavilasa Dhammathat*, compiled in the reign of King Narapatisithu (1173-1210).⁵ Another law text that was well-known was the Wareru *Dhammathat* compiled in Mon language in AD 1281, during the reign of King Wareru, who reigned at Mottama. This *Dhammathat* was translated into *Pali* and Myanmar by Ven. Buddhaghosa in the reign of Dhammazedi in 1707.⁶

Concerning the history of *Dhammathat* literature, Lahiri believes that the Hindus came to Myanmar when Abhiraja, a prince of Indian royal lineage, founded the city of Tagaung *circa* 90 BC, and that Hindu customs which spread to Myanmar merged with local customs. Buddhism, after it was founded in India, spread to Myanmar in about the 5th century AD. Although Buddhism prevailed throughout the kingdom of Myanmar, Hindu customs did not cease to exist, but merged with the Myanmar customs.⁷ In the 5th century AD, a monk named

⁴ Maung Htin Aung, *Burmese Law Tales*, London, Oxford University Press, 1962, p.8 (Henceforth: Htin Aung, 1962)

⁵ Maung Kyin Swi, "The Origin and Development of the Dhammathat", *Journal of the Burma Research Society*, Vol. XLIX, Part ii, December 1966, pp. 173-205 (Henceforth: Kyin Swi, 1966)

⁶ Ba Han, *A Legal History of India and Burma*, Yangon, The AMAK Press, 1952, pp.70-71 (Henceforth: Ba Han, 1952)

⁷ Lahiri, S.C., *Principles of Modern Burmese Buddhist Law*, Calcutta, Eastern Law House (Private) Ltd, 1939, 4th edition, p.1 (Henceforth: Lahiri, 1939)

Buddhaghosa brought Hindu law texts from Ceylon and India to Raminnya, the land of the Mons,⁸ from where these texts came to Bagan, the royal seat of the Myanmar kings.⁹

Dr. Htin Aung is of the opinion that Myanmar customary law which is directly connected with Myanmar Buddhists came into being together with the history of Myanmar, that the Myanmars, a people speaking a Tibteto-Burman language, must have brought their customary laws with them when they entered the plains of Myanmar, and that Hinduism was on the wane in the 11th century when King Anawrahta of Bagan conquered Thaton.¹⁰

In addition, the Myanmar customary law differ from the Hindu customary law even in its foundation. Buddhism was a religion that came into existence in opposition to Hinduism. At the time when Hindu customs spread to Myanmar, Myanmar social system was well established. The Myanmars not only had founded villages and towns, but also had established a royal capital. Pointing out that this civilized society was highly developed with its own culture, customs and legal and administrative systems, he debunked the suggestions of western scholars.¹¹ Dr. E Maung is adamantly opposed to the view that Myanmar customary law derived from Hindu law in his work entitled “The Expansion of Burmese Law.” He asserts that Myanmar customary law slowly developed throughout the history of Myanmar.¹² Actually, it is not known for certain when the *Dhammathats* came into being. However, the people who had established their

⁸ Hla Aung, “Burmese Concept of Law”, *Journal of the Burma Research Society*, Vol. LIII, part. ii, December 1969, pp.27-41 (Henceforth : Hla Aung, 1969)

⁹ Kyin Swi, 1966, 173-205

¹⁰ Kyin Swi, 1966, 173-205

¹¹ Dr. Maung Maung , *Law and Custom in Burma and Burmese Family*. Netherlands, the Hague, Martinus Nijhoff, 1963, p.5 (Henceforth: Maung Maung, 1963)

¹² U E Maung, *The Expansion of Burmese Law*, Yangon, n.p,1951, p.1 (Henceforth: E Maung, 1951)

own country certainly would have their own customs, social mores and forms of behavior depending on the level of their civilization. Some would have been the rules made in accordance with established customs. Therefore, the view that the Myanmar customary law of the Myanmar Buddhists was copied from Hindu laws should be reconsidered. It was a set of rules codified after adapting the Hindu laws to be in conformity with Myanmar customs.

In the Konbaung period, civil cases were decided in accordance with the *Dhammathats*. 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. This practice began from the Taungoo period.¹³ 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 ascertain adequate grounds for action existed. Then the litigants would have to make their pleadings (complaint, plea, counterplea or replication, rejoinder, etc.), and the particulars of the case would have to be 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 (*onus probandi*) 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

¹³ U Aung Than Tun, *Myanma Yinkyehmu (Tayaye Hnint Luhmuye)* [*Myanmar Culture (Administration of Justice and Social Life)*], Yangon, Win Thitsa Press, 1970, p.43 (Henceforth: Aung Than Tun, 1970)

party was dissatisfied with the decision, the party could refuse to eat *lahpet* and file an appeal against the decision to a higher court.¹⁴

The lawsuits filed in the Konbaung period 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.¹⁵ Concerning the succession to a hereditary offices, it is learnt that Nga Kale, son of Nga Kauk, of Thamyindon town, was appointed *myothugyi* in the reign of Alaungmintaya (1752-1760), even though he was not of *myothugyi* lineage.¹⁶ Nga Kale was one of the thirty commanders who accompanied Alaungmintaya in his military campaign against Thanlyin. Although Alaungmintaya found out that he became *myothugyi* by greasing the palms of Weluyaza, the royal clerk, the king did not remove him from the post.¹⁷ This probably was because of his valour in the conquest of Thanlyin. Therefore, it can be learnt that the persons favored by the king were appointed to hereditary offices in the reign of King Alaungmintaya.

To prevent the disputes over the succession to hereditary offices, Badon Min 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 latter attained

¹⁴ J.G Scott, *Gazetteer of Upper Burma and Shan States*, Vol.II, Part i, Yangon Government Printing, 1900, p.484 (Henceforth: Scott, 1900)

¹⁵ Toe Hla, 2002,61

¹⁶ *Laung Mein*, 1964, 240

¹⁷ *Laung Mein*, 1964, 241

the age of legal maturity.¹⁸ King Badon issued an order in 1789 in violation of the *Dhammathats* that the hereditary offices were not to be transferred by inheritance.¹⁹ Thus, the king was presumably attempting to control the succession to hereditary offices. But with limited success.

Concerning hereditary offices, if a *thugyi* had two wives, only the one whose name was recorded in the *sittan* was recognized as his *pwedet-maya* (ie. the wife who was entitled to accompany him on ceremonial occasions), and therefore only her son had the right to succeed to the office to the office of the *thugyi*. A dispute over the succession to the office to *myedaing-thugyi* at Letpanhla village in the tract of Taloke may be cited as an example. *The myedaing-thugyi* Nga Thaug had a son, Nga Cho Aye, from his first marriage with Mi Win Nyo. Later, he divorced Mi Win Nyo and married Mi Win San. When his statement for the *sittan* was submitted in 1784, he did not mention the names of Nga Cho Aye and Mi Win Nyo, but only mentioned the name of his second wife, Mi Win San. When he (Nga Thaug, *myedaing-thugyi*) passed away, Nga Cho Aye and Mi Win San's son Nga Shwin contested at law for the succession to *myedaing-thugyi*; and Nga Shwin, the son of Mi Win San, won the case and became *myedaing-thugyi*. Although Nga Cho Aye, son of Mi Win Nyo, was the son from the deceased person's first marriage, as his name or his mother's name was not mentioned in the *sittan*, Nga Shwin, the son of the second wife of the deceased had the right to succeed the office.²⁰ In addition, if a hereditary officer had more than one son, the son whose name was mentioned in the *sittan* had to succeed him. In a dispute over the succession to a hereditary office at Chipyit village, Banchi taik, in 1812 (Nga Shwe Pe vs Nga Aing), the decision was made as follows:

¹⁸ "1146 *Ameindaw*," *Pu* MS 1497

¹⁹ Tin, 1965, 156

²⁰ Than Tun, 1987, 752

The *sittan* of Chipyit village of Banchi Taik of the year 45 (1145 ME/ AD 1783) was submitted by Nga Sutaung. Nga Sutaung's list mentions his son Nga In. Nga Aing is not mentioned in the list. Nga Aing, whose name is not mentioned in the list, is not to be made an administrative officer. Appoint Nga Shwe Pe, son of Nga In, whose name is mentioned in the list as Nga Sutaung's son, as *myedaing-thugyi* of Chipyit village, and make him rule the village.²¹

Thus, Nga Shwe Pe, the son of Nga In whose name was mentioned in the *sittan* was appointed the *myedaing-thugyi* of Chipyit village.

It is learnt that although the succession to a hereditary office was decided after checking the names mentioned in the *sittan* of 1784, whether a person mentioned in the *sittan* really was of *thugyi* lineage was checked. A person who submitted the *sittan* as acting *thugyi* because the *thugyi* or his heir was away when the *sittan* had to be submitted was not regarded as a hereditary *thugyi*. In a dispute over the *thugyi* ship of Byaungbya village which was litigated in 1810, the decision was made as follows:

With regard to the case concerning the office of the *thugyi* of Pyaungpya village, Taloke town, it is stated in the *sittan* that Thirituyin submitted the *sittan* list in the year 45(AD 1783) as the person of *thugyi* lineage the *thugyi*'s heir was away. Appoint Nga Myat Tha Oo who is of *thugyi* lineage as *myedain*, and make him rule the town. Make him submit the *sittan*. Nullify the *sittan* and sagyun appointment order from Thirituyin.²²

Thus, in this case, Nga Myat Tha Oo who was of *thugyi* lineage was allowed to succeed to the hereditary office. Thirituyin did not have the right of inheritance to

²¹ Than Tun, 1987,738

²² Than Tun, 1987, 738

the office even though he submitted the *sittan* because he was not of *thugyi* lineage but was only serving as acting *thugyi*.

Moreover, there were instances in which a person was not allowed to succeed the hereditary office because the office was not bequeathed to him by the deceased in an *amwe-hlwe-at-sa* (a deed by which one's property was left to an heir, ie a will). For instance, Nga Pau Hla, the *thugyi* of Pugyi village, Sinkye tain, had to join a military expedition because he was a serviceman, and hence he handed over the duties of *ywathugyi* (village headman) to his younger brother Nga Paw Htwe. When Nga Paw Htwe passed away, his son and Nga Paw Hla's son engaged in a lawsuit for the succession to the hereditary office. The judge ruled in favour of Nga Shwe Maung, the son of Nga paw Hla. The son of Nga Paw Htwe did not have the right to inherit the office because Nga Paw Hla did not transfer the office to Nga Paw Htwe by inheritance, but only made the latter act as his substitute in his absence.²³

Although a hereditary office was to pass through succeeding generations, there were instances in which the king appointed persons who were not of *thugyi* lineage as *thugyis*. Before the Myingun rebellion broke out, Minhla Zeyyathu, the Aukmyitsin Wun Mingyi, after consulting the *sittans*, appointed Nga Yan Hnin as the *thugyi* of Hpaunggwe village. During Myingun rebellion, Nga Yan Hnin, together with fifty followers, had to march towards Shwebo via Sagaing to quell the rebellion staged by Prince Padein. Then, Nga Theindaw seized the office of the *thugyi* of Hpaunggwe, and sided with the rebels, with forty followers, Nga Theindaw helped the rebels when the troops from Pin Natmauk, Kyaukbadaung and Magwe who supported the rebellion attacked Taungdwingyi. So, when the Myingun rebellion was put down, there were two village headmen in Hpaunggwe village: Nga Yan Hnin the royalist who was holding the office of the *thugyi*, and Nga Theindaw, who took the side of the rebels in the rebellion. Although Nga

²³ Than Tun, 1987, 703

Theindaw fought for the rebels, no action was taken against him as the court declared an amnesty. Therefore, the abbot of the Mandalarama monastery, who was a *Thudhamma Sayadaw*, ordered the *taik-oak* of Magwe on 27 April 1782 to conduct an investigation to determine who was of *thugyi* lineage. The *taik-oak* questioned the inhabitants of Hpaunggwe circle who were over sixty or eighty years old. He deduced from available information the Nga Yan Hnin was of *thugyi* lineage and reported his finding to the abbot of Mandalarama monastery on 6 September 1873. However, the king issued a royal appointing Nga Theindaw as *thugyi*; the order was promulgated by Nemyo Yaza Kyawthu, the Royal Herald, on 8 December 1873.²⁴ Thus, whatever was stipulated in the *Dhammathat*, the king sometimes ignored the customs and meddled in the succession to hereditary offices.

Moreover, sometimes, a person was appointed to the office of *thugyi* on the recommendation of the *gaing-oak*, *gaing-dauk* and the local community. For instance, when U Toe, *thugyi* of Se-oat town passed away on 25 December 1873, his son U Nyo was appointed as the *thugyi* of Se-oat town in accordance with custom. U Nyo was appointed *thugyi* because the *gaing-oak* and *gaing-dauk sayadaws* as well as the local populace liked him.²⁵ How a person was appointed as a *thugyi* on the recommendation of the *gaing-oak* and *gaing-dauk* can be learnt from a royal order:

As requested by the *gaing-oak* and *gaing-dauk sayadaws* of Saku town, Nga San is to continue to rule Minywa village in the tract of Saku. The royal order announced by Royal Herald Nemyo Thinkaya on the 12th day of the waxing moon of Pyatho, 1235 ME (30 December 1873).²⁶

²⁴ Ne Win, *Pin Natmauk Thamaing (1852-1911) (History of Pin and Natmauk 1852-1911)*, M.A. thesis, Magwe University, 1988, pp.16-17 (Henceforth: Ne Win, 1988)

²⁵ Than Tun, 1989, 859

²⁶ Tin, 1976, 220

The function of the hereditary office of the *thugyi* of a town or a village was to administer the town or village under his charge. Therefore, a *thugyi* was responsible to maintain law and order and to collect revenues in the town or locality concerned. In addition, he had civil jurisdiction and criminal jurisdiction over petty cases.²⁷ As the *thugyis* were thus invested with the administrative powers of the localities under their charge, the disputes over the succession to these hereditary offices arose. In fact, the *thugyis* of towns and village played a major role in the Konbaung administration.

Apart from the disputes over the succession the hereditary offices, there were those over inheritance—inheritorship of the property of one's spouse following the latter's death, and inheritance of the property of one's parents after their death. According to the *Dhammathat* texts, a person did not have the right of inheritance to the hereditary office of his or her parent-in-law. Apart from a hereditary office, a person was entitled to inherit the property of one's spouse. If the deceased person had more than one wife, the social classes of the wives would be taken into consideration. In *Mi Hla Thin vs Mi Yauk* which was litigated in 1884, during the reign of King Thibaw, Mi Hla Thin, who was of *myo-thugyi* lineage was regarded as *myomyint-maya* (wife of high social class) and Mi Yauk, who was born of a slave family, was considered *myoneint-maya* (wife of low social class). Concerning the estate of Nga Hnaung, their husband, the aggregate of the property Nga Hnaung owned before he got married, that he acquired after during his marriage with Mi Hla Thin, and that he amassed during his marriage with Mi Yauk had to be divided equally between Mi Hla Thin, who had no offspring, and Mi Yauk, who had a son named Nga Soe.²⁸ This system of dividing inheritance was in conformity with the *Dhammathats*.

²⁷ Mya Sein, *Administration of Burma*, Yangon, Zabumeitswe Pitaka Press, 1938, pp.64-69 (Henceforth: Mya Sein, 1938)

²⁸ Taw Sein Ko, 1977, 110-112

With regard to a person's right of inheritance in the property of his or her deceased parent, the *Dhammathats* classified the *tha* (son or daughter including adopted son or daughter and stepson or stepdaughter) into twelve types: six who were qualified to inherit and six who were not qualified to inherit. The six *tha* who were qualified to inherit were: *orassa*, one's own offspring who was legitimately born, *khettaja*, one's offspring born by one union with a female slave or employee, *hetthima*, one's offspring born of a lesser wife, *pubbaka*, an offspring of one's spouse by a previous marriage, i.e a stepson or a stepdaughter, *kittima*, a person formally adopted as one's heir, and *apatitha*, an adopted son or daughter.²⁹ The six *tha* who were not qualified to inherit were: *dinnako*, a *tha* who was given to one by someone else, *saholla*, a *tha* who was bought, *punanubbhava*, an adulterine offspring of one's wife, *kilita*, one's offspring born by one's promiscuity, *svanutta*, an offspring who was like a dog.³⁰ A court decision made in an inheritance suit (Nga Sa, a *khittaza* vs Nga Thetsan, a *kittima*) in 1799 indicates that a *khettaja*, an offspring born of a man's union with a female slave, was entitled to a right of inheritance. Zeyya Kyawswa adopted Nga Thet San during his first marriage with Mi Hpyu. Later, he bought a female slave named Mi Hla for seventy *kyats*, and he had a son, Nga Sa, by his union with Mi Hla. When Zeyya Kyawswa died, his adopted son Nga Thet San and Nga Sa, his son born of his union with a female slave, contested at law for inheritance. The decision made by the governor of Saku in this case was that an offspring born of the deceased's union with a female slave also was his own flesh and blood, and hence he or she should have the primogenital right if there was no *orassa*; the adopted son was only to get the share of an adopted son. As Nga Sa and Nga Thet San requested that they desired to end the litigation they were engaged in and settle the matter amicably by agreeing to share the estate of their deceased father Zeyya Kyawswa

²⁹ U Kaung, 1898, 30

³⁰ U Kaung, 1898, 37

equally, Maung Hmaing, the governor of Saku passed judgement in 1799 that the litigants were to share the inheritance and the legal expenses incurred equally.³¹ The first decision made by the governor of Saku town was that as the offspring of a man born of his union with a female slave also was his own offspring he or she was entitled to the rights of an *orassa* provided there was no *orassa*, and that the adopted son was only entitled to the share of an adopted son. However, when both the litigating parties expressed their desire to settle the case amicably by sharing the inheritance equally, the judge changed his decision in conformity with the wishes of the litigants. Thus, whatever was laid down in the *Dhammathats*, there were instances in which the judge made his decision according to the wishes of the litigants.

The inheritance, ie the property passing at the owner's death to the heirs, was of two types: *payin* or *ahtet-oatsa*, ie the property that a person acquired before his or her marriage, and *let-hete-pwa* or *auk-oatsa*, ie the property a person and his or her spouse acquired after his or her marriage. A court decision made in the reign of Badon Min was that the *ahtet-oatsa* of a deceased person was to be inherited by the *ahtet-tha-thami-mye-myit*, ie the descendants of the first wife, and the *auk-oatsa* was to be inherited by the *auk-tha-thami-mye-myit*, ie the descendants of the deceased person's second wife or lesser wife or wives. A decision made by Badon Min in 1809 Shwetaung Yanngu Kyawswa, son of Letwe Winhmu vs Mi Min Hla (Shwetaung Yanngu Kyawswa's stepmother) was that as Letwe Winhmu had conveyed his *payin* property to Shwetaung Yanngu Kyawswa, the son of his first wife as inheritance, Shwetaung Yanngu Kyawswa should not claim by inheritance the *let-htet-pwa* or *auk-oatsa* acquired by Letwe Winhmu during his marriage with Mi Min Hla; it was to be inherited by the descendants of Mi Min Hla.³² However, in a litigation for the inheritance of cattle at Kyeywathit

³¹ *Yazatheikpa Kyan, 1929, 112-116*

³² *Than Tun, 1987, 631*

village Inn-wa town (Nga Lon vs Nga Hpon), in 1832, during the reign of Sagaing Min (1819-1837), the *ahtet-tha-thami* (the offspring of the first marriage of the deceased person) received the shares of *auk-oatsa*. In this case, of the eighteen oxen owned by the deceased person, Nga Hpon, the son of his first marriage, received twelve oxen and Nga Lon, the son of his second marriage, inherited two oxen. It was decided that what remained was to be divided into four portions, one portion for Nga Hpon, the son of the first marriage, and three for Nga Lon, the son of the second or latter marriage.³³

According to the *Dhammathats*, the *kittima* or adopted sons and daughters were entitled to inherit their adoptive parents' property. In the reign of King Mindon, however, a person who could not present the *thetkayit* document by which he or she was adopted as a *kittima tha*, was not recognized as a *kittima tha*. Moreover, it was prescribed by law in 1874 that an adopted son or daughter who could not present the *thetkayit* by which he or she was adopted as *kittimma tha* was not qualified to inherit the property of his or her adoptive parent even if they had been dwelling together.³⁴ If an adoptive parent bequeathed his or her property to an adopted son or daughter in his or her will in the presence of monks and lay witnesses, however, the legatee was entitled to inherit the legator's property pursuant to the will. For example, a court decision made in 1885 (Nga Hpo Chein's heirs vs Mi Thetpon) during the reign of King Thibaw may be cited:

Mi Thet Pon, the *kittimma* relative of Mi Sa, is to inherit the property as the legator Mi Sa bequeathed it to her, whom Mi Sa had adopted as *kittima*, in the presence of the elders—monks as well as laypersons.³⁵

³³ U Thaug, "Padetharit Khit Hma Kyeywa Tayayon Mya" ("Village Law Courts in the feudal period"), *Working People's Daily*, 4 May 1970 (Henceforth: U Thaug, 4 May 1970)

³⁴ U Thaug, "Myeshin Padetharit Do Ei Zati Yoat" ("True nature of the feudal lords"), *Working People's Daily*, 20 October 1970 (Henceforth: U Thaug, 20 October 1970)

³⁵ Taw Sein Ko, 1977, 107

The conveyance of personal property by bequest was not a usual practice in Myanmar Buddhist Law. It can therefore be assumed that the testator in the above-mentioned case was just following a Christian practice.

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*.³⁶ When Yazakyawthu, the *Thadawzint* (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 King.³⁷

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 adoptive 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 was 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.³⁸ Thus, according to Badon Min's royal order, the property of a deceased person was to escheat to the crown only if he or she had no

³⁶ Than Tun, *1986 a*, 232

³⁷ Than Tun, *1986 b*, 807

³⁸ “*Atula Sayadaw Hpyathton*” (“Ruling of Atula Sayadaw”), *palm-leaf* MS 1021, Yangon, Universities' Central Library, khu (recto, verso) (Henceforth: *Atula Sayadaw, Pa* MS 1021)

heir.³⁹ In 1885, during the reign of King Thibaw, a law was enacted to prevent the unlawful seizure of the property of a deceased person who might or might not have heirs as follows:

Whoever seizes the property of a deceased person who had no heir or who had an heir or heirs although the property has not yet been conveyed to the heirs (by inheritance), is to get a penalty of up to seven years in prison with or without hard labour or pecuniary penalty, or both a prison sentence and a pecuniary penalty.⁴⁰

Although judges were appointed to hear inheritance suits, sometimes the king, revoking the court decision, would divide the case personally. There was an inheritance suit when Maha Minhla Kyawswa died in 1805. The judge decided that the inheritance of Maha Minhla Kyawswa was to be divided into nine portions: three for his grandson Nga Maung, four for the offspring of his lesser wives, and two for his first wife Mi Hla. Mi Hla appealed against this decision to the king, and the king pronounced his judgment as follows:

The judge's decision in the inheritance suit involving Maha Minhla Kyawswa's property was incorrect (ie incorrect). Those referred to as offspring were not the offspring of the deceased person's first wife, but those of his lesser wives who were not dwelling together with him; hence, they should not claim the shares of inheritances. As to Nga Maung, the grandson of the deceased, Maha Minhla Kyawswa had given him his share inheritance, which was under the charge of an administrator. While Mi Hla, *hpwahtwe* (grandmother) of the deceased was alive, the property should be passed to her by inheritance. Do not make her claim it.⁴¹

³⁹ Ba Thaug, 1975, 81

⁴⁰ Ba Thaug, 1975, 81-82

⁴¹ Tin, 1970, 58

Thus, Mi Hla acquired the property of Maha Minhla Kyawswa by inheritance. Therefore, it can be learnt that litigants in inheritance suits could appeal against the court decisions to the king.

The duration of a litigation depended on the litigants. If the litigants were uncompromising, they would have to engage in a lengthy litigation; if they were agreeable, however, the duration of the litigation would not be long. An inheritance suit (Nga Ku vs Minhla Zetapo) which began in 1855, during the reign of King Mindon did not end until the litigants' relatives mediated between the two sides in 1862.⁴² Another case, which began in 1870, also during the reign of Mindon, took three years (Nga Shwe Tha, son of Nga Pwa vs Mi Kyi Nyo, the donor of Ngazi monastery, Manung Myo and Nga Kyi, *ex-thugyi*).⁴³ As a lengthy litigation would be costly, it could make the litigants pile up debt, which in turn could force them to sell themselves into slavery. Therefore, the relatives of the litigants normally would mediate between the constants at law so that the litigation would not be protracted. In a settlement thus brokered by relatives, however, the division of inheritance might not be in conformity with the stipulations of the *Dhammathat*. Therefore, the way of dividing inheritance also depended on the heirs.

As the relatives of the litigants acted as mediators in some inheritance suits, there were some disputes in which the *son-yas* had to arbitrate between the opposing sides. A *son-ya* was a sort of arbitration board formed for each case on an individual basis with two or three villagers who knew the case well. It would be formed *ad hoc* for settling disputes. The term of a *son-ya* expired when a settlement was reached. A *son-ya* was formed with the arbitrators acceptable both

⁴² U Thaug, "Myeshin Padetharit Do Ei Amwe Zaga" ("Inheritance disputes of feudal lords"), *Working People's Daily*, 1 August 1970 (Henceforth: U Thaug, 1 August 1970)

⁴³ "Salin Thugaung" (Salin nobles), *Purabaik* MS 155, Daw Ohn Kyi's Collection (Henceforth: "Thugaung", *Pu* MS 155)

sides—normally with elderly relatives of the opposing parties and village elders although local officers were included sometimes. A dispute would be arbitrated by a *son ya* expeditiously and justly according to local customs. As the settlements effected by *son-ya* were economical, expeditious, and satisfactory to the disputants, some litigants called off their litigation in the courts in towns, and resorted to arbitration in *son-yas*. Concerning a dispute between Nga Kyaing, Mi Thit’s husband, and Mi Wa, Nga Meit’s sister over inheritance, the opposing sides accepted the arbitration of the *son-ya* at Ywathit village, Khin Oo township, and ate *let-hpet* on the 5th day of the waning moon, Wazo, 1230 ME (8 July 1868), to validate their agreement.⁴⁴ It can be learnt from the settlements effected by the *son-ya* that a *son-ya* arbitrated the differences of the disputing parties only after making a thorough examination of the particulars of a case, the matters agreed to by both sides and the matters in dispute; only then, it mediated a settlement acceptable to both parties. Therefore the disputing parties found the settlements mediated by the *son-yas* satisfactory. The fairness of the village elders in settling the disputes without relying on the *Yazathat* and *Dhammathat* law texts and without prejudice against anyone, reflects the social customs of the rural people in Myanmar. The arbitration of the disputes by the *son-yas* was also in accordance with the goal of Myanmar judicial administration—“to extenuate serious legal cases and to dissolve minor legal cases”. A list of the inheritance suits is given in Appendix (4).

Of the legal cases involving family matters, the *myosas* and *ywasas* had jurisdiction over *mayahko-hmu* (lawsuits involving committing adultery with married women) until Badon Min revoked it in 1789 because adultery should not be dealt with by criminal courts because the *myosas* and *ywasa* only had criminal

⁴⁴ U Thaung, “*Son-ya Do Sonma Hpyanbyechet*” (“Arbitration of the Son-Yas”), *Working People’s Daily*, 15 April 1972 (Henceforth: U Thaung, 15 April 1972)

jurisdiction.⁴⁵ A judge tried Nga Talop who committed adultery with Mi Naw, wife of Thayewun Minhla Kyawswa according to criminal law:

Hand over Nga Talop, who had adulterous relationship with Thayewun Minhla Kyawswa's wife and Mi Naw, the wife of Thayewun Minhla Kyawswa to the grave-diggers, and make them stay at the open-hall at the cemetery unclothed so that they would be noticeable, let all those who come to the cemetery see them.

However, the penalties were changed on 13 September 1787—Mi Naw was imprisoned and Nga Talop was made to gather elephant food.⁴⁶ In the reign of King Mindon, the *mayahko-hmus* had to be heard by *myothugyis* and *khondaws*. Thus, these cases were regarded as civil cases in his reign. In a *mayahko-hmu* (Nga po vs Nga Paik), Nga Po's wife Mi Yauk who had married Nga Po a long time ago and who had children, being unable to curb her sensual desires, committed adultery with Nga Paik who was young. Nga Paik did not deny the accusation either; he admitted that he had a single sexual encounter with Mi Yauk. The judge decided that Nga Paik, who had adulterous relationship with Nga po's wife, was to pay 30 *kyats* to the plaintiff in accordance with the *Dhammathats*, and was also to pay the court fees, and that Nga Po and wife Mi Yauk were to continue to be married.⁴⁷ Thus, the case was decided pursuant to the stipulations of the *Dhammathats*.

According to the *Dhammathats*, parents could arrange the marriages of their offspring who were young in the Konbaung period. It is stated in a *Dhammathat* as follows:

⁴⁵ “1151 *Ameindaw*” (“Royal Order of 1789”), *Purabaik* MS 616, Yangon, National Library (Henceforth: “1151 *Ameindaw*”, *Pu* MS 616)

⁴⁶ Than Tun, 1986 a, 595

⁴⁷ Kyaw Htin, 1964, 61-62

If a young woman runs off with a man, the parents can separate her from the man she ran off with even if she has given birth to ten children, and marry her off to a new husband. A man with whom she ran off with had no right to say that she belongs to him because a daughter belongs to her parents.⁴⁸

If the parents entrusted their daughter to their relatives because they were decrepit, the relatives who acted as her guardians could arrange her marriage.⁴⁹ Therefore parents or guardians could arrange the marriage of a young woman who was under their care.

According to the *Dhammathats*, the parents were allowed to marry off their daughter when the latter was fifteen or sixteen years old. If the marriage was not arranged by the parents, a young woman was legally competent to consent to marriage at the age of twenty.⁵⁰ However, a court decision (Mi Kyawt vs Nga Do) made on 16 June 1796, during Badon Min's reign, indicates that a divorced woman could not remarry of her own volition if she lived and ate with her parents because she was not free from their care.⁵¹ Thus, young women who were not free from the care of their parents could not marry out of their own volition. Also, it was the custom for women to stay under the care of their parents until they were married.

In the reign of Badon Min, the king issued a royal order in violation of the *Dhammathats* to forbid intermarriage between persons of different social classes as follows:

⁴⁸ Manu Amat, 1903, 158

⁴⁹ Kin Wun Mingyi U Kaung , *Addasankhepa Vanana Kyan*, Yangon, Government Printing and Stationery, 1936, section 346 (Henceforth: U Kaung, 1936)

⁵⁰ Kin Wun Mingyi U Kaung , *A Collection of Texts from Thirty-six Dhammathats*, Vol.II, Yangon, Government Printing, 1899, pp.58-59 (Henceforth: U Kaung, 1899)

⁵¹ Kyaw Htin, 1964, 18

If the social strata of the parents of the two sides differ from one another, the castes (social classes) would become impure. If the people of high and low social strata, of high-ranking service groups and low-ranking service groups intermarry, the castes (social classes) would become mixed up. Hence, do not let a man and woman of different social strata—of higher and lower social strata of or high-and low-ranking service groups—marry. Let the people marry only within their social classes.⁵²

However, evidence indicates that this order was violated sometimes. For instance, the governor of Saku permitted Nga Tha, the son of a slave, to inherit the property of his father Zeyya Kyawswa in 1806 in accordance with the *Dhammathats*.⁵³ This clearly indicates that the marriage of Mi Hla and Zeyya Kyawswa, who were of different social classes, was recognized. It is therefore clear that even though intermarriage between different social classes was forbidden, the law was not enforced strictly. Moreover, concerning the marriage of Mi Rambhi, Nga Myat Htwe's daughter and Nga Oo, the governor of Saku ruled that they were to consummate marriage only after Mi Rambhi received permission from the *kala sayas* (Muslim clerics) at the royal capital.⁵⁴ Therefore, according to the *Dhammathats*, intermarriages and mixed marriages were not strictly forbidden in the Konbaung period.

However, if a man and woman of different social classes marry, both of them would be recognized as members of the lower social class. If the members of different service groups marry one another, the custom was that their daughter would become a member of the service group to which the mother belonged, and

⁵² “*Thetkarit 1145 Htopyandawmuthi Mahayazathat Ameindaw Tangyi*” (Royal Order known as Mahayazatthat issued in 1783), *Purabaik* MS 1020, Yangon, National Library (Henceforth: “*Thetkarit 1145*”, *Pu* MS 1020)

⁵³ Kyaw Htin, 1964, 27-30

⁵⁴ Kyaw Htin, 1964, 31

their son would become a member of the service group of the father. With regard to a marriage involving a slave, the offspring would be regarded as a member of the mother's social class. If the father was a slave and mother was not, the child would not become a slave. If the mother was a slave and father was not a slave, the child would be recognized as a slave. In the marriage between, a *hpaya-kyun* (slave donated to a temple or a stupa) and a *kyaung-kyun* (slave donated to a monastery), the child would become a *hpaya-kyun* if the mother was a *hpaya-kyun*, and would become a *kyaung-kyun* if the mother was *kyaung-kyun*.⁵⁵ The king laid down these rules probably to maintain purity of servicemen's lineages.

There were also divorce suits during the Konbaung period. Divorce could be obtained by the spouses by mutual consent, or by one of the spouses (plaintiff) with or without giving the wrong committed by the other spouse (respondent) as grounds for divorce. When a divorce was obtained by mutual consent, the spouses had to share the *let-htep-pwa oatsa* (property accumulated during their marriage) equally, and were equally responsible to repay their debts. They also had to share the legal expenses equally. The husband would receive the custody of their sons, while the mother would get that of their daughters.⁵⁶ Therefore, the division of property as well as the custody of children was fair in consensual divorce. In a divorce case of Mi Kywet and Nga Shwe Tha of Sinda village, Inn-wa in 1833, during Sagaing Min's reign, their marriage was dissolved because both the spouses sought to do so even though neither side had committed any wrong. In this case, each of the spouses got his or her respective *payin-oatsa* (the property he or she owned before their marriage), and half of the *let-htet-pwa* (property they accumulated during their marriage). It was also decided that they were to club together to repay their debts and to bear the legal expenses equally, and that each

⁵⁵ "Thetkarit 1145", Pu MS 1020

⁵⁶ U Kaung, 1899, 353-357

child was to dwell together with the parent they chose.⁵⁷ When Nga Shwe Waing and Mi Minpu sought a divorce by mutual consent in 1841, during the reign of King Tharyarwady, the divorce was granted and their property was shared equally between them.⁵⁸ Thus, the decisions in these two cases were made in accordance with the *Dhammathats*.

A spouse could petition for divorce even though the other spouse did not commit any wrong. In such a divorce, however, the respondent received better rights concerning the family property in recompense for the injury he or she suffered. The stipulation in the *Dhammathat* for the divorce of spouses who of the same social class and who were married for the first time was as follows:

The spouse who seeks a divorce (ie the plaintiff) even though his or her spouse has committed no wrong may keep things given to him or her by the king and his or her clothes. Apart from these, he or she should not get anything, animate or inanimate. The person who does not want to divorce (ie the respondent) should receive everything. The legal fees are to be paid by the person seeking divorce (the plaintiff). The property need not be divided into animate and inanimate things. If the plaintiff's clothes increased because of the things given by the king, the person seeking divorce should only get a gown. The person who does not desire to divorce should get all remaining. If the couple had incurred debts, old or new (ie incurred a long time ago or incurred recently), the person seeking divorce must settle them.⁵⁹

However, Badon Min issued an order concerning no-fault divorces on 16 December 1784:

⁵⁷ U Thaung, 4 May 1970

⁵⁸ Ba Thaung, 1975, 21

⁵⁹ Manu, 1903, 340

The person who wants to divorce his or her spouse just because he or she feels no affection to the latter anymore even though the spouse has committed no wrong and even though the spouse has been living in conformity to establish moral conventions is to be caned and the divorce is to be granted according to custom.⁶⁰

This order indicates that flogging was inflicted as a corporeal punishment on the person who sought a no-fault divorce, even though he or she would be granted a divorce, presumably to discourage the people from seeking divorce despite the fact that their spouses were not guilty of misconduct. However, when Nga Aung Min, the governor of Saku filed a petition for divorce in 1809, he was allowed to divorce his wife Mi Hnin, who had committed no wrong. Regarding their family property, the court decision was as follows:

As they had been married for more than ten years and as they had even become parents, let the plaintiff who was the husband take menswear such as *pahso* (men's nether garments) and betel box, horse, *purabaiks*, swords, spears, muskets etc that were only suitable for men depending on the wife's generosity. The wife is to assume the liabilities for debts as well as the possessory rights to property. The *myowun* (the plaintiff) is to bear the legal expenses.⁶¹

Thus, Badon Min's order was disregarded in this case. It can be assumed that *Myowun* Nga Aung Min did not get the lash because he was a feudal lord (high-ranked official). Thus, those born into a feudal family (the members of officialdom) enjoyed certain privileges.

⁶⁰ "1146 *Ameindaw*", *Pu* MS 1497

⁶¹ Kyaw Htin, 1964, 45

If a person sought a divorce because his or her spouse had committed some wrong, regarded as one of the legislatively recognized grounds for divorce, the respondent would be deprived of property rights, and would be made to pay the debts the family had incurred. It is stipulated by the *Dhammathat* that if they had no possessions, the party guilty of a wrong was to pay-*ko-bo-ngwe*(the amount of money equal to the value of one's body) to the party who was not guilty.⁶² In a divorce case (Nga Waing vs Mi Hnin) decided by Zeya Shwetaung Kyaw of Ywathit village in 1830, in King Sagaing's reign, the divorce was petitioned by the wife because her husband Nga Waing was treating her cruelly after taking a mistress. As they had no property, the court dissolved the marriage and decided that Nga Waing (the respondent) was to give Mi Hnin Oo (the plaintiff) thirty *kyats* (the value of his body).⁶³ Thus, this case was decided according to the *Dhammathat*. Therefore, it can be assumed that the main grounds for a fault-based divorce were the wife's infidelity or the husband's continual physical abuse at his wife. According to the *Dhammathats*, the husband could sell his wife if she had committed adultery, if the couple had no property and if they were not in debt.⁶⁴ In a divorce suit file on 16 May 1790 (Mi Hla vs Thiri Kyawthu), the husband planned to sell his wife Mi Hla who was an adulteress to the bawds for fifty viss of silver in accordance with the *Dhammathat*. However, Mi Hla took the case to the court at Ratanasingha presided over by Maung Hmaing, saying that she should not be sold. The court decided that it was stated in the treatises that "as all the rivers flowed meanderingly, it was natural for women to go astray;" hence the husband should not be allowed to sell his wife even though she had sinned; the wife was to pay forty *kyats* as *ko-bo-ngwe* to him.⁶⁵ Therefore, although a man

⁶² U Kaung, 1899, 374

⁶³ U Thaung, 4 May 1970

⁶⁴ Manu Amat, 1903, 384

⁶⁵ Kyaw Htin, 1964, 8-9

was permitted by the *Dhammathats* to sell his wife if she was guilty of marital infidelity, this stipulation was ignored.

Divorce suits were judged according to different customs in the different areas—the Palaung areas, Myanmar areas, Shan areas, etc. In a divorce suit of Mi Ye and Nga Than, a Palaung couple, filed by the wife, the Palaung elders dissolved the marriage in conformity with the Palaung customs. Nga Than molested her in a bazaar saying they were not divorced according to Myanmar customs. Yandameit Kyawhtin, the governor of Momeit decided that Nga Than was to receive ten lashes for molesting Mi Ye as they had been divorced according to Palaung custom.⁶⁶

In the Konbaug period there were lawsuits involving debts, which had to be decided according to *myi-tet-chin chauk-pa* (six kinds of debts or debts incurred in six ways) as mentioned in the *Dhammathats*. Lawsuits involving debts had to be decided according to *myi-tet-chin-chauk-pa*.⁶⁷ According to the *Dhammathats*.

If a creditor fails to demand repayment of a debt from the debtor even though both of them live in the same ward (locality) for three years, for ten years, or for thirty years, the former cannot demand it anymore saying you owe me because he or she failed to demand the payment when it was due even though they (the creditor and the debtor) were living in the same place.⁶⁸

⁶⁶ Kyaw Htin, 1964, 46-48

⁶⁷ The *myi-tet-chin chauk-pa* were: (1) a loan for which both the principal and interest have not been repaid, (2) a loan for which the interest has been paid and the principal has not been repaid, (3) a loan for which the principal has been repaid and the interest has not been paid, (4) a loan not fully repaid, (5) the interest payable to the creditor at rate fixed by the creditor, and (6) the unpaid compensation one is obliged to pay.

⁶⁸ Dr. Forchhammer, *The Jardine Prize An Essay*, Yangon, The Government Press, 1885, p.7 (Henceforth: Forchhammer, 1885)

In a lawsuit between Nga Kun, former *thugyi* of Yenangyaung town, and Yehla Kyawthu Nawrahta, Nga Kun borrowed three viss of silver putting up fifteen ticals of gold as collateral; and the loan was repayable in two months. The creditor sued Nga Kun's wife Mi Hko twenty years after Nga Kun's death, demanding the repayment of this loan. Mi Hko testified that she had never heard that the creditor had demanded payment during her husband's lifetime. As it was an old case that was terminated since the reign of Sagaing Min, the lower court dismissed the case.⁶⁹ The judge of the lower court dismissed the suitor as he failed to take legal action within the prescribed period (the period of limitation), which had ended since the reign of Sagaing Min. Thus, in suit, the court ruled in accordance with the *Dhammathats*.

If the creditor failed to present the loan *thetkayit* or if no witnesses were present when the loan was made, trial by ordeal⁷⁰ would be resorted to.⁷¹ In a litigation between Nga Tu and Mi Chin, Nga Tu stated that Mi Chin borrowed more than twenty khwet of silver from him; however, Mi Chin denied that she had borrowed silver. Nga Tu failed to present the loan *thetkayit* and stated that the witness had died. Therefore, the judge decided that the litigants were to undergo *mi-tun* (burning candles), a trial by ordeal.⁷²

As the cases involving disputes over loans were sometimes decided according to the *myi-tet-chin chauk-pa* stated in the *Dhammathats*, they were sometimes decided by making litigants swear by their faith. In a litigation between Minywa Myinzi and Mi Hmo, Nga Hlaing, the younger brother of Mi Min Yauk, mortgaged Mi Min Yauk's son Nga Kala to Minywa Myinzi for 57 *kyats* 8 *mu*. When Nga Kala fled, Minywa Myinzi demanded Mi Hmo, the elder sister of Nga

⁶⁹ Kyaw Htin, 1964, 76

⁷⁰ The four kinds of trial by ordeal were: lighting tapers, chewing rice, submerging in water, and dipping one's finger in molten lead.

⁷¹ Than Tun, 1986 a, 229

⁷² Kyaw Htin, 1964, 70

Kala, to fulfill the debt. Mi Hmo stated that Nga Hlaing, their uncle who put Nga Kala in pledge, was not dwelling together with them, that they did not get the money from him either, that Nga Kala had fled from Minywa Myinzi's house for ten years already, and that Nga Kala did not come to Nyaung-yan town. U Kyan, the judge of Htayanka ruled on 7 August 1869 that Minywa Myinzi should not demand Mi Hmo to repay the loan in the *thetkayit* just because she was an heir of Mi Min Yauk, that Mi Hmo and her relatives were to swear on oath that Nga Kala did not come to Nyaung Yan town, if they had the courage to swear, Minywa Myinzi was to find Nga Kala himself, if they dare not swear Mi Hmo and her relatives were to look for Nga Kala, and that the party who lost the case was to pay the court fees. He also instructed the litigants that they were not to litigate the matter again in the future.⁷³

Moreover, in another lawsuit (Nga Shwe Khin vs *ex-thugyi* of Hpyauk Seit village), Nga Shwe Khin was unable to settle the debt he owed to the *thugyi* of Hpyauk Seit village. Therefore, he was to be detained; however, he was released on parole. When the *thugyi* of Hpyauk Seit, hearing that Nga Shwe Khin had absconded, set an errand-boy to go and call Mi Nyein, Nga Shwe Khin's wife; and Mi Nyein also went into hiding. Therefore, the *thugyi* of Hpyauk Seit took the matter to the *myo-oak-min*. Mi Nyein stated that she went to ground at her mother Mi Baw Oo's instruction. When Mi Baw Oo was interrogated, she stated that she did not tell Mi Nyein to hide, but that the latter went into hiding by herself. The *myo-oat-min* instructed Mi Baw Oo to swear that she was telling the truth. It was decided on 4 July 1879 that if Mi Baw dared to swear that she was telling the truth, the *thugyi* of Hpyauk Seit was not to demand payment of the debt from her, that if she did not dare to swear she was to settle the debts owed by Mi Nyein and

⁷³ Thein Swe Oo, *The Study of Lawsuits and Written Judicial Decisions from Meiktila and The Surrounding Areas*, M.Res. Meiktila University, 2004, p.51 (Henceforth: Thein Swe Oo, 2004)

Nga Shwe Khin, and that the person who lost the suit was to bear the litigation expenses. Accordingly, Mi Baw Oo swore at the Shwe Gu temple on 5 July 1879.⁷⁴ The lawsuits involving loans are given in Appendix (5).

Legal cases involving slaves were also adjudicated in accordance with the *Dhammathats* in the Konbaung period. According to the *Dhammathats*, a slave who was acquired by purchase could release himself from slavery by paying the owner the cost the latter had paid in buying him or her. A slave given to the owner by the latter's parent, however, could not manumit himself or herself. A slave given to the owner by a person (other than his parents) could free himself or herself from bondage by paying thirty *kyats* (for male slave) or twenty five *kyats* (for female slaves) to the owner.⁷⁵ When Nga Hmaing, grandson of Nga Nyo Gyi and Mi Loke, wife of *aukma-wun*, demanded Mi Kun Ka and her descendants to pay their *ko-bo* in the reign of Badon Min, the decision made was that Mi Kun Ka, Mi Oo, Mi Aung Min, Mi Nyein Tun and Nga Shwe Myat were to be manumitted if they paid their *ko-bo*. If they failed to pay their *ko-bo*, however, they were to continue to serve their owner to whom they had been given by their previous owners. This decision was made by Yandameit Kyaw Htin, the governor of Moemit. What happened was as follows: Winhum's wife bought Mi Hpyu, Nga Nyo Gyi's wife for a viss of silver during her lifetime. When she died, Nemyo Shwetaung Sithu, the *aukma-wun* passed away, his wife Mi Loke inherited the slaves. Mi Hpyu, Nga Nyo Gyi's wife who was purchased for a viss of silver died. Mi Hpyu's daughter Mi Kun Ka cohabited with Nga Myat Hpyu. Nga Myat Hpyu also had died, leaving three daughters: Mi Oo, Mi Aung Min and Mi Nyein Tun. If the descendants of Mi Hpyu, Nga Nyo Gyi's wife, wanted to release themselves from slavery by paying *ko-bo*, their *ko-bo* should be calculated as follows: the *ko-bo* of Mi Kun Ka, who was a *kye-thabauk* (slave), should be forty ticals (two times

⁷⁴ Thein Swe Oo, 2004, 51-52

⁷⁵ Forchhammer, 1885, 41-42

twenty ticals); that of Mi Oo, Mi Aung Min and Mi Nyein Tun, who were granddaughters, should be sixty ticals (three times twenty) each; so the *ko-bo* for the three granddaughters would be 180 ticals; and the sum of two groups (the Mi Kun Ka and the three granddaughters) therefore would be two viss and twenty ticals. Deducting fifty ticals of Mi Oo's income from this amount, Mi Kun Ka, Mi Aung Min and Mi Nyein Tun were to pay one viss and seventy ticals of silver to Mi Loke.⁷⁶ Thus the price of a female slave who was purchased was set at twenty ticals of silver in this case not twenty five *kyats* as fixed in the *Dhammathat*. Therefore, the decision was not in conformity with the rule in the *Dhammathat* that the slaves who were purchased could release themselves from slavery by paying the cost the owner had to pay when he or she bought them.

There was a dispute over the ownership of a slave which was litigated in 1880, during the reign of King Thibaw. The account of this case was as follows: Ko Aing of Megagiri ward, Yadanabon (Mandalay), sold his wife into servitude for 100 silver coins. Later, Maung Gyi (a feudal lord) and wife, conspiring with court officials, sued Ko Aing as a debtor who owed them 100 silver coins; and Ko Aing was arrested. When he stood trial, Ko Aing presented the agreement, which mentioned that Ko Aing of Megagiri ward asked Maung Maung Gyi and Wife to "buy" his wife Mi Ru for a hundred silver coins. He also promised that he would redeem Mi Ru in five months, that if he redeemed her earlier, he would pay extra money in accordance with the local custom, that if Mi Ru fled and if the creditors had to take the matter to court he not only would redeem her by repaying the loan but also would bear the legal expenses. Mi Nyunt, U Shwe Ton's wife and U Hpo Te promised that if the debtors failed to fulfill the debt, they would repay it together with the expenses. The sureties also admitted, when they were summoned to the court, that they had given assurance that the debt would be settled. Therefore, the judge ordered the release of the defendant and ordered that the

⁷⁶ Kyaw Htin, 1964, 35-36

defendant, together with the sureties, was to settle the debt.⁷⁷ This case reflects the greed of the creditors. After paying a hundred *kyats* for a woman, though the normal value was only about fifty *kyats*, the creditors seemed to have regretted that they paid too much. Therefore, they sued the person who sold the slave, saying that he owed them 100 silver coins. The judge was partial towards the plaintiffs (creditors), causing suffering to the defendant.

Legal cases involving slaves were judged according to the *Dhammathats* in the Konbaung period. However, there were instances in which *hpaya-kyun* (pagoda slaves) became *min-kyun* (crown slaves) at the request of the *Thathanabaing Syadaws* (Supreme Patriarchs) in the reign of Badon Min. In a case involving the *hpaya-kyuns* who were inhabitants of Kyaungbadaung, the *Maungdaung Thathanabaing* (the Supreme Patriarch who was from Maungdaung) and other abbots sent a letter to the king advising that although it was impossible to assume that the inhabitants of Kyaukbadaung donated by Thihapate to Myazigon stupa were released from slavery, they should be *min-kyun* or *min-hmudans* (crown servicemen). Therefore Badon Min released the inhabitants of Kyaukbadaung from slavery.⁷⁸ The slave donated to the monasteries, temples or stupas, or to the Buddhist scriptures could not become *min-kyun*. They only had to serve as the slaves of the religious establishments to which they were donated. However, the king broke with tradition in letting them become *min-kyuns* at the request to abbots.

After the second Anglo-Myanmar war, the British who ruled Lower Myanmar had political and commercial relations with Upper Myanmar. It was stipulated in the Anglo-Myanmar treaty signed by King Mindon and the British Government in 1867 that the British were to be granted immunity against

⁷⁷ U Thaung, “*Kyun Hmu Taya*” (“Case involving slaves”), *Working People's Daily*, 29 January 1971 (Henceforth: U Thaung, 29 January 1971)

⁷⁸ Than Tun, 1989, 398

prosecution under Myanmar laws, and that the British commissioner (Resident) was to be allowed to hear the cases, involving British nationals. If a criminal who committed theft, robbery, murder, etc in the Myanmar territory fled to the British territory, the British would extradite him to Myanmar when and if the Myanmar government demanded. Reciprocally, the Myanmar government was to extradite the fugitives who entered its territory after committing crimes in the British territory. Then, the Myanmar nationals who committed crimes, such as theft, robbery, murder in the British territory were to be tried by a Myanmar court in accordance with Myanmar customs, and the British nationals who committed crimes in the Myanmar territory were to be tried by the British government according to British customs.⁷⁹ Civil cases involving both the British and Myanmar nationals were to be heard by the *Twebet Yon*, a special tribunal with the British commissioner and a Myanmar minister serving as judges. The rules governing the procedure of the *twebet yon* were drawn up by the British commissioner and the members of the Myanmar *hluttaw* (Council of Ministers).⁸⁰

The rules include:

- (a) If the two judges of the *twebet yon* failed to reach an agreement, the case was to be decided by a *khon* (panel of judges or tribunal)
- (b) If a defendant who was a Myanmar national owed money to the plaintiff, the British commissioner was to demand it in writing through the Myanmar judge.
- (c) A territory was not to let someone file a suit in its territory if the matter was in litigation in another territory or if the matter had been judged by a court.

⁷⁹ Ohn Kyi, “*Twebet Yon Hmuhkin Mya*” (“Cases tried at the mixed court”), *Than Tun*, 75 *Mwene Letsaung, Shasha Hpwehpwe Myanmar Thamaing*, Vol. II, Yangon, Theinthteik Yadana Press, 1999, pp. 239-270 (Henceforth: Ohn Kyi, 1999)

⁸⁰ *Hluttaw PurabaikI*, 1901, 106

As the British laws and judicial system differed greatly from those Myanmar, disagreements over the cases occasionally arose. As the underlying principle of Myanmar judicial administration was “to extenuate serious legal cases and to dissolve minor legal cases”, most of the cases were settled by arbitration. The British judicial system was accusatorial: ie, the facts were ascertained by the judge from the evidence presented by the plaintiff and the defendants in their pleadings. Like the judicial systems, the classifications of cases into criminal and civil cases also differed. Under the Myanmar kings, any action to oppose the king was a crime, and treason, murder, robbery, armed robbery, theft, and rape were classified as serious crimes (felonies); and concealment of weapons, destruction of monasteries and temples, arson, consumption, production or sale of alcoholic drinks, toddy sap, opium, marijuana and fermented liquor, slaughter, consumption and sale of cattle or buffaloes for food, gambling including playing pachisi, setting cockfights, etc were classified as minor crimes (misdemeanours). The *twebet yon* only had civil jurisdiction over the cases involving both British and Myanmar nationals. Therefore, if a case was recognized as a criminal case, the case would not be under its jurisdiction even if it involved both British and Myanmar nationals. Therefore, the British commissioner sometimes demanded that some cases the Myanmar judge had defined as criminal cases were to be tried by the *twebet yon* arguing that they were civil cases. A fraud in September 1874 may be cited as an example. Thayet Kasin, a British, swindled Ko Hpo Mya, a Myanmar, out of four bolts of cloth and sold them; subsequently, Ko Hpo Mya reported the matter to the town court. When the *Myowun* (governor) summoned Thayet Kasin the latter, being scared, sent Maung Kyan as a substitute. The *Myowun* had Maung Kyan in chains, and Kasin reported the commissioner of Mandalay that his substitute was shackled. Then, on 24 September 1874, the commissioner demanded the Myanmar authorities in writing to unshackle Maung Kyan and to make the plaintiff file a suit at the *twebet yon*. The *hluttaw* questioned the *myosaye* (town clerk) about the matter, and learnt that Thayet Kasin swinkled four bolts of

cloth from Ko Hpo Mya, who had a shop at Zegyo and Ko Hpo Mya complained the matter to the *Myowun*, and that when the *Myowun* summoned Thayet Kasin, the latter failed to come but send a substitute, Maung Kyan, and therefore the latter was shackled in accordance with criminal procedures. Then the *hluttaw* informed the matter to the British commissioner as stated by the *myosaye*. It explained that the substitute of the accused was arrested with a view to reclaiming what the accused had swindled, and that the case would not be referred to the *twebet yon* because fraud was a crime.⁸¹

There was another fraud case which the British commissioner regarded as a civil case, demanding that it should be heard by the *twebet yon*. Kin Wun Mingyi, on the other hand, argued that it was a criminal case and hence it should be decided by the *hluttaw*, *yondaw* and *khondaw*. Concerning this case, the British commissioner informed Kin Wun Mingyi on 8 August 1878 that he believed that the case involving the loan of a diamond earring (Malakyan vs Nanapusari) would be referred to the *twebet yon* as it was a civil case. Kin Wun Mingyi replied on 25 August 1878 that the case was a criminal case, not a civil case, because the diamond earring was not lent to the accused, but the accused got it through a swindle, and hence the case would not be referred to the *twebet yon*, and demanded the commissioner to send the person summoned without giving excuses if the *hluttaw*, *yondaw* or *khondaw* summoned someone for criminal investigation. However, Kin Wun Migyi's letter to the British commissioner dated 28 March 1879 indicates that this case later had to be transferred to the *twebet yon*.⁸² Fraud was a crime according to both Myanmar and British laws. Therefore, these disagreements had nothing to do with the differences between Myanmar and British laws. The British Resident probably was misled by the British nationals who were involved in these cases by their concealment of the pertinent facts in their petitions, or was just being devious to protect the British subjects.

⁸¹ Ohn Kyi , 1999, 239-270

⁸² Ohn Kyi, 1999, 239-270

A suit litigated by Clement Williams and the Myanmar government was heard by the *twe-bet yon*. The Myanmar government contracted Clement Williams to procure machinery for an iron smelter. However, the latter failed to deliver the machinery within the period stipulated in the contract, and hence Kin Wun Mingyi requested the British commissioner in a letter dated 6 October 1875 to make Clement Williams deliver the goods.⁸³ As Clement Williams was in Britain on a visit, his younger brother Herr Williams informed the commissioner that he desired to discuss the matter concerning the *hundi* (an informal bank draft) signed by Kin Wun Mingyi, that the Myanmar king still owed them some money for the machinery-part of the expenses as well as the interest. The commissioner relayed the information to Kin Wun Mingyi on 4 December 1875. Then, Kin Wun Mingyi send a list that included the contract, promissory note, the prices of machinery, technicians' salaries, freight, and the amount of money paid to Clement Williams to the commissioner on 11 December 1875 for information. The commissioner, in return, sent Kin Wun Mingyi the copies of the explanations given by Clement Williams on 22 September 1876. Concerning this case, King Wun Mingyi informed the commissioner on 4 October 1876 that if Clement Williams or his brother agreed to accept the decision of the British commissioner at Mandalay, the Myanmar government was also willing to go along with it.⁸⁴ The *twebet yon* decided on 4 September 1877 that Clement Williams was to deliver the machinery within thirty days from the day the judgement was pronounced, and that the Myanmar government was to pay the amount owed to Clement Williams within ten days from the date of delivery.⁸⁵

⁸³ *Hluttaw Purabaik Ahmat Atha Atokauk Hmatpon (Abbreviations of the Purabaik Manuscripts of the hluttaw)* Vol-II, Yangon, Government Printing, 1909, p.106 (Henceforth: *Hluttaw Purabaik, 1909*)

⁸⁴ *Hluttaw Purabaik, 1909*, 106

⁸⁵ *Hluttaw Purabaik, 1909*, 107

To conclude, lawsuits concerning inheritance disputes, adultery with a married woman, marriage, divorce, loan defaults, slave, etc were decided according to the *Dhammathats*. Although there is no reliable record to determine whether the Myanmar *Dhammathats* were not copies of Hindu law texts. They were the adaptations of Hindu law texts, which were modified to be in conformity with Myanmar customs.

According to the *Dhammathats* the offices of the *htaungke*, *winhmu*, *thwethaukyi*, *myedaing* and *thugyi* were hereditary offices, which passed from one generation to the next. Generally, disputes over claims to hereditary offices were decided according to the *Dhammathats* and sometimes, the king would appoint the officers who had served courageously for him to those offices. The kings also attempted to control those offices by ordering that they were not to be transferred by inheritance. Therefore, it can be learnt that whatever was stipulated in the *Dhammathats*, the kings sometimes breached the customs by meddling in the appointment of hereditary officials.

Concerning inheritance suits, the property of a deceased person was either inherited by his or her spouse or offspring. These suits also were decided in accordance with the *Dhammathat*. If a court decision was not in accordance with the *Dhammathats*, the king would intervene. In a lengthy litigation, the relatives of the litigants sometimes would mediate between the two sides. In addition, there were the *sonyas* (or arbitration boards), formed with the relatives of the litigants, village administrative officials and village elders acceptable to the litigating parties. Some cases were arbitrated by these *sonyas*. Although the *sonyas* did not arbitrate the disputes according to the *Dhammathats*, it seems that the *sonyas* were instrumental in implementing the goal of Myanmar judicature which was “to extenuate serious legal cases and to dissolve minor legal cases.”

CHAPTER FOUR

LEGAL CASES INVOLVING BUDDHIST MONKS

Like laypersons, monks also were involved in legal cases in the Konbaung period. If both parties were Buddhist monks, the case would be decided by the *kyaungdaing sayadaw* (the head of the monastery) concerned. If the *kyaungdaing sayadaw* was unable to solve the problem, either side could take the matter to the *taik-oak* (presiding monk of a group of buildings in a monastery complex) or *taik-choat sayadaw* (abbot or the presiding monk of a monastic complex). Appeals against their decision could be made to the *Thathanabyu Sayadaw* (the Supreme Patriarch), whose office served as the Court of Final Appeal for monastic cases.²⁷⁴ Thus, the law cases involving Buddhist monks were adjudicated by the different levels of judges—from *kyaundaing sayadaw* to the *Thathanabyu Sayadaw*. However, unlike laypersons, neither party incurred legal expenses even though their case would be heard by a trial court as well as different levels of appellate courts.²⁷⁵

The *Thathanabaing* (the most Supreme Patriarch), referred to as *Tathanabyu Sayadaw*,²⁷⁶ who acted as the judge of the highest appellate court, was nominated

²⁷⁴ Ba Thaug, 1975, 92

²⁷⁵ Tin, 1976, 253

²⁷⁶ The *Thathanabyu Sayadaw* will be referred to as *Thathanabaing* for the sake of convenience.

by the king.²⁷⁷ The king also appointed the *Thudhamma Sayadaws* who were placed under the *Thathanabaing*. They were first appointed in the reign of Badon Min.²⁷⁸ The *Thathanabaing* and the *Thudhamma Sayadaws* appointed the *Sayadaws* from the monastic complexes in the capital who commanded respect as *taik-choat*, *taik-oak*, *taik-kyat* (assistant to a *taik-oak*) to hear the cases involving Buddhist monks. The *taik-choat* was appointed only in King Thibaw's reign.²⁷⁹ In addition, *gaing-choat* (head of a Buddhist sect), *gaing-oak* (head of a Buddhist fraternity in a locality) and *gaing-dauk* (assistant to a *gaing-oak*) were appointed in the towns and villages distant from the capital to decide the cases involving Buddhist monks in their respective localities. The post of *gaing-choat* was created only during the reign of King Thibaw as the work concerning religious affairs increased considerably.²⁸⁰ The *gaing-oak* and *gaing-dauk* were appointed by the *Thathanabaing* and the *Thudhamma Sayadaws*. In appointing each of them, a *sagyundaw* (royal order of appointment written on palm-leaf) stamped with a seal was used.²⁸¹

A candidate for *Thathanabaing*, who would be nominated by the king, must meet the following requirements;

- (1) he must be well versed in the three Pitakas,
- (2) he must be able to promote the Thathana (Pali *Sāsana*, "Religion"), and
- (3) he must be *lajji pesala sikkha kama* (scrupulous, well-behaved and anxious for training). The word *lajji* means "having hiri and ottappa", ie

²⁷⁷ Win Maung, 1999,219-236

²⁷⁸ Tin, 1970,188

²⁷⁹ "Yahando Kyintsauung yan Upade 1880 " (Rules to be followed by monks 1880), *Purabaik* MS 82, Mandalay University Library (Henceforth: *Yahan Upade*, *Pu* MS 82)

²⁸⁰ Tin, 1970, 129

²⁸¹ Win Maung, *Mandalay Khit Buddha Thathanawin (Buddhist religion in the Mandalay Period)*, M.A. thesis, Mandalay Arts and Science University, 1978, p.169 (Henceforth: Win Maung, 1978)

scrupulous or conscientious; *pesala* means “lovable, amiable, well-behaved”, *sikkha* means training, ie the three trainings: *adhisila-adhicitta*-and *adhipañña-sikkhas* (“the training in heightened virtue, the training in heightened mind, the training in heightened discernment”.) and *kama* means “desirous of anxious”.²⁸²

Although these requisite qualifications were laid down there were instances in which the monks who had taught the kings or queens when they were young were appointed as *Thathanabaing* even though they failed to meet these requisite qualifications. In the reign of king Mindon, U Sandima, the monk who had taught King Mindon when he was young, only became a member of the Thudhamma Committee, whereas U Nyeyya, who had been the teacher of the queen of Nanmadaw (Central Palace), was nominated as *Thathanabaing*.²⁸³ Concerning the reason for nominating the Taungdaw *Sayadaw* as *Thathanabaing* in the reign of King Thibaw, Ivan Pavlovich Minaye who had firsthand knowledge of the matter, recorded on 7 February 1886 that he was appointed *Thathanabaing*²⁸⁴ only because he was the monk who taught King Thibaw when the latter was young.²⁸⁵ Thus, it is clear that even though the requirements for the post of *Thathanabaing* were laid down, in reality, the monk who had taught the reigning king normally was appointed to the post. The monk nominated as *Thathanabaing*,

²⁸² “*Thathanaye Ameindaw 1855* ” (“Royal Order on religious affairs 1855”), *Purabaik* MS 626, Yangon, National Library (Henceforth: “*Thathanaye Amein*”, *Pu* MS 626)

²⁸³ Myaketu, “*Mindon Bayin Lethtet Thathanabaing Sayadaw*” (“Supreme patriarch of king Mindon's reign”), *Myawadi*, Vol. XII. no.x, August, 1964, pp.56-61 (Henceforth: Myaketu , 1964)

²⁸⁴ Kanni Sitke Minhtinyaza, *Mandalay Yadanabon Maha Yazawindawgyi (the great history of Mandalay Yadanabon)*, Mandalay, Tetnelin Press, 1969, p.162 (Henceforth: Minhtinyaza, 1969)

²⁸⁵ Than Tun, *Nehle Yazawin (Peripatetic history)*, Vol.III, Yangon , Nantha Press, 1969, first printing, p.423 (Henceforth: Than Tun, 1969)

the head of the Buddhist Order, had to swear an oath at a *ceti* that “he would administer justice in secular as well as religious matters without taking into consideration the bribe given to him and without prejudice”.²⁸⁶ Moreover, the main duty of the *Thathanabaing* was to strive for the purity of the *Thathana* (Pali Sāsana” Religion”). For the purification of the *Thathana*, he had to arrange to prevent the monks from becoming immoral, to decide the cases involving monks, and to promulgate laws and orders to ascertain that the monks would follow the Vinaya rules.²⁸⁷

As there were monks who lived in conformity with the Vinaya rules, there were those who disregarded them. Some monks were breaking the rules by playing pachisi, taking part in pitch game (played with the seeds of *Entada pursaetha*), betting in gambling games, committing theft, or by being overfriendly with laywomen. Therefore to purge the *Thathana* of corruption, the *Thathanabaing* had to order the *taik-oak*, *taik-kyat*, *gaing-oak*, and *gaing-dauk* concerned to take disciplinary measures when ever necessary. If the monks disregarded their decisions, the *Thathanabaing* himself would decide the matter. A list of the immoral monks, with the name, age, address, monastery of each monk and the offence he had committed, was made; and they would be summoned to the Thudhamma Committee to face the charges.²⁸⁸ An order was issued in 1853 to the monks entrusted with administrative powers to act in concert to purge the Order of immoral monks.²⁸⁹ Furthermore to cleanse the *Thathana* of immoral monks, many

²⁸⁶ “*Sangha Vinicchaya Hpyathton*”, *palm-leaf* MS 41 (ka to ngau) 4 inga, 10 leaves, Mandalay University Library, ki (recto), (Henceforth: *Sangha Vinicchaya*, *pa* MS 41)

²⁸⁷ Win Maung, 1978, 146

²⁸⁸ “*Mandalay Akyauung Aya Ayap-yap Zagazu*” (Words on various facts about Mandalay), *Purabaik* MS 746, Yangon, National Library (Henceforth: “*Mandalay Zagazu*”, *Pu* MS 746)

²⁸⁹ Win Maung, 1978, 147

law had to be issued so that the monks would follow the Vinaya rules. This clearly indicates that there always were some immoral monks. In the laws issued by the *Thathanabaing* for the moral rectitude of the monks, concerning *pariyatti* (study) the monks were directed to study the *Patimokkha*²⁹⁰ and the novices were instructed to study the *sekhiya*,²⁹¹ and they were to discuss what they had read with one another. With regard to *patipatti* (practice) it was ordered that the trainers were to teach the methods of meditation to their trainees (*ganthadhura*), and to practice *Vipassana* or insight meditation (*vipasanadhura*).²⁹² Concerning the monks' relations with their lay devotees, it was ordered that the monks were not to visit layperson's homes without a good reason, not to jostle each other to receive offering,²⁹³ not to give fruits or flowers to laypersons, not to give medical care to laypersons, not to practice divination, not to go in a boat or ride a cart without a reason, not to indulge in debauchery, not to watch *pwe* (public entertainments),²⁹⁴ not to visit the palace and the *hluttaw* to ask for offerings without being invited, not to recite the suttas in whining or singsong tone, and were not to swim in the river. The monks were not to hold any grudge against one another or speak to one another insinuatingly. In addition, they were exhorted not to fight with one another or cause schism in the Sangha, but were to live in harmony.²⁹⁵ In entering towns or villages, the monks were urged to wear their robes properly and to avoid using an umbrella or wearing slippers.²⁹⁶ The *Mahadanwun*²⁹⁷ had to keep watch over the

²⁹⁰ The basic code of monastic discipline, consisting of 227 rules for monks (bhikkhus) and 310 for nuns (bhikkhunis).

²⁹¹ The seven training rules for the novices () to follow.

²⁹² Taw Sein Ko, 1977, 206

²⁹³ Taw Sein Ko, 1977, 202-204

²⁹⁴ Taw Sein Ko, 1977, 203-205

²⁹⁵ Taw Sein Ko, 1977, 204-209

²⁹⁶ Taw Sein Ko, 1977, 202-203

²⁹⁷ The *Mahadanwun* had to urge the monks to act in conformity Vinaya rules. He was responsible to detect those who broke the Vinaya rules and to apprehend them and hand them

monks and had to arrest those who violated the rules. The lawbreakers, together with their teachers, would be tried at the Thudhamma hall.²⁹⁸ Thus, actions were taken not only against the offenders for breaking the law, but also against their leaders for being remiss in their duties of enforcing discipline. It seems that the leaders were held responsible for the conduct of the monks over whom they had control so that they would be strict in enforcing discipline.

So that there would be no immoral monks in the *Thathana*, the religious law promulgated in 1883 prohibited the monks from initiating crown servicemen, thieves, robbers or rebels into the Buddhist Order as monks or novices.²⁹⁹ On 20 April 1884, Ven. Pinnyasetka, a son of Prince Kanaung, was arrested, expelled from the Order and executed for rebelling against the reigning king.³⁰⁰ The problem stemmed from the death of Prince Kanaung who was killed in the rebellion staged by the princes who held Myingun and Myingondaing in fief;³⁰¹ dissatisfied with this, the sons of Prince Kanaung rose in rebellion in 1884. One of them was Maung Hpon, who led the rebellion after becoming a monk by the name of Ven. Pinnyasetka. When his plans emerged, the *Thathanabaing* expelled him from the Order and forced him to disrobe.³⁰² King Thibaw had

over to the adhipati *Sayadaws*. He also had to inflict punishments on the offenders—*thedan* (carrying sand) or *yedan* (carrying water) in penance. He was also responsible for the administration of slaves and land donated to the religious establishments, and to maintain order in the religious establishments.

²⁹⁸ *Dhamma-Vinaya Ameindaw Pyandangyi (Royal Order of Dhamma and Vinaya)* Yangon, Hanthawady Press, 1968, p.50 (Henceforth: *Dhamma-Vinaya, 1968*)

²⁹⁹ Taw Sein Ko, 1977, 206

³⁰⁰ *Konbaungzet*, 2004 b, 148

³⁰¹ Win Maung, 1978, 418

³⁰² Khin Maung San, *Konbaung Khit Thathanabaing mya hnint Swansaunggyet mya (Supreme Patriarchs of Konbaung period and their achievement)*, M.A. thesis, Mandalay University, 1991, pp. 104-105 (Henceforth: Khin Maung San, 1991)

Maung Hpon and his confederates executed on 2 April 1884.³⁰³ This incident indicates that the people had revolted against the reigning king in the monastic garb.

The *Thathanabaing* was responsible to hear the cases involving only monks or involving both monks and laypersons: disputes over the claims to *kyaungdaing*-ship, theft, the practicing of usury, loss of property, rape cases, land disputes, assault and battery, gambling, murder cases, disputes over inheritance, entering the Order by those who were underage, the practicing of alchemy, etc.³⁰⁴ He had to sentence the offenders in accordance with the Vinaya texts. Concerning these cases, the decision of the *Thathanabaing* was final. However, his decisions were not immutable in some cases. For instance, a dispute over the ownership of a plot of land with toddy trees led to a fight between a layperson and a monk, and U Mala, the *Thathanabaing*, settled the dispute by sentencing the monk to carry sand sixty times to atone for his offence.³⁰⁵ However, this case resurfaced twenty-five year later in 1907, and another monk had to solve the matter again.³⁰⁶ Moreover, a monk who entered the *Hluttaw* and uttered profanities,³⁰⁷ a monk who, being accused of committing immoral acts, was excommunicated by his fellow monks,³⁰⁸ and a monk who unjustly accused another monk of immoral behaviour³⁰⁹ were banished from the towns and villages they were dwelling in. Even though a monk had committed rape, he could not be punished unless he

³⁰³ *Konabaunzet*, 2004 b, 418

³⁰⁴ “*Sangha Vinicchaya*”, Pa MS 41, Ka-ngau

³⁰⁵ *Thathana Visuddhi* edited by Saya Wa, Yangon, Myanmar Pyi Zaunt Thadinzadaikkyi, n.d., p.5 (Henceforth: *Visuddhi*)

³⁰⁶ *Visuddhi*, 1-2

³⁰⁷ *Vinaya Samuha Vinicchaya Kyan* edited by U Nigyoda, Vol.III, Mandalay, Thathanamandaing Press, 1941, p.74(Henceforth: *Vinaya*, 1941)

³⁰⁸ *Vinaya*, 1941, 90

³⁰⁹ *Vinaya*, 1941, 32-35

himself confessed to it.³¹⁰ If he confessed to rape, however, he would have to leave the monkhood and could continue to stay in the Order as a novice.³¹¹ Concerning manslaughter, the *Thathanabaing* decided that if the cause of death was accidental and unintentional, the accused need not leave the order.³¹² Thus, it is learnt that in hearing the legal cases, the *Thathanabaing* decided in conformity with the Vinaya rules.

Apart from meeting out punishments to offenders pursuant to Vinaya rules, the *Thathanabaings* requested the kings to pardon some convicts who had been sentenced to death, and there were instances in which some convicts were pardoned. During the reign of King Bagan, altogether twenty-two convicts—including both men and women—who had either been condemned to death or sentenced to jail were pardoned in 1849. Similarly, fifty convicts who were serving time were pardoned in the reign of King Mindon.³¹³

The *Thudhamma Sayadaws* who were placed under the *Thathanabaing* were appointed by the king. When the king had nominated them, the *Thudhamma Sayadaws* had to vow in the presence of other monks.

- (1) that they would act selflessly for the welfare of the *Thathana*;
- (2) that they would be deferential towards the *Sayadaws* and that they would not lord it over junior monks and novices; and
- (3) that they would be objective in hearing the cases concerning the *Thathana*.³¹⁴

Obeying the orders of the *Thathanabaing*, the *Thudhamma Sayadaws*

³¹⁰ *Vinaya, 1941*, 10-11

³¹¹ *Vinaya, 1941*, 19-21

³¹² *Vinaya, 1941*, 97-100

³¹³ Khin Maung San, *1991*, 87

³¹⁴ *Shangale Kyun Sayadaw*, “*Thudhamma Sayadaw mya-ei Upade*” (Law of the *Thudhamma Sayadaw*), *palm-leaf MS 45107*, Yangon, Universities Central Library, ka (verso) (Henceforth: “*Thudhamma Upade*”, *Pa MS 45107*)

- (1) had to hear the cases involving the *Thathana*,
- (2) had to appoint *gaing-oaks* and *gaing-dauks*, and
- (3) had to relay the orders and laws issued by the *Thathanabaing* to other localities. The rules the *Thudhamma Sayadaws* had to follow either in administering justice or in appointing *gaing-oaks* and *gaing-dauks* were prescribed, and the offences and punishments were spelled out.³¹⁵ See appendix (6).

In 1872, the *Thudhamma Sayadaws* appointed the *Hkethka Sayadaw* as *gaing-dauk*.³¹⁶ Although the *Thudhamma Sayadaws* were only to carry out their duties concerning the affairs of the religion in conformity with the Dhamma, they sometimes meddled in secular affairs— in the appointment of royal officials³¹⁷ in the cases involving only laypersons,³¹⁸ etc.

Monks, like laypersons, were involved in legal cases—those involving only monks and those involving both monks and laypersons. The cases, involving only monks were referred to as *adhikarons* (pali *adhikarana*, meaning “case dispute”), which were categorized into (1) *vivadadhikaron*,³¹⁹ (2) *apattadhikaron*,³²⁰ (3) *anuvadadhikaron*,³²¹ and (4) *kiccadhikaron*.³²²

³¹⁵ “*Thudhamma Upade*”, *Pa* MS 45107, ki (recto)-ge (verso)

³¹⁶ Win Maung, 1978, 170

³¹⁷ The *Pahkhan Sayadaw* had issued an order to appoint Nga Thein, young brother of Nga Kyi, a *gaung* (Who assumed the Razaponnya title) of Nabu Aing village, Taloke circle, as *asu aye*. (Win Maung, 1978, 162)

³¹⁸ The *Pahkhan Sayadaw* had interrogated the robbers who had been in custody. (Win Maung, 1978, 162)

³¹⁹ *Vivadadhikarons* were disputes.

³²⁰ *Apattadhikarons* were cases concerning the monks committing seven kinds of offences.

³²¹ *Anuvadadhikarons* were the cases concerning immoral behaviours, livelihoods or holding wrong views.

The *vivadadhikarons* included disputes over the ownership of monasteries, misappropriation, land disputes, and disputes over inheritance. As to the disputes over the ownership of monasteries, there were instances in which a monk took hold of a *puggalika* monastery (a monastery donated to a monk as his personal possession), acting as *kyaungdaing* without the consent of the donor,³²³ and in which a monk occupied a *sanghika* monastery (a monastery donated to the Sangha community) by turning it into a *puggalika* monastery.³²⁴ In another case, when an abbot passed away, the other monks vied with one another to become *kyaungdaing* or abbot of a *sanghika* monastery the abbot had presided over before his death.³²⁵ The *kyaungdaing* had to be chosen by the donor of the monastery if the monastery in question was a *puggalika* monastery, while the *kyaungdaing*-ship of a *sanghika* monastery was based on seniority. There was also an instance in which a monk misappropriated the gold and silver entrusted to his care by a lay devotee.³²⁶ Most of the cases, however, concerned disputes as to the ownership of land. In an instance, there was a dispute between a monk and a layperson over the ownership of a plot of land—the land had been purchased by a layperson, and a monk claimed that it had been donated to him; and they engaged in a lawsuit.³²⁷ In another instance, a monk sold a plot of land he had received as an inheritance to a layperson, who later donated it to a monastery. Then, the monk sold it to the layperson attacked the monks to whom it was donated, and the matter was taken to court. The *Thathanabaing* punished the monks who unjustly attempted in these

³²² *Kiccadhikarons* were cases concerning duties.

³²³ “*Sangha Vinicchaya*”, *Pa* MS 41, nge (recto)-ngau (recto)

³²⁴ “*Sangha Vinicchaya*”, *Pa* MS 41, kha (verso)-khi (verso)

³²⁵ “*Sangha Vinicchaya*”, *Pa* MS 41, ku (verso)-ke (recto)

³²⁶ “*Sangha Vinicchaya*”, *Pa* MS 41, ki (recto)- (verso)

³²⁷ “*Sangha Vinicchaya*”, *Pa* MS 41, khu (recto)- (verso)

ways to seize monastery land by banishing them from the locality they were dwelling in.³²⁸

There was a suit in which a layperson claimed the inheritance of a plot of monastery land.³²⁹ In another case, a layperson who held a plot of monastic land by tenancy misappropriated it by mortgaging it.³³⁰ In another instance, a layperson who was an heir to a plot of land that had been donated to a monk, contested at law to reclaim it.³³¹ When an abbot passed away, there was a dispute over the inheritance of two kinds of property—*garu-bhanda*³³² and *lahu-bhanda*³³³—that could be passed on to other monks through inheritance. In such cases, the alms-bowl and robes of the abbot would go to the two monks to whom the abbot had transferred them in dual ownership (*dvi-santaka*) before his death; these two monks had to share the things equally.³³⁴

Concerning Vivadadhikarons, there was a dispute among three monks from Yepoattalin village over *garu-bhanda* and *lahu-bhanda* property of a monastery when the abbot of Maungdaung was serving as the Supreme Patriarch. On 24 October 1853, Ven. Kawi, the complainant, reported to the Supreme Patriarch that Ven. Parama and Shin Ariya, the defendants, had seized the possessions of the monastery entrusted to them, by Ven. Nyana, their preceptor. When the Supreme Patriarch questioned them, the defendants stated that Ven. Nyana gave them those by a deed of conveyance. Ven. Kawi, however, asserted that U Nyana had transferred those things in dual-ownership (*dvi-santaka*). After hearing the case, it was decided that Ven. Nyana's property except the alms-bowl and the robes were to be divided into two portions, and Ven. Kawi was to get one while Ven. Parama

³²⁸“*Sangha Vinicchaya*”, *Pa* MS 41, gu (verso)-gai (verso)

³²⁹ “*Sangha Vinicchaya*”, *Pa* MS 41, gi (verso)-gi (recto)

³³⁰ “*Sangha Vinicchaya*”, *Pa* MS 41,ghai (recto)-ghai(verso)

³³¹ “*Sangha Vinicchaya*”, *Pa* MS 41, ya:(recto)-nga (verso)

³³² *Sanghika* property or property owned by the Sangha community.

³³³ *Puggalika* property or things a monk had acquired as his personal possessions.

³³⁴ “*Sangha Viniccaya*”, *Pa* MS 41, ku(recto)-ku (Verso)

and Ven. Ariya were to take the other, and Ven. Kawi, who was senior, was to take control of the monastery. Thus, the Maungdaung Supreme Patriarch decided the case according to the vinaya rules³³⁵.

Sometimes, a monk would transfer the *sanghika* property (or *garu-bhanda*) together with his personal possessions (*lahu-bhanda*) to some other monks before he passed away. For instance, Ven. Indasabha, the *gaing-dauk* who dwelt at the monastery of Pyaungpya village, situated to the south of Taloke town, transferred both *garu-bhanda* (*sanghika* property) and *lahu-bhanda* (private property) to Ven. Gandhabhisura., the abbot of Shagaing monastery, by signing an agreement in 1854, during the reign of King Mindon.³³⁶ Another document dated 19 December 1868 recording the transfer of both *garu-bhanda* and *lahu-bhanda* before a monk's death also has been discovered.³³⁷ On 28 October 1880, during the reign of King Thibaw, Ven. U Ketu signed a conveyance to transfer both *garu-bhanda* and *lahu-bhanda* properties that were in his possession to Ven. U Mala, his nephew.³³⁸ In fact, the *garu-bhanda* or *sanghika* property could not be alienated. Therefore, it is probable that the monks were just transferring their duties of safeguarding the *garu-bhanda* (communal property) to other monks.

It is stated in the *Vinicchaya Pakasani Dhammathat* and the *Manu Vannana Dhammathat* that an individual—whether a monk or a layperson—legally owned the property handed over to him by the owner before the latter's death. Therefore, the decision in *Ma Gaung vs monks* that laypersons had a right to receive the things

³³⁵ Nyunt Nyunt Wai, *Taunggwin Thathananaing Lethtet Aye-ahkin Mya 1903-1938 (The disputes that arose while the Taunggwin Supreme Patriarch was in office 1903-1938)*, M.A. thesis, Mandalay Arts and Science University, 1969, pp.184-185 (Henceforth: Nyunt Nyunt Wai, 1969)

³³⁶ Ba Thaug, 1975, 103

³³⁷ “1230 *Ameindaw*” (Royal Order of 1868), *Purabaik* MS 30, Mandalay University Library (Henceforth: “1230 *Ameindaw*”, *Pu* MS 30)

³³⁸ “*Garuban Lahuban Pe Sagyoke*” (Conveyance deed involving communal property and personal property), *Purabaik* MS 274, Mandalay University Library (Henceforth: “*Garuban*”, *Pu* MS 274)

given to them by monks before their death, was made in conformity with the *Dhammathat* law texts.³³⁹

According to Vinaya rules, the monks, novices and laypersons who attended a monk when he was sick were allowed to receive the eight requisites of the latter after his death. More precisely, a monk attending him could receive the eight requisites and a layperson could only receive the amount of money equal in value to the eight requisites.³⁴⁰ The reason probably was because only the monks were to receive the eight requisites as those were suitable only for monks.

How the property of an elder was to be portioned out among his followers is prescribed in the *Manu Vannana Dhammathat* as follows:

It an elder passes away, the monks under him are entitled to inherit his requisites, gardens, tanks and the offertories he had received. The remaining items—such as slaves and other possessions—have to be divided into four portions; the *mahather* (or great elder) who takes them first should receive two portions (ie, the *mahather* (great elder) had the first choice of share and he is entitled to two portions); the oldest member of the coparceners who was like the eldest son in a family is entitled to a portion. The remaining one portion must again be divided into four portions; three for junior monks and one for novices. The lay devotees of the deceased should only get what the deceased himself had handed over to them before his death.³⁴¹

³³⁹ “*Atula Hpyathton*” (Rulings of Atula), *Plam-leaf* MS 118115,ga (recto), ga(verso), Yangon, Universities Central Library (Henceforth: “*Atula*”, *Pa* MS 118115)

³⁴⁰ *Samuhaladdhavicchedani Dhammathat Choat Hkaw Myanmar Tayalan Dhammathat-Choat (A digest of Myanmar dhammathats called Samuhaladdhavicchedani Dhammathat choat)*, Yangon, Hanthawaday Press, 1892. p.138 (Henceforth: *Dhammathat Choat, 1892*)

³⁴¹ Wanna Dhamma Kyaw Htin, “*Manu Vannana Dhammathat*”, *palm-leaf* MS 56916, Yangon, Universities’ Central Library, me (verso) (Henceforth: Kyaw Htin, *Pa* MS 56916)

This way of dividing inheritance was followed in the Konbaung period.

The *apattadhikarons* were cases concerning the violation of seven kinds of monastic rules.³⁴² Therefore, many cases involving monks were of this kind. Of all the offences, the *parajika* offences were the most serious, and there were cases in which monks broke *parajika* rules. Some monks had sex with women.³⁴³ The worst offence was the monks' sodomizing young novices.³⁴⁴ According to the Buddha's teachings, if the offender failed "to admit to the offence" (*patiññāya kāretabbam*), it could not be decided that he was "defeated" (*asuddha*), ie that he was guilty of a *parajika* offence. According to the phrase *bahusupi vatthusu uppannesu*, even if there was sufficient evidence, it could only be decided that he might or might not have been defeated" (*newasuddha nāsuddha*), ie, he might or might not be guilty of a *parajika* offence.³⁴⁵ Neither the commentaries nor sub-commentaries prescribe that a monk who may or may not have been defeated is to be forced to disrobe (*linganāsana*) right away. He is just to be prohibited from associating with good monks (*samvāsa*), from sharing things with other monks (*paccaya-sambhoga*), or from teaching, learning, preaching, listening to sermons, or discussing *dhamma* with other monks (*dhamma-sambhoga*).³⁴⁶ Thus, a sex offender can be expelled from the order only if he admits to the offence. If he does not admit to the offence, it has to be decided that the monks who are suspicious that he is "defeated" are not to associate with him anymore, while those who believe that he is not guilty are to continue associating with him.³⁴⁷ However, there were some instances in which the accused was expelled from the order because of

³⁴² *Parajika, Sanghaṭṭhithi, Kullasi, Paseit, Patidethani, Doakkat, Dobbathi*

³⁴³ "Sangha Vinicchaya", Pa MS 41, ghi (recto)-ghu (verso)

³⁴⁴ "Sangha Vinicchaya", Pa MS 41, ku (recto)-(verso), ke(recto)-kai (verso)

³⁴⁵ *Vinicchaya Letswe (Manual for vinicchaya)*, Yangon, Department of Religious Affairs, 1991, pp.93,94 (Henceforth: *Vini Letswe, 1991*)

³⁴⁶ *Vini Letswe, 1991, 95*

³⁴⁷ "Sangha Vinicchaya", Pa MS 41, ku (verso)

his behaviour even though he did not admit to a *parajika* offence.³⁴⁸ Of the *apattadhikarons*, a monk who stole someone's possessions to gamble was forced to disrobe, to put on a white garment and was to be handed over to an *acu* (crown service group).³⁴⁹ Once, a monk was caught with stolen goods. While arranging to inflict an exemplary penalty on him at the Thudhamma hall, he escaped. Therefore, the *Thudhamma Sayadaws* had to issue an order, requesting anyone who knew his whereabouts to inform them.³⁵⁰ However, a receiver of stolen goods was not regarded as a thief.³⁵¹

Concerning manslaughter, there was an instance in which a layperson was killed in a fight with a monk. As the monk had no intention to kill, he did not have to leave the Order; he just had to become a novice and carry out *cetiyangaka-wat* (ie sweep the platform of a stupa). With regard to *apattadhikarons*, there was a case in which Ven. U Nandiya was accused of having forcefully sodomized Maung Hpo Oo, his pupil who had left the Order, on 29 December 1853. The case was heard by the Maungdaung Supreme Patriarch, who found that Maung Hpo Oo contradicted himself in his statements, and all the other monks agreed that Ven. Nandiya did not socialize. Hence, he decided that Ven. Nandiya stood accused of committing this offence only because he was unlucky and as a consequence of his past misdeeds, and that he was to observe the precepts without being vindictive³⁵². Thus, manslaughter was regarded as a *parajika* offence, one of the *apattadhikarons*, only if it was voluntary.³⁵³ It can therefore be learnt that cases involving members of the Buddhist Order were judged in conformity with the

³⁴⁸ “*Sangha Vinicchaya*”, *Pa* MS 41, ghu (verso)

³⁴⁹ “*Sangha Vinicchaya*”, *Pa* MS 41, khi (recto)-khu (recto)

³⁵⁰ “*Thudhamma Upade*”, *Pa* MS 45107, ki (recto)

³⁵¹ “*Sangha Vinicchaya*”, *Pa* MS 41, ga (verso)-gha (verso)

³⁵² Nyunt Nyunt Wai, 1969, 189

³⁵³ “*Sangha Vinicchaya*”, *Pa* MS 41, ko (recto)-kam (verso)

Vinaya texts. A monk who falsely claimed supernatural powers also was not made to leave the order; he was just condemned to leave the locality in which he was dwelling³⁵⁴. Thus, the monk who committed one of the *parajika* offences (Offences of Defeat) were only forced to become novices or to leave their localities, or were handed over to an *acu* (crown service group) after making them disrobe and put on a white garment.

The *anuvadadhikarons* included wrong livelihoods and misconduct, such as raising and selling pigs,³⁵⁵ entering the *Hluttaw* by force muttering obscene curses,³⁵⁶ practising usury, practising alchemy, raising horses,³⁵⁷ watching entertainments,³⁵⁸ and assaulting someone.³⁵⁹ With regard to *kiccadhikarons* (cases concerning monks duties), there was an instance in which a person had to undergo re-ordination because he was ordained as a monk before he was twenty years old.³⁶⁰

In addition, there were some disputes which were not mentioned in the Vinaya texts. For instance, there was a controversy over how a novice should wear his robes at the time of entering a village: whether to arrange his upper robe only on one shoulder or to “cover” (both shoulders). As the *Atula Sayadaw* himself was an advocate of covering only one shoulder, it became difficult to settle the controversy. Laypersons referred to the faction of monks who favoured the custom of covering both shoulders as *ayon-gaing*, and that of those who preferred to cover only one shoulder as *atin-gaing*. Monks on the other hand, could not divide the

³⁵⁴ “*Sangha Vinicchaya*”, *Pa* MS 41, kau (recto)-ka (verso)

³⁵⁵ “*Sangha Vinicchaya*”, *Pa* MS 41, kau (recto)

³⁵⁶ “*Sangha Vinicchaya*”, *Pa* MS 41, ge (recto)-(verso)

³⁵⁷ “*Sangha Vinicchaya*”, *Pa* MS 41, khi (verso)- khi (recto)

³⁵⁸ *Manle Sayadaw, Vijirupama Byabaraa Kyan, juguttarapakasani Kyan*, Mandalay Times Press, 1902, p.54 (Henceforth: *Manle Sayadaw, 1902*)

³⁵⁹ “*Sangha Vinicchaya*”, *Pa* MS 41, ni (verso)- nu(verso)

³⁶⁰ “*Sangha Vinicchaya*”, *Pa* MS 41, gham (verso)- gha (recto)

two factions as *ayon* and *atin* factions, as it would amount to attempting at a schism within the Order, which was a grave *sanghadisesa* offence.³⁶¹ Nevertheless, the monks were split into two factions “one shoulder” (*atin*) and covering (*ayon*) factions in the reign of Sane Min. During his reign, Ven. Gunabhilankara of Tonywa, which was situated on the west bank of Chindwin river opposite Monywa, exhorted the novices that they should arrange their upper robes over one shoulder and take fans with them when they enter the village; however, they were not supposed to wear hats. Thus, he founded the *atin* or “one-shoulder” faction. At the same time, Ven. Buddhankura and Citta of Taungoo town, Ven. Sunanda of Tabayin, and Ven. Kalyana of Ngayan-o, Tayoke town, established the *ayon* or ‘covering’ faction by instructing the novices not to cover only one shoulder, not to wear heats, but to carry fans at the time of entering the village. In this way, the two factions—*atin* or “one-shoulder” and *ayon* or “covering” came into being.³⁶² The problem came to a head in 1714, during the reign of Tanninganway Min.³⁶³ Therefore, in the reign of Alaungmintaya, the king ordered all the monks to follow the one-shoulder faction.³⁶⁴ This was because Atula Sayadaw, the *Thathanabaing*, himself was an adherent of the *atin* or “one-shoulder” faction. It seems that Alaungmintaya sided with his preceptor, the *Thathanabaing* because the latter had helped him in strengthening his army by urging the *sawbwas* (Shan chiefs) and *myosas* (governors of towns) within the

³⁶¹ *Ashin Zanakabiwuntha, Hpayaw Upadedawgyi (Buddha's rules)*, Yangon, Union of Myanmar Department of Religious Affairs, 1991, 2nd printing, pp.47-49 (Henceforth: *Zanakabiwuntha, 1991*)

³⁶² *Mahadhammathingyan, Thathanalinkara Sadan* (an adornment of the religion), Yangon, Hanthawady Press, 1956, pp.180-181 (Henceforth: *Mahadhammathingyan, 1956*)

³⁶³ *Mahadhammathingyan, 1956*, 182-183

³⁶⁴ *Medi Sayadaw, Vamsa Dipani*, Yangon, Hanthawady Press, 1966, 2nd printing, p.146 (Henceforth: *Medi Sayadaw, 1966*)

kingdom to follow the king in his military expedition to Hanthawady together with their troops.³⁶⁵

However, the controversy did not come to an end. In 1779, in the reign of King Singu, monks from both factions were invited to Thudamma Hall to debate the matter by citing sources. The *atin* or one-shoulder faction lost, and the king ordered all the monks in the kingdom to follow the *ayon* or covering faction.³⁶⁶ However, this did not solve the problem either. *Atula Sayadaw*, who was the *Thathanabaing* during the reign of Alaunmintaya, joining forces with *Manle Sayadaw*, who was the *Thathanabaing* in the reign of Badon Min, reignited the controversy.³⁶⁷ Concerning this controversy, Badon Min issued an order on 3 June 1782 to all the monks to follow the Vinaya rules.³⁶⁸ Accordingly, in 1783, Badon Min made the monks of the two factions hold a debate to settle the problem by referring to literary sources. As the statement in the *Cūlaganṭhipada*, cited by *Atula Sayadaw* and his followers, was not well-founded, they lost; and they were expelled from the Order and were banished to the forest that served as a penal colony where the felons were sent.³⁶⁹ Thus, the controversy that arose in the early days to the Konbaung period was settled once and for all in the reign of Badon Min. The reason was because the *atin-ayon* controversy did not become worse or spread throughout the country in the later Konbaung period. Therefore, it can be seen that the controversy in which the *Thathanabaings* themselves were entangled

³⁶⁵ *Laung Meint, 1964, 95-96*

³⁶⁶ *Konbaungzet Mahayazawindawgyi (Great Chronicle of Konbaung Dynasty)* edited by U Magung Magung Tin, Vol.I, Yangon, Universities Historical Research Centre, 2004, 5th Printing, p.372 (Henceforth: *Konbaungzet, 2004 a*)

³⁶⁷ U Aung, *Ayudawmingalar Shaukhton Hpyitthaw Kavisaramajusa Kyan*, Yangon, Ledimandaing Press, 1959, p.52 (Henceforth: *Aung, 1959*)

³⁶⁸ “*Atin Ayon Sadan*”, *palm-leaf MS*, U Pinnyazota’s Collection (Taunglelon monastery, Amarapura) (Henceforth: “*Atin Ayon*”, *Pa MS*)

³⁶⁹ “1145 *Ameindaw*”, *Pu MS 45218*

was settled by the monks after a thorough examination of the treatises the two sides had cited. By settling this controversy, the monks were able to introduce a uniform way of wearing robes. Thus, the cases involving only monks were solved in the Konbaung period in accordance with Vinaya texts.

The Joti views, ie views that neither monks nor stupas and Buddha images were to be worshipped, also surfaced in the Konbaung period. Joti view was a doctrine of annihilation. According to it, when a man died, both his soul and body ceased to exist; he did not continue to exist by reincarnation. It was asserted that there was no need to worship monks, stupas or Buddha images. The sect that held joti views continued to exist till 1838.³⁷⁰ Badon Min issued royal order in 1783 to punish those who held joti view, the annihilationists dwelling in the towns and villages around Sinbyugyun. The king commanded in this order as follows:

The *myowun* (governors of towns), *sitke* (military officers), *nahkan* (heralds), *myo-thugyi* (headmen of towns), *ywa-thugyi* (headmen of villages), *gaung* (leaders), as they owe allegiance to the king, were to interrogate all the teachers and leaders from all the towns and villages who held joti views thoroughly and, without covering anything up, were to apprehend all of them and bring them “under the golden foot” (ie, to my presence). If you fail to investigate properly and apprehend all of them, or if you have covered up the issue, and if “the golden ear hears” (ie, it come to my knowledge) later that there are those who hold joti views in any of your localities, you will be prosecuted.³⁷¹

³⁷⁰ U Maung Maung Tin, *Myanmar Min Lethtettaw Sadan Mya (Papers written under the Myanmar kings)*, Yangon, Bagan Book House, 1967. p.132 (Henceforth: Maung Maung Tin, 1967)

³⁷¹ U Thaung, “*Badon Min Lethtet Thathana*” (Religion in Badon Min’s reign), *Working People’s Daily*, 29 November 1968 (Henceforth: U Thaung, 29 November 1969)

However, this did not eradicate the Joti views. In 1838, during the reign of King Tharyarwady, Nga Paw-I, a member of the Joti sect, was arrested and interrogated.³⁷² This clearly indicates that *Joti-vada* persisted till the reign of King Tharyarwady. Additionally, the views of U Po, who was a cotemporary of the *Joti vadis* (anihilationists), also emerged in 1869.³⁷³ He held that the Religion would stand firm five thousand years, not two thousand five hundred years; that Buddhaghosa's commentaries were not reliable, only the canonical works should be relied on; and that there cannot be any true monk in this era and that it was very difficult to find a true monk.³⁷⁴ His faction also was crushed like the Joti sect was. U Po was detained and demanded to renounce his views in the reign of King Mindon. However, he willingly suffered death rather than renounced his faith.³⁷⁵ Each king's attempt to put a stop to factionalism within the Sangha by arresting the factional leaders must have been motivated by self-interest. As differing views could engender disunity within the Sangha which, in turn, could tear the country apart by causing disunity among the citizens, jeopardizing the king's rule. Hence the king could arrest the sectarian leaders to prevent sectarianism to ensure that his position was secure. It can be regarded that U Po's views concerning monks were just to urge the monks to follow the Vinaya rules strictly all the time, because it would always be extremely difficult to follow all the Vinaya rules strictly as in brief there are altogether 227 rules, which can be expanded to 91,805,360,000 million.³⁷⁶ U Po was, therefore, implying that only those who followed these rules strictly were true monks. Hence, it can be assumed that U Po was just trying to urge the monks to follow the Vinaya rules faithfully.

³⁷² Maung Maung Tin, 1967, 132

³⁷³ Maung Maung Tin, 1967, 135

³⁷⁴ Tin, 1970, 135-136

³⁷⁵ Maung Maung Tin, 1967, 136

³⁷⁶ "Thathanaye Amein", Pu MS 626

Moreover, in the reign of King Mindon , the Buddhist fraternity in Upper Myanmar was divided into two different sects: Shwegyin and Thudhamma. The leader of the Shweghyin sect was Ven. Zagara, better known as the abbot of Shwegyin. He became famous in 1852 because he was well-versed in the scriptures and because he strictly followed the Vinaya rules. In the reign of King Mindon, more precisely in 1860, he came to Mandalay and dwelt at Shwegyin monastery, also known as Dhammikarama monastery³⁷⁷. Holding that Vinaya rules must be followed strictly, the Shwegyin Sayadaw lead a group of monks. King Mindon respected him and treated him like the Thudhamma Sayadaw's equal. By referring to the Shwegyin Sayadaw and his followers as the Shwegyin Sect and the Thudhamma Sayadaws and their followers as Thudhamma Sect³⁷⁸, the Shwegyin and Thudhamma sects appeared. As causing a schism within the Sangha was a grave offence, the monks who adhered to the Vinaya rules strictly did not cause schism by founding new sects. They just performed the Sangha rites separately from the monks who were lax in following the Vinaya rules. Therefore, mistrust between the monks over the strictness in following the Vinaya rules led to sectarianism.

Concerning the cases involving either only monks or both monks and laypersons, seven penalties or punishments were prescribed: (1) expelling the offender from the Order, (2) expelling the offender from the Order and sending him into banishment, (3) expelling the offender from the Order and sending him to gather grass as food for elephants after publicizing the punishment, (4) inflicting *thedan* and *yedan* on the offender without expelling him from the Order, (5) expelling the offender from the Order and inflicting *thedan* and *yedan* on him, (6)

³⁷⁷ Shin Pandita Mahte, *Shwegyin Nikaya Thathanawin (A history of the Shwegyin Sect)*, Yangon, Buddha Sasana Council Press, 1963, p.106 (Henceforth: Shin Pandita, 1963)

³⁷⁸ Shweghyin Sayadaw, *Shwegyin Gaing Kyinh tongyi (The rulings of the Shwegyin Sect)*, Yangon, Hanthawady press, 1962, 2nd printing, p.127 (Henceforth: Shwegyin Sayadaw , 1966)

inflicting *yadan* on the offender, ie making the offender to give compensation for damage or loss sustained, and (7) making the offender face criminal charges.³⁷⁹

As to the penalty of expulsion from the Order, the offences included sleeping with a woman without having sex, stealing the possessions of another monk, failing to practice in conformity with the *Anagatabhaya-sutta*³⁸⁰ to gain *sarana-guna* (firm belief in the “Three Jewels”) by dwelling in a forest, being unable to recite the scriptures in the king’s presence after claiming to be well-versed in the scripture, and causing schisms within the Sangha. Expelling a monk from the Order for sleeping with a woman even though he did not have sex with her was a decision made in the reign of Alaungmintaya’s reign in Monks San Thwin vs. Mi Hla Wun.³⁸¹ When a monk stole the possessions of another monk in 1759, he was expelled from the Order (*Shin Pandita vs Shin Nyana*).³⁸²

Concerning a dispute over the Vinaya rules, the guilty party was expelled from the Order and banished from his locality. With regard to the *atin-ayon* controversy, *Atula Sayadaw*, the leader of the *atin* faction and his followers were expelled from the order and sent into banishment in 1783, during the reign of Badon Min.³⁸³ According to a royal edict issued in 1812, the monks who were well-versed in the scriptures were to be expelled from the Order if they were unable to answer the questions in the king’s presence.³⁸⁴ Badon Min issued an order in 1813 that the monks who caused schisms were to be expelled from the Order.³⁸⁵

³⁷⁹ “*Atula*”, *Pa* MS 118115, gu (recto, verso)

³⁸⁰ The *Anagatabhaya-sutta* exhorts monks to practice *sarana-guna* alone in a secluded forest without mixing up with laypersons.

³⁸¹ “*Atula*”, *Pa* MS 118115, gu (recto, verso)

³⁸² “*Atula*”, *Pa* MS 118115, kham (recto, verso)

³⁸³ “1145, *Ameindaw*”, *Pu* MS 45218

³⁸⁴ Than Tun, 1988, 300

³⁸⁵ Tin, 1970, 122

Expelling an offender from the Order and sending him to gather grass as food for elephants after publicizing the punishment was introduced only in 1784, during Badon Min's reign for punishing the monks who held wrong views.³⁸⁶ In a case where a group of monks seized the property of other people the offenders were punished by making them carry sand and water to atone for their misdeeds; however, they were not expelled from the Order. In 1870, during the reign of King Mindon, the monks who seized a boat were made to carry sand and water in four quarters of the city.³⁸⁷

Moreover, some monks who were guilty of manslaughter were expelled from the Order and were forced to make up for their misdeeds by carrying sand; they killed someone accidentally while punishing him. A group of monks from Myedu, while flogging Nga Thatin, son of Nga Kyaw Nge, a *thwethaukyi* (commander of a troop), accidentally killed him. The offenders had to disrobe, and each of them was given 150-*thedan* sentence in 1763.³⁸⁸

If a monk was guilty of damaging the property of another monk or other monks³⁸⁹ or of a layperson or persons,³⁹⁰ of damaging something that he had borrowed from someone else,³⁹¹ of sojourning someone's treasury despite the owner's refusal if anything was missing there,³⁹² or of losing something that had been entrusted to his care, he would be made to recompense for the loss or

³⁸⁶ "1146 *Ameindaw: Ayon Atin Hnin Bodawhpaya Ameindaw*" (Royal Order of 1784: Bodawhpaya's Royal Order and "covering" and "one-shoulder" factions), TMS., ma 17322 (7), Mandalay University Library, p.71 (Henceforth: "*Ayon Atin Ameindaw*", TMS. Ma 17322)

³⁸⁷ Ba Thaug, 1975, 100

³⁸⁸ "*Atula*", Pa MS 118115, go (verso)-gau (recto)

³⁸⁹ "*Atula*", Pa MS 118115, khau (recto)

³⁹⁰ "*Atula*", Pa MS 118115, khaw (verso)

³⁹¹ "*Atula*", Pa MS 118115, ko (recto)-ko (verso)

³⁹² "*Atula*", Pa MS 118115, kha (verso)-kha (recto)

damage.³⁹³ Moreover, a monk would have to make a recompense if he refused to marry a woman with whom he had had sex, as it was prescribed that a monk who had sex with a woman with her consent was to leave the Order and marry her.³⁹⁴

It was prescribed in 1806, during Badon Min's reign, that the monks who failed to translate canonical texts into Myanmar correctly were to face criminal charges.³⁹⁵ The cases involving only monks could also be adjudicated according to the Dhammathats if both parties agreed. In the reign of Alaungmintaya, some monks had a brawl, and the case was judged in accordance with the Dhammathat texts.³⁹⁶

As the cases involving only monks were decided according to Dhammathat law texts provided both parties consented, those involving both monks and laypersons were judged in conformity with the Dhammathat texts. The case concerning the loss of robes, slippers and other articles by Ven. Agga of Dayegaung monastery complex in 1853, during King Mindon's reign, was decided in accordance with the *Manuthara Dhammathat* and the *Shwemyin Dhammathat*.³⁹⁷ The *Thathanabaing* decided the dispute over the ownership of a paddy land between Ven. Thumana of Sahton village and Nga Pu, a layperson from Pata village, Bankyi circle, in 1854 according to the *Manuthara Dhammathat* and the *Shwemyin Dhammathat*.³⁹⁸ The cases involving monks and laypersons as well as those involving only monks from available evidence are given in appendix (7).

³⁹³ “*Sangha Vinicchaya*”, *Pa* MS 41, ki (recto), ki (verso)

³⁹⁴ “*Atula*”, *Pa* MS 118115, ka (verso)kha (recto)

³⁹⁵ Than Tun, 1986 b, 103

³⁹⁶ *Nanzin Poaksa*, Yangon, Sapalwe, 1970, pp. 83-84 (Henceforth: *Nanzin Poaksa*, 1970)

³⁹⁷ “*Sangha Vinicchaya*”, *Pa* MS 41, ko (verso)

³⁹⁸ Ba Thaug, 1975, 97

The cases involving both monks and laypersons, which were sometimes decided according to Dhammathats, were sometimes settled *ex curia*. How the land dispute between Nga Paula and Nga Yan, heirs of U Kyaw Thwin, their grandfather, and Ven. Tezothara, heir of U Hpo Ya was settled may be cited as an example. Nga Paula and Nga Yan asserted that the land on which they were working was owned by Hpo Kyaw Thwin, their grandfather, while Ven. Tezothara maintained that the land was purchased by his ancestors in his grandfather Hpo Ya's time. This dispute was settled by the village headman. It seems that the village headman had jurisdiction over this case even though it involved a monk and two laypersons because the property involved was not owned by a monk. Neither side could present the *thetkayit* deed to prove the ownership of land. Therefore, both parties agreed to call U Lu, donor of a monastery, of Tharasha village, who was a contemporary of their grandfathers, as a witness and to accept U Lu's statement without question. Hence, the headman of Teinde village passed judgement on 15 May 1870 that they were to accept U Lu's statement as true, and that the party that refused to accept it, was to pay forty-five 1-kyat coins to the party that accepted it.³⁹⁹ Nowadays, the cases involving both members of the Sangha and laypersons were heard by a Sanga Vinicchaya Committee formed in accordance with rules and regulations.⁴⁰⁰

Another case involving both monks and laypersons may also be cited. U Myo, donor of a pagoda, of Hpayagyigon village around Meiktila began the construction of a library at the Ywa-oo Kyaung monastery before his death. He also sent two kilns of bricks and eleven baskets of lime to the monastery. He passed away before the construction was completed. His son Nga Hla and mother Mi Theik fell on hard times and ask the monks to give them back the bricks and lime that had been sent to the monastery so that they could sell them. Ven.

³⁹⁹ Thein Swe Oo, 2004, 46

⁴⁰⁰ Vini Letswe, 1991, 85

Athapha, the abbot of the monastery of Hpayagyi village refused, saying that the bricks and lime had been donated together with the library by U Myo before he died. Nga Hla and Mi Theik argued that the bricks and lime were sent to the monastery only because U Myo did not want to keep them in his home and that he did not donate them to the monastery. Ven. Athapha and Ven. Thumana insisted that they accepted the bricks and lime because U Myo sent Nga Hpaunggyi, his son-in-law who lived in his house, to the monastery to donate them. This dispute was solved by U Ariyawuntha, the abbot of the central monastery of Shande, U Nandiya, the *gaing-dauk* of the southern monastery of Shande and U Thathana, the abbot of Kyweshin monastery together with other abbots. On 23 September 1890, they settled the dispute by urging Nga Hla and mother Mi Theik not to sell the bricks and lime, but to continue the construction of the library U Myo had been building before his death because the monks of this monastery (ie, the monastery of Hpayagyigon village) had been worshipped by all their ancestors.⁴⁰¹

To sum up, cases involving monks were heard by different levels of adjudicators; the lowest and the highest being the abbot of a monastery and the *Thathanabaing* respectively. From the reign of Alaungmintaya, the founder of the Konbaung dynasty, onwards, *Atula Sayadaw* was appointed *Thathanabaing* with jurisdiction over cases involving members of the Order. The cases included the violation of monastic rules, disputes concerning the donation of land and slaves, redemption of mortgaged property, disputes over the ownership of monastic land, disputes over inheritance, loss property, theft, sexual misconduct, etc.

To assist the *Thathanabaing* in trying the cases involving monks, the *Thudhamma Sayadaws* were appointed in the reign of Badon Min. These *Sayadaws*, following the orders of the *Thathanabaing*, had to hear the cases concerning religious affairs and had to relay the orders and laws issued by the *Thathanabaing* to other localities.

⁴⁰¹ Thein Swe Oo, 2004, 57

It can be learnt that the cases involving members of the Sangha were sometimes decided according to Vinaya texts and sometimes judged in conformity with the Dhammathat, and that the cases involving both monks and laypersons were adjudicated in accordance with the Dhammathat if the litigating monks agreed.

RÉSUMÉ

Studying the judicial system of the Konbaung period, it is learnt that different levels of courts were constituted in the royal capital and the towns and villages in the provinces for smooth and expeditious administration of justice. The courts in which the civil and criminal cases that arose among the people at the royal capital were heard, were the *hluttaw*, the *she-yon*, the *nauk-yon*, the *taya-yon* and the *pyin-ein wun-ein* concerned. In the towns and villages in the provinces, the courts of the headmen of towns and villages, of the *awemyowuns* and of the *khayaingwuns* were established. The *hluttaw*, *she-yon* and *nauk-yon* and *taya-yon* at the royal capital but could also hear the appeals against the decisions made by provincial courts and could try the civil and criminal cases which were outside the jurisdiction of the courts of *myowuns* and *khayaingwuns*.

Among the courts of law, the courts of the *thugyis* of towns and villages were the lowest courts, which only had jurisdiction over the cases not exceeding five hundred *kyats* in value. Appeals from the courts of the *thugyis* lay to *awemyowuns*' courts. An *awemyowun*'s court had jurisdiction over cases up to a value of a thousand *kyats* and could try all the criminal cases except disputes over the succession to hereditary offices, lese majesty, robbery, cases of underreporting population, bribery and corruption involving *myowuns* and *sitkes*. Appeals against the decrees and decisions made by a *myowun yon* could be filed to the court of the *khayaingwun* concerned, which could try cases not exceeding ten thousand *kyats* in value. Legal cases that arose in the towns and villages could not be filed directly to the *khayaingwun*'s courts, which served as the highest provincial courts.

However, complaints as to the oppression of the *thugyis* of towns and villages could be filed directly to the *khayaingwun's yons*.

The *she-yon*, which served as the criminal court at the royal capital could try criminal cases. The *myowuns* tried the criminal cases at the *she-yon*, which had to refer the cases to the *hluttaw* if the crimes called for severe punishments. The *myowuns* could inflict pecuniary penalties, flogging, detention, or imprisonment for a short period by themselves. The *Anaukyondaw* (Western Court) tried the legal cases such as verbal abuse, assaults, robbery and pecuniary disputes involving the service men under the charge of *Anaukwun* and the cases involving queens. This custom was abolished in the reign of King Thibaw, who ordered that civil cases had to be heard at the *taya-yon* (civil court) and criminal cases had to be tried by the *sheyondaw* (Eastern Court); hence, the *naukyondaw* was deprived of its power to try civil and criminal cases. In cases involving common citizens, both parties were required to be present at the court. Especially, the *taya-yandaw* heard the cases involving slaves, verbal abuse, land dispute, loans, family cases and inheritance disputes. All the civil suits had to be filed to the *taya-yon*, and only the appeals against its decision could be filed to the *hluttaw*. The *hluttaw* was the highest court subordinate only to the king, and it could try suits of any value and could inflict severe penalties.

Although there was no change in Myanmar judiciary in the early and middle Konbaung period, more courts were constituted in the later Konbaung period. Pressured by the British in the reign of King Mindon, Myanmar had to form a mixed court in which Myanmar and British judges jointly tried the civil cases (involving British subjects). Moreover, for the speedy administration of justice, King Mindon appointed legal experts as *khondaws* (judges). Therefore, administration of justice would have become speedier due to King Mindon's efforts.

More reforms were effected in the reign of King Thibaw. First he abolished the *khondaws* constituted by King Mindon. Then he established new courts—the *taya htanagyoat yon* (Department of Justice) and the court of the *asi awe win hmu mat* (councillors)—in addition to the existing courts—*hluttaw*, *sheyon*, *naukyon*, and *taya-yon*. In the early and middle Konbaung periods, appeals against the decisions made by the judges of the *taya-yon* could be filed to the *hluttaw*, where the *wungyis* (ministers) of the *hluttaw* would decide the cases. In the reign of King Thibaw, however, appeals against the decisions of the *taya-yon* had to be filed to the *taya htanagyoat yon*, and only the appeals against the *taya htanagyoat yon* could be filed to the *hluttaw*.

It seems that King Thibaw emulated the constitutional monarchy in the West in establishing the *taya htanagyoat yon* and the *ais awe win hmutaw mattaw yon*. Moreover, in King Thibaw's reign, the British had already annexed Lower Myanmar, and were finding a pretext to annex Upper Myanmar. Therefore, it seems that these offices were established to reduce the workload of the *hluttaw* so that the *hluttaw* would be able to focus on the administration and security of the kingdom. Establishing the *taya htanagyoat yon* and the *asi awe win hmutaw mattaw yon* for the judicial administration in the royal capital could be regarded as an innovation in judicial administration.

Although there were no noticeable changes in Myanmar judiciary in the early and middle Konbaung periods, more courts were established in the later Konbaung period. As the number of courts increased, the judicial administration would have become speedier. It seems that this was done to be in step with the times.

Concerning criminal cases, many *yazathats* or royal orders were issued in the Konbaung period, and criminal cases had to be tried in accordance with them. In cases with no witnesses, however, one of the four types of trial by ordeal (*kabaleyat*)—*ye-ngoat* (submerging in water), *mipyaing* (lighting tapers), *san-wa*

(chewing rice), *hkehtauk* (dipping one's finger in molten lead) would be resorted to both the litigants had to undergo one of these ordeals in some cases, whereas only the accused or defendant had to undergo the ordeal in others. It is, however, impossible to regard these trials by ordeal as fair and correct. However, as the people of those days had faith in the *adeithtan choat* (binding oath) and the *thitsadaw kyan* (book of oaths), it seems that they believed in these trials because an offender could lose because of his or her lack of confidence.

Many *yazathats* were promulgated in the Konbaung period to enable the judges to try criminal cases. As the kings were absolute monarchs, it is understandable that the pretenders to the throne, the rebels and those who were guilty of having sex with palace ladies were sentenced to death. However, there were some weaknesses in the royal orders concerning theft and robbery. The administrative chiefs were ordered to apprehend the accessories to theft and robbery. However, it was necessary for them to ascertain whether a person implicated by a thief or robber really was the latter's accomplice. It would be necessary to consider carefully if a criminal implicated an honest person. Therefore, such investigations could have delayed the arrest of the accomplices in those crimes. Hence, executing the local administrative officials for their failure to catch the alleged accomplices of the thieves and robbers and hand them over to the *hluttaw* was just oppressing the officials. A study of the royal orders concerning theft and robbery suggests that the king's intentions were to deter the people from committing such crimes and, if such crimes were committed, to force the administrative officials to arrest and punish the offenders. However, it seems that the kings were using violent means to prevent theft and robbery without considering the ultimate cause of these crimes. The people probably committed these crimes because they were in abysmal poverty. Moreover, the local administrative officials would not be able to differentiate the criminals from law-abiding citizens easily. Therefore, it seems that the Court issued royal orders to

inflict severe punishments on the administrative officials considering that they had failed to apprehend and punish the thieves and robbers.

With regard to criminal cases, although the successive kings of the Konbaung dynasty issued many royal orders concerning the administration of justice, the judicial system in the konbaung could not have been a system in which the people had faith because of the corruption of the administrative officials and the judicial officers' lack of legal knowledge and incompetence.

To sum up, 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*. Although there is no evidence as to when the Myanmar *dhammathats* came into being, the Myanmar *dhammathat* laws were not copies of Hindu laws. Indeed, the Myanmar had adapted the Hindu laws to be in line with Myanmar customs in producing their own *dhammathats*.

According to the *dhammathats*, the offices of the *htaungke*, *winhmu*, *thwethaukkyi*, *myedaing*, and *thugyi* were held by hereditary right. Hence these offices were to be passed from one generation to another through inheritance. As some disputes over the succession to hereditary officer were decided according to the *dhammathats*, sometimes the king would appoint a person who had served courageously for him to a hereditary office; moreover, the kings also had tried to control the succession to hereditary offices by ordering that those offices should not be passed on to future generations through inheritance. Thus, it is learnt that notwithstanding anything stated in the *dhammathats*, the kings sometimes ignored the customs and meddled in the succession to hereditary offices.

Ordinary inheritance cases were the cases in which the property of a deceased person was inherited by his or her spouse or by his or her offspring. These cases also were decided in conformity with the *dhammathats*. However, if a decision made by a judge was not in accordance with the *dhammathats*, the king

himself would intervene and pass judgement. Moreover, if a case was prolonged, the relatives sometimes arbitrated between the opposing parties. Additionally, there were arbitration boards called *sonyas*, formed with the relatives of the opposing parties, village elders and local notables, which arbitrated justly between opposing sides according to local customs. Although the decisions of the *sonyas* cannot be regarded as decisions made according to *dhammathats*, it seems that the *sonyas* were instrumental in implementing the goal of Myanmar judicature which was “to mitigate major cases and dissolve minor ones”. Hence, Myanmar judicature stressed arbitration than litigation.

As to the cases involving only monks in the Konbaung period, different levels of judges from the abbot of a monastery concerned to the Supreme Patriarch had to hear and decide the cases. In the reign of Alaungmintaya, the founder of the Konbaung Dynasty, the *Atula Sayadaw* was appointed Supreme Patriarch and was empowered to try legal cases. These cases included the monk’s violation of monastic rules, disputes over religious lands (lands donated to temples or to monasteries), quarrels, inheritance disputes loss of property, theft, sexual offenses, etc.

In the reign of Badon Min, the *Thudamma Sayadaws* were appointed to assist the Supreme Patriarch in hearing and determining legal cases involving monks. The *Thudamma Sayadaws*, following the orders of the Supreme Patriarch, had to try such cases and had to relay the Supreme Patriarch’s orders around the kingdom.

The cases involving monks in the Konbaung period were decided either according to the Vinaya texts or in conformity with the *dhammathats*. The cases involving both monks and laypersons also were decided according to the *dhammathats* if the litigating monks agreed.

Appendix (1)

Legal fees for civil and criminal cases as prescribed by law

	ရေ	တရားမှု	ရာဇဝတ်မှု
ရွှေမြို့တော်မြို့ကြီးတွင် ခေါ်ဝတ် . . .	၁	၂၂၂ ဝ'	၅၂၂
ရွှေမြို့တော်မြို့ကြီးပြင်ကစ၍အဝေးမြို့ကျေးရွာများမှာ တရားမှုနှင့်ဖြစ်စေသူပုန်မှုထားပြမှုသူခိုးမှုများပြင်ကျန်ရာဇဝတ်မှုများနှင့်ဖြစ်စေချခေါ်ရလျှင်အမှုမကွဲစာတစောင်နှင့်လူအများဖြစ်စေတဦးတယောက် ဖြစ်စေတတိုင်လျှင်	၁	၂၂၂ ဝ'	၅၂၂
သူပုန်မှုထားပြမှု၊သူခိုးမှုများနှင့်ချခေါ်ရလျှင်အမှုကွဲပြားသည်ဖြစ်စေ၊မကွဲပြားသည်ဖြစ်စေ၊လူတစ်ယောက်လျှင်ခရီးတတိုင်သင့်	၁		၅၂၂
အမှုစွဲဆိုလျှောက်ထားလျှင်မှတ်ပုံတင်	၁	၁၂၂	၁၂၂
တရားလိုတွင် တရားမှုတက်ငွေ	၁	၁၂၂ ဝ'	၁၂၂ ဝ'
တရားခံတွင် အစစ်ခံရေးစား	၁	၁၅၂၂	၁၅၂၂ ဝ'
အယူခံဉာဏ်ပူဇော်တဖက်သင့်	၁	၂	၂
ကောက်ချက်ရေးတဖက်သင့်	၁	၅၂၂	၅၂၂
လဖက်မိုးတဖက်သင့်	၁	၂၂၂ ဝ'	၂၂၂ ဝ'
လုင်တဖက်သင့်	၁	၂၂၂ ဝ'	၂၂၂ ဝ'

ခံဝန်ချက်ကောက်ချက်ရေးစားတဖက်သင့်	၁	၅၂	၅၂
ကျမ်းထုတ်တဖက်သင့်	၁	၅၂	၅၂
ကျမ်းပင့်ကျမ်းတိုက်တဖက်သင့်	၁	၅၂	၅၂
လှင်တဖက်သင့်	၁	၂၂ ၁'	၂၂ ၁'
ကမ္ဘာလေးရပ်ရောက်လျှင် မိဋ္ဌာန်ချုပ်ရေးတဖက်သင့်	၁	၅၂	၅၂
လှင်တဖက်သင့်	၁	၂၂ ၁'	၂၂ ၁'
ဖယောင်းဖိုးတဖက်သင့်	၁	၂၂ ၁'	၂၂ ၁'
ဆန်းဖိုးတဖက်သင့်	၁	၂၂ ၁'	၂၂ ၁'
ဆိပ်ထိန်းတဖက်သင့်	၁	၅၂	၅၂
တိုင်စိုက်တဖက်သင့်	၁	၅၂	၅၂
ကြိုးကိုင်တဖက်သင့်	၁	၅၂	၅၂
ဝါးနှိပ်တဖက်သင့်	၁	၅၂	၅၂
နာရီစောင့်တဖက်သင့်	၁	၅၂	၅၂
ခဲဖိုးတဖက်သင့်	၁	၂၂ ၁'	၂၂ ၁'
သက်ငယ်စည်းခဲစောင့်တဖက်သင့်	၁	၁	၁
ပြီးရေးတဖက်သင့်	၁	၁	၁
ပြီးလှင်တဖက်သင့်	၁	၅၂	၅၂
အမိန့်တော်ရတို့မှာ အမှုကြီးငယ်မဆိုတကြိမ်လဲရလျှင်ငွေ	၁	၁	၁
တရားရာဇဝတ်မှုနှင့်ချုပ်ထားရလျှင် အချုပ်စား	၁	၅၂	၅၂
အဆင့်စား	၁	၂၂ ၁'	၂၂ ၁'
ရာဇဝတ်မှုနှင့်အကျဉ်းကျရောက်လျှင်ခြေကျဉ်းဖိုး	၁	၂	၂

ခြေကျဉ်းချုပ်အချုပ်စား	၁		၁
အဆင့်စား	၁		၅။
ကွမ်းဖိုးမှာလျှော်ကြေး ၁၀ ခိုင် တခိုင်ကျယူစေမည်	၁		
လျှော်ပြစ်လျော်ဒဏ်မရှိသည့်အမှုများမှာ ပြီးရေး ၅၊ လင်ဝတ် ၅။ သာ စားယူစေရမည်	၁		
တရားပြီးပြတ်၍ဖြတ်စာကို ထန်းရွက်နှင့်ရေးကူးတံဆိပ်ခတ် မှတ်ပေးအပ်ရာရေးစား ၅။ တံဆိပ်တွက် ၅။ တောင်းခံယူစေမည်။	၁		
လွှတ်တော်ရုံးတော်များတွင်စွဲဆိုသည့် အမှုများမှာ လင်အပုံ အတွက် ၂။ ၁ ပဲ ၊ မြို့ပြင် ၅။ ယူစေမည်	၁		
သက်သေချာဝတ်မှာ တရားမှုဖြစ်လျှင် တတိုင် ၂။ ၁' ၊ ရာဇဝတ်မှုဖြစ်လျှင် တတိုင် ၅။ ထမင်းဖိုး တရက်လျှင် ၂။၁' တောင်းခံယူစေမည်။	၁		

တော်စိန်ခို၊ ၁၉၇၇၊ ၂၂-၂၄

Appendix (2)

Legal expenses incurred by a litigant in a land dispute which was litigated in Powa village, close to the north of the river in Madaya, in 1859

		ကျပ်	
၁။	မှတ်ချက်ရွေးအဆင့်စားအဆောင်ကိုင်တို့ပေးငွေ	၁	
၂။	အစစ်ခံရေး ၅ မှူး၊ ပုရပိုက်ကန်ကူဝယ်ပေးရသည့်အဘိုး ၅မှူး၊ ခေါ်လုလင် တို့ကိုအပန်းပေးရသည့် ၅ မှူး ၃ စု	၁	၅ မှူး
၃။	နောက်တန်းလျှောက်ရာမှတ်ချက်ရေးအဆင့်စားပေးငွေ		၈ မှူး
၄။	၎င်းနောက်မှာစာစာချွန်ရအောင်ထပ်မံလျှောက်ထားရာမှတ်ချက်ရွေး အဆင့်စားပေးငွေ		၇ မှူး
၅။	စာလယ်ရာ၊ အလယ်စား၊ရေးစား၊ အမှာရေးကိုပေးသဘောခြည်ပုဆိုး ၁၊ အဘိုးငွေ	၄	
၆။	၎င်းအမှာတော်ရေး စာရေးကိုပေးငွေ	၁	
၇။	စာရေးကြီးဦးကြယ်ကိုပေး၊ သဘောခြည်ပုဆိုး ၁၊ အဘိုးငွေ	၄	
၈။	၎င်းစာရေးမောင်မြစ်နှင့်မောင်မြစ်ဆရာတို့ကိုပေး သဘောခြည်ပုဆိုး ၂၊ အဘိုးပေးငွေ	၆	
၉။	ပုရပိုက်၊ကန်ကူ၊ထန်းဘူး၊အမှာရေးစာရေး၊လွတ်စာရေးတို့ကိုဝယ်ပေးရ သည့်အဘိုးငွေ	၂	
၁၀။	ခံဝန်ခံ၊ရှေ့နေခ၊အဝေးရောက်စာရေးဦးလှရွှေကိုပေးရငွေ	၅	

၁၁။	စာတံဆိပ်ခတ်သူ၊ တံဆိပ်စာရေးမောင်ရောက်ကိုပေးရငွေ	၁	
၁၂။	စာတပ်ဆင့်စာရေးကြီး အဆောင်ကိုင်ကိုပေးရသည့်ငွေ	၁	
၁၃။	မှာစာ၊ စာချွန်များနှင့်စည်ကူးမြို့သို့ သွား၍ မြို့ဝန်ထံတင်စေသူ အဝေး ရောက်စာရေးဦးရွှေလှကို စရိတ်ပေးငွေ	၅	
၁၄။	၎င်းသွားရာစီးနင်းရန်မြင်း ၁၊ ငှားပေးရသည့်အခငွေ	၅	
၁၅။	၎င်းအဝေးရောက်စာရေးမောင်ရွှေလှကို ဝတ်ဆင်ရန်ပေး၊ သင်္ဘောခြည် ပုဆိုး ၁၊ အဘိုးပေးငွေ	၄	
	ပေါင်း	၄၂	

၂၃ ဖေဖော်ဝါရီ ၁၉၇၁ (လုပ်သားပြည်သူ့သတင်းစာ)

Appendix (3)

A list of serious criminal cases

Year	Murder	Dacoity	Robbers
1860	34	236	n.a.
1861	31	161	87
1862	32	129	n.a.
1863	47	152	121
1864	39	146	136
1865	52	125	144
1866	52	159	173
1867	56	229	188
1868	70	187	206
1869	98	117	174
1870	136	103	172
1871	86	118	193
1872	76	65	111
1873	59	34	99
1874	72	31	112
1875	77	38	108
1876	73	28	84
1877	81	43	120
1878	107	61	132
1879	99	25	103
1880	102	45	129
1881	101	37	114
1882	145	82	205
1883	143	100	284
1884	156	81	259
1885	162	119	277

Teruko Saito & Lee Kin Kiong, *Statistics on the Burmese Economy*, Singapore, published by institute of Southeast Asian Studies, 1999, p.245

Appendix (4)

A list of inheritance suits from available evidence

ခုနှစ်	အမှုအမည်	ကျမ်းကိုး
၁၇၉၆	မိလှ၊မိတော်နှင့်မိမွေးဖြူအမွေမှု	တိုးလှ၊ကုန်းဘောင်ခေတ်မြန်မာ့လူမှုအဖွဲ့အစည်းနှင့်တရားမူခင်းများ၊ ရန်ကုန်၊နဝရတ်ပုံနှိပ်တိုက်၊၂၀၀၄၊ မျက် - ၅၃ (နောင်ကိုးကားလျှင် တိုးလှ၊ ၂၀၀၄)
၁၇၉၉	ငဆားနှင့်ငသက်စံအမွေမှု	ရာဇသိပ္ပကျမ်း၊ ၁၉၂၉၊၁၁၂-၁၁၆
၁၈၀၅	မဟာမင်းလှကျော်စွာပိုင်ပစ္စည်းနှင့် ပတ်သက်၍မယားကြီးမယားငယ် အမွေမှု	တင်၊ ၁၉၇၀၊၅၈
၁၈၀၉	ရွှေတောင်ရန်ငူကျော်စွာနှင့်မိမင်းလှ အမွေမှု	သန်းထွန်း၊၁၉၈၇၊ ၆၃၁
၁၈၂၇	မိထွန်းခံ နှင့်မရိုးအမွေမှု	တိုးလှ၊၂၀၀၄၊ ၆၂
၁၈၂၈	ဇေယတမန်ကျော်နှင့်တစ်စုအမွေမှု	တိုးလှ၊၂၀၀၄၊ ၅၇
၁၈၃၂	ငလုံးနှင့်ငဖုံးအမွေမှု	၄ မေ ၁၉၇၀၊ လုပ်သား
၁၈၄၆	မိပြောင်း နှင့် ငပဲအမွေမှု	တိုးလှ၊၂၀၀၄၊၆၀
၁၈၅၃	လှိုင်းတက်မြို့စားသားသမီးများ အမွေမှု	တိုးလှ၊၂၀၀၄၊ ၆၃
၁၈၅၄	ငခွေး နှင့် ငလှိုင်အမွေမှု	တိုးလှ၊ ၂၀၀၄၊ ၆၅
၁၈၅၄	ငစံညီ နှင့် မိဘရုံအမွေမှု	တိုးလှ၊ ၂၀၀၄၊၅၈
၁၈၅၅	ငကူး နှင့် မင်းလှဇေတပိုအမွေမှု	၁ ဩဂုတ် ၁၉၇၀၊ လုပ်သား
ဧပြီလိုင်၁၈၅၆	မိချို နှင့် သားချင်းတစ်စုအမွေမှု	တိုးလှ၊ ၂၀၀၄၊ ၆၃
စက်တင်ဘာ ၁၈၅၆	မိမင်းပု နှင့် မိဘော်အမွေမှု	တိုးလှ၊ ၂၀၀၄၊ ၆၂
၁၈၅၇	သွေးသောက်ကြီးနေမျိုးလက်ဝဲဗန္ဓု၊ ရွှေတောင်မိလုံးနှင့်မိခံအမွေမှု	တိုးလှ၊၂၀၀၄၊ ၅၃

၁၈၆၀	မိရှင်သား ငခိုနှင့်ငကြည်စိုး၊ငလန်း၊ ငပဲအမွေမှု	တိုးလှ၊၂၀၀၄၊၅၂
မတ် ၁၈၆၆	ငခင်နှင့်ငဆောင်အမွေမှု	တိုးလှ၊၂၀၀၄၊ ၅၈
နိုဝင်ဘာ၁၈၆၆	မောင်ဘေပုနှင့်မောင်လှဘေအမွေမှု	တိုးလှ၊၂၀၀၄၊၅၆
၁၈၆၈	ငရွှေပုံနှင့်ငရာပိုအမွေမှု	တိုးလှ၊၂၀၀၄၊၅၇
၁၈၆၈	ငကျိုင်းနှင့်မိဝါအမွေမှု	၁၅ ဧပြီ ၁၉၇၂ ၊လုပ်သား
၁၈၇၀	ငရွှေသားနှင့်မြို့သူကြီးဟောင်းငကြီး အမွေမှု	စလင်းသူကောင်းပုရပိုက် ၁၅၅
၁၈၇၁	မောင်တုပ်ကြီးနှင့်သားချင်းတစ်စု အမွေမှု	တိုးလှ၊၂၀၀၄၊၆၃
မေ ၁၈၇၃	ငဖွားနှင့်မိကြီးညိုအမွေမှု	တိုးလှ၊၂၀၀၄၊၆၁
နိုဝင်ဘာ ၁၈၇၃	ငနှောင်းနှင့်မိအေးအမွေမှု	တိုးလှ၊၂၀၀၄၊ ၅၆
၁၈၇၅	ငသူတော်အမမိပိုးနှင့်စလင်းမြို့သူကြီး အမိ မိကြီးညိုအမွေမှု	တိုးလှ၊၂၀၀၄၊ ၅၂
၁၈၇၆	နေမျိုးသီရိစည်သူနှင့်မိကြီးညိုအမွေမှု	တိုးလှ၊၂၀၀၄၊ ၆၁
၁၈၇၉	ငစု နှင့် ငပုအမွေမှု	တိုးလှ၊၂၀၀၄၊ ၆၂
၁၈၈၀	ငရွှေမိတ်နှင့်ငညိုငတုပ်ပေါအမွေမှု	တိုးလှ၊၂၀၀၄၊ ၅၃
၁၈၈၄	မိလှသင်နှင့်မိရောက်အမွေမှု	တော်စိန်ခို၊ ၁၉၇၇၊ ၁၁၀-၁၁၂
၁၈၈၅	ငခန့်. နှင့် ငလူမောင် မိစိုးဦးတို့. အမွေမှု	တော်စိန်ခို၊ ၁၉၇၇၊ ၁၀၈-၁၁၀
၁၈၈၅	မိမှိုင်းသမီး မိကျီးညို တို့နှင့် ငရွှေ ကျော် နှမမိဖားဥတို့အမွေမှု	တော်စိန်ခို၊ ၁၉၇၇၊ ၁၀၆
၁၈၈၅	ငဘိုးချိန်အမွေစားတို့နှင့်မိသက်ပုံတို့. အမွေမှု	တော်စိန်ခို၊ ၁၉၇၇၊ ၁၀၇-၁၀၇

Appendix (5)

A list of cases involving default on loans

ခုနှစ်	အမှုအမည်	ကျမ်းကိုး
၁၈၃၃	ရေနံချောင်းမြို့သူကြီးဟောင်း ငကွန် နှင့် ရဲလှကျော်သူနော်ရထာတို့၏ ကြွေးမှု	ကျော်ထင်၊ ၁၉၆၄၊ ၇၆
ဩဂုတ် ၁၈၃၇	ငမြတ်သတေနှင့်ငမြတ်အေးကြွေးမှု	တိုးလှ၊ ၂၀၀၄၊ ၆၅
စက်တင်ဘာ ၁၈၅၀	ငပုနှင့်နေမျိုးသီဟရွှေတောင်ကြွေးမှု	တိုးလှ၊ ၂၀၀၄၊ ၆၂
ဩဂုတ် ၁၈၆၉	မင်းရွှာမြင်းစီးနှင့်မိမိုတို့၏ ကြွေးမှု	သိန်းဆွေဦး၊ ၂၀၀၄၊ ၅၁
ဇန်နဝါရီ ၁၈၇၃	အာပဒူကနီနှင့်ဇလာမြို့သူကြီးကြွေးမှု	အုန်းကြည်၊ ၁၉၉၉၊ ၂၃၉-၂၇၀
၂၅မတ် ၁၈၇၃	မာမတ်တကီနှင့်ရေနံအုပ်မောင်စံဝကြွေးမှု	အုန်းကြည်၊ ၁၉၉၉၊ ၂၃၉-၂၇၀
၆ မတ် ၁၈၇၃	မရှုတီမေဒီနှင့်မောင်အိန္ဒာတို့ကြွေးမှု	အုန်းကြည်၊ ၁၉၉၉၊ ၂၃၉-၂၇၀
အောက်တိုဘာ ၁၈၇၃	မောင်ရွှေကို၊ မောင်ဘိုးနှင့်မောင်သိုင်း၊ မောင်ညိုတို့ကြွေးမှု	အုန်းကြည်၊ ၁၉၉၉၊ ၂၃၉-၂၇၀
၄ ဩဂုတ် ၁၈၇၄	မောင်ကြင်နှင့်မောင်ရွှေကြင်ကြွေးမှု	အုန်းကြည်၊ ၁၉၉၉၊ ၂၃၉-၂၇၀
၅ ဩဂုတ် ၁၈၇၄	အာလီအာဂပယ်ရွတ်ထရီနှင့်မောင်ပေါရတို့ကြွေးမှု	အုန်းကြည်၊ ၁၉၉၉၊ ၂၃၉-၂၇၀
၂၅ ဩဂုတ် ၁၈၇၄	မောင်ရွှေကြင်နှင့်မောင်စံမဇင်တို့ကြွေးမှု	အုန်းကြည်၊ ၁၉၉၉၊ ၂၃၉-၂၇၀
ဇူလိုင် ၁၈၇၉	ငရွှေခင်နှင့်ဖျောက်ဆိပ်ရွာသူကြီးဟောင်းကြွေးမှု	သိန်းဆွေဦး၊ ၂၀၀၄၊ ၅၂
ဒီဇင်ဘာ ၁၈၈၁	ငဘဲနှင့်ငပေါကြွေးမှု	တိုးလှ၊ ၂၀၀၄၊ ၅၅
ဇူလိုင် ၁၈၈၄	နတ်စုလကျော်သေနတ်ဗိုလ်နှင့်ငကျားကြွေးမြီမှု	တိုးလှ၊ ၂၀၀၄၊ ၅၆

Appendix (6)

Offences and Punishments for *Thudhamma Sayadaw's* Violation of Rules

Prohibitions Concerning litigants	Prohibitions concerning the appointment of <i>gaing-oaks</i> and <i>gaing-dauks</i>	Prohibitions concerning taking bribes	Punishments
1. not to accept a litigant at one's monastery	not to appoint a <i>gaing-oak</i> or a <i>gaing-dauk</i> on one's own initiative	Anything worth Five <i>kyats</i>	Five <i>thedan</i> , Five <i>ye dan</i> and Five days detention at Thudhamma hall
2. not to speak with a litigant before entering the Thudhamma hall	Not to inform the nominee even if a <i>gaing oak</i> or a <i>gaing-dauk</i> and been nominated if the nomination had not been announced yet	Anything worth Five to ten <i>kyats</i>	Ten <i>thedan</i> , Ten <i>yedan</i> , and Ten days detention
3. not to be friendly with a litigant	not to object the nomination of a <i>gaing-oak</i> or a they had been nominated if one did not object to it before the nomination	anything worth Ten to Fifteen <i>kyats</i>	Fifteen <i>thedan</i> , Fifteen <i>yedan</i> , and fifteen days Detention

4. not to encourage a Litigant	not to be friendly with someone whose nomination for <i>gaing-oak</i> or <i>gaing-dauk</i> would be considered	Anything worth Between Fifteen and Twenty <i>kyats</i>	Twenty <i>thedan</i> , Twenty <i>yedan</i> , and Twenty days detention
5. not to plead for a litigant	not to gossip about someone who had been appointed a <i>gaing-dauk</i>	Anything worth between Twenty and Twenty-five <i>kyats</i>	Twenty-five <i>thedan</i> , Twenty-five <i>yedan</i> , and Twenty-five days detention
6. not to pass judgement subjectively	not to propose an unsuitable person as a candidate for <i>gaing-oak</i> or <i>gaing-dauk</i>	Anything worth Twenty-five <i>Kyats</i> or more	Thirty <i>thedan</i> , Thirty <i>yedan</i> , and Thirty days detention

“*Thudhamma Upade*”, Pa MS 45107, ki (recto)-ge (verso)

Appendix (7)

A list of cases involving monks and laypersons as well as those involving only monks

ခုနှစ်	အမှုအမည်	ကျမ်းကိုး
၁၇၅၂	မဇဇံမောင်ပဉ္စင်းသာရလင်္ကာ သေဆုံးရာတွင် အတူနေ ရှင်ဂုဏသာရနှင့်မဇဇံတို့ ဖြစ်ပွားသည့် အမွေမှု	ရှေးဟောင်းစာပေသုတေသီတစ်ဦး၊အတုလဆရာ တော်ဖြတ်ထုံး(စတုတ္ထပိုင်း)၊ရန်ကုန်မြို့၊ ဗဟိုစာကူးနှင့် ပုံနှိပ်လုပ်ငန်း၊ခုနှစ်မပါ၊မျက်-၅။ နောင်ကိုးကားလျှင် အတုလဖြတ်ထုံး၊စတုတ္ထ ဟုကိုးကားမည်။
၁၇၅၃	ရှင်ညာဏနှင့်ယွန်းကျောင်း ညာဏဝံသတို့အမှုစကား	ရှေးဟောင်းစာပေသုတေသီတစ်ဦး၊အတုလ ဆရာတော်ဖြတ်ထုံး(ဒုတိယပိုင်း)၊ရန်ကုန်မြို့၊ ဗဟိုစာကူးနှင့်ပုံနှိပ်လုပ်ငန်း၊ခုနှစ်မပါ၊မျက်၇။ နောင်ကိုးကားလျှင်အတုလဖြတ်ထုံး၊ဒုတိယဟု ကိုးကားမည်။
၁၇၅၃	ငထွန်းသမီးနှင့် ပဉ္စင်းသား မွေးကာမဂုဏ်မှုဖြတ်စာ	အတုလဖြတ်ထုံး၊စတုတ္ထ၊မျက်-၁
၁၇၅၅	စကုရွာနေငရွှေစလုပ်ကိုင်နေ သည့်လယ်မြေပေါ်တွင်ဘုန်း တော်ကြီး ရှင်ဂုဏလင်္ကာ ကျောင်းတိုက်တည်လိုသည့် အမှုကိစ္စ	အတုလဖြတ်ထုံး၊စတုတ္ထ၊မျက်-၅

<p>၁၇၅၆</p>	<p>ရှင်ညာဏနှင့်တောကြီးရှင်ဂမ္ဘီတို့ ဓားခိုးအမှု</p>	<p>ရှေးဟောင်းစာပေသုတေသီတစ်ဦး၊ အတုလဆရာတော်ဖြတ်ထုံး (တတိယပိုင်း)၊ ရန်ကုန်မြို့၊ ဗဟိုစာကူးနှင့်ပုံနှိပ်လုပ်ငန်း၊ ခုနှစ်မ ပါ၊ မျက်-၂။ နောင်ကိုးကားလျှင် အတုလဖြတ်ထုံး၊ တတိယဟု ကိုးကားမည်။</p>
<p>၁၇၅၆</p>	<p>ဘွားညိုထွန်းဇံနှင့် ရှင်ဂုဏသင်္ဘောတစ်စု ဥစ္စာပျောက်မှုဖြတ်စာ</p>	<p>အတုလဖြတ်ထုံး၊ စတုတ္ထ၊ မျက်-၃</p>
<p>၁၇၅၈</p>	<p>ဆရာရှင် ဂုဏသာရနှင့်တပည့်ရှင်သာရဝံသ တို့ ပေးပြီးသည့် သပိတ်သင်္ကန်းပြန်ယူမှု</p>	<p>အတုလဖြတ်ထုံး၊ တတိယ၊ မျက်-၄</p>
<p>၁၇၅၉</p>	<p>ရွာကြီးရှင်ဂုဏလင်္ကာနှင့်ယင်းတော် တိုက်သား ရှင်ဝါယမတို့ ရဟန်းသိက္ခာရှိမရှိ စိစစ်စီရင်မှု</p>	<p>အတုလဖြတ်ထုံး၊ တတိယ၊ မျက်-၃</p>
<p>၁၇၆၅</p>	<p>လွမ်းပျော်မွှေးစားအဘပန်းညိုပိုင်ပစ္စည်းကို အမွေခံည်ကိုကျောက်ပုံစားက အရာတော် အဖြစ် သိမ်းယူသည့်အမှု</p>	<p>အတုလဖြတ်ထုံး၊ စတုတ္ထ၊ မျက်-၈</p>
<p>ခုနှစ်မပါ</p>	<p>မိနဲ၊ ပဉ္စင်းငမ္မေး၊ မဟာဒါန်ပုံတို့၊ ပဉ္စင်းအမွေမှု</p>	<p>ရှေးဟောင်းစာပေသုတေသီတစ်ဦး၊ အတုလဆရာတော်ဖြတ်ထုံး (ပထမပိုင်း)၊ ရန်ကုန်မြို့၊ ဗဟို စာကူးနှင့်ပုံနှိပ်လုပ်ငန်း၊ ခုနှစ်မပါ၊ မျက်-၉။ နောင်ကိုးကားလျှင် အတုလဖြတ်ထုံး၊ ပထမပိုင်း ဟုကိုးကားမည်။</p>

ခုနှစ်မပါ	ရှင်ဂုဏလင်္ကာနှင့်ပေါက်မြိုင်တိုက်နေရှင်ပ ဏ္ဍိတတို့ထန်းရည်ချို သောက်မှုစကား	အတုလဖြတ်ထုံး၊ဒုတိယ၊မျက်-၉
၂၄ အောက်တိုဘာ ၁၈၅၃	ရေပုတ္တလင်ရွာတရားလိုရှင်ကဝိနှင့် တရားခံရှင်ပရမ၊ရှင်အရိယတို့၏ ဝိဝါဒမိကရုဏ်းမှု	ညွန့်ညွန့်ဝေ၊ ၁၉၆၉၊၁၈၄၊၁၈၅
၂၉ ဒီဇင်ဘာ ၁၈၅၃	ဆရာတော် ဦးနန္ဒိယနှင့်သာမဏေ လူထွက် မောင်ဘိုး ဦးတို့၏ အာပတ္တာမိကရုဏ်း	ညွန့်ညွန့်ဝေ၊ ၁၉၆၉၊၁၈၉
၁၅ မေ ၁၈၅၅	ရဟန်းရှင်စန္ဒာဝရက ဘိုးဘွားပိုင် မြေကွက် ကို ပေါင်နှံသည့် အနုဝါဒီအမိကရုဏ်း	ညွန့်ညွန့်ဝေ၊ ၁၉၆၉၊၂၁၇
ခုနှစ်မပါ	ပြည်မြို့မှရှင်မဏ္ဍိနှင့်ဘုရားစောင့် မောင်ရွှေလှတို့၏ အာပတ္တာမိကရုဏ်းမှု	ညွန့်ညွန့်ဝေ၊ ၁၉၆၉၊၁၉၀
ခုနှစ်မပါ	တမူးခမ်းပတ်အဝင်အင်ကုံရွာမှ ရှင်ဝိလာသ ပဇ္ဇူ၏ အသက်မပြည့်ဘဲ ရဟန်းခံခဲ့သည့် ကိစ္စာမိကရုဏ်းမှု	ညွန့်ညွန့်ဝေ၊ ၁၉၆၉၊၂၃၉
ခုနှစ်မပါ	ရှင်ဂုဏလင်္ကာနှင့်ပေါက်မြိုင်တိုက်နေရှင် ပဏ္ဍိတတို့ထန်းရည်ချို သောက်မှုစကား	အတုလဖြတ်ထုံး၊ဒုတိယ၊မျက်-၉

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