

**YANGON UNIVERSITY OF ECONOMICS
DEPARTMENT OF APPLIED ECONOMICS
MASTER OF PUBLIC ADMINISTRATION PROGRAMME
(NAY PYI TAW)**

**STUDY ON THE ULTRA VIRES ACTS DONE
BY PUBLIC ADMINISTRATORS IN MYANMAR
FROM A PUBLIC ADMINISTRATIVE PERSPECTIVE**

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EMPA - 19 (18th BATCH)**

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A thesis submitted as a partial fulfillment of the requirements for the degree of
Executive Master of Public Administration

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ABSTRACT

The main objective of the study is to analyze the role of ultra vires actions by public administrators for 10 years from 2011 to 2020 in Myanmar. To meet this objective, the five sub-objectives will be set and verified also. According to this study's results of the writ application, there is clear that remedies were obtained for the grievances, it is highlighted the time during that applications of the writ were pending under the state of emergency. If ultra vires occur in adjudicated cases, the aggrieved parties cannot be remedied during this period. Therefore, public administrators need to be careful to avoid ultra vires acts that exceed their powers as much as possible in accordance with the laws and regulations. Moreover, the results and findings of the study indicate that a need for more monitoring of legal issues that have a much of exposure to the public in some Union ministries or Union organizations. Similar monitoring is required in some of the most densely populated and highly commercialized areas where Region or State governments.

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LIST OF ABBREVIATIONS

AFPFL	The Anti-Fascist People's Freedom League
BCS	Burma Civil Service
BSPP	Burma Socialist Programme Party
EMPA	Executive Master Programme of Public Administration
EU	European Union
ICS	India Civil Service
MCDC	Mandalay City Development Committee
MPA	Master Programme of Public Administration
PAGLEP	Program for Asian Global Legal Professions
SLORC	State Law and Order Restoration Council
SPDC	State Peace and Development Council
UK	United Kingdom
UNDP	United Nations Development Programme
USA	United States of America
USSR	Union of Soviet Socialist Republic
YCDC	Yangon City Development Committee
YUOE	Yangon University of Education

CHAPTER 1

INTRODUCTION

Since 1971, the application of the writ process has been suspended in Myanmar's judicial system. After the adoption of the Constitution of the Republic of the Union of Myanmar (2008), Myanmar citizens regained their constitutional rights as citizens. According to this adoption, ultra vires acts done by public administrators are included in the applications of the writ from 2011 to 2020.

The Supreme Court of the Union corrected and remedied the grievances, through writ orders, civil rights, and constitutional rights over the quasi-jurisdictions function done by public administrators who were authorized under subordinate legislative power in the executive power branch.

This reflects the need for public administrators to realize their responsibilities to the rule of law in accordance with legal provisions for the implementation of good governance while at the same time it reflects the activation of the Constitution that implements democracy.

1.1 Rationale of the Study

Since 14 years of adoption of the Constitution of the Republic of the Union of Myanmar (2008), it has been observed that not only ultra vires acts done by public administrators cases have been included in the writ applications, but there have been 31 rulings also. It can be clearly predicted that there would have been grievances and arguments during the period of the socialist era constitution (1974-1988) which did not allow writ applications and the Constitution of the Republic of Myanmar (2008) drafting period (1988-2011).

Through ultra vires cases that have been ruled on for more than 10 years after the Constitution of the Republic of the Union of Myanmar (2008) was implemented, the enforcement of the law by officials in the mechanism of public administration needs to be analyzed in their exercising of quasi-judicial function under subordinate legislative power. Chapter VIII of the Constitution of the Republic of the Union of

Myanmar (2008) includes Citizens, Fundamental Rights, and Duties of the Citizens. Section 377 of this chapter, stipulates the right to apply for citizenship rights as follows.

Section 377; In order to obtain a right given by this Chapter, an application shall be made in accordance with the stipulations, to the Supreme Court of the Union¹.

At the same time, in Section 378 (a) (b), the authority to issue writs to the Supreme Court of the Union is stipulated as follows.

Section 378;

(a) In connection with the filing of the application for rights granted under this Chapter, the Supreme Court of the Union shall have the power to issue the following writs as suitable²:

- (1) Writ of Habeas Corpus;
- (2) Writ of Mandamus;
- (3) Writ of Prohibition;
- (4) Writ of Quo Warranto;
- (5) Writ of Certiorari.

(b) The right to issue writs by the Supreme Court of the Union shall not affect the power of other courts to issue an order that has the nature of writs according to the existing laws³.

Especially, now is the period during which applications of the writ are pending under the state of emergency according to Section 296 (b), Section 379 of the Constitution of the Republic of the Union of Myanmar. On February 15, 2021, the Supreme Court of the Union issued the declaration in accordance with the decree No. 1/2021 of the President's Office dated 1-2-2021 declaring a state of emergency for one year⁴; [Appendix (A)]

In addition, on February 22, 2022, according to the National Defense and Security Council's announcement No. 1/2022 dated 31-1-2022, extending the state of

¹ The Constitution of the Republic of the Union of Myanmar (2008). (P 154)

² Ibid. (P 154)

³ Ibid. (P 154)

⁴ The Supreme Court of the Union (2021) Declaration (Dated on 15th February 2021) (Translated by Author)

emergency for six months, the Union Supreme Court continued to issue the next declaration⁵; [Appendix (B)]

If ultra vires occur in adjudicated cases, the aggrieved parties cannot be remedied during this period. Therefore, public administrators and administrative authorities need to be careful to minimize Ultra Vires as much as possible in accordance with the laws and regulations.

1.2 The Objective of the Study

The main objective of the study is to analysis the role of ultra vires actions of the public administrators in Myanmar during a period of 10 years (2011-2020). To meet this objective, the following objectives will be set and verified;

- (i) To analyze the status of writ applications by aggrieved applicants against administrative bodies (Union Ministries, Union Organizations, Regional and State Governments) during the 10-year period from 2011 to 2020.
- (ii) To examine the issued types of writs to Union Ministries, Union Organizations, and Division/ State Governments by the Supreme Court of the Union.
- (iii) To analyze the classification of reported governmental cases of writs application.
- (iv) To examine most mainly related law types in writ applications during the 10 years (2011 – 2020).
- (v) To examine some leading remedied cases under the Constitution and other laws against Union Ministries/ Organizations and Division/ State Governments.

1.3 Methods of the Study

The descriptive method based on secondary data and a Focus Group Discussion (FGD) method (a form of qualitative research) is used to collect information from a wide range of people (Legislative, Executive and Judicial Branches) on this study. Data sources will be mainly collected from annual rulings published by the Supreme Court of the Union.

⁵ Ibid (Dated on 22nd February 2022) (Translated by Author)

1.4 Scope and Limitation of the Study

This study mainly focuses on Writs related to cases of Union Ministries, cases of Union Organizations and cases of Regional and State Governments that were published ruling writs by the Supreme Court of the Union. It is limited to the period of 10 years (Between 2011 and 2020). In addition, among the five types of writs under the Constitution of the Republic of the Union of Myanmar (2008), only three types of writs (Writ of Mandamus, Writ of Quo Warranto, Writ of Certiorari) which mainly related to public administration affairs will be studied in this study.

1.5 Organization of the Study

This thesis is the study on the ultra vires acts done by public administrators in Myanmar from a public administrative perspective (2011 to 2020). It contains five chapters. The Chapter 1 is introduction including rationale of the study, the objective of the study, method of the study, scope of limitation of the study and organization of the study. Following Chapter 1, Chapter 2 gives information on the literature review with 8 sub articles. Chapter 3 is composed of two parts. Firstly, it presents the systems of public administration and then, there will be remedies for public grievances under different Constitutions in Myanmar. Chapter 4 presents the analysis of ultra vires acts done by public administrators in Myanmar and using focus group discussion method. Chapter 5 concludes with findings and recommendations.

CHAPTER 2

LITERATURE REVIEW

2.1 Nature of Constitution

Constitutional law covers a very wide range of aspects such as the concept and philosophy of the Constitution, governmental structure, rule of law, structure, and mission of the judiciary, a delegation of judicial powers, constitutional review, the building of a culture of human rights, Constitutional principles, the objectives of the legislature body, the objectives of the governmental authority and legal institutions⁶.

Constitutional law is the body of law deriving from the U.S Constitution and dealing primarily with governmental powers, civil rights, and civil liberties, the body of legal rules that determine the constitution of a state or country with an unwritten constitution and the field of law dealing with aspects of constitutional provisions, such as restrictions on government powers and guarantees of rights⁷.

According to C.F STRONG, a true constitution will have the following facts:-

- (i) how the various agencies are organized;
- (ii) what power is entrusted to those agencies;
- (iii) In what manner such power is to be exercised⁸?

Constitution implies any regular form or system of government. Law implies a binding rule of action to which men are obliged to make their conduct comfortable. A constitution lays down the general and fundamental principle on which the powers of a state are to be exercised. In this sense, constitutional law is often described as the fundamental law of the Land. The main objective is to reconcile the conflict between the government and the governed and to define the orbit of sovereignty⁹.

⁶ Hla Myo Nwe, Daw. (2014) (P 99) (Translated by Author)

⁷ Bryan A. Garne (Editor in Chief) (1996) (P 162)

⁸ C. F. Strong.) (1960) (P 10)

⁹ Wade, E.C.S and G.G Philips (1957) (P 2/3)

2.2 Three Main Branches under the Constitution

According to the Doctrine of Separation of Power by 18th-century philosopher Montesquieu, the countries of the world today, are divided into three branches: Legislative, Executive and Judicial branches. Each branches of specific characteristics and the natures under the Constitution of the Republic of the Union of Myanmar (2008) are as follows;

2.2.1 Legislative Branch

Legislation¹⁰ is the process of making or enacting a positive law in written form, according to some type of formal procedure, by a branch of government constituted to perform this process. The law so enacted; collectively, the formal utterances of legislative organs of government. (It is also) the whole body of enacted laws.

Legislation¹¹ is the whole or any part of a country' written law, in the UK the term is normally confined to Acts of Parliament, but in its broadest sense, it also includes law made under powers conferred by Act of Parliament, the law made by virtue of the royal prerogative, and Measures. (It is also) the process of making written law.

The most important machinery in the modern state is the legislature, or Law-making body¹². In studying the legislature, there is a classification of "Unicameralism" and "Bicameralism".

Generally, a State Constitution or a State structure that has one Chamber or one House for the legislature is known as a unicameral legislature. Unitary states use the unicameral system and they have only one chamber each. Bangladesh has a Parliament (which is known as the House of Nations): China has one (Supreme organ) the National People's Congress. Egypt has a People's Assembly, and Singapore has one parliament¹³.

Two chambers or two Houses for the legislature are known as bicameral legislature. It is usually called the House of Representatives, the Assembly, and the

¹⁰ Bryan A. Garne (Editor in Chief) (1996) (P 465)

¹¹ Jonathan Law (2015) (P 364)

¹² C. F. Strong (1958) (P 66-69)

¹³ Ibid (P 25)

Senate¹⁴. Some of the unitary states use the bicameral system and have two chambers e.g. France has one which consists of a National Assembly and Senate; Japan has one Diet which shall consist of a House of Representatives and a House of Councillors: the United Kingdom has a Parliament and it has House of Lords and House of Common¹⁵.

Every Federal state applies the bicameral system and it has two chambers. For example, Germany has a Parliamentary Council consisting of a Council of States and a House of People: Malaysia has a Parliament consisting of a Senate and a House of Representatives: Under the Constitution of the Union of Burma (Myanmar) (1947), Myanmar had a Parliament consists of Chamber of Nationalities and Chamber of Deputies; USA has a Congress which shall consist of Senate and House of Representatives: Pakistan has a Parliament consists of Senate and National Assembly; Former USSR has one Supreme Soviet of the USSR consists of Soviet of The Union and Soviet of Nationalities, etc.¹⁶

Nowadays, Myanmar has a Parliament (Pyidaungsu Hluttaw) consists of Pyithu Hluttaw and Ahmyotha Hluttaw under Chapter IV, of the Constitution of the Republic of the Union of Myanmar (2008). Formation of the Pyidaungsu Hluttaw is in Section 74 as follow;

Section74. The Pyidaungsu Hluttaw comprises of the following two Hluttaws¹⁷ :

- (a) in accord with the provisions of Section 109, the Pyithu Hluttaw formed with Hluttaw representatives elected on the basis of +township as well as population and Hluttaw representatives being the Defence Services Personnel nominated by the Commander-in-Chief of the Defence Services;
- (b) in accord with the provisions of Section 141, the Amyotha Hluttaw formed with Hluttaw representatives elected in equal numbers from Regions and States and Hluttaw representatives being the Defence Services Personnel nominated by the Commander-in-Chief of the Defence Services.

¹⁴ Bryan A. Garne (Editor in Chief) (1996) (P 76)

¹⁵ C. F. Strong (1958) (P 66-69)

¹⁶ C. F. Strong (1958) (P 66-69)

¹⁷ The Constitution of the Republic of the Union of Myanmar (2008). (P 27)

2.2.2 Executive Branch

The unitary'-'federal' classification deals with the distribution of powers horizontally between the different levels of government. Another classification that deals with the vertical distribution of power are within a government at any level. This is the distinction between constitutions that provide for a "parliamentary-executive;" between those which embody, in some measure, the separation of the executive, legislative and judicial powers, and those which do not.¹⁸

In the Presidential Republics which used the Presidential System, the president is the head of the state and also the head of the executive. He is the real head of the state and also the head of the executive. According to the Article 2, Section 1 (1), under the Constitution of the United States of America, the executive Power is vested shall be vested in a president of the United State of America.

According to the Constitution of the United States of America, the president of the United States is independent executive. The essential of good government is a vigorous head of executive. To make the executive independent from interference, the American adopted the theory of the separation of powers. They established an independent legislature, an independent executive and an independent judiciary. His powers are definitely limited by the Constitution. He appoints his own minister and can remove them. His ministers are not member of the legislature nor are he and his minister responsible to the legislature for their acts. The President is elected by the people.¹⁹

In the Parliamentary Republic which used the Parliamentary System Prime Minister or Premier is the head of the executive. He is the real executive. In that case even though the President is the head of the state he is the nominal executive. The Parliamentary executive is generally marked by two main characteristics.

- (i) The formal appointment by the head of state of the head of the executive and the ministers. (This category includes Australia, Austria, Belgium, Canada, Ceylon, Demark, Germany, Italy, Japan, New Zealand, U.K, Former USSR, China, and socialist countries.)
- (ii) The necessity of parliamentary approval before the appointment of the head of the executive and the ministers can be effective. (This is the case

¹⁸ C. F. Strong (1958) (P XIX)

¹⁹ Guide for the Study of Constitutional Law (P 30)

in China and Socialist countries, Germany, Israel, Italy, Japan and Switzerland²⁰)

Myanmar Practice of Executive role prescribed by under Section 199, Chapter V, the Constitution of the Republic of the Union of Myanmar (2008) as follows:

Section 199²¹.

- (a) The Executive Head of the Union is the President.
- (b) (i) The executive power of the Union is distributed among the Union, Regions and States.
(ii) Self-Administered power is distributed among Self-Administered Areas as prescribed by the Constitution.

According to Section 96 of the constitution of the Republic of the Union of Myanmar (2008), the Pyidaungsu Hluttaw shall have the right to enact laws for the entire or any part of the Union related to matters prescribed in Schedule One Union Legislative List.

At the same time, according to the Section 188, the Region or State Hluttaw shall have the right to enact laws for the entire or any part of the Region or State related to matters prescribed in Schedule Two of the Region or State Hluttaw Legislative List, and according to the Section 196, the legislative power relating to the matters listed in the Schedule Three for respective Divisions or Zones are allotted to the Self-Administered Division or the Self-Administered Zone Leading Bodies also.

Moreover, the Pyidaungsu Hluttaw enacts a law, it may authorize to issue rules, regulations, and by-laws concerning that law to any Union-level organization formed under the Section 97, Sub-section (a) of the 2008 constitution. According to Section 97, Sub-section (b) the Pyidaungsu Hluttaw enacts a law, it may authorize to issue of notification, orders, directives, and procedures to the respective organization or authority.

2.2.3 Judicial Branch

The nature of the judiciary or judicial system is different from one to another under the application of different legal systems of the world. The vital distinction is one that concerns the connection of the judiciary with the executive.

²⁰ Leslie Wolf-Phillips (1968) (P XX)

²¹ The Constitution of the Republic of the Union of Myanmar (2008). (P 75)

In most continental states there is a special system of law to protect the civil servants of the state in the discharge of their official duties, if they should thereby be guilty of acts that, omitted by unofficial persons, would be unlawful²².

This judiciary system was born in France, where it goes by the name of Droit Administratif (i.e. Administrative Law). Most continental states, which have been satisfied in other respects to model their executive systems the British pattern, have in adopting an administrative law, departed utterly from the Anglo-Saxon spirit²³. For example in Britain and those communities which have sprung directly from her, and have carried with them her legal, if not always her constitutional, system, a special system of administrative law for the protection of government officials is quite known.²⁴

The Supreme Courts of the Union are formed under the Section 293 of Constitution of the Republic of the Union of Myanmar (2002) as follows:

- (a) Supreme Court of the Union, High Courts of the Region, High Courts of the State, Courts of the Self-Administered Division, Courts of the Self-Administered Zone, District Courts, Township Courts and the other Courts constituted by law²⁵;
- (b) Courts-Martial²⁶;
- (c) Constitutional Tribunal of the Union²⁷.

Judicial Review is a court's power to review the actions of other branches or levels of government; especially, the court's power to invalidate legislative and executive actions as being unconstitutional. It is the constitutional doctrine providing for this power and a court's review of a lower court's or an administrative body's factual or legal findings²⁸.

Judicial Review²⁹ is the principal means by which the High Court exercises supervision over public authorities in accordance with the doctrine of "ultra vires". The power of the High Court to exercise judicial review is often referred to as its supervisory jurisdiction. The mechanism for seeking judicial review is by making a

²² G. H. Sabine (1937) (P 399)

²³ G. H. Sabine (1937) (P 399)

²⁴ Ibid (P 399)

²⁵ The Constitution of the Republic of the Union of Myanmar (2008). (P 125)

²⁶ Ibid (P 125)

²⁷ Ibid (P 125)

²⁸ Bryan A. Garne (1996) (P 438)

²⁹ Jonathan Law (Edited) (2015) (P 347)

claim under the procedure provided for in Rule 54 of the Civil Procedure Rules in U.K. Claims are made to the Administrative Court³⁰. The common law grounds on which judicial review may be granted were defined in the case *Council of Civil Service Unions v Minister for the Civil Service* (1985). If the claim for a judicial review is successful, the court may grant a quashing order, mandatory order, prohibiting order, declaration, or injunction; it may also award damages in certain circumstances. Under the tribunals, Courts and Enforcement Act 2007 the newly created Upper Tribunal has the power of judicial review over decisions of the First-tier Tribunal. In European Union Law, the European Court of Justice has a judicial review function provided for under Article 230 of the EC Treaty. In terms of this provision, community acts (i.e. legally binding acts of the community institutions) are challengeable by means of judicial review on the grounds of infringement of the Treaty or any rule of law relating to its application or misuse of powers. Action can be brought by an institution of the EU, a member state, or (in certain limited circumstances) an individual³¹.

2.3 The Doctrine of Separation of Power

The doctrine of separation of powers has emerged in several forms of different periods and in different contexts. It is traceable back to Aristotle; it was developed by the Englishman John Locke in the 17th century. The doctrine of separation of powers was developed by the French Jurist, Montesquieu, who based his exposition on the British Constitution of the early 18th century³². The term “Separation of Powers³³” used to be no longer separated by the logician Montesquieu in the 18th century.

The essence of the doctrine of Montesquieu expresses that when the legislative and government powers are united in the equal person, or in the equal body of magistrates, there can be no liberty. Moreover, there is no liberty, if the judiciary strength is now not separated from the legislative and executive, the place it joined with the legislative, the lifestyles and liberty of the situation would be uncovered to arbitrarily manipulate for the choice would then be the legislator. If it joined the government however, the choice may behave with violence and oppression. There would be a quit to everything, had been the identical man, or the identical body,

³⁰ Jonathan Law (Edited) (2015) (P 347)

³¹ Ibid (P 347)

³² Leslie Wolf-Phillips (1968) (P 8)

³³ H.W.R Wade & C.F. Forsyth (1961) (P III)

whether or not of the nobles or of the people, to exercise these three powers, that of enacting laws, executing the public resolutions, and of attempting the reasons of individuals³⁴.

S.A de Smith restated the formulation of Montesquieu in his Constitutional and Administrative Law³⁵ as follow;

The doctrine, as propounded by Montesquieu and his follower, may be stated briefly;

- (i) There are three main classes of governmental functions: the legislative, the executive, and the judicial³⁶.
- (ii) There are (or should be) three main organs of government in a State: the Legislature, the Executive, and Judiciary³⁷.
- (iii) To concentrate more than one class of function in any one person or organ of government is a threat to individual liberty. For example, the Executive should not be allowed to make laws or adjudicate on alleged breaches of the law; it should be confined to executive functions of making and applying policy and general administration³⁸.

The meaning of Separation of powers³⁹ given by Wade and Phillips is as follows:

- (i) that similar persons need to not form part of more than one of the three organs of government, for example, that ministers should be no longer in Parliament.
- (ii) that one organ of authorities (government) should no longer control or intervene with the work of another, e.g, that the Judiciary should be impartial to the Executive or that ministers must no longer be accountable to Parliament:
- (iii) that a part of government should not exercise the another functions, e.g, that ministers should not have legislative powers.

³⁴ Ibid (P III)

³⁵ Leslie Wolf-Phillips (1968) (P 9).

³⁶ Leslie Wolf-Phillips (1968) (P 9)

³⁷ Ibid (P 9)

³⁸ Ibid (P 9)

³⁹ Ibid (P 10)

2.4 Public Administration

The term 'Administration' has been derived from the Latin word 'ad' and 'ministrare' which means 'to serve. Simply, meaning of word indicate to 'care for or to 'look after people, to 'manage affairs'. The definition of administration may be "group activity which involves cooperation and coordination for the purpose of achieving desired goals or objectives". Any cooperation of human effort closer to accomplishing some frequent goals is additionally recognized as administration. Therefore, each department and every organization exercise entails some part of administration whether or not it is in a governmental department. Therefore, administration permeates all prepared human activities.

Public Administration is the management of governmental affairs at all levels of national, state, and local. It is a wider branch than the field of administration. The term administration has been variously defined by different authors. In the words of Marx: Administration is determined action taken in pursuit of a conscious purpose. It is the systematic ordering of affairs and the calculated use of wants to happen. According to J.M. Pfiffner, Administration is the organization and direction of human and material resources to achieve desired ends. Therefore, the two essentials part of administration are cooperative effort and the pursuit of common objectives.

The functions of Public administrators are the arrangement, management, and supervision of the organizations that regulate and control statutory laws and statutes. As these agencies grow to accommodate the needs of society, public administrators act as special advisors to satisfy the public's interests and needs. It is the purpose of public administration. The definitions of terms related to Public Administration that will be presented in this study are as follows;

According to United Nations Development Program (UNDP), governance is an exercise of economic, political, and administrative authority to manage a country's affairs at all levels⁴⁰. Any cooperation of human effort closer to accomplishing some frequent goals is additionally recognized as administration. Therefore each and every team exercise entails some part of administration whether or not it is in a

⁴⁰ UNDP, Governance for Sustainable Human Development 1997 https://www.undp.org/sustainable-development-goals?c_src=CENTRAL&c_src2=GSR (visited on 2, November, 2022)

governmental department. Therefore Administration permeates all prepared human activities.⁴¹

Good governance has eight important characteristics⁴². It is participatory, consensus oriented, accountable, transparent, responsive, tremendous and efficient, equitable and inclusive, and follows the rule of law. It assures that corruption is minimized; the views of minorities are taken into account and that the voices of the most inclined in society are heard in decision-making. It is additionally responsive to the modern-day and future desires of society⁴³.

According to Montesquieu, the rule of law means that the use of political power is subject to the formal constraint of standing rules that are codified in the positive laws of the land. It means that no one is above the law and that the actions of the state must conform in a consistent way to publicly known standards.

2.5 Administrative Law

2.5.1 Nature of Administrative Law

Administrative law governs the Executive, to modify its functioning and shield the frequent citizenry from any abuse of strength exercised with the aid of the Executive or any of its instrumentalities. Administrative legal guidelines are the physique of regulation that governs the things to do of administrative businesses of government.

Guidelines of administrative law are created via administrative corporations with the aid of way of rules, regulations, orders, and decisions. Administrative regulation encompasses legal guidelines and criminal ideas governing the administration and legislation of authorities organizations (both federal and state).

Myanmar does not have any form of administrative procedure law, that is, a general law that sets out the obligations of government agencies in terms of duties such as the need to provide reasons for decisions, access to information, and procedural fairness in decision-making.

⁴¹ Ibid (visited on 2, November, 2022)

⁴² <https://www.unescap.org/sites/default/files/good-governance.pdf> (Visited on September 28, 2022)

⁴³ [Ibid](#) (Visited on September 28, 2022)

2.5.2 Delegated Legislation or Subordinate Legislative Power

Delegated Legislation refers to the law-making power conferred by parliament on the executive. As the exercise of this law-making power is derivative power, not the original one, it is called subordinate legislation – it is subordinate in terms of the Act under which it is exercised. It is void if it violates the parent Act, and transgresses the power granted under the Act⁴⁴.

In the USA, the President has the power either to sign the legislation into law or to veto bills promulgated by Congress, the Congress, however, may override a veto with a two-thirds vote of both houses⁴⁵. The Executive Branch exercises diplomacy with other countries and the President has the power to negotiate and sign treaties, which the Senate ratifies. The President can issue executive orders that direct executive officers or clarify and further existing laws⁴⁶.

In Myanmar, in accordance to Section 95 under the Constitution of the Republic of the Union of Myanmar (2008), the legislative system prescribed as follows⁴⁷;

Section 95 (a) - If a Bill initiated in the Pyithu Hluttaw or the Amyotha Hluttaw is approved by both Hluttaws, it shall be deemed that the Bill is approved by the Pyidaungsu Hluttaw.

Section 95 (b) - If there is a disagreement between the Pyithu Hluttaw and the Amyotha Hluttaw concerning a Bill, the Bill shall be discussed and resolved in the Pyidaungsu Hluttaw.

And then, according to Section 105 under the Constitution of the Republic of the Union of Myanmar (2008), the legislative procedure was prescribed as follows⁴⁸;

(a) The President shall sign the Bills approved or the Bills deemed to be approved by the Pyidaungsu Hluttaw, within 14 days after the day of receipt, and shall promulgate it as Law.

(b) The President, within the prescribed period, may send the Bill back to the Pyidaungsu Hluttaw together with his comments.

⁴⁴ Rumki A. Garne (1996) (P 18)

⁴⁵ Ibid (P 18)

⁴⁶ Ibid (P 18)

⁴⁷ The Constitution of the Republic of the Union of Myanmar (2008). (P 33)

⁴⁸ Ibid, (P 37)

- (c) If the President does not send the Bill back to the Pyidaungsu Hluttaw together with his signature and comments within the prescribed period, or if the President does not sign to promulgate, on the day after the completion of that period, the Bill shall become a law as if he had signed it.

2.5.3 Quasi-Judicial Function of the Administrative Authorities

A quasi-judicial function, as defined by S.A de Smith, is a “judicial procedure” whereas the decision is made by the discretionary power of the executive. Therefore, when a body, other than a court, decides a dispute and it is required to follow the elements of judicial procedure and the rules of fair play and natural justice, the process is referred to as quasi-judicial⁴⁹.

2.5.4 Rules of Natural Justice

The words “natural justice” (Roman word “Jus Naturale”) is rule fair play, originally developed by the courts of equity to control the decisions of inferior courts and then gradually extended (particularly in the 20th century) to apply equally to the decisions of administrative and domestic tribunals and of any authority exercising an administrative power that affects a person’s status, rights, or liabilities⁵⁰. Any decision reached in contravention of natural justice is void as “*ultra vires*”⁵¹.

There are two principal rules⁵². The first is the rule against bias i.e. against departure from the standard of eve-handed justice required of those who occupy judicial office - *nemo judex in causa sua*, (or in *proaria causa*); no man may be a judge in his own cause”. This means that any decision, however fair it may seem, is invalid if made by a person with any financial or other interest in the outcome or any known bias that might have affected his impartially.

The second rule is known as *audi alteram partem*, hear the other side”⁵³. It states that a decision cannot stand unless the person directly affected by it was given a fair opportunity both to state his case and to know and answer the other’s side case.

⁴⁹ Myint Thu Myaing, Dr. (2020) (P 99)

⁵⁰ Jonathan Law (2015) (P 410)

⁵¹ Ibid (P 410)

⁵² Ibid (P 410/411)

⁵³ Ibid (P 410/411)

The rules of natural justice provide a minimum standard of procedural fairness and the exact requirement will vary depending on the context.

Natural justice is the administration of justice in a common sense liberal way⁵⁴. The basic principle underlying Natural Justice is that “Justice must not only be done but must be seen to be done” and this rule has received wide recognition in several decisions of the Supreme Court.

‘Natural’ justice does not simply mean justice discovered in nature. It is a compilation of ideas that should be naturally connected with justice, regardless of whether these ideas are part of the law. Natural justice applies comprehensively to administrative discretion. Its goal is to prevent mischievousness and unfairness towards the resident by managing authorities⁵⁵.

The principles of natural justice in India are those regulations made by the courts as the least protection of the person’s rights against the arbitrary policy that judicial, quasi-judicial principles of natural justice in administrative law power may adopt while making an order working on those rights. The committee on Minister’s Power or Frank Committee has laid down the following norms of natural justice:

- (i) No one shall determine in his own cause.
- (ii) Making accessible a copy of the statutory report.
- (iii) No one should be convicted without a hearing.
- (iv) a party has the right to know all the causes of the decision.

2.5.5 Finality Clauses

Finality clauses⁵⁶ are provided by the statute to declare that a decision by any agency “shall be final”. However, a person aggrieved by the decision of an administrative tribunal can approach a court when the decision given by the tribunal is ultra vires, meaning that the tribunal has exceeded its jurisdiction while exercising its authority⁵⁷. Therefore, the court can review the decision on the grounds of it being ultra vires, which is a question of law. In England, administrative finality has been attempted to be established by various statutes. However, by merely invoking a clause establishing the finality of the decision by the tribunal does not bar the court from

⁵⁴ Jonathan Law (2015) (P 410/411)

⁵⁵ <https://byjus.com/free-ias-prep/principles-of-natural-justice/> (Visited on 31 July 2022)

⁵⁶ Yashaswini Gautam (2020) (P 1) <https://blog.ipleaders.in/finality-clause-power-judicial-review/> (visited on 14 August, 2022)

⁵⁷ Ibid (P 1)

reviewing the decision on the ground of law although it does prevent the court from questioning or challenging it based on facts⁵⁸. Therefore, it can be concluded that the finality clause only makes the decision of the tribunal on the facts “final” and not the question of the law⁵⁹.

It is not historically uncommon for Acts and Laws of Myanmar which exclude the court's power to review administrative decisions by inserting a finality clause⁶⁰. Finality clauses under ordinary legislation are not very effective in all cases, and the Supreme Court is ready to review the administrative actions and omissions judicially; and if it is necessary, to exercise its power to issue writs either to quash the administrative acts or to compel the executive authority to act its functions in accord with the law.

It means that no judicial appeal lies from an order made by the administrative authority to the ordinary judicial courts. It does not prohibit him or her to apply writs to the Supreme Court under the constitutional provision of judicial review. For instance, in the case of *U Zaw Phyu vs. Chairman of Thaninthayi Region Farmland Management Body & 1*, 2014 Civil Miscellaneous case No 305, the Supreme Court of the Union issued writ of quo warranto to quash the decision made by the Taninthayi Region Farmland Management Body as an ultra vires act of administrative body, although there has been a finality clause in Farmland Law⁶¹. However, the finality clause under the Constitution is final and conclusive.

2.6 Ultra Vires

Ultra Vires is from the source of the Latin language and means “beyond the legal powers” or authority of a corporation, corporate officer, etc. It is described actions taken by government bodies or corporations that exceed the scope of power given to them by laws or corporate charters. Ultra vires⁶² [Latin “beyond the powers (of)”] Unauthorized; beyond the scope of power allowed or granted by a corporate charter or by law. Ultra vires acts are invalid (compare INTRA VIRES). The ultra vires doctrine applies to all powers, whether created by statute or by a private document or agreement

⁵⁸ Ibid (P 1)

⁵⁹ Yashaswini Gautam (2020) (P 1) <https://blog.ipleaders.in/finality-clause-power-judicial-review/> (visited on 14 August, 2022)

⁶⁰ Khin Khin Oo, Dr. (2018) (P 26)

⁶¹ Khin Khin Oo, Dr. (2018) (P 27)

⁶² Bryan A. Garne (1996) (P- 802)

such as a trust deed or contract of agency⁶³. In the field of public (especially administrative) law, it governs the validity of all delegated and sub-delegated legislation. This is ultra vires not only if it contains provisions not authorized by the enabling power but also if it does not comply with any procedural requirements regulating the exercise of the power⁶⁴.

2.7 Application of writ

The term writ refers to a formal, legal document that orders a person or entity to perform or to cease performing a specific action or deed. Writs are drafted by judges, courts, or other entities that have administrative or judicial jurisdiction⁶⁵.

In common law, a writ (Anglo-Saxon gewrit, Latin breve) is a formal written order issued by a body with administrative or judicial jurisdiction; in modern usage, this body is generally a court, Warrants, prerogative writ, subpoenas, and Certiorari are common types of the writ, but many forms exist and have existed which of effective of writ⁶⁶. It is a quashed order by a court. The relevant writs are issued based on the following basic reasons:

- (1) Doing more than is authorized (Ultra Vires), or doing without authority (Intra Vires), not doing it while having the authority according to the jurisdiction.
- (2) Legal information errors are obvious on the case record.
- (3) Violation of the rules of natural justice.

In Myanmar, according to Section 378 (a) under Chapter VIII (Citizen, Fundamental Rights and Duties of Citizen) of 2008 Constitution, and according to Section 16 (a) of the Union Judiciary Law (The State Peace and Development Council Law No. 20 / 2010), the Supreme Court of the Union has the power to issue the following writs;

- (i) Writ of Habeas Corpus⁶⁷,
- (ii) Writ of Mandamus⁶⁸,
- (iii) Writ of Prohibition⁶⁹,

⁶³ Jonathan Law. (2015) (P 637)

⁶⁴ Ibid (P 637)

⁶⁵ Bryan A. Garne (1996) (P 867)

⁶⁶ Ibid (P 867)

⁶⁷ Ibid (P 367)

⁶⁸ Ibid (P 490)

- (iv) Writ of Quo Warranto⁷⁰,
- (v) Writ of Certiorari⁷¹.

According to the Law Relating to the Application of Writ, 2014 (The Pyidaungsu Hluttaw Law No.24, 2014), the meanings of five kinds of writs and related terms are as follow⁷²;

- (i) Writ of Habeas Corpus means a writ issued in writing after causing to bring the detainee to the office of writ and hearing whether are not the detention is in conformity with Law by any Court of the Republic of the Union of Myanmar or any competent authority;
- (ii) Writ of Mandamus means a writ issued in writing to comply with Law by any competent person; or any authority; or any government department for the failure to comply with the power conferred thereon;
- (iii) Writ of Prohibition means a writ issued in writing not to perform beyond the jurisdiction (ultra vires) or against justice in any proceeding of any Court or any quasi-judicial matter,
- (iv) Writ of Quo Warranto means a writ issued in writing whether or not it is in conformity with Law after hearing whether or not any government department or any empowered authority has carried out in accord with laws, rules, regulations, by-laws, procedures, orders, notifications, directives issued on person or persons.
- (v) Writ of Certiorari means a writ issued in writing to be the decision in conformity with Law if it is found that the decision of any Court or any quasi-judicial matter is not in conformity with Law;
- (vi) Office of Writ means the Supreme Court of the Union which is empowered to issue writ;
- (vii) Application means the application which is filed to the Supreme Court of the Union to issue writ;
- (viii) Applicant means the applicants who file the application to issue writ;

⁶⁹ Ibid (P 631)

⁷⁰ Ibid (P 649)

⁷¹ Ibid (P 109)

⁷² The Law Relating to the Application of Writ (2014) (P 1)

- (ix) Respondent means the person who acts or the persons, organizations, departments that fail to act directly or by other means in respect of the applications to issue writ.

2.8 Reviews on Previous Studies

Previous study papers of EMPA program in Yangon University of Economics and scholarly research articles related to this study are as follows;

Myo Nyunt (EMPA 2004-2005) studied “A Comparative Study of Myanmar’s State Constitution (1947) and State Constitution (1974) relating to Public Administration”. He made his study to expose some major changes arising out of the two Constitutions (1947 and 1974) during in his study period before 2008 Constitution.

Khin Phyu Win (EMPA 6th Batch, 2010) studied “A study on the Administration of Indian Civil Service (JCS) and Burma Civil Service (BCS) in British Colonial Period”. She has tried to identified and evaluate the changes in the general administration system and explores an efficient and effective general coordination mechanism in the British Colonial Period to be able to support the administrators in the policy formulation, coordination and implementation.

Kyawt Kyawt Hlaing (EMPA 10th Batch, 2013) made a study “Legislative Systems Under the (1947, 1974 and 2008) Constitutions in Myanmar”. Her purpose of the study is to identify elements which play vital roles in legislation of Myanmar and to evaluate performance three legislative systems in Myanmar. She attempts to study the Legislative system under the different constitutions which emerged from Myanmar’s historical changes.

Khin Maung Nyein (MPA 12th Batch, 2013) made a study to “Changes in Administrative Structure Under the 2008 Constitution in Myanmar”. His thesis carried out with the purpose of studying the administrative structures changes under the successive Governments in Myanmar and analysing the changes of administration structure from the State Peace and Development Council Government to Democratic Government.

U Gyi Je Ra (EMPA-55) (11th Batch) (2015) attempted to study “The Practice of Law Making Process in the Republic of the Union of Myanmar”. Her study focused on the legislation system and the process of law making in Myanmar, specifically pointing out the current legislation system of Myanmar although it has

been long and several legal history and its legal system of each period has been seen in different manners. Her thesis is emphasized on how National laws have been made and to express the current (in 2015) legislative process of Myanmar in developing parliamentary procedures since legislature is more vibrant and influential than many had expected in the past and has a key role in the reform process.

Mi Khin Saw Aung, (Dr. Professor, Head of Law Department, Dagon University) wrote “Writ Jurisdiction in Myanmar” in Dagon University Research Journal 2020, Vol. 11. She examined the applications and practices of writs in Myanmar after 2011 with a focus on the frequency of cases for each kind of writs.

Ah Kar Min, (Dr. Deputy Director, Ministry of Home Affairs) wrote “the Role of Administrators in Regional and Local Administration of the Republic of the Union of Myanmar in his Ph.D. paper that submitted to Department of Law, Mandalay University in 2015. His research focused on the role of administrators in regional and local administration throughout Myanmar's 800-year history, more than 100 years of colonial rule, and the post-independence period.

CHAPTER 3
PUBLIC ADMINISTRATION SYSTEMS ON REMEDIES
FOR PUBLIC GRIVENANCE UNDER DIFFERENT
CONSTITUTIONS IN MYANMAR

3.1 Public Administration Systems under Different Constitutions

Myanmar went through an ancient monarchy for about 1,000 years and fell under the British colonial emperor in the 19th century. During the colonial period, the British used their English traditional common law system. After gaining independence, this common law system was also inherited in Myanmar. After independence, Myanmar has passed three constitutions. In addition to the period in which the Constitution was in force, it also passed through various administrative systems during the drafting of the new Constitutions.

3.1.1 Public Administration under the Constitution of the Union of Burma (Myanmar) (1947)

This section can be divided into post-independence and pre-independence periods. In addition, the pre-independence period can be further divided into ancient Myanmar and colonial Myanmar public administration.

Ancient Public Administration in Myanmar was well-established since the eras of Vishnu, Sriksetra, Vissali (Rakhine), and Suvarnabhumi. These administration systems were built in line with each imperialist rule of the Bagan Dynasty A.D (1044-1344), Innwa Dynasty A.D (1365-1531), Taungoo Dynasty A.D (1531-1599), Nyaungyan Dynasty A.D (1599-1752) and finally Konbaung Dynasty A.D (1752-1885). These systems were mainly based on the teaching of the Buddha and the ethic of Administrators from the King to the Village Headmen has been designated in accordance with the Dhamma.⁷³

⁷³ Than Tun, Dr. (2010) (P ix) (Translated by author)

Myanmar has existed as a sovereign State for over many years under Myanmar Kings. Myanmar, in which feudalism once exercised, came to a change in administrative, political, social, and economic aspects. In the former Myanmar administrative system, the monarchical system was practiced.⁷⁴

Colonial Public Administration in Myanmar started after the British invaded Myanmar in 1824, 1852, and 1885 by making the three times of Anglo – Myanmar Wars. After the first Anglo- Myanmar war, Rakhine and Taninthayi were ceded by the British East India Company. Due to the geographical condition, the Rakhine was placed by a Superintendent under the Chief Commissioner of Chittagong in Bengal and later, such Superintendent was promoted to a Commissioner for Rakhine Division, under the direct control of the Governor General of India in the years 1835 to 1852.

In the colonial period, the various types of administration were exercised and the appointment and role of administrators in each level of administration were changed. In the colonial administration, the Government maintained a hierarchy of officials as its agents; Divisional Commissioner (Taing Mingyi), the Deputy-Commissioners for Districts (DC) (Ayebaing or Khayaing Wun), Head Quarters Assistance (HQA) (Myoma Wundauk Kyi), who is also responsible to DC and he had to perform the routine administrative works on behalf of DC and other tasks and duties assigned to him, Sub-divisional Officers (Naebaing Wundauk) and Extra Assistant Commissioner (EAC) (Sit Ke), Township Officers (Myobaing or Myonae Ayashi). In general, they were the agents of government for all purposes except those in the hands of the specialists departments such as Forestry, Public Work, Medical, Education, and Agriculture⁷⁵.

To handle the tasks of each level of administration, the British Government selected the Administrators from Indian Civil Services (I.C.S) (latter known as the Burma Civil Services- B.C.S) who must have the following qualifications;

- (a) a B. A (Hon.) degree holder;
- (b) the special recommendation of Headmaster of Yangon University;
- (c) to be loyal to the British Government;
- (d) passed the exam of Indian Civil Service.

⁷⁴ Ah Kar Min, Dr. (2015) (P 4)

⁷⁵ Ah Kar Min, Dr. (2015) (P 4)

When they passed the competition exam of Indian Civil Service, they had to study the administration subjects such as Law, History, Language, Departmental, and Horse riding for transportation, at the Oxford, and Cambridge Universities, by taking the salary, for two years. Within this period of study, they must learn the methods of Treasury, Judicial, Revenue Collection, Excise, Survey, and Land Record, as job training for ten months⁷⁶.

U Myint Thein (Rangoon University) (2016) pointed out that there were 6 basic aspects of governance that remained unchanged even though Myanmar was governed by various forms of governance during the British occupation⁷⁷.

First of all, Burma's sovereignty rests with the British King and Parliament. The British King has the right to rule Myanmar, and the British Parliament has the right to make laws for Myanmar. The British Government's Minister for Burma and the British Governor in Burma have the right to decide on important Burmese affairs. The power of the legislature in Burma did not encroach on the British government. This gives the British government the right to legislate with the approval of the Governor to assist in maintaining peace and order in the administration of Burma⁷⁸.

Secondly, in the administration of Burma, all areas that can be supervised and managed are kept in the possession of the British. Thirdly, the governor appoints Burmese ministers as he likes. He has the power to overthrow also. In addition, the final decision on all business matters is in the hands of the Governor. The governor presides over the Cabinet meeting and the agenda of the meeting is determined only by the governor. In all aspects of the government's work, he acts only in the name of the Governor and not as the Cabinet. The official head of the ministries is the secretaries, and all the functions of the government are carried out by the secretaries on behalf of the governor. Secretaries appoint staff, Authority in all personnel and financial matters. If the Minister and the Secretary disagree on any matter, the Secretary may report directly to the Governor. The governor convenes the minister and the secretary and makes a decision⁷⁹.

By the fourth factor, during the Colonial era, British nationals were placed in the positions of supervision and management of the colonial civil service

⁷⁶ Alleyne Ireland (1907) (P 407/408)

⁷⁷ Myint Thein, U (Yangon University) (2016) (P 66) (Translated by author)

⁷⁸ Myint Thein, U (Yangon University) (2016) (P 66/67) (Translated by author)

⁷⁹ Ibid (P 67) (Translated by author)

organizations, and Burmese nationals were placed in the actual implementation positions. The heads of important departments are British, and most of the first-level department staffs are British. The second level is the same as the indigenous Burmese, and the third level is the majority of Burmese people⁸⁰.

In the fifth point, if the Burmese people are not satisfied with the government's actions and appeal, the appeal authority is only the British people. In the judiciary, the appellate authority is the Supreme Court, and only 2 of the 9 Supreme Court judges are Burmese. The two Treasury Commissioners, who are the appellate authority in revenue and administrative matters, are both British authorities. Most of the heads of the Appellate Authority in internal affairs are British⁸¹.

Finally, in administrative methods, Burmese traditions that affected British interests were abolished, and those that were not affected were kept, and the colonial authorities gradually assimilated their customs and cultures to rule over a long period of time. The Burmese tradition of ruling by a group of community elders has been abolished and only one Village Headman has been given power to govern. If there is a lawsuit, the Myanmar custom of tradition is canceled and the decision is made by a single judge. Breaking the Burmese tradition that community affairs must be completed in the community, townships and district offices were established to judge community issues. In other words, the administrative system created by British imperialists is an administrative system designed to protect British interests⁸².

Myanmar became an independence State and the Constitution of the Union of Burma (Myanmar) (1947) came into force on such date ⁸³ on 4th January 1948. This Constitution (1947) contains 14 chapters, 234 sections and four schedules. Public Administration of new Myanmar operated the Parliamentary Administration under the Constitution of the Union of Burma (1947).

Some articles in the Constitution of the Union of Burma (Myanmar) (1947) are almost identical to some articles in the Constitution of India. The drafters of the Constitution of Myanmar referred to the Constitution of India and the Government of Burma Act (1935). The framers of the constitution decided to form a Union of Burma, and federal-style provisions were included in the constitution at the Preliminary

⁸⁰ Ibid (P 67) (Translated by author)

⁸¹ Ibid (P 68) (Translated by author)

⁸² Myint Thein, U (Yangon University) (2016) (P 68) (Translated by author)

⁸³ The President House's Notification on 4th January 1948

Conference of the Anti-Fascist People's Freedom League (AFPFL) held in May 1947⁸⁴.

The Union of Myanmar, which was established under the Constitution of the Union of Burma (Myanmar) (1947), had two houses, the Chamber of Deputies and the Chamber of Nationalities.

According to Section 4, all powers, legislative, executive and judicial, are derived from the people and are exercisable on their behalf by, or on the authority of, the organs of the Union or of its constituent units established by this Constitution⁸⁵.

According to Section 65, the legislative power of the Union shall be vested in the Union Parliament which shall consist of the President, the Chamber of Deputies and a Chamber of Nationalities and which is in this Constitution called "the Parliament" or "the Union Parliament"⁸⁶.

Studying the Constitution of Myanmar (1947), it will be seen that the law is designed to be neither a Federal Form of Government nor a Unitary Form of Government. It can be said that the drafters of the Constitution drew up reconciliation, which is a combination of two administrative methods, aiming for the harmony of the ethnic groups, even though the united is very beneficial for the country. To what extent it is a federal form of government, it can be said that it is as federal as Canada, and to what extent is it unitary, it can be said that it is as unitary as the UK⁸⁷.

According to the Constitution of the Union of Burma (1947), the Sovereign power is divided among the mainland and states and the exercise of administrative power is as follows⁸⁸ -

- (1) In the mainland, it is exercised by the Department of the Home Affairs on behalf of the Central government.
- (2) In the States, it is applied by the ministries of state.
- (3) In the Special Division of Chins, it is applied by the Ministry of Chin Affairs.
- (4) In border territories, it is applied by the Border Territory Administration Department.

⁸⁴ Myint Thein, U (Yangon University) (2016) (P 65/66) (Translated by author)

⁸⁵ The Constitution of the Union of Burma (1947) (P 1)

⁸⁶ Ibid (Section 5)

⁸⁷ Htwe, U, Wanna Kyaw Htin (1963) (P 45/47) (Translated by author)

⁸⁸ Kyaw, U (Aung Myat Kyaw), Director (Retd); (B.C.S)(2015) (P 54) (Translated by author)

The Ministry of the Home Affairs is the main administrative ministry responsible for the central government in the mainland, and has a chief secretary. He is responsible for internal security, Community peace and harmony, law enforcement and local development, and has to supervise and control the police forces and general administrative staff. On the other hand, the chief secretary are supervised and coordinated with secretaries in other ministries for government functions. Secretaries of State Governments are responsible for the administration of the states. The Chief Secretary was a high-ranking position, and this position was appointed to the Prime Minister's Office, and the Ministry of Home Affairs appointed a secretary like other ministries⁸⁹.

Under the Constitution (1947), AFPFL government enacted the Parliamentary Secretaries Act on 21 January 1948. According to this Act which includes 5 articles, the members of parliament nominated by the prime minister are appointed by the president as parliamentary secretaries. These are to assist the Prime Minister and Ministers, not the Government Secretaries. Their salaries and expenses are borne by Parliament, and their terms are for the duration of their term of office or until the Prime Minister instructs them to resign⁹⁰.

George J, Jackson. (Civil Service Commission of Canada) (1952) distinguished the Positions of the Minister, the Secretary-General, and secretaries in his report (the Report of Survey of Public Administration) as follows;

The Chief Secretary is the highest-ranking government official and is indispensable. Secretaries appointed to each ministry are policy advisors to the minister and head of ministry administration and sub-departments. The Secretary is an advisor on policy matters, whose main responsibility is to implement the policies and activities established by the Minister or cabinet. However, it is the responsibility of the Secretary General to ensure that policy proposals that are against the law and inconsistent with the Constitution are not introduced. Detailed and routine work should not reach the level of the minister, and should be carried out by lower-level staffs that are in charge of daily routine work that is not related to the secretary. Positions of the Minister, the Secretary General and secretaries are to share the Line of authority and Line of Staff to ensure the smooth running of the administration.⁹¹

⁸⁹ Ibid (P 54) (Translated by author)

⁹⁰ Kyaw, U (Aung Myat Kyaw), Director(Retd;)(B.C.S) (2015) (P 71) (Translated by author)

⁹¹ Kyaw, U (Aung Myat Kyaw), Director (Retd;)(B.C.S) (2015) (P 62) (Translated by author)

3.1.2 Public Administration under the Constitution of the Socialist Republic of Union of Burma (Myanmar) (1974)

This period can be divided into the period when the 1974 constitution was still being drafted by the Revolutionary Council and the period after the constitution was adopted.

On March 2, 1962, the Myanmar Army (Tatmataw) seized power and formed a 17-member Revolutionary Council led by General Ne Win. On March 3, the Revolutionary Council dissolved the Chamber of Deputies and the Chamber of Nationalities and the Supreme High Court. Legislative power, all administrative and judicial powers are vested in the Chairman of the Revolutionary Council. Councils of State and council of Chin affairs were abolished. The government is responsible for carrying out instructions, governed according to the path, enacted laws and draw projects; by the Revolutionary Council.

The Revolutionary Council drafted a new constitution led by one party on the Burmese Socialist Programme. The Council considers that the administrative system in Myanmar has weaknesses as it is a system that has been slightly modified from the colonial era administrative system⁹². Therefore, on March 15, 1972, Proclamation No. 97 was issued, stating that a new administrative system that would be compatible with the new constitution would be developed.

In 1969, the secretarial system was abolished and the administrative restructuring plan was started as administrative reform. The secretariat was dissolved and the secretary position was replaced with the position of Deputy-ministers. In March 1972, 25 ministries were reorganized into 20 ministries to develop a new Myanmar administrative system. On April 20, 1972, a 15-member cabinet was formed⁹³. Therefore, in 1972, the system of governmental secretaries ended in Myanmar.

On this point, U Kyaw (Aung Myat Kyaw) (B.C.S) pointed out that according to the announcement of the Revolutionary Council, the country's administrative machinery is controlled by bureaucratic employees, and it is considered that the country is not progressing; expressing the perception that administration will improve by removing secretaries. In fact, secretaries run the administration with their professional administrative skills and experience. In every political system, they are

⁹² Myint Thein, U (Yangon University) (2016) (P-102) (Translated by author)

⁹³ Notifications of the Revolutionary Council (1972) (P-4)

just who support the ministries and governments. Whatever administrative mechanism system in any country, there will be bureaucratic apparatus, employees, and staff organization⁹⁴.

On 4th March 1974, the Council of Minister of the Union Socialist Republic of Myanmar was formed as led by Prime Minister U Sein Win. It has the same terms as the Pyithu Hluttaw. According to the Article 83, the Council of Ministers is the highest executive organ of the State. It is responsible to the Pyithu Hluttaw when the same is in session and to the State Council when the Pyithu Hluttaw is not in session under Article 84 under the Constitution of the Socialist Republic of the Union of Myanmar (1974).

According to the Article 87, the Council of Ministers⁹⁵ -

- (a) is responsible for the management of the executive, economic, financial, social, cultural, and foreign affairs and national defense on behalf of the Pyithu Hluttaw in line with the principle of collective leadership;
- (b) implements the socialist economic system through the economic plans of all national races;
- (c) implements the resolutions of the Pyithu Hluttaw and the orders of the State Council;
- (d) directs and coordinates the ministries, organs of public administration and the executive committee of the people's council at a different level;
- (e) maintains the rule of law and upholds law and order; and
- (f) performs such other duties as may be laid down by the Pyithu Hluttaw or the State Council.

According to the Article 29 in Chapter III of State Structure under the Constitution of the Socialist Republic of the Union of Myanmar (1974), local area and administrative areas are structured as follow;

Article 29 (a) Local areas of the Union are to be organized as follows⁹⁶;

- (1) villages organized as village-tracts;
- (2) wards organized as towns;

⁹⁴ Kyaw, U (Aung Myat Kyaw), Director (Retd.); (B.C.S) (2015) (P 77) (Translated by author)

⁹⁵ The Constitution of the Socialist Republic of the Union of Myanmar (1974). (P 22)

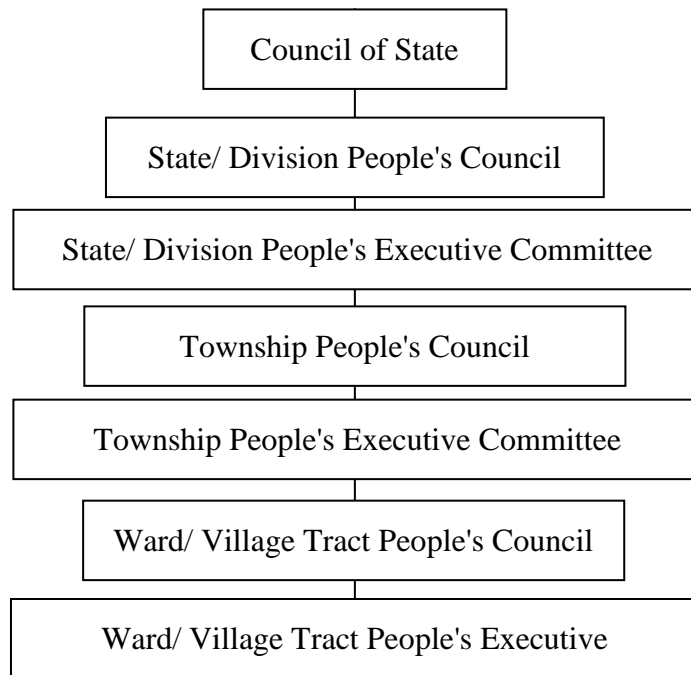
⁹⁶ Ibid. (P 8)

- (3) village-tract and towns organized as townships;
- (4) townships organized as states or divisions,
- (5) State and divisions are organized as the State.

Article 29 (b) the different levels of administrative areas of the Socialist Republic of the Union of Burma shall be as follows⁹⁷:

- (1) wards or village-tracts;
- (2) townships;
- (3) states or divisions;
- (4) the State.

Figure (3.1) Administrative System of the State Council Government (1974-88)



Source; Article 35/64 - The Constitution of the Socialist Republic of the Union of Myanmar (1974). (P 8) Thein Hlaing, U, Khin Hla Han, Daw (1993) (P 178)

In the Socialist Republic of the Union Myanmar, which was established under the 1974 Constitution, there are no longer two houses, namely the Chamber of Deputies and the Chamber of Nationalities. There is only one single chamber system. According to Article 41 enacts that the Pyithu Hluttaw is the highest Organ of the state power. It exercises the sovereign powers of the State on behalf of the people.

⁹⁷ The Constitution of the Socialist Republic of the Union of Myanmar (1974). (P 8)

The legislative power of the state resides only in the Pyithu Hluttaw, and the Pyithu Hluttaw can delegate the administrative and judicial powers of the state to the central and local authorities under the 1974 Constitution. However, according to Article 11, the State shall adopt a single-party system. The Burma Socialist Programme Party is the sole political party and it shall lead the State. Moreover, Local autonomy under central leadership is the system of the State in accordance with Article 28. Therefore, even the Pyithu Hluttaw is the highest organ of the state, must comply with the guidelines of the Central Executive Committee of the Burma Socialist Programme Party as mandated by Articles 10 and 28 of the Constitution of the Socialist Republic of the Union of Myanmar (1974)⁹⁸.

3.1.3 Public Administration under the Constitution of the Union of Myanmar (2008)

After 1988, the Myanmar Military (Known as Tatmadaw) took the state power and the period before the 2008 constitution can be divided into two consecutive Tatmadaw Government as the State Law and Order Restoration Council (SLORC) and the State Peace and Development Council (SPDC).

The state administration done by SLORC from its beginning of 1988 until the formation of State Peace and Development Council (SPDC) could be divided into two phases are as follows⁹⁹;

- (i) The period of building security, rule of law and stability from 1988 to 1992.
- (ii) The period of reforming administrative mechanism in order for transiting into a disciplined democratic system.

The SLORC restructured the administrative bodies are

- (i) Its administrative body (Government) was formed with 9 members under SLORC Notification No (4/88)¹⁰⁰.
- (ii) State, Division and township level Law and Order Restoration Councils were formed with personals from military, General Administration Departments, People's Police Force under SLORC notification no (5/88)¹⁰¹.

⁹⁸ Thein Hlaing, U, Khin Hla Han, Daw (1993) (P 28) (Translated by author)

⁹⁹ Khin Maung Nyein (MPA -11 – MPA 12th Batch, YUE) (2013) (P 23)

¹⁰⁰ Ibid (P 99)

¹⁰¹ Ibid (P 147)

- (iii) Group of townships (District) level and Order Restoration Councils were formed with personnels form military, General Administration Departments, People's Police Force and ward or village tract level bodies were with the selected locals under SLORC notification no (7/88)¹⁰².
- (iv) Township level Law and Order Restoration Councils were reformed with the Head of township General Administration Departments as chairman and Head of township Police Force, Head of township Immigration Department and Head of township Planning Department or a person assigned by chairman under SLORC notification no (14/92)¹⁰³ and
- (v) The administrative zones were reorganized into ward or village tract, township, district.

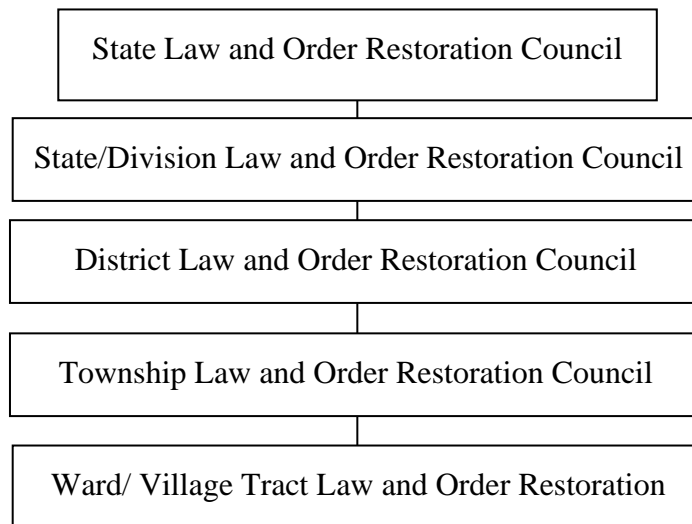
To steer the new administrative machine, the following State or Division Law and Order Restoration Councils and Township Law and Order Restoration Councils were established.¹⁰⁴ Figure (3.2) mentions Administrative System of the State Law and Order Restoration Council (1988-97).

¹⁰² The Office of the Attorney General (1988) (P 155)

¹⁰³ Ibid (P 231)

¹⁰⁴ Home Affairs and Religious Ministry (1988) Notification No.5/ 1988 dated (20-9-1988)

Figure (3.2) Administrative System of the State Law and Order Restoration Council (1988-97)



Source; Home Affairs and Religious Ministry's Notification No 5/1988 dated (20-9-1988)

The SLORC was reorganized as the State Peace and Development Council (SPDC) targeting installation of disciplined democracy and building of peaceful, modern and developed country in 1997 under the procedures as follow;

- (i) SPDC was formed under announcement no (1/97)
- (ii) Its administrative body (government) was found under announcement no (2/97) and
- (iii) The title of Law and Order Restoration Council at all levels were changed as the Peace and Development Council at concerned level by 1997 Word Replacement Act (1/97).

The administrative head of the country was the chairman of SPDC (the Commander in Chief of Defense Services). The cabinet and regional SPDCs were granted administrative authority while the Chief Justice was also granted judicial power. The cabinet exercised its administrative power under the closed control of SPDC.

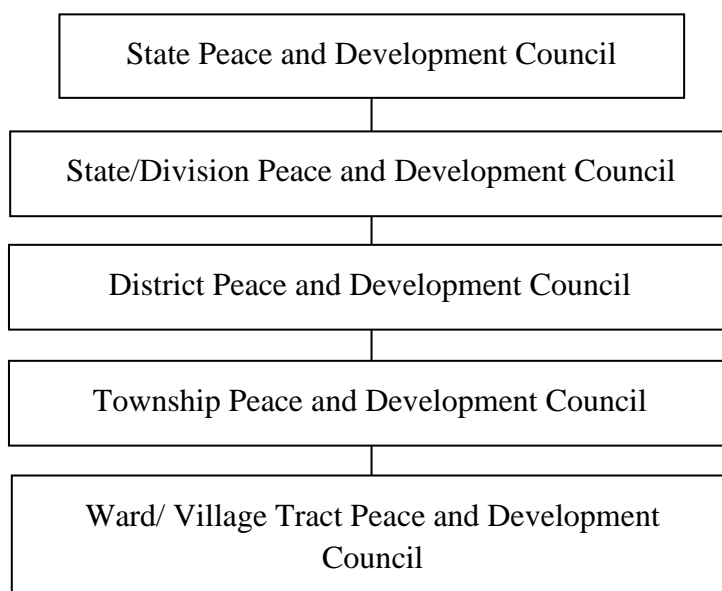
SPDC formed the State Peace and Development Council at state/division, district, township, ward and village tracts levels for regional administration. In 2006, SPDC began withdraw of the Tatmadaw (Defense Services) leadership from administration of all levels except the State and reorganized the Peace and Development Councils with staff officers from General Administration Department,

Police Forces and Planning Departments. The main duties of these bodies were as follow;

- (i) To implement the policies and tasks adopted by SPDC,
- (ii) To link and coordinate among the governmental organizations, supervise, check and give necessary instructions based on the laws, rules and regulations already enacted for the concerned ministry and department and
- (iii) Providing the works that were prescribed by the existing laws for the benefit of the public.

SPDC defined the 24 development models supporting necessary infrastructure and facilities based on the modal village development guidelines as an attempt to have balanced development in the entire country¹⁰⁵.

Figure (3.3) Administrative Systems of the State Peace and Development Council (1997-2011)



Source; The Adaptation Law (1997)
Proclamation of SPDC No (2/2006)

¹⁰⁵ Khin Maung Nyein (MPA -11 – MPA 12th Batch, YUE) (2013) (P-26)

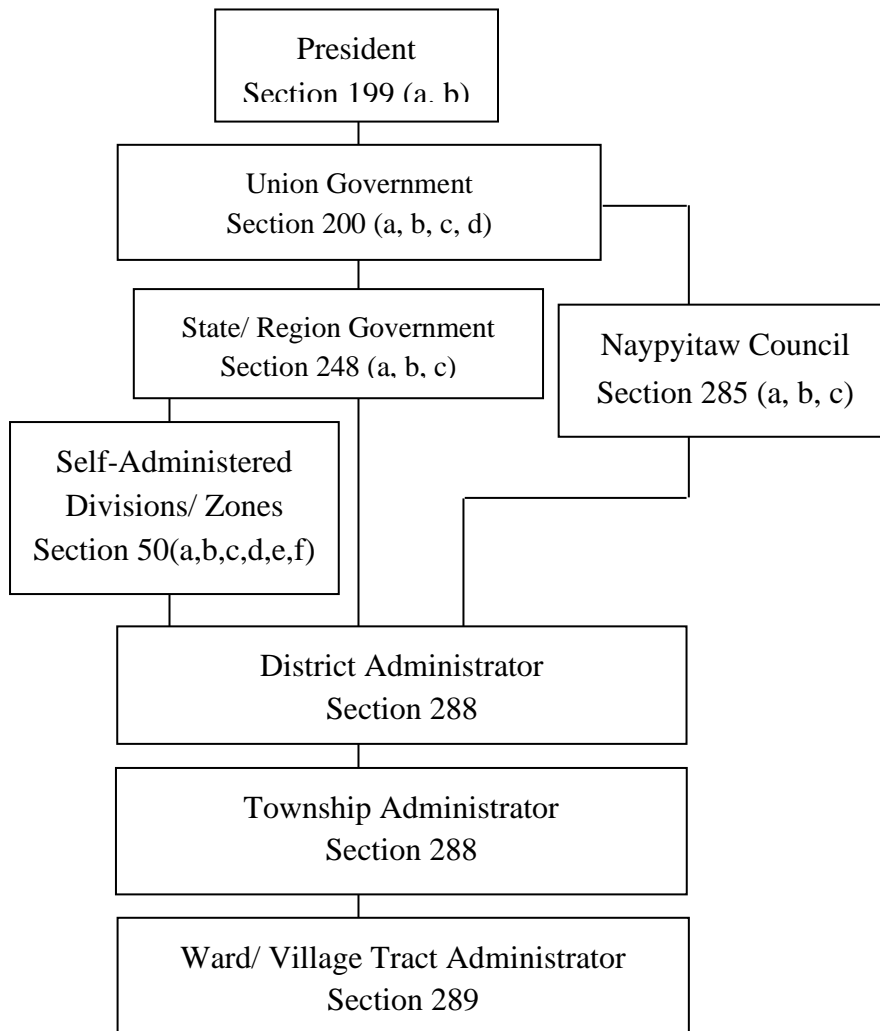
In 1993, the State Peace and Development Council convened the National Convention to adopt a new constitution that guarantees long-term benefit, essential to the future state. The National Convention was held in 2004 in accordance with the 7 policy directions adopted in 2003. It was successfully completed on September 3, 2007, establishing Basic Principles and Detailed Basic Principles for formulating a Constitution. In 2008, the Constitution of the Republic of the Union of Myanmar (2008) promulgated through a nation-wide referendum on 29th May, 2008.

According to Section 49 and 50 (a) under the Constitution of the Republic of the Union of Myanmar (2008), the Union is delineated and constituted by seven Regions, seven States and the Union territories, Nay Pyi Taw, the capital of the Union, prescribed as Union territory, shall be under the direct administration of the President. Moreover, a Self-Administered Divisions and five Self-Administered Zones are delineated according to Section 56.

According to Section 51 under the Constitution of the Republic of the Union of Myanmar (2008), the administration system of the Union Government can be seen in Figure (3.4)¹⁰⁶.

¹⁰⁶ The Constitution of the Republic of the Union of Myanmar (2008) (P 14)

Figure (3.4) Administrative System of the Union Government (2011-Up to now)



Source: Section 51 The constitution of the Republic of the Union of Myanmar (2008)

3.2 Remedies for Public Grievances under Different Constitutions

After the First and Second Anglo-Burmese Wars of 1824 and 1852, Burma (Myanmar) came into contact with Common Law. In 1885, after the entire country of Burma fell under the colonial rule, the whole country continued to apply Common Law (traditional English legal system) until independence. Myanmar became an independent country in 1948 and has gone through three constitutions in the 74-year period from 1948 to 2022.

3.2.1 Judicial Review as Remedies for Public Grievances under the Constitution of the Union of Burma (Myanmar) (1947)

In Colonial Period ¹⁰⁷ before the 1947 Constitution, Calcutta, Madras and Bombay Courts in India had the power to issue writs for Burma (Myanmar) during the colonial period. On December 18, 1922, the Supreme Court of Burma which was established separately for Myanmar was allowed to issue writs like the English Judiciary Court. In 1935, Myanmar was separated from India and became an independent state. Under the Government of Myanmar Act (1935), writs were issued in the same manner as the English Judiciary Court, although it was not included separately in relation to writs.

It is only found that there are cases where Writ of Certiorari has been issued by the Supreme Court of Burma.¹⁰⁸:

After independence on 4th January 1948, according to the Constitution of Union of Burma (1947), the Supreme Court, the High Courts and subordinate courts were established. Under this constitution, Rights to Constitutional Remedies was enacted in Section 25, Chapter II. According to Section 25 (2), without prejudice to the powers that may be vested in this behalf in other Courts, the Supreme Court shall have power to issue directions in the nature of Habeas Corpus, mandamus, prohibition, quo warrnato and certiorari appropriate to the rights guaranteed in this Chapter.

From 1947 to 1971, under the constitution of the Union of Burma, there were 315 writs cases decided by the Supreme Court. There are 43 cases of Writ of Habeas Corpus, 17 cases of Writ of Mandamus, 5 cases of Writ of Prohibition, 2 cases of Writ of Quo Warranto, 218 cases of Writ of Certiorari, 11 cases of Writ of Certiorari & Prohibition, 7 cases of Writ of Certiorari & Mandamus. Other issued writs are 11 cases of Writ Proceeding and a case of Writ Jurisdiction.

3.2.2 Review as Remedies for Public Grievances under the Constitution of the Socialist Republic of Union of Burma (Myanmar) (1974)

After the Revolutionary Council took power on March 2 1962, the legal system was transformed into a socialist legal system under the 1974 Constitution. The Revolutionary Council abolished the Supreme Court and the Court of Justice and

¹⁰⁷ Khin Win Myint (Law Researcher) (2019) (P 30) (Translated by Author)

¹⁰⁸ Kyi Khin (Law) (2011) (P 61) (Translated by Author)

established the Supreme Court in their place. According to the Notification No (25) of the Revolutionary Council, On March 2, 1962, the Supreme Court was given only the authority to issue Certiorari, and was not allowed to issue other types of writs.

Under the Constitution of the Socialist Republic of Union of Burma (Myanmar) (1974), the Central court, the State and Divisional courts, the Township courts and the Wards and Village Tracts courts were formed. The salient feature of the then judicial system was the participation of the working people in all levels of courts¹⁰⁹.

According to article 73 (m), Chapter V and article 105, Chapter VII under the Constitution of the Socialist Republic of Union of Burma (Myanmar) (1974), the duties of the State Council are stipulated as follows¹¹⁰;

- The Council of State shall abrogate the decisions and orders of the Central and Local Organs of State Power if they are not consistent with the law [Article 73(m)] and
- The Council of People's Justices shall supervise all judicial organs and courts within the State (Article 105).

As presented above paragraph, under Article 73(m), according to the Constitution of the Socialist Republic of Union of Burma (Myanmar) (1974), the Council of State shall abrogate the decisions and orders of the Central and Local Organs of State Power if they are not consistent with the law. Moreover, according to Article 112 (b) under the 1974 Constitution and Section 4 (b) of the Council of People's Attorney Law 1974, the Council of People's Attorneys shall protect and safeguard the rights and privileges of the working people. Anyway, one thing is certain, however, that the Constitution of the Socialist Republic of Union of Burma (Myanmar) (1974) does not provide for the right to apply the writ.

3.2.3 Judicial Review as Remedies for Public Grievances under the Constitution of the Republic of Union of Myanmar (2008)

In the period before the Constitution of the Republic of Union of Myanmar (2008), according to Section 5 of SLORC Law No. 2/88 on 26th September 1988, the State Law and Order Restoration Council promulgated the Judiciary Law and formed the courts at different levels and for the administration of justice in the Union of

¹⁰⁹ <https://myanmar.gov.mm/union-supreme-court>

¹¹⁰ The Constitution of the Socialist Republic of Union of Burma (Myanmar) (1974) (P 18/26)

Myanmar and the Law No. 3/88, Section 3 (c) of the Attorney General's Law stipulates that the Attorney General is responsible for legal protection in order for the people to have full access to their rights and freedoms in accordance with the law.

According to the Section 6 under SPDC Law No. 5/2000 (27th June, 2000) the State Peace and Development Council stipulates the Judiciary Act that the Supreme Court shall supervise the various courts. According to Section 3 (i) of Attorney General's Law under the SPDC Law No (1/2011) is as follows¹¹¹:

Section 3 (i) - It is stipulated that people must be protected so that they can fully enjoy their rights and freedoms in accordance with the law.

During the period under the State Law and Order Restoration Council (SLORC) and the State Peace and Development Council (SPDC), the people lacked the right of writ application to present their grievances as the new constitution was still being drafted.

After promulgation of the Constitution of the Union of Myanmar (2008), the present judicial system was adopted under the 2008 Constitution and Union Judiciary Law 2010. According to Section 296 under Chapter VI (Judiciary) and Section 378 (a) under Chapter VIII (Citizen, Fundamental Rights and Duties of Citizen) of 2008 Constitution, the Supreme Court of the Union has the power to issue the 5 kinds of writs. These five kinds are as follow;

- (i) Writ of Habeas Corpus,
- (ii) Writ of Mandamus,
- (iii) Writ of Prohibition,
- (iv) Writ of Quo Warranto,
- (v) Writ of Certiorari.

In addition, the Supreme Court of the Union has the right to issue these matters under Section 16 (a) of the Union Judiciary Law (State Peace and Development Council Law No. 20/2010), and the Law Relating to the Application of Writ, 2014 (The Pyidaungsu Hluttaw Law No.24, 2014). After the adoption of the Constitution of the Republic of the Union of Myanmar (2008), among the adjudicated writ applications, there are 183 leading cases decided by the Supreme Court of the Union in 10 years from 2011 to 2022. Cases ruling by the Supreme Court of the Union in 10 years (2011 to 2022) are shown Table (1). [Appendix C].

¹¹¹ Attorney General's Law under the SPDC Law No (1/2011) (2011) (P 2)

According to table (1), there are 64 Cases of Criminal Miscellaneous Case, 109 Cases of Civil Miscellaneous Case, 10 Cases of Writ Application Case, 183 cases of total writ application ruling during 10 years from 2011 to 2020. Among these cases, the analysis study of ultra vires cases done by the administrative authorities that have been made as ruling will be presented in Chapter 4.

CHAPTER 4
ANALYTICAL STUDY ON LEADING CASES ON ULTRA VIRES
ACTS DONE BY PUBLIC ADMINISTRATORS IN MYANMAR
(2011 TO 2020)

4.1. Analysis on Writ Applications in Myanmar (2011 to 2020)

Now, there will be present an analysis of the leading cases on ultra vires by public administrators in Myanmar from 2011 to 2020 in this Chapter. During the 10-year period, 31 cases of writ applications of ultra vires action done by public administrators from 183 writ rulings will be analyzed step by step as follows;

- (i) The status of writ applications by aggrieved applicants against administrative bodies (Union Ministries, Union Organizations, Regional and State Governments) in Myanmar will be analyzed during the 10-year period from 2011 to 2020.
- (ii) It is to examine the issued types of writs to Union Ministries, Union Organizations, and Governments of Region and State by the Supreme Court of the Union.
- (iii) To identify and examine the classification of reported governmental cases of writs application.
- (iv) It is to examine most mainly related law types in writ applications during the 10 years (2011 – 2020).
- (v) It is to analyze remedies cases under the Constitution and laws against Union ministries/organizations and Governments of Regional and State.

4.1.1 Cases ruling by the Supreme Court of the Union in 10 years (2011 to 2020)

According to table (1) of Appendix-A , there are 64 Cases of Criminal Miscellaneous Case, 109 Cases of Civil Miscellaneous Case, 10 Cases of Writ Application Case, 183 cases of total writ application ruling during 10 years from 2011 to 2020. Among these, the cases of ultra vires acts done by the public administrators

and administrative authorities were divided as 3 Criminal Miscellaneous Case, 18 Cases of Civil Miscellaneous Case, 10 Cases of Writ Application Case, 31 cases ruling of writ application. [Table (2) Appendix –C]

4.1.2 Classification of case of reported governmental cases of writs application

From 2011 to 2020 by each year, there are 3 rejected cases, 2 cases of Writ of Mandamus in Criminal Miscellaneous Application, 6 rejected cases, 2 cases of Writ of Mandamus, 3 cases of Writ of Quo Warranto and 7 cases of Writ of 7 Certiorari in Civil Miscellaneous Application, and 5 rejected cases, 3 cases of Writ of Mandamus, 2 cases of Writ of Quo Warranto in Writ Application that sentencing of reported governmental cases of writs application. [Table (3) Appendix –D]

According to the classification of case on Table (3), there are 12 rejected cases, 7 cases of Writ of Mandamus, 5 cases of Writ of Warranto, and 7 cases of Writ of Certiorari as reported 31 governmental cases of writs application by the Supreme Court of the Union. [Table (4) Appendix D]

4.1.3 31 Cases of Union Ministries, Union Organizations and Government of Division/States

There are 7 Union Ministries and 6 Regional Governments in Table (5). Not only the most applications for criminal miscellaneous, but also the most applications for civil miscellaneous case are the Ministry of Home Affairs. The second most are the Ministry of Labor and the Ministry of Health. Among the 6 regional governments, the Yangon Regional Government is the most applicable for writs. [Table (5) - Appendix E]

From 2011 to 2020, The 31 rulings of the Supreme Court of the Union according to the type of writs are 7 cases of Writ of Mandamus, 4 cases of Writ of Quo Warranto, 7 cases of Writ of Certiorari, a case of Writ of Mandamus and Quo Warranto and 12 rejected cases. Among the total of 31 applications of writs, the ruling of Daw San Hla and the Rector and 2 others of the Mandalay University of Medicine (2016, Civil Miscellaneous Application No.126) is issued as writs of Mandamus and writ of Quo Warranto.

4.1.4 Classification of applications by type of law

When the classified to the application of writs type of law during the 10 years (2011 – 2020), there were mainly involved 11 related categories of law. The maximum number of writ applications related to Municipal Urban Planning and City Management Regulations, Lower Myanmar Town and Village Lands Act, the Administration of Vacant, Fallow and Virgin Land Law and 1960 The Urban Rent Control Act is 19 cases. The second most are Labor Law and Civil Service Personnel Law, with 3 cases each. Other related laws are the Constitution of the Union of Myanmar (2008), the Union Judiciary Law, the Myanmar Citizenship Law, the Myanmar Police Force Maintenance of Discipline Law and Rules; the admission as a Lawyer Law, Criminal and Penal Code; the Nationalization of Industries Law (1963) and Electrical law. [The maximum and minimum status of these applications can be studied as Table (6) in Appendix F].

4.2 Remedies guaranteed under the Constitution of the Republic of the Union of Myanmar (2008)

There are 2 cases related remedies guaranteed under the Constitution of the Union of Myanmar (2008) among 31 writ application of ruling. [Table (7) Appendix F].

4.2.1 U Aung Win Vs. Head of Department, Ministry of Security and Border Affairs, Government of Yangon Division (2017 Criminal Miscellaneous, Application No. 37). (Writ of Mandamus)

In 2018, the application of U Aung Win Vs. Head of Department, Ministry of Security and Border Affairs, Government of Yangon Division is related to Section 250, 256 under the Constitution of the Union of Myanmar (2008), the Administration of Vacant, Fallow and Virgin Land Law (2012) and the Code of Criminal Procedure.

Captain Mya Tin who owns Hlegu Township, Kalihtaw West, Mae Zali Gone Village Pitch No. 963, the 15.18-acre land area of Kyauk Kadin Field was successfully sued for eviction and had the won degree on U Hla Tun Aung, Yard-guard, in 2011 Civil Case No. 100.

On June 10, 2013, U Aung Win who gets Captain Mya Tin's authorized representative, confirmed the degree by the Yangon Northern District Court with the case No. 43 and U Hla Tun Aung was removed and received the land.

According to Section 447 and 506 under the Penal Code, the Court of Hlegu Township sentenced to prison U Hla Tun Aung for living on this land again. U Aung Win filed with 2014 Criminal Miscellaneous Application No. 165, and the Yangon Northern District Court ordered the extradition of U Aung Win under Section 522 of the Criminal Procedure Code.

On January 20, 2014, the encroacher, U Hla Tun Aung, signed a deed of ownership of 4.44 acres of land to his adopted sister Daw Khin Kyu. Daw Khin Kyu applied to own the vacant land.

U Aung Win submitted the order of the Yangon Northern District Court to the Hlegu Township General Administrator's Office to process the land transfer warrant.

On September 7th and October 6th, 2015, Bilis of the Court of Hlegu Township and the security team went to confirm the land, but they were prevented by manpower and could not confirm the warrant. Therefore, since the warrant could not be confirmed, and then the Court of Hlegu Township requested to obtain security according step by step procedure.

However, according to the telephone instruction of the office of the Minister of Security and Border Affairs of the Yangon Region Government, the Hlegu Township General Administration Office has suspended the issue of the land transfer warrant.

There is a delay in not confirming the land transfer warrant in accordance with the legal procedure, in addition to the effect of the administration interfering with the judiciary. Therefore, U Aung Win applied for a writ of mandamus to issue over the administrative authorities because of the uncertainty and hasty issuance of the suspension order, causing a paradox between the administration and the judiciary.

The Supreme Court of the Union considered the following points on this application;

- (i) It is found that the Yangon Region government has suspended for the security of the area and the peace of the community due to the possibility of a conflict between the security team and the villagers for the approval of the land transfer warrant by the decision of the regional government's minute of meeting.
- (ii) Although it said to be according to Section 256 (b) under the Constitution (2008), the Region or State Government may, relating the performance of the civil service organizations discharging duties in

their Region or State concerned, supervised, inspect and coordinate in accord with the law, but the status of coordination has not been presented from October 7, 2016 until the date of submission of the report.

- (iii) The commander of township police forces has reported back that he will provide security with sufficient force, if he was notified to carry out security.
- (iv) It is necessary to coordinate the judicial sector and the administrative sector in order to avoid contradiction between the court order and the decision of the administrative authority in carrying out coordinated activities.
- (v) The applicant has already obtained an order permitting the right to cultivate or utilize the land (Form-7) for 15.18 acres of land, including farmland and vacant land on August 28, 2015.
- (vi) On May 5, 2015, Daw Khin Kyu, the elder sister of U Hla Tun Aung, applied for 4.44 acres of the land to get order permitting the right to cultivate or utilize the land.
- (vii) Persons and organizations may apply to obtain the right to cultivate vacant, fallow and virgin lands according to Article 5 of the Vacant, Fallow and Virgin Land Management Law (2021). The Central Committee for the Management of Vacant, Fallow and Virgin Lands may permit or refuse the businesses applied for the right to cultivate or utilize the vacant, fallow and virgin land according to Section 8 of this law. There is no reason to interfere with the proceedings in accordance with the procedure.
- (viii) Writ of Mandamus means a writ issued in writing to comply with Law by any competent person; or any authority; or any government department for the failure to comply with the power conferred thereon.
- (ix) The order of the court is valid for the restitution of the owner's existing land forfeited by trespass. The court is responsible for issuing and approving the order to execute the order in accordance with the law.
- (x) The Yangon Region Government is responsible for implementing and coordinating the court's decision under Section 256 Sub-section (b) of the Constitution (2008).

- (xi) Therefore, the Yangon Region Government has been issued a Writ of Mandamus to cancel the decision of the Regional Government Meeting No. (36/2016) in Article 43, as it appears that the suspension of security has failed to comply with the duty to be carried out under the law.

4.2.2 U Ko Ko Hein Vs. Director General, The Union Judicial Oversight Office, the Union Supreme Court (2019, Civil Miscellaneous Application 181) (Reject)

In 2008, the Supreme Court of the Union considered the following points on the application of the application of U Ko Ko Hein Vs. Director General, the Union Judicial Oversight Office in the Ruling has been established in 2019;

- (i) The applicant, U Ko Ko Hein applied to be allowed to submit. The Union Judicial Oversight Office replied that he was not allowed to be admitted as a lawyer under the 1955 Lawyer's Internship Rule 3.
- (ii) The applicant's lawyer applied that the applicant is a Buddhist from Myanmar Citizen and his father is a pensioner of Myanmar Civil Personnel, a citizen is defined as a person born to citizen and visiting citizenship parents accordance with Article 7 (b) of the Myanmar Citizen Law (1982), the refusal to register the applicant as a high grade pleader is unconstitutional and it is against Myanmar's Citizen law.

The applicant's lawyer applied for permission to remedy the applicant's grievances with reference to the following section 345 (b) and 347, 352 of the Constitution of the Republic of the Union of Myanmar (2008).

- (i) Section 345. (b) Person who is already a citizen according to law on the day this Constitution comes into operation.
- (ii) Section 347. The Union shall guarantee any person to enjoy equal rights before the law and shall equally provide legal protection.
- (iii) Section 352. The Union shall, upon specified qualifications being fulfilled, in appointing or assigning duties to civil service personnel, not discriminate for or against any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, and sex. However, nothing in this Section shall prevent appointment of men to the positions that are suitable for men only.

The Supreme Court of the Union considered the following points on this application;

- (i) According to Section 2 (c) of the Myanmar Citizen Law, it is found that the applicant U Ko Ko Hein is a guest citizen. The applicant's mother is a visiting citizen and did not state on which day she received the citizenship verification card and did not attach a copy of the citizenship verification card.
- (ii) If the applicant's mother, Daw Khin Maw Htay has become a guest citizen before giving birth to the applicant, the applicant born to a guest citizen mother and a citizen father will become a citizen according to Section 7 (b) of the Myanmar Citizenship Law.
- (iii) It was found that the applicant was considered a guest citizen and was issued a guest citizenship verification card as the applicant's name was included in the guest citizenship certificate application of the mother after his birth under Section 25.
- (iv) No person who is not a citizen of the Union of Myanmar shall be admitted as a High-Grade Pleader and shall not be registered according to 1955 Lawyer's Internship Rule 3. Under Section 447 of the Constitution (2008); Existing rules, regulations, by-laws, notifications, orders, directives, and procedures shall remain in operation in so far as they are not contrary to this Constitution until and unless they are repealed or amended by the Union
- (v) The Lawyer's Internship Rule is confirmed according to Section 447 of the Constitution (2008) and the Union Government has not canceled and no amendment to it. There is no conflict with the constitution.
- (vi) The 1955 Lawyer's Internship Rule does not define the term "citizen" separately, according to the law, no one who is not a citizen of the Union of Myanmar cannot be admitted as a High-grader Pleader and cannot be registered. Non-citizen Guest citizens who are granted citizenship will not be entitled to the same rights as that citizen.
- (vii) In accordance with the rule, the applicant replied that the application is not allowed to submit the list of lawyer internships to the holder of the guest citizenship verification card. The verification is carried out in accordance with the rules, and it is not necessary to issue a writ of

Mandamus on this action. Therefore, this Civil Miscellaneous application is rejected. The cost is not specified.

4.3 Remedies given under Urban Laws and Acts (12 cases)

Applications of land cases can be mainly divided into urban and farmland in 31 writ application of ruling. There are 5 Writs of Mandamus, 4 Writs of Quo Warranto, 4 Writs of Certiorari and 6 applications are rejected. The judgment of writ applications on these urban and firm land cases are as Table (8) in Appendix (G).

In the classifications of 19 applications, the most applications are 12 cases of Urban Rent Control Act, Urban Planning and City Management Regulations, and Vacant, Fallow, and Virgin Land Law. The 12 cases of laws and acts that related urban land are as follow;

- (i) 3 cases of Yangon/Municipal Urban Planning and City Management Regulations [Table (9) Appendix G]
- (ii) 3 cases of 1960 The Urban Rent Control Act [Table (10) Appendix H]
- (iii) 2 cases of Yangon and Mandalay City Development Law [Table (11) Appendix H]
- (iv) A case of Lower Myanmar Town and Village Lands Act. [Table (12) Appendix H]
- (v) A case of Land management and Land measurement Procedure. [Table (13) Appendix I]
- (vi) A case of The Government Premises (Eviction) Act (1955). The Government Premises (Eviction) Act. 1955 Amending Law No. 16/2012. [Table (14) Appendix I]
- (vii) A case of Myanmar Land Registry Manual Act, Land Inventory Manual Instructions. [Table (15) Appendix I]

In the application of urban land cases that inheritance cases and transfer of land ownership among applicants, there are against the decisions of the Municipal Committee (Yangon and Mandalay City Development Committees).

According to the ruling of the Namtu Workers' Union Vs. the Court of Industrial Arbitration, Burma and two other [1950 B.L.R (S.C) 176], the Supreme Court of the Union reviewed the application of U Kyaw Minn and 2 others Vs. Head of Dept: Urban Planning and Land Management Dept, YCDC, as follows;

- (i) The Writ of Mandamus is a writ that can be issued by the Supreme Court of the Union to direct an administrative authority that fails to comply according to the law to fulfill its duty of public affairs.
- (ii) Therefore, the refusal to issue the land records and map by the Municipal Committee (YCDC), was found to be wrong, and a writ of mandamus was issued.

4.4 Remedies given under Laws relating to Farmland Applications (7 cases)

The Laws and Rules that related Farmland (7 cases) are

- (i) 2 cases of the Administration of Vacant, Fallow and Virgin Land Law, 2012 (2 cases) [Table (16) Appendix J]
- (ii) 5 cases of the Farmland Law/ Act (5 Cases) [Table (17) Appendix J]

The five out of seven application based on the grievances under the judgments of the Chief Ministers (Divisional and Regional Chairman, Farmland Management Board).

In the application of Daw Chit Pont Pont Htwe Vs. Chief Minister, Bago Region Government and 4 others. (2019, Civil Miscellaneous Application No. 314), the Supreme Court of the Union reviewed as following points;

- (i) In 2011, Daw Chit Pont Pont Htwe bought 7.28 acres of land in the Myaese Village track, Taunggu District, Oaktwin Township, Bago Region, from U Win Myint who a resident of Kywepwe.
- (ii) On August 23, 2013, she received a land used permission of certificate (Form 7), and then, the land was fenced off and planted with rice and other seasonal crops from 2013 to 2017.
- (iii) On August 8, 2018, she requested the village administrator for prohibition as U Shwe Ye and 24 others encroached on her land and built huts but due to continued encroachment, a case was filed at the Kywepwe area police station.
- (iv) On March 7, 2019, the Chief Minister of Bago Region came to the unofficial office building that had been encroached on the land by an unregistered organization, and then he gave a verbal order to cancel Form 7 of Daw Chit Phot Phot Htwe and to be placed with yard plots for the squatters.

- (v) According to the guidelines of Chief Minister, the Township Farmland Management Board canceled the applicant's land used permission of certificate (Form 7), and notified her to submit the original Form 7, on October 4, 2019.
- (vi) According to Section 17 (d) under the Farm Land Law (2012), the duties and powers of the Central Administrative Body of the Farm Land is revoking the right to carry out the farm land of the person who is taken in any administrative action contained in sub-sections (c) and (d) of section 19, the farm land which is inclusive of section 31 and the right to carry out the farm land of the person who is convicted under section 37.
- (vii) Moreover, according to the Clause 2 Sub-Clause (g) under Notification No (49/2016) (Preparation and formation of the Central Administrative Body of the Farm Land) dated 16 June 2016 by the Union Government of the Union of the Republic of Myanmar, this Body has the right to revoke the right to farm land.
- (viii) If the applicant fails to comply with any of the penalties in Section 19 (c)(d) under the Farm Land Law (2012), in order to recapture his right to farm land, the levels of the Farm Land Management Boards must submit to the Central Administrative Body of the Farm Land through in accordance with the Central Farm Land Board's Notice No. 2/2016.
- (ix) Without doing so, it was found that the notification of the cancellation of the land used permission of certificate (Form 7) by the Farmland Management Board of Oaktwin Township is not in accordance with the Farmland Law/Rules/Instructions.
- (x) Therefore, the notification of the cancellation of form 7 of Daw Chit Pont Pont Htwe with letter No. 45/La Si (Township) 05 of the Farmland Management Board of Oaktwin Township dated 4 October 2019, is canceled by Writ of Quo Warranto.

4.5 Remedies given under the Settlement of Labour Dispute Law

In 31 writ applications of the ruling, 3 cases of the Settlement Labor Dispute Act were the second most applications. There are 2 Writ of Certioraris and rest is rejected. Applications of labor dispute cases are as follows;

- | | | | |
|-------|--|---|--------------------|
| (i) | U Sein Win Vs. Industrial Court, Nay Pyi Taw. | The Settlement of Labour Dispute Act. | Writ of Certiorari |
| (ii) | Daw Win Win Khaing (Owner) Vs. Industrial Court. | The Settlement of Labour Dispute Act. | Reject |
| (iii) | Daw Kyin Hmwe Vs. Industrial Court, | The Employment and Skill Development Law. | Writ of Certiorari |

[Table (18) Appendix K]

In the application of U Sein Win Vs. Industrial Court, Nay Pyi Taw (2015, Civil Miscellaneous Application No. 30), it is the dispute between U Sein Win, the owner of “The Rice Grain” tire and tube factory in Pyi Gyi Takhon Township, Mandalay Region, and U Win Zaw Htun, a worker who was dismissed. The arbitration council's decision on the relief that the worker did not apply for went beyond the assigned jurisdiction, therefore, the Supreme Court of the Union issued a writ of Certiorari.

In the application of Daw Win Win Khaing (Owner) Vs. Industrial Court (2015, Civil Miscellaneous Application No. 50), it is the a dispute between the Daw Win Win Khaing, owner of a refrigeration factory in Hlaing Tharyar Township, Yangon Region and the worker Daw Hla Hla who was dismissed by his employer because she attended a minimum wage enumeration course at the invitation of the Department of Labor, Hlaing Tharyar Township.

The arbitration panel decided to pay Daw Hla Hla the final salary from the date of dismissal to the date of reinstatement, and the Industrial Court approved it. The Supreme Court of the ruled that the Industrial Court’s decision cannot be said to be inconsistent according to the Settlement of Labour Dispute Law (2014). The Union Supreme Court's power to issue a writ is not limited, stating that it can only issue a writ for a right in Chapter (8) of the Constitution of the Republic of the Union, and dismissed the case.

In the application of Daw Kyin Hmwe Vs. Industrial Court (2016, Civil Miscellaneous Application No. 27), it is a dispute between Daw Kyin Hmwe, owner

of Asian Rose garment factory in Hlaing Tharyar township, Yangon Division and worker, Daw Thandar Moe and 7 other who request for right of overtime in the contract before having signed contract between owner and labour.

Daw Kyin Hmwe, the owner of the Asian Rose Garment Factory reduced and terminated 196 workers including seven executives of basic labour union in 2015. Workers Daw Thandar Moe and 196 others asked to return to work. The arbitration panel heard dispute No. 70/2015 and decided to reassign Daw Thandar Moe and 7 workers to work at their original salary.

After Daw Thanta Moe and 7 people started working, they refused to sign an employment contract and demanded right of overtime work. The Arbitration council of Yangon Region decided to rehire them as the new employee by paying compensation for the claim and the Industrial Court approved it.

The Supreme Court of the Union considered that approving the request for overtime in the contract before having signed contract is making his own decision again, and this judgment is not consistent with the law. Therefore The Supreme Court of the Union issued a writ of Certiorari and canceled it.

4.6 Remedies given under the Civil Service Personnel Law 2014

There are 3 cases related the Civil Service Law (2014) among 31 writ application of ruling same as the Settlement of Labour Dispute Act. Application of U Chit Htwe vs. Union Minister, Ministry of Education was rejected off in these cases. Therefore, there are 2 cases that have remedies guaranteed under Civil Service (2014) as follow;

- (i) U Chi Htwe vs. Union Minister, Ministry of Education.
- (ii) U Min Yu Shein, & U Ne Win, vs. Union Minister, Minister of Home Affairs.
- (iii) Daw San Hla vs. Rector, Mandalay University of Medicine.

[Table (19) Appendix K]

[One of the leading cases of writ application is Professor Dr. Daw Kyin Htay vs. Union Minister, Ministry of Education (2013 Civil Miscellaneous Application No.290)]

4.6.1 Application of U Min Yu Shein, & U Ne Win, vs. Union Minister, Minister of Home Affairs. (2016 Civil Miscellaneous Application No.51 & No 66)

The Ministry of Home Affairs has imposed the punishment of dismissal to the Deputy Director of U Min Yu Shin and U Ne Win, who served as secretaries of the Government of Magway Division in 2016. The Anti-Corruption Commission accused that they accepted bribes of 500,000 Kyats from employees of Magway Regional Municipality and Township Municipality during the promotion examination.

The Anti-Corruption Commission sent questions to U Min Yu Shein, & U Ne Win by Fax and asked them to answer them, and both secretaries sent a reply as evidence that they did not. And then, the commission informed the Union Government Office to take action against these secretaries due to the public perception of corruption.

According to the notification to the Union Government Office, the Ministry of Home Affairs imposed the penalty of dismissing the two secretaries as employees without conducting a departmental enquiry. Therefore, these two secretaries, U Min Yu Shein and U Ne Win applied to the Supreme Court of the Union to issue a Writ of Mandamus.

The Supreme Court of the Union considered the following points¹¹² on their application-

- (i) According to the notification of the Union Government Office, it appears that the action taken against the 2 applicants is only applicable to the Civil Service Personnel Law.
- (ii) Article 41 of the Civil Service Personnel Law stipulates that in cases where there is clear evidence that a personnel is guilty, he/she may be subject to appropriate disciplinary action without a departmental investigation.
- (iii) Under the Chapter 11(Penalty on employee discipline; regarding appeals) of the Civil Service Personnel Law, according to Section 53 (a) to (i) lists 9 types of penalties. The Section 53 (i) stipulates dismissal him/ her as a personnel. Article 55 of the Civil Personnel

¹¹² The Supreme Court of the Union (2016) (P 140 -145) (Translated by author)

Service Law stipulates that the personnel shall have the right to appeal in respect of penalty imposed in the departmental action.

- (iv) The Civil Service Personnel Sub-rule(d) of Rule 192 stipulates that if the action or omission of the service personnel is being a case which is punishable with reduction of pay within the pay scale, demotion, removal from a post or dismissal from being a service personnel, the departmental enquiry shall be made to enquire and hear the case.
- (v) In relation to the departmental investigation, the employee's conduct or failure to perform duties is a case worthy of a reduced penalty under the penalty of salary reduction or rank reduction within the salary scale or dismissal from the position or dismissal as an employee. However, in order to ensure justice and it is also good to be legally valid. Sub-rule 193 (a) of the Civil Service Personnel Rule stipulates that if the service personnel is guilty of the action or omission which deserves only a minor penalty which is lower than reduction of pay within the pay scale, demotion, removal from a post or dismissal from being a service personnel, a judgment may be made without making a departmental enquiry and trial. Provided that, if it is considered that there are the facts to be enquired for justice or to be evident legally, the departmental enquiry may be made to enquire and hear the case.
- (vi) Applicants got only one chance to provide only a written statement answering the questions sent by the Anti-Corruption Commission in relation to the complaint, and clarifying the allegations themselves. According to the application form and affidavit, there is no right to self-explanation, presenting evidence, justification and questioning presentation, without doing so, it should not be concluded that it is obvious that the applicants are guilty. When the petitioners gave their testimony to the commission, it was seen that they denied receiving the money as a matter of courtesy.
- (vii) According to the investigation by the Anti-Corruption Commission, the Ministry of Home Affairs decided to take effective action against the two applicants in accordance with the civil personnel rules and regulations, as the commission's minute of meeting No. 1/2016 decided

that the maximum penalty of dismissal was imposed on the two employees without a departmental investigation.

- (viii) Under the Anti-Corruption Law Section 30 (b), the Commission notified the two applicants, U Min Yu Shein and U Ne Win, to take effective action in accordance with the Civil Personnel Rule and Regulation. However, the Ministry of Home Affairs' decision to dismiss them as an employee without opening a departmental investigation and hearing is inconsistent with Civil Service Rule 192 (d) and 193 (a).
- (ix) According to Article 347 under Chapter 8 of the 2008 Constitution, regarding the basic rights of citizens, the Union shall guarantee any person to enjoy equal rights before the law and shall equally provide legal protection. In addition, it is stipulated that the protection of the law must be given equal access to property. In relation to the basic rights of employees in Chapter 4 of the Civil Service Personnel Law, Article 11 (m) refers to rights to submission, justification and petition related with employee's benefits and grievances are stipulated.
- (x) The Ministry of Home Affairs dismissed the applicants as an employee without opening a departmental investigation and conducting an investigation and hearing, it appears that the applicant did not have the employee's right to appeal regarding the punishment imposed in the departmental action according to Section 55 of the Civil Service Law.
- (xi) Writ of Quo Warranto means a writ issued in writing whether or not it is conformity with Law after hearing whether or not any government department or any empowered authority has carried out in accord with laws, rules, regulations, by-laws, procedures, orders, and notifications, directives issued on person or persons.
- (xii) A Writ of Quo Warranto should be issued to the Ministry of Home Affairs for dismissing the applicants without an investigation and hearing in accordance with the Civil Service Law, Rules, Procedure and Regulations.
- (xiii) These Civil miscellaneous applications are allowed. The Writ of Quo Warranto is issued for stating that dismissing the applicants as employees is not in accordance with the law by Ministry of Interior

Minister's Office Notification No. 76/2016 and 75/2016 dated 13-1-2016.

- (xiv) If it is necessary to take action against the applicants by the respondent, Union Minister, Ministry of Home Affairs, it shall conduct a methodical investigation in accordance with the rules and procedures of the relevant law, conduct a methodical investigation in accordance with the findings, and issue an order in accordance with the findings.

4.6.2 Application of Daw San Hla vs. Rector, Mandalay University of Medicine. (2016 Civil Miscellaneous Application No.51 & No 126)

There are two time applications of Daw San Hla vs. Rector of Mandalay University in 2015 and 2016. On June 5, 2017, the Supreme Court of the Union considered the following points¹¹³ on the application of civil miscellaneous No. 126 of 2016, and the Ruling has been established in 2017.

- (i) The applicant, Daw San Hla (branch clerk in the accounting department of the Mandalay University of Medicine) was forced to retire by rector, reasons of inability to fulfill responsibility and flexibility as her rank and position, disrupting unity among employees and due to abusive communication stated that Office Order No. 221 of the Mandalay University of Medicine dated November 1, 2011.
- (ii) Daw San Hla applied to the Union Supreme Court to cancel it with a writ of mandamus that the order was inconsistent with the Civil Service Personnel Law. (2015 Civil Miscellaneous No. 28).
- (iii) The Supreme Court of the Union considers that the penalty imposed on the applicant, Daw San Hla, without a departmental inquiry, and forced to retire is not included in the 9 types of civil services personnel penalties that can be imposed according to Article 56 of the Civil Services Personnel Discipline Manual. Therefore, the office's order dated November 1, 2011 of the Mandalay University of Medicine was canceled by the Writ of Mandamus on October 5, 2015.
- (iv) According to the Writ of Mandamus of the Supreme Court of the Union, the Ministry of Health canceled the compulsory retirement

¹¹³ The Supreme Court of the Union (2017) (P 91 -103) (Translated by author)

order issued to Daw San Hla dated November 1, 2011 by Office Order No. 65 of the Department of Medical Human Resource Development and Management on March 17 2016.

- (v) On March 3, 2016, the Rector of Mandalay Medical University continued to report to the Department of Medical Human Resource Development and Management that Daw San Hla continued to carry out the duties of a branch clerk at Mandalay Medical University. The director general of the department continued to report to the Union Minister of Health on 30 March 2016.
- (vi) Daw San Hla submitted a letter dated June 2, 2016 to issue an appointment letter for her original position as Accountant 2 and to issue a salary calculation from November 1, 2011. The Rector continued to submit an order to the Director General Medical Human Resources Development and Management Specialist Department on June 17, 2016.
- (vii) The Ministry of Health requested an opinion on Daw San Hla's salary report in a letter dated March 18, 2016 to the Ministry of Planning and Finance. The Ministry of Planning and Finance responded that Daw San Hla's compulsory retirement should be applied to Section 68 (a) and (b)¹¹⁴ of the Civil Service Personnel Rule for the period from November 1, 2016, until 17-3-2016, which was canceled. [Section (68) of the Civil Service Personnel Rule; When reinstating a service personnel who has been suspended from duties, dismissed or removed from the post after closing of the case, the head of the relevant Ministry and the service personnel organization: -
 - (a) Shall allow the service personnel to draw back full pay and allowance to which he would have been entitled for the period of his absence from duties and treat the said period as on duty when the service personnel is reinstated after he had as he has been fully exonerated in case of temporary suspension or dismissal or removal:

¹¹⁴ Civil Service Personnel Rules (2014) (P 31)
(i)

- (b) If a service personnel is reinstated in his previous post or in another post depending on the seriousness of the case although he is found guilty but not of serious commission deserving of dismissal or removal from the post, may allow the following for the period of absence from duties:
 - (i) a part of pay and allowance:
 - (ii) treating the period of absence as on duty;
 - (iii) treating the period of absence on leave:
 - (iv) treating the period of absence as on leave and pay as leave salary.]
- (viii) After the Supreme Court of the Union canceled the forced retirement order of Daw San Hla on October 5, 2015, the Ministry of Health requested opinions and comments of the Ministry of Planning and Finance, the Union Attorney General's Office, and the Union Board of Civil Services, regarding Daw San Hla's case before she had returned to work on March 28, 2016, from February 1, 2016.
- (ix) After that, the Ministry of Health examined Daw San Hla by the Departmental Enquiry Board with the Department's Order No. 1/2016. Based on the report of the Departmental Enquiry Board, it was decided that she should be dismissed from her position on November 1, 2011, with the approval of the Ministry's Executive Committee Meeting No. 10/2016 held on November 11, 2016.
- (x) The Supreme Court of the Union scrutinized that such a decision had the effect of retroactive action against a civil servant. The opinion reply of the Union Attorney General's Office also considered the same and suggested that if the employee had the right to hold a position from November 1, 2011 to June 6, 2016, the decision to dismiss him should only start after the date of the Departmental Enquiry.
- (xi) It is found that the respondent No. 1 Rector of the University of Mandalay Medicine has been not carried out separate assignment of duties to issue an office order reassigning Daw San Hla to her job after canceling the order that gave Daw San Hla compulsory retirement by Office Order No. 65 of the Department of Medical Human Resource Development and Management.

- (xii) In addition, according to the statement that the Ministry of Health has formed a Departmental Enquiry Board 1/2017 according to the direction of the Union Minister (Ministry of Health), the Supreme Court of the Union verified that the relevant ministry has not yet made any decision on Daw San Hla.
- (xiii) Writ of Mandamus means a writ issued in writing to comply with Law by any competent person; or any authority; or any government department for the failure to comply with the power conferred thereon¹¹⁵.
- (xiv) Writ of Quo Warranto means a writ issued in writing whether or not it is in conformity with Law after hearing whether or not any government department or any empowered authority has carried out in accord with laws, rules, regulations, by-laws, procedures, orders, and notifications, directives issued on person or persons¹¹⁶.
- (xv) According to Section 378 Sub-section (a) under the Constitution of the Republic of the Union of Myanmar (2008) in connection with the filing of application for rights granted under this Chapter VIII (Citizen, Fundamental Right and Duties of Citizens), the Supreme Court of the Union shall have the power to issue the five kinds of writs as suitable.
- (xvi) Therefore, the Supreme Court of the Union granted the Civil Miscellaneous Application No 126 (2016) of the applicant Daw San Hla and issued the following writ orders –
 - (a) A Writ of Mandamus: Respondent No. 1 Rector of the University of Mandalay Medicine has to reappoint the applicant as an employee in her original position and issued an office order assigning her appropriate duties in accordance with the Civil Service Personnel Law in accordance with the rules.
 - (b) A Writ of Mandamus: Respondent No. 2 the Department of Medical Human Resource Development and Management has to apply and allow the application of the Civil Service Personnel Rule (68) (b), for the period from November 1, 2011 to March 17, 2016.

¹¹⁵ The Pyidaungsu Hluttaw (2014) [The Pyidaungsu Hluttaw Law No.24, Section 2 (d)]

¹¹⁶ Ibid Section 2 (f)

- (c) A Writ of Quo Warranto; Respondent No. 2 the Department of Medical Human Resource Development and Management has to issue an office order reassigning the job and the department's departmental investigation board (1/2016) (1/2017) investigates the applicant who has not been assigned responsibility, according to non-compliance with the procedure the Civil Personnel Service Law, Rules, Regulation and Procedure.

4.6.3 Application of Professor Dr. Daw Kyin Htay vs. Union Minister, Ministry of Education (2013 Civil Miscellaneous Application No.290)

Professor Dr. Daw Kyin Htay vs. Union Minister, Ministry of Education (Civil Miscellaneous Application No 290 in 2013) was the very first case in which a writ of certiorari was issued, and in which the Supreme Court of the Union quashed the administrative decision made by the Ministry of Education¹¹⁷.

According to Section 41 of the Civil Service Law, the Ministry of Education issued an order of notification that was forced to retire for Professor Dr. Daw Kyin Htay (Head of Department, Department of Economics, Yangon University of Distance Education) will receive a non-compulsory pension from March 29, 2013.

The applicant applied an appeal against the order under Article 55 of the Civil Service Personnel Law and Article 67 (b) of the Civil Service Personnel Manual, however, no action was taken by the Ministry of Education.

Moreover, any action was not taken against the applicant according to the Civil Service Personnel Disciplinary Manual and departmental investigation procedures. Although it is stipulated that an appeal can be filed within 6 months from the date of receipt of the order, this point was not mentioned in the order. Therefore, applicant applied that issue a writ of mandamus as suffering irreparable grievance,

The Supreme Court of the Union considered the following points on her application;

According to Section 41 under the Civil Service Personnel Law, in cases where there is clear evidence that a personnel is guilty, he/she may be subject to appropriate disciplinary action without a departmental investigation.

¹¹⁷ Khin Khin Oo, Dr.(2018) (P 35)

In this case, it cannot be said that the guilt of the employee is obvious.

The applicant has denied that he is guilty.

According to Section 53 under the Civil Service Personnel Law: For departmental disciplinary actions, one of the following penalties or more than one penalty may be imposed in accordance with the rules, regulations, and by-laws:

- (a) Written warning;
- (b) Withholding of annual increment;
- (c) Withholding of promotion;
- (d) Reduction of pay within pay scale;
- (e) Demotion;
- (f) Reimbursement of wholly or partially lost value caused by negligence or breaching of orders and directives;
- (g) Not being allowed to receive full pay for the period of temporary suspension from duty or not designating that period as duty period;
- (h) Dismissing from his/her position;
- (i) Dismissing him/her as personnel;

The punishment given to the applicant under Section 41 is not included in the disciplinary punishments that can be enacted under Section 53 the Civil Service Personnel Law.

Writ of Mandamus means a writ issued in writing to comply with Law by any competent person; or any authority; or any government department for the failure to comply with the power conferred thereon.

Therefore, this application has been approved and the order of Notification by Ministry of Education's at dated March 29, 2013 was canceled by issuing a Writ of Mandamus.

4.7 Focus Group Discussion

There were be done a step-by-step analysis of 31 ultra vires action act was conducted by public administrators during the 10-year period. The following points were verified and obtained based on this analysis:

- (a) The types of ultra vires case done by the public administrators and administrative authorities in 10 years.
- (b) Rejection and sentencing of reported governmental cases of writs application

- (c) Types of writs issued to Union Ministries/ Organizations and Division/ Regional Governments.
- (d) Classification of writs with the highest number against Union Ministries/ Organizations and Division/ Regional Governments in writ applications.
- (e) The main type of laws related to these writ applications
- (f) Remedies given under each type of laws for grievances.

And then, Focus Group Discussion was done on four groups in fields [Administration, Jurisdiction, Parliamentary (Legislature), and other fields] based on these emerging results as follow;

4.7.1 Classification of Group by Fields

This study is “Study of Ultra Vires Acts Done by Administrative Authorities in Myanmar’s Ruling of Writs”. As this study is qualitative research, focus group discussions and interviews were conducted with individuals from the following related fields, between July and August 2022, in Nay Pyi Taw:

- (a) Administrative Field
 - (i) Senior and middle officials of Union Ministries and Organizations.
 - (ii) Police officers of Myanmar Police Forces.
- (b) Jurisdiction Field
 - (i) Member of the Constitutional Tribunal of the Union.
 - (ii) Officials of the Supreme Court of the Union.
 - (iii) Judges.
- (c) Parliamentary Field
 - (i) Former Members of Parliament.
 - (ii) Parliamentary officials.
- (d) Other Fields
 - (i) Former member of the Constitutional Tribunal of the Union.
 - (ii) Members of the Bar Council.
 - (iii) Advocates.
 - (iv) Legal writers and analysts.

4.7.2 Using Question Types by Moderator

The open-ended questions and points were used following focus group to confirm the findings from the judicial review of writ applications by moderator in focus group discussion. [Open-ended questions and points are shown in Appendix (L)].

- (a) Group of administrative field.
- (b) Group of jurisdiction field.
- (c) Group of parliamentary field.
- (d) Group of other field.

4.7.3 Factors identified from each group

According to discussions with each focus groups, the following points were identified from the focus group discussion in each branch –

- (a) Executive Branch
 - (i) According to the given circumstances of Myanmar, the executive branch still dominates the implementation of important policies for the stability of the political system.
 - (ii) The authorities who are responsible in various fields (especially in the branch of administration and law enforcement) should study and complete more background knowledge of the law.
 - (iii) From the time of independence to the present day, along with the change in political systems, administrative systems have changed. With the change in administrative systems and the attitude of civil servants; perception quality needs to be improved.
 - (iv) It changes according to the term of various governments, but the implementation of a good governance system needs to be continued continuously.
- (b) Jurisdiction Branch
 - (i) Writ orders regulate the fundamental rights of citizens on writ applications under the Constitution.
 - (ii) It is necessary to understand original philosophy of common law and it's procedures that established by the British in Myanmar.

- (iii) Moreover, it is necessary to be able to use common law's procedure and system according to the situation of our country.
 - (iv) There is a need to reexamine the old system and way of thinking, doing that was practiced during the socialist system.
- (c) Parliamentary Branch
- (i) The foresight of the members of the parliament in charge of the Hluttaw, a wide range of visionary ideas and studies and experiences are especially important in the law making process for country.
 - (ii) It is necessary to produce qualified legislators and politicians with a long-term plan for the country.
 - (iii) Those in charge of all three pillars (Administration, Jurisdiction and Parliament) of the country need mutual understanding and respect along with mutual check and balance.
- (d) Other Fields
- (i) The stability of the political system is fundamental for the mutual control of all three branches of sovereign power.
 - (ii) It is necessary to encourage and nurture research institutions that monitor and analyze the three branches of sovereign power.
 - (iii) Anti-bribery and reduction of corruption and the development of a good governance system is related to the formulation and implementation of the country's macroeconomic policies.
 - (iv) As the country's economy is related to political stability, therefore, it is necessary to understand political economy.

In this Chapter 4, there have been done for the results of the analytical study on leading cases on ultra vires acts done by public administrators in Myanmar (2011 to 2022) firstly. And then, the common factors identified by each group were compiled based on these results in Focus Group Discussion (FGD). Finally, the findings and recommendations that obtained from these factors will be presented in conclusion in Chapter 5.

CHAPTER 5

CONCLUSION

5.1 Findings

The results of the analytical study on leading cases of ultra vires acts done by public administrators and the common factors identified by each group were compiled based on these results in Focus Group Discussion (FGD) and will be presented separately as follows.

5.1.1 Findings of Analytical Study in Writ Applications and Case Studies

There are seven Union Ministries and six Regional Governments in rulings of writ application. Among the seven ministries not only the most applications for criminal miscellaneous but also the most applications for the civil miscellaneous case of the Ministry of Home Affairs. The second most of writ application are the Ministry of Labor and the Ministry of Health. Moreover, among the six regional governments, the Yangon Regional Government is the most applicable for writs.

This indicates that the Ministry of Home Affairs and the Ministry of Labor provide the most services to the public. Among the Region and States, it is indicated that Yangon Region, where the population density is the highest and the business capital is located, is providing the most services to the public.

The results and findings of the study indicate that a need for more monitoring of legal issues that have a much of exposure to the public in some Union ministries or Union organizations. Similar monitoring is required in some of the most densely populated and highly commercialized areas where Region or State governments.

Moreover, an economy uses the following three factors of production forces to produce goods and services.

- (i) Land or natural resources,
- (ii) Labour or human resources and
- (iii) Capital or man-made resources.

In the 31 cases of the ruling to Ultra Vires act made by administrative authorities within 10 years, the most writ applications are grievances and arguments of land applications in urban and rural areas (19 cases). And then, the second most of writ applications are grievances and arguments of labor, civil personnel, and police forces (six cases). This can be found related to the first and second important of the country's factor of production.

Therefore, the following legal provisions are closer to the actual situation. If there are any additional points that should be amended, the executive branch and the legislative branch will need to cooperate to make the amendment;

- (i) Municipal Urban Planning and City Management Regulations.
- (ii) Lower Myanmar Town and Village Land Act.
- (iii) the Administration of Vacant, Fallow, and Virgin Land Law
- (iv) 1960 The Urban Rent Control Act.
- (v) Labor Dispute Law.
- (vi) Civil Service Personnel Law.
- (vii) The Myanmar Police Disciplinary Law.

5.1.2 Findings of Focus Group Discussion (FGD) Method

The implementation of a law is concerned with three branches (Legislative Power, Executive Power, and Judicial Power). The legislative branch determines the necessary regulatory requirements for the operation of the respective country according to past and present conditions. The executive branch implements the law enacted by the legislative branch. If the executive branch makes ultra vires and intra vires or become a violation of the statutory provision in public, the judicial branch decides according to the laws and regulations enacted. Therefore, these branches are interconnected with each other and need to be mutual understanding and respect along with mutual check and balance.

Under the circumstances of Myanmar, the executive branch still dominates the implementation of important policies for the stability of the political system.

The findings indicate the need for more study and complete background knowledge of the law, macroeconomic policies, and political economy by public administrators, to a good attitude by civil service personnel, and to improve the quality of perception and continued implementation of good governance.

5.2 Recommendations

According to the analytical findings obtained from this study, it is strongly supported by step-by-step courses for civil service personnel, workshops, domestic and foreign seminars for responsible authorities and public administrators in various fields to obtain background knowledge of the law and political economy.

It is recommended that the implementing of good governance needs to be continued. Moreover, Myanmar needs to produce qualified legislators and politicians with long-term plans for the country. And then, research institutions that monitor and analyze the three branches of sovereignty need to be encouraged and nurtured.

In addition, long-term plans should be established to be qualified legislators, produce qualified politicians, and foster research institutions that monitor and analyze the three pillars of sovereignty for the future nation. It is suggested that will be necessary to constantly monitor and amend the law on urban and agricultural land, the labor dispute law and the civil personnel law, which mostly consists of writ rulings, to be closer to the actual situation.

According to this study's result of the writ applications, it is clear that remedies were obtained for the grievances. It is highlighted that the time during which applications of the writ are pending under the state of emergency according to Section 296 (b), Section 379, of the Constitution of the Republic of the Union of Myanmar, Section 3 (b) of the Law Relating to the Application of Writ (2014), and Section 16 (b) of the Union Judiciary Law. (It has been presented in Chapter 1.1 Rationale of the Study). If ultra vires occur in adjudicated cases, the aggrieved parties cannot be remedied during this period. It is concluded, therefore, public administrators and administrative authorities need to be careful to avoid Ultra Vires as much as possible in accordance with the laws and regulations.

This study on the ultra vires acts done by public administrators in Myanmar (from 2011 to 2020) is just an academic study of the administrative law point of view and the public administrative subject's perspective.

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ကြေညာချက်

ရက်စွဲ၊ ၂၀၂၁ ခုနှစ်၊ ဖေဖော်ဝါရီလ ၁၅ ရက်

နိုင်ငံတော်သမ္မတရုံး၏ ၁-၂-၂၀၂၁ ရက်စွဲပါ အမိန့်အမှတ် ၁/ ၂၀၂၁ ဖြင့် နိုင်ငံတော် အား အရေးပေါ် အခြေအနေကို တစ်နှစ်သတ်မှတ်ကြေညာထားပါသည်။

ဖွဲ့စည်းပုံအခြေခံဥပဒေပုဒ်မ ၂၉၆ (ခ) ၊ စာချွန်တော်ဥပဒေပုဒ်မ ၃(ခ)၊ ပြည်ထောင်စု တရားစီရင်ရေးဥပဒေပုဒ်မ ၁၆ (ခ) တို့တွင် နိုင်ငံတော်အတွင်း အရေးပေါ် အခြေအနေများ ပေါ်ပေါက်ကြောင်း ကြေညာသည့်အခါတွင် စာချွန်တော်အမိန့် ထုတ်ဆင့်ပေးရန် လျှောက်ထားချက်များကို ရပ်ဆိုင်းထားရမည် ဟု ပြဋ္ဌာန်းထားပါသည်။

သို့ဖြစ်ပါ၍ နိုင်ငံတော်သမ္မတရုံး၏ ၁-၂-၂၀၂၁ ရက်စွဲပါ အမိန့်အမှတ် ၁/ ၂၀၂၁ ဖြင့် နိုင်ငံတော်အား အရေးပေါ်အခြေအနေ တစ်နှစ်သတ်မှတ်ကြေညာထားသည့် ကာလအတွင်း ဖွဲ့စည်းပုံအခြေခံဥပဒေပုဒ်မ ၂၉၆ (ခ) ၊ စာချွန်တော်ဥပဒေပုဒ်မ ၃(ခ)၊ ပြည်ထောင်စုတရား စီရင်ရေးဥပဒေပုဒ်မ ၁၆ (ခ) တို့အရ ပြည်ထောင်စုတရားလွှတ်တော်ချုပ်သို့ စာချွန်တော် လျှောက်ထားချက်များကို ရပ်ဆိုင်းထားမည်ဖြစ်ကြောင်း ကြေညာအပ်ပါသည်။

ပြည်ထောင်စုတရားလွှတ်တော်ချုပ်

ကြေညာချက်

ရက်စွဲ၊ ၂၀၂၂ ခုနှစ်၊ ဖေဖော်ဝါရီလ ၂၂ ရက်

အမျိုးသားကာကွယ်ရေးနှင့် လုံခြုံရေးကောင်စီ၏ ၃၁-၁-၂၀၂၂ ရက်စွဲပါ ကြေညာချက်အမှတ် ၁/၂၀၂၂ ဖြင့် နိုင်ငံတော်အား အရေးပေါ်အခြေအနေကို ခြောက်လသက်တမ်းတိုးမြှင့်ကြောင်းကို ကြေညာထားပါသည်။

ဖွဲ့စည်းပုံအခြေခံဥပဒေပုဒ်မ ၂၉၆(ခ)၊ စာချွန်တော်အမိန့် လျှောက်ထားမှုဆိုင်ရာဥပဒေပုဒ်မ ၃(ခ) ၊ ပြည်ထောင်စုတရားစီရင်ရေးဥပဒေပုဒ်မ ၁၆ (ခ)တို့တွင် နိုင်ငံတော်အတွင်း အရေးပေါ်အခြေအနေများပေါ်ပေါက်ကြောင်း ကြေညာသည့် ဒေသတွင် စာချွန်တော်အမိန့်ထုတ်ဆင့်ပေးရန် လျှောက်ထားချက်များကို ရပ်ဆိုင်းထားရမည် ဟု ပြဋ္ဌာန်းထားပါသည်။

သို့ဖြစ်ပါ၍ အမျိုးသားကာကွယ်ရေးနှင့် လုံခြုံရေးကောင်စီ၏ ၃၁-၁-၂၀၂၂ ရက်စွဲပါ ကြေညာချက်အမှတ် ၁/၂၀၂၂ ဖြင့် နိုင်ငံတော်အား အရေးပေါ်အခြေအနေကို ခြောက်လသက်တမ်းတိုးမြှင့်ကြောင်း ကြေညာထားသည့် ကာလအတွင်း ဖွဲ့စည်းပုံအခြေခံဥပဒေပုဒ်မ ၂၉၆(ခ)၊ စာချွန်တော် အမိန့်လျှောက်ထားမှုဆိုင်ရာဥပဒေပုဒ်မ ၃(ခ) ၊ ပြည်ထောင်စုတရားစီရင်ရေးဥပဒေပုဒ်မ ၁၆ (ခ) တို့အရ ပြည်ထောင်စုတရားလွှတ်တော်ချုပ်သို့ စာချွန်တော်လျှောက်ထားချက်များကို ရပ်ဆိုင်းထားမည်ဖြစ်ကြောင်း ကြေညာအပ်ပါသည်။

ပြည်ထောင်စုတရားလွှတ်တော်ချုပ်

Appendix (C)

Table (1) Cases ruling by the Supreme Court of the Union in 10 years (2011 to 2020)

Sr.	Year	Criminal Case	Civil Case	Civil Miscellaneous cases to issue writs	Total
1	2011	13	14	-	27
2	2012	8	10	-	18
3	2013	7	11	-	18
4	2014	6	15	-	21
5	2015	3	17	-	20
6	2016	4	15	-	19
7	2017	7	14	-	21
8	2018	5	4	4	13
9	2019	6	8	3	17
10	2020	5	1	3	9
Total		64	109	10	183

(Compilation by Author)

Table (2) The cases of ultra vires acts done by the public administrators and Administrative authorities

Sr.	Year	Criminal Case (64)Cases		Civil Case (110) Cases		Writ Case (10) Cases		Total
		Public	Govt;	Public	Govt;	Public	Govt;	
1	2011	13	-	14	-	-	-	27
2	2012	8	-	10	-	-	-	18
3	2013	7	-	10	1	-	-	18
4	2014	5	1	12	3	-	-	21
5	2015	2	1	13	4	-	-	20
6	2016	4	-	9	6	-	-	19
7	2017	6	1	10	4	-	-	21
8	2018	5	-	4	-	-	4	13
9	2019	6	-	8	-	-	3	17
10	2020	5	-	1	-	-	3	9
Total		61	3	91	18	-	10	183

(Compilation by Author)

Appendix (D)

Table (3) Rejection and sentencing of reported governmental cases of writs application

Sr	Year	Criminal Miscellaneous Case		Civil Miscellaneous Case				Writ Application			Total
		Reject	Mandamus	Reject	Mandamus	Wuo Warranto	Certiorari	Reject	Mandamus	Quo Warranto	
1	2011	-	-	-	-	-	-	-	-	-	-
2	2012	-	-	-	-	-	-	-	-	-	-
3	2013	-	-	-	1	-	-	-	-	-	1
4	2014	-	1	1	-	-	2	-	-	-	4
5	2015	-	1	3	-	-	1	-	-	-	5
6	2016	-	-	-	1	2	3	-	-	-	6
7	2017	1	-	2	-	1	1	-	-	-	5
8	2018	-	-	-	-	-	-	2	1	1	4
9	2019	-	-	-	-	-	-	1	2	-	3
10	2020	-	-	-	-	-	-	2	-	1	3
		1	2	6	2	3	7	5	3	2	31

(Compilation by Author)

Table (4) Classification of case of reported governmental cases of writs application

Sr.	Classification of Case	Reject	Mandamus	Quo Warranto	Certiorari	Total
1	Criminal	1	2	-	-	3
2	Civil	6	2	3	7	18
3	Writ	5	3	2	-	10
Total		12	7	5	7	31

(Compilation by Author)

Appendix (E)

Table (5) 31 Cases of Union Ministries, Union Organizations and Government of Division/States

Sr.	Union Ministries/ Organizations and Regional Governments	Application			Total
		Criminal	Civil	Writ	
1	The Supreme Court of the Union	-	-	2	2
2	Ministry of Home Affairs	3	4	2	9
3	Ministry of Agriculture, Livestock and Irrigation			1	1
4	Ministry of Natural Resources & Environmental Conservation	-	-	1	1
5	Ministry of Labour	-	3	-	3
6	Ministry of Education	-	1	-	1
7	Ministry of Health	-	1	-	1
8	Ministry of Construction	-	1	-	1
9	Taninthayi Region Government	-	1	-	1
10	Bago Region Government	-	-	1	1
11	Mon State Region Government	-	1	-	1
12	Mandalay Region Government	-	1	-	1
13	Yangon Region Government	-	4	3	7
14	Ayeyawaddy Region Government	-	1	-	1
Total		3	18	10	31

(Compilation by Author)

Appendix (F)

Table (6) Classification by type of law

Sr.	Related Laws	Mandamus	Quo Warranto	Certiorari	Mandamus and Quo Warranto	Reject	Total
1	The Constitution of the Union of Myanmar (2008)	1	-	-	-	1	2
2	The Urban Rent Control Act, Urban Planning and City Management Regulations and Vacant, Fallow and Virgin Land Law.	5	3	5	-	6	19
3	The Settlement of Labour Dispute Act	-	-	2	-	1	3
4	The Civil Service Law 2014	-	1	-	1	1	3
5	The Judicial Administration	-	-	-	-	1	1
6	Other laws.	2	-	-	-	4	6
Total		8	4	7	1	14	34

(Compilation by Author)

Table (7) 2 cases related remedies guaranteed under the Constitution of the Republic of Union of Myanmar (2008)

Sr.	Name of Cases	Application category	Writ
(i)	U Aung Win Vs. Head of Department, Ministry of Security and Border Affairs, Government of Yangon Division	2017, Criminal Miscellaneous Application No. 37	Writ of Mandamus
(ii)	U Ko Ko Hein Vs. Director General, the Union Judicial Oversight Office.	2018, Civil Miscellaneous No.181	Reject

(Compilation by Author)

Appendix (G)

Table (8) The judgment of writ applications on the urban and firm land cases

Sr.	Judgment of Writ	The Laws and Rules that related Urban Land (12 Cases)	The Laws and Rules that related Farmland (7 Cases)	Total
(i)	Writ of Mandamus	3	2	5
(ii)	Writ of Quo Warranto	2	2	4
(iii)	Writ of Certiorari	3	1	4
(iv)	Reject	4	2	6
Total		12	7	19

(Compilation by Author)

Table (9) Yangon/Municipal Urban Planning and City Management Regulations/ Procedures

Sr.	Name of Cases	Application category	Writ
(i)	U Kyaw Minn and 2 others Vs. Head of Dept: Urban Planning and Land Management Dept, YCDC.	2012, Civil Miscellaneous Application No. 171	Writ of Mandamus
(ii)	Daw Tin Tin Win (a) Daw TinTin Aye and 2 others Vs. Head of Dept; Urban Planning and Land Management Department, YCDC.	2016, Civil Miscellaneous Application No. 203. 2017, Civil Miscellaneous Application No.118	Writ of Quo Warranto
(iii)	U Win Naing (Representative Daw Khin Cho Oo) Vs. Head of Department and 5 others, Urban Planning and Land Management Department, YCDC.	2018, Civil Miscellaneous Application No. 239	Writ of Mandamus

(Compilation by Author)

Appendix (H)**Table (10) 1960 The Urban Rent Control Act**

Sr.	Name of Cases	Application category	Writ
(i)	U Khin Hla (a) Isoud Moumsar. Vs. Township General Administration Department, Kyauk Tada Township.	2014, Civil Miscellaneous Application No. 121	Writ of Certiorari
(ii)	Daw Ishar Bibi, M.G, R, Rif. Vs. Township Inspector for Urban Rent Control, General Administration Department. Panbedan Township.	2014, Civil Miscellaneous Application No. 79	Writ of Certiorari
(iii)	Daw San Myint and 4 others Vs. Township Inspector for Urban Rent Control. General Administration Department. Panbedan Township.	2016, Civil Miscellaneous Application No. 163	Writ of Certiorari

(Compilation by Author)

Table (11) Yangon and Mandalay City Development Law

Sr.	Name of Cases	Application category	Writ
(i)	U Zaw Myo Win Vs. Head of Department Building & Store Department, Mandalay City Development Committee.	2014, Civil Miscellaneous Application No. 30	Reject
(ii)	U Ne Win and 91 others Vs. Head of Department, Engineering Department.(Water/Cleaning) YCDC.	2014, Civil Miscellaneous Application No.222	Reject

(Compilation by Author)

Table (12) Lower Myanmar Town and Village Lands Act

Sr.	Name of Cases	Application category	Writ
(i)	U Toe Htay and 2 peoples Vs. Director General, Department of Urban and Housing Development.	2015, Civil Miscellaneous Application No.150	Writ of Mandamus

(Compilation by Author)

Appendix (I)**Table (13) Land management and Land measurement Procedure**

Sr.	Name of Cases	Application category	Writ
(i)	U Hla Myint Phyu Vs. Head of Department, Urban Planning and Land Management Department, YCDC, Yangon.	2015, Civil Miscellaneous Application No. 82	Writ of Quo Warranto

(Compilation by Author)

Table (14) The Government Premises (Eviction) Act (1955).**The Government Premises (Eviction) Act, 1955 Amending Law No. 16/2012**

Sr.	Name of Cases	Application category	Writ
(i)	U Kyaw Soe Moe. Vs. Director, Department of Forestry, Yangon Division.	2017, Civil Miscellaneous Application No. 95	Reject

(Compilation by Author)

Table (15) Myanmar Land Registry Manual Act, Land Inventory Manual Instructions

Sr.	Name of Cases	Application category	Writ
(i)	U San Shwe (Chairman, Trustee Board of Ja-May Mosque, Trustee of Ja-may Mosque)	2019, Civil Miscellaneous Application No. 216	Reject

(Compilation by Author)

Appendix (J)**Table (16) The Administration of Vacant, Fallow and Virgin Land Law, 2012 (2 Cases)**

Sr.	Name of Cases	Application category	Writ
(i)	U Than Htut Vs. Camp commander, Police Station, Naung Cho Township.	2013, Criminal Miscellaneous Application No. 42	Writ of Mandamus
(ii)	U Aung Win Vs. Head of Department, Ministry of Security and Border Affairs, Government of Yangon Division.	2017, Criminal Miscellaneous Application No. 37	Writ of Mandamus

(Compilation by Author)

Table (17) The Farmland Law/ Act (5 Cases)

Sr.	Name of Cases	Application category	Writ
(i)	U Kyi Shin Vs. Chairman, Farmland Management Board, Taninthayi Division.	2015, Civil Miscellaneous Application No.100	Writ of Certiorari
(ii)	Daw Khin San Lwin Vs. Chairman, Farmland Management Board, Mon State.	2016, Civil Miscellaneous Application No. 54	Writ of Certiorari
(iii)	U Maung Shwe Vs. Chairman, Farmland Management Board, Ayerawaddy Division and 5 others. Ayeyawaddy Region.	2017, Civil Miscellaneous Application No. 67	Reject
(iv)	U Win Lwin Vs. Chairman, Farmland Management Board, Yangon Division and 5 others.	2016, Civil Miscellaneous Application No. 127	Reject
(v)	Daw Chit Pont Pont Htwe Vs. Chief Minister, Bago Region Government and 4 others.	2019, Civil Miscellaneous Application No. 314	Writ of Quo Warranto

(Compilation by Author)

Appendix (K)**Table (18) Remedies that are guaranteed under the Settlement of Labour Dispute Law**

Sr.	Name of Cases	Application category	Writ
(i)	U Sein Win Vs. Industrial Court, Nay Pyi Taw..	2015, Civil Miscellaneous Application No.30	Writ of Certiorari
(ii)	Daw Win Win Khaing (Owner) Vs. Industrial Court.	2015, Civil Miscellaneous Application No.50	Reject
(iii)	Daw Kyin Hwme Vs. Industrial Court,	2016, Civil Miscellaneous Application No.27	Writ of Certiorari

(Compilation by Author)

Table (19) Remedies given under the Civil Service Personnel Law 2014

Sr.	Name of Cases	Application category	Writ
(i)	U Chit Htwe Vs. Union Minister. Ministry of Education	2014, Civil Miscellaneous Application No.260	Reject
(ii)	U Min Yu Shein, & U Ne Win, Vs. Union Minister, Minister of Home Affairs.	2016, Civil Miscellaneous Application No.51 and 66	Writ of Quo Warranto
(iii)	Daw San Hla Vs. Rector, Mandalay University of Medicine and 2 others	2016, Civil Miscellaneous Application No.126	2 Writs of Mandamus/ Writ of Quo Warranto

(Compilation by Author)

“Using Question Types by Moderator in Focus Group Discussion (FGD)”

The following open-ended questions and points were used in the focus group discussions to confirm the findings from the judicial review of writ applications:

- (a) Administrative field
 - (i) What you know about the writ application?
 - (ii) I would like to know the opinion on the emergence of the right to apply for writs according to the constitution (2008).
 - (iii) Conditions of implementation of the administrative laws used by their departments and organizations.
 - (iv) Effects arising from remedies by writ judgments.
 - (v) Good Government Factors that should be taken by the department to reduce the Grievances and Arguments of administrative law decisions.
- (b) Jurisdiction Field
 - (i) Things public administrators and civil services should know about the writ application.
 - (ii) Practical judgmental experiences.
 - (iii) Relationship between Good Governance and Writ Application.
 - (iv) Recommendations and Advices.
- (c) Parliamentary Field
 - (i) Things lawmakers / members of parliament and politicians should know about writ application and parliament.
 - (ii) Experiences in the law-making process.
 - (iii) Relationship between Good Governance and Writ Application.
 - (iv) Recommendations and Advices.
- (d) Other
 - (i) Situations faced by lawyers.
 - (ii) Changing jurisprudential views/
 - (iii) Relationship between Good Governance and Writ Application.
 - (iv) Recommendations and Advices