

A Report on the Development of Judiciary in the Union of Myanmar

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要 旨

ミャンマー連邦の司法制度は、コモンローの法族に属するコモンロー法システムにもとづく特色あるものです。その司法制度は、ミャンマーの王制とともにゆっくりと発展し、植民地行政の中で変化してきました。ミャンマーが独立した後に、その司法制度は、その歴史を通じて、さまざまな政治的、行政的、経済的制度や社会に対して、現実的に大きな影響を与えるような役割を果たしてきました。1988年に、ミャンマーは、その政治体制を変化させ、市場を志向する経済へと展開しました。現在の司法制度もまた、時代に即して、このような体制の変動に合わせて変化し、現在では、将来の憲法と同じ方向を目指しています。ミャンマー司法制度の歴史と実務とが、コモンロー法システムの諸原則を基礎としていること、および、ある部分においては、ミャンマーの慣習法システムと混合していることが、分析により明らかとなります。司法制度は、制定法や慣習法、および、社会の変化する環境との調和を保ちながら法を発展させることに、関与する必要があります。

Keywords: Traditional Judiciary, British Common Law System, Present Judiciary

Introduction

I. Judiciary in Pre-WWII regime

- a. Myanmar Traditional Judiciary
- b. Judiciary under the British Colonial Regime
- c. Judiciary under the Japanese Occupied Regime

II. Judiciary in Post-WWII regime

- a. Judiciary after Independence
- b. Judiciary of Socialism
- c. Present Judiciary

Conclusion

Introduction

The judiciary of the Union of Myanmar is a unique system being based on the Common Law Legal System belonging to the Common Law Legal Family.¹The Union of Myanmar, former name of the "Union of Burma", is a sovereign state of her ancient historical background with her enriched culture since ancient time. The judiciary had gradually developed with its monarchical regime and changed into colonial administration. The Myanmar judiciary had played a significant role in her history practically reflected on her different political, administrative and economic systems and society.

In 1988, Myanmar changed her political system and forwarded into market-oriented economy. Present judiciary also changed with system as time and growth demand and is aimed to be in line with drafting Constitution. For the development of judiciary of Myanmar, it cannot be excluded from the historical background of her political, administrative and economic system. This article will be explained how the judiciary has practiced from reign of Myanmar kingdoms up to the present day with a brief background of Myanmar history and her society.² It can be especially analyzed on the comparative and historical research from the view point of practical example by the positive law contra by traditional law. I would like to discuss on such example which historically reflected the concept and aspect of Myanmar society and her judiciary.

1. *The Problem of dispute* a practical example

Does the School caning by Teachers be amount to an offence? (See Chart 1)

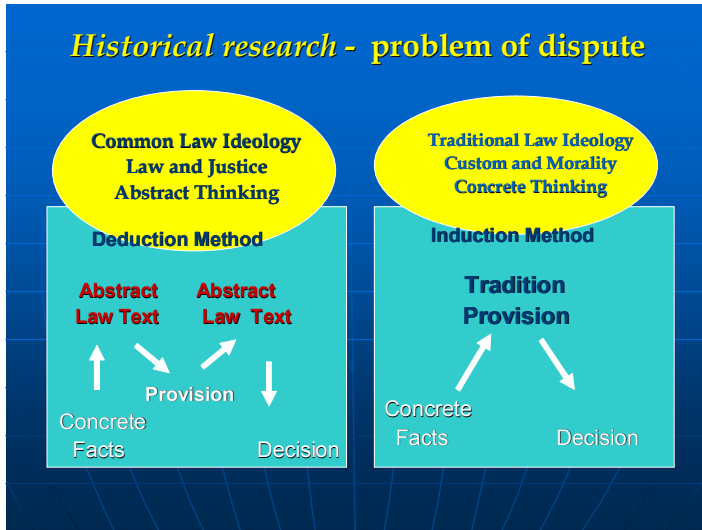
Chart 1

<p>The Problem of dispute — a practical example How to resolve the legal dilemma, which come from difference between Modernized civilization and Ancient civilization.</p>	
X	Y
"Y is guilty of hurt."	"Y is not guilty of hurt"
"Because Y beat my son."	"Because Y is a teacher."
"Offender is always guilty."	"Teacher must perform his duties."
"The guilty must be punished."	"Teacher must not be punished."
"The criminal law provided so."	"The traditional law and religion defined so."

Source: Made by the Author, according to practical example of School Caning.

2. *Historical research - problem of dispute* (See Chart 2-1)

Chart 2-1



Source: Made by the Author, For Common Law Ideology and Traditional Law Ideology

-Problem solving and Application of Common Law and Traditional Law- (See Chart 2-2)

Chart 2-2

	Common Law Ideology	Traditional Law Ideology
Judiciary before Pre-WWII	It prohibited by the Penal Code for 'hurt'. It is an offence under such law.	Caning by Teacher to admonish students was not amount to an offence. It is recognized as Myanmar custom.
Judiciary after Post-WWII	The Penal Code still prevails for nearly 150 years. The offence 'hurt' is same as before.	It is still practiced and most of people still recognized as Teacher's duties.

Source: Made by the Author, For problem solving and application of law.

3. The problem of judge

Who is the man to resolve the legal dilemma, And to be selected from difference between the modernized civilization and ancient civilization. (See Chart 3)

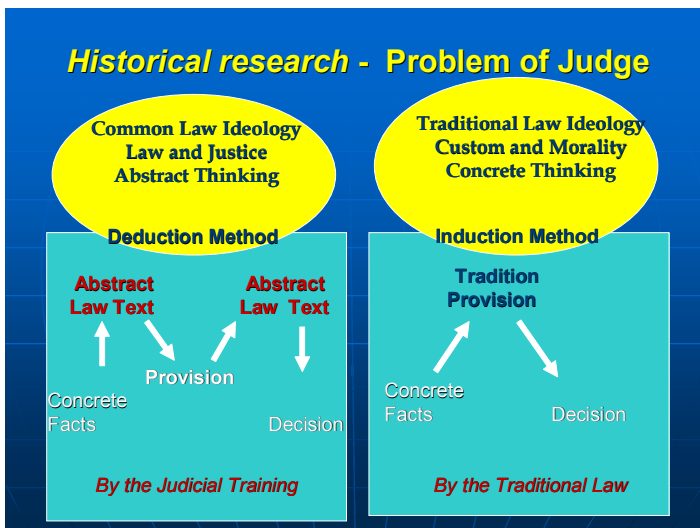
Chart 3



Source: Made by the Author, For the question how to select a judge between modernization and Ancient civilization.

4. Historical research - Problem of Judge

Chart 4-1



Source: Made by Author: For the problem of Judge

Chart 4-2

	Common Law Ideology	Traditional Law Ideology
Judiciary before Pre-WWII	It prohibited by the Penal Code for 'hurt'. It is an offence under such law. An offender must be tried by the Law.	It is duties of teachers to admonish the students and all Myanmar society and also Buddhism are accepted.
Judiciary after Post-WWII	The Penal Code still prevails for nearly 150 years.	It is still practiced and most of people still recognized teacher's duties and religious faith.

Source: Made by Author: For the problem of Judge - how to resolve the legal dilemma

I. Judiciary before Pre-WWII

a. Myanmar Traditional Judiciary

Myanmar has flourished its own culture and historical background and can be seen much material evidence from very ancient times. Transition of urban civilization as ancient city-states was made up in the 2nd Century BC. The written and reliable evidences are available only from Bagan dynasty onwards and the first unified Myanmar had established in 1044 A.D.³ There were 3 unified Myanmar Empires with 7 dynasties in Myanmar history and the capital had moved from place to place and from time to time.

With the history in ancient Myanmar, it can be said that Myanmar traditional judiciary started even 5th century B.C. but that was perhaps too early. Myanmar civilization achieved a high level of development at Bagan era from middle of the 11th century to the end of 13th century.⁴ In 12th Century A.D., the Myanmar traditional judiciary had, as evidenced by reliable records, established itself in the judicial system.

Myanmar is a community of equals and the main ambition of Myanmar traditional justice is achieved harmony and peace in her society. The judges and arbitrators are primarily to give patient ear to the

litigants and gently guide them to compromise. The procedures are neither formal nor rigid. Decisions are guided by considerations of what is good for the peace and harmony of the Myanmar society at that time.

For the traditional judiciary, the Myanmar kings had the highest judiciary authority in his kingdom. Judiciary authority differs according to the location, type, or value of the cases. Judiciary hierarchy were King, Supreme Queen, Crown-Prince, Parliament-member Princes, Parliament-member Ministers, Judges appointed by the king, Mayor, Town-chief and village-headman.⁵

For studying of Myanmar traditional legal sources, ancient Myanmar Dynasties till Kone Baung Era in 18th Century ruled the country with those of (a) *Yazathats*, the King's Royal Edicts and Ordinances, (b) *Dhammathats*, legal rules and principles relating to Marriage, Divorce, Partition, Succession, Inheritance and Adoption etc. and (c) *Phyattons*, Judicial precedents decided by Courts, Benches and the King's parliaments.

Six classes of judges were recognized in the traditional hierarchy of Myanmar justice. The parties themselves, if they could argue out their dispute and reach agreement, were recognized as the best judges in their own cause. Or they could appoint one or more ad hoc arbitrators of their own. Then, there was unpaid but officially appointed and recognized arbitrators. Above this there was the district officer as judge. Then the Chief Civil Court at the capital and finally is the King, and combined as the entire Parliament, Supreme Court and Privy Council as one.⁶

Criminal justice was an administrative function, and there was the notion of the king's peace, to be kept by the punishment of offenders against state, of those who committed serious crimes such as murder, rape, abduction and robbery. It is observed that during the reign of the last two kings of Kon Boun Dynasty till the British colonial annexation, the criminal department and civil department were systemically founded.

Myanmar traditional judiciary was accurately based upon the customary law. It can be said that there were two categories of criminal and civil judiciary separately and also had the right to appeal on the decision of original court. The King was the highest authority of traditional judiciary and appointed the lower judges for subordinated courts.⁷ Old sayings of Myanmar traditional judiciary are; “let the graver offences be mitigated and the smaller ones be settled” and “let amity be ever-lasting and enmity be ephemeral”. In the sense of traditional judiciary, the purpose which had been practiced for many centuries was to arbitrate to reach a compromise with peaceful mean if possible before standing at trial.⁸

For the legal dilemma, the genuine traditional education under Myanmar ancient kingdoms was based on the Monastic education which is appropriate to build up the moral, to establish the basic for Myanmar culture and to nurture good moral character and literature.⁹

In Myanmar society, the status of a teacher is great, respectful and high not only in their school but also in social community. In view of religion, the status of teacher is placed on the same level together with the Buddha, the *Dhamma* or Teaching of Buddha, the *Sangha* or monk and the parents. The teacher is respected and given due regards by pupils present as well as former. The belief towards teacher is "Once a teacher in life will be last as teacher for all the life you lived."

There is old famous verse written by prominent Buddhist monk named Thingazar Sayadaw for main five duties of Teacher's; (a) teaching the arts, (b) good manners and morality, (c) leaving nothing for himself, (d) warding off dangers, and (e) referring to other suitable specialists - Which a teacher should discharge. The verse shows how a teacher has to observe high moral, right attitude, correct ethical standard and selfless devoted duties to train and nurture their pupils to become good and highly educated citizens of the country. In ancient Myanmar society, the school caning was accepted for admonishing for student and presumed not as corporal or cruel punishment for either society or student.

b. The Judiciary under the British Colonial Regime

The British started to rule parts of Myanmar in 1826, 1852 and the whole country in 1885 as a province of British India Empire. Myanmar was first placed under a Chief Commissioner, then a Lieutenant Governor in 1897, and then a Governor in 1923, and ruled a part of British India until separation in 1937.¹⁰

The operation of the *Yazathats*, the King's Royal Edicts and Ordinances, and statue laws of ancient Myanmar king faded gradually after the first and second Anglo-Burmese wars and ceased totally after the British annexed the entire country. However, some of the Myanmar Customary Laws including the *Dhammathats*, legal rules and Principles relating to Marriage, Divorce, Partition, Succession, Inheritance and Adoption etc., had been applied by the courts of the colonial period.¹¹

In Myanmar even herself, the Shan, the Kayah (Karen) state and the hilly regions were administered separately from Myanmar proper. The Arakan Hill District Laws Regulation, 1874 was prescribed for Rakhine hills area and later, the Arakan Hill District Laws Regulation was substituted in 1916. In 1886, the Shan State and Kachin State were also formed as scheduled Districts under the Scheduled District Act, 1874.

Also in 1886, the Shan state was given a specific status under the Upper Burma Law Act. In that year the Court of the Judicial Commissioner of Upper Myanmar was also founded. In 1888, the Shan State Act was prescribed and the Shan *Saw Bwas*, chieftains, were given limited powers under the Sanad Document

A Report on the Development of Judiciary in the Union of Myanmar (Tun Tun Aung)

in civil, criminal, taxation and administrative matters. After that the Shan State Act was repealed and the Act of Burma Laws was prescribed in 1898 and extended to the Shan State.¹²

The Karenni area i.e. the Kayah State was placed under the control of the Karenni Chief with the advice and supervision of the Shan State Deputy Commissioner under Sanad Document. The Kachin Hill Tribes Regulation, 1895 was also applied to the tribes in the Kachin hills region. The Chin State was placed under a separate control by the Chin Hills Regulation, 1896.¹³

When the British Imperialist came to South East Asia they introduced statutory laws on the basis of British Common Law system. They extended the laws originally promulgated in India and hierarchy of Indian Courts was imported to Myanmar. After conquering Myanmar, it was the typical the British colonial government that came to be built in Myanmar. The statutory laws which were designed on the British common law models for use in India were gradually extended to Myanmar as well.¹⁴

The codes of law which were imported wholesale into Myanmar from India, first as unofficial guides and later by formal extension, embodied in large measure the principles of the British common law. Myanmar received from India both the codes and the judicial interpretations, and thus received the British common law somewhat second-hand. The inevitable result was that the courts had to legislate to fill with British common law principles the "vast gaps and interspaces in the substantive law."

After the annexation of Myanmar by the British Government, Civil Courts and Criminal Courts were formed and the Code of Criminal Procedure, the Code of Civil Procedure, the Indian Penal Code and all sorts of Civil laws were introduced and extended throughout the country. The Indian Penal Code, drafted and adopted in 1860, the Indian Evidence Act of 1872, and the Code of Criminal Procedure of 1898 were among the earlier imports from India to Myanmar.

Legislation for Myanmar was done in India for several decades, and by the time legislative powers passed to councils of Myanmar in 1937 the import of the codes and the judicial principles from India was completed, and it was left to the highest courts in the country to harmonize as best as they could between the imported laws and the indigenous laws and current customs of society. Colonial judiciary came to be settled more and more with formal laws and legal forms imported from British India but the gap between the law and the society in Myanmar appeared to widen with time.¹⁵ Most of the imported Codes were intended to enact for British India and her society only and imported to Myanmar without considering the differences of society.

After annexation of Lower Myanmar, the Central legislature turned its attention first to British

Burma which was then under a Chief Commissioner as *ex officio* Judicial Commissioner with the power of a High Court. By Act I of 1863 six grades of Courts, apart from the Recorder's Court and the Small Causes Court which were to be set up later, were established. The Recorder's Court was established both at Yangon and Mawlamyaing cities and it had full powers of civil and criminal jurisdiction.¹⁶

An appeal from Recorder's Court laid in civil cases to the High Court of Bengal where there was some pecuniary limitation for such appeal. Within territorial limits the Recorder exercised the powers of a Court of Session under the Code of Criminal Procedure. By Act VII of 1872, the Recorder's Court at Mawlamyaing is abolished and the judicial system of the Lower Myanmar was substituted under a Judicial Commissioner who was invested with most of the powers of a High Court.¹⁷

In 1886 Upper Myanmar was annexed to British India, civil and criminal courts similar to those established in India were set up. The highest court was the Court of the Judicial Commissioner of Upper Myanmar.¹⁸ By the Act XI of 1889, the courts were established under the superintendence of the Judicial Commissioner. In 1900, a Chief Court composed of a Chief Judge and 3 or more Judges was established by Act VI as the highest appellate court for both civil and criminal cases in Lower Myanmar.

In 1922, a High Court of Judicature at Yangon was established by Letters Patent under the Government of India Act, 1919 and it had been abolished both the Chief Court of Lower Myanmar and the Court of Judicial Commissioner of Upper Myanmar.¹⁹ Therefore, it exercised original civil jurisdiction over the entire country.

By the enactment of the Burma Courts Act of 1922, four grades of Civil Courts were established and the ascending scale was made up of the Township Court, the Sub-divisional Court, District Courts and Divisional Court. And also four grades of Criminal Courts were established and these courts were Courts of Session, Magistrates courts of First, Second and Third classes with the provision of Code of Criminal Procedure.²⁰

After the separation of Myanmar from British India, the jurisdiction and powers of the Yangon High Court were further defined by the Government of Burma Act, 1935. Under that Act, the British government appointed directly the Governor of Myanmar. Myanmar was also separate from India's dependency. The High Court of Judicature at Yangon was the highest court and had the all the powers of appellate jurisdiction upon all the territories in Myanmar.

The impact of English law has not effect appreciably the ancient customary laws in Myanmar such as Hindu, Mohammedan and Buddhist Laws which form the rule of decision in any question to be

decided by the Court regarding succession, inheritance, marriage or caste or any other religious usage or institution except in so far as such laws have by enactment been altered or abolished or are opposed to any custom having the force of law.²¹ Such ancient customary laws and some indigenous rules and regulations in Myanmar were performed with current custom and her society even by the British colonial judiciary and its courts.

As for School caning, even in colonial pre-WWII regime, the traditional custom and concept upon teacher was still same with our monarchical regime. All the teachers followed the traditional code of conduct towards student. The status of teacher was also accepted as before that regime and was highly respectful person in all corners of Myanmar society. The concept of school caning as admonishment was still practicing in not only urban but also rural area in Myanmar society as tradition and custom. Even in colonial period, in 1931 roughly half the male population of Myanmar was literate and about 14% of the female population.²²

c. The Judiciary under the Japanese Occupied Regime

In 1942, the Myanmar's Patriotic Force with Japanese Army attacked and conquered the whole country. On 1st August 1943, Japanese Army enacted the Law regulating the Administration of Myanmar and granted Myanmar so-called Independence. According to Section 23 of said Law, all Myanmar existing laws, Indian Acts and Myanmar Acts continued to be applicable insofar as they were not inconsistent with this regulation.

Judiciary during Japanese occupation, it was mainly administered by military tribunals.²³ All the time of Japanese's occupation, however, the same judiciary and laws were applied: the customary laws of the family, the British codes, and even the common law of England. The Majority of the judges and magistrates who reappointed under the occupation were the same people who had served before. Thus, for judiciary under Japanese occupation had learnt to be same system as previous British ruling judiciary.²⁴

II. The Judiciary after Post-WWII regime

a. Judiciary after Independence

Myanmar Patriotic army fought back the Japanese Army and the Japanese retreated from Myanmar in 1945. After retreating Japanese Army, the British reoccupied again. The British Evacuee Government came back to Myanmar and ruled once again under the Government of Myanmar Act, 1935. The

judiciary was same as before the Second World War.

On January 4, 1948 Myanmar broke away from British Empire and became a sovereign and independent State. For Myanmar, the Indo-British legal system which has as its basic the British conception of justice, equity and good conscience has been still continued. This system has been molded by centuries of experiences to suit the varying complexities of local needs.²⁵ By the constitution of the Union of Myanmar, 1948²⁶ Myanmar was formed as a quasi Federal Union based on Parliament Democracy system and with a governmental system in which the cabinet was responsible to a bicameral legislature made up of the Chamber of Deputies and Chamber of Nationalities.²⁷

Although Myanmar as a sovereign and independent State, Indo-British Legal system, which has as its roots in British conception of justice, equity and good conscience had been continued as a basic and vital function of her legal system. It was also enacted her Constitution 1947 and principles and provisions of Judiciary had concluded.²⁸ The judiciary changed along with the constitution as an independence state. But some old laws which are inconsistent and out of tune with her social, political and economic system were amended and repealed as and when necessary. According to Section 133 of Constitution 1947, it was invested to institute Courts and appoint the judges by law and Section 134 provided of courts in two categories, original and appellate courts.

By the Constitution 1947, it was classified the courts into four and those were Supreme Court, High Court, District Courts/ Session Courts and Additional District Courts/ Township Courts. The Supreme Court was constituted by Section 136 of Constitution 1947 and Section 3 of the Union Judiciary Act, 1948 and was the highest court. The High Court had also formed by Section 134 of Constitution 1947 and Section 13 of the Union Judiciary Act, 1948.²⁹ After Independence, it had been codified all laws concerning with courts and judicial system and promulgated the Courts Act, 1950 and enforced in 1st April 1951 to whole country. It provided on constitution and formation of Courts and its Jurisdiction, Administration of Justice and appointment of Judges and staffs.

In 1953, the States' Civil Courts Act was promulgated and all states' civil courts were constituted in particular States. For States' judiciary was different with other divisions and the local minority traditional judiciary, rules and regulations enacted by the regime of British colony played a vital role and still practiced in such particular state. Other civil courts for states of Shan, Kachin, Kayah and Kayin, the State's Courts Act 1953 was enacted. By such Act, District Civil Courts, Additional District Civil Courts, Sub-divisional Civil Courts and Township Civil Courts were founded in some specific territories in such States.³⁰

The Supreme Court and High Court issued the court directives from time to time for correctly and speedily in administration of justice. It was codified and published all court's directives from 1946 to 1970 as one volume.

For civil judiciary, under section 5 of the 1950 Courts Act, for civil courts except Supreme Court, High Court and other civil courts established by any other existing laws were formed as District Civil Courts, Additional District Civil Courts, Sub-divisional Courts and Township Civil Courts. Besides these civil Courts, there were the Yangon City Civil Court, the small cause courts in certain territories and other special civil courts constituted by special Acts.³¹

As for criminal judiciary, the Criminal Courts other than Supreme Court and High Court were formed as Session Courts, Additional Session Courts and the Courts of Magistrates empowered by First, Second and Third Class.³² Moreover, the 2 Juvenile courts were constituted in Yangon and Mandalay cities in accordance with the Child Act, 1955.³³ It was also established the Special Criminal courts and Special Criminal Appellate courts under Special Crimes (Tribunal) Act.³⁴

According to Constitution, 1947, the salient characters of Supreme Court were the powers to interpret the Constitution, to review on any other law in conformity with Constitution, to decide on any decision in conformity with Constitution and to issue the writs. The Supreme Court was the highest authority of judiciary for administration of justice and had administered of appointment, promotion, transfer and etc. of judges and administration of Courts.

The legal sources, including existing Laws and Acts, which were in force during British colonial regime shall continue to be in force subject to that Constitution, 1947 and to the extent to which they were inconsistent therewith.³⁵ The Laws Revision Committee is established and reviewed on laws, interpreted the laws from English into Myanmar, drafted the new laws for current system as a newly independence state and codified 13 Myanmar Code volumes which are still in force and prevail till now. Among the 435 laws in 13 Myanmar Code volumes, 219 laws are repealed and 216 laws are still prevailing. During the Parliament Democracy system from 1955 to 1962, Myanmar Legislature enacted 334 new laws, repealed 156 laws and 178 new laws are also prevailing up to now.³⁶

b. The Judiciary under the Socialism

On 2nd March 1962, the revolutionary Council took over the sovereign powers and the judicial system was transformed into socialist system. The Revolutionary Council suspended the Supreme Court and

High Court and established the Chief Court instead. But the Chief Court had also empowered jurisdiction and duties same as the former Supreme Court and High Court. It was also prevailed all subordinate courts as previous judicial system after independence. Other Special Criminal Courts were also established by the Special Criminal Courts Law and empowered with jurisdiction of Session Courts. Those were composed of 3 judges of one chairman and two members.³⁷

On 7th July 1972, the Revolutionary Council released a notification of judiciary in transformative period to Socialism and it was provided the formation of Courts other than Chief Court were Divisional and State courts, Township courts and Ward and Village-tract courts.³⁸ The Revolutionary Council promulgated new laws, repealed old laws and amended the laws towards to Socialist Republic Union and economic system. The judiciary had changed a new judicial system of all people's courts being consisted of 3 People's representatives and decided the cases by people's judicial members.

The Myanmar was forwarded with new system based on Socialism and drafted a new Constitution of Socialism. In 1974, the new constitution was ratified by the People's parliament on support of people. The Central Court was established and the judiciary was also properly changed from single judge bench to people's Judicial bench consisted of 3 members of People's representatives. Furthermore, the Judges were elected people representatives and judicial officers performed as judicial advisors for such People's judges.

After the 1974 Constitution, Myanmar formally changed her name as ` Socialist Republic of Union of Burma` and based on centralized system. The Council of People's Justice was highest organ of administration of justice.³⁹ Section 96 of Constitution and by the Council of People's Justices Law, 1974, all the Courts' councils were formed as the Council of People's Justices, State Judges' Committees and Divisional Judges' Committees, Township Judges' Committees, Ward Judges' Committees and the Village-tract Judges' Committees⁴⁰ from 1974 till 1988. All judges' Committees exercised the civil and criminal jurisdiction in accordance with the Council of People's Justices Law and other existing laws. The new feature of the judicial system in this period was the participation of working people in all levels of courts. From 1962 to 1988, Myanmar Legislature enacted 307 new laws, repealed 101 laws and 206 new laws also exist up to now.⁴¹

c. Present Judiciary

Since the prevalence of law and peace and tranquility of the state were in danger, the State Law and Order Restoration Council took over the sovereignty of State on 18th September 1988 and repealed the

Constitutional Law, 1974 and abolished the mechanism of Socialism. Furthermore, in 1997 it is reorganized as the State Peace and Development Council (SPDC) in order to carry out its task of making Myanmar as a modern, developed nation. The present judicial system was adopted on the 26th of September, 1988 when the State Law and Order Restoration Council promulgated the Judiciary Law, 1988 for the formation of the Courts at different levels and the administration of justice in the Union of Myanmar. The Council promulgated the Judiciary Law, 1988⁴² and established the Supreme Court and its subordinate courts for new administration of justice and appointed Chief Justice, Deputy Chief Justice and Justices for the Supreme Court. The present judiciary is aimed to be bridged for future Constitutional Law and Judiciary in conformity with new Constitution.

According to the Judiciary Law 1988, it is promulgated and constructed the Supreme Court and its subordinated Courts. The Supreme Court is the highest and final appellate court. The presiding system of judiciary is changed into single judge bench system except for some special bench composed of two or more judges by the Judiciary Law or other special Law.

The State Peace and Development Council has conferred judicial powers upon the judges, who are government service personnel by promulgating the Judiciary Law, prevalence of law and order and thus, the judicial system which is beneficial to the public interest has been adopted.⁴³ Under the Judiciary Law, the Supreme Court, State and Divisional Courts, District Courts and Township Courts are established in the Union of Myanmar. It was subsequently repealed by the present Judiciary Law, 2000⁴⁴ which was promulgated on the 27th June, 2000 by the State Peace and Development Council.

Under the Judiciary Law 2000, the courts are established in the Union of Myanmar - the Supreme Court, the State or Divisional Courts, the District Courts, the Township Courts⁴⁵ and the specific Courts established by other special laws to trial the juvenile, municipal and traffic offences. It has been empowered to exercise both civil and criminal jurisdiction to all levels of Courts by the Judiciary Law, 2000 and also by any other existing laws.

As for present Judiciary Law, 2000 and judiciary, judicial principles⁴⁶ for adjudicating the cases at different levels of the Courts are as follows:

- (a) Administering justice independently according to law;
- (b) Protecting and safeguarding the interests of the people and aiding in the restoration of law and order and regional peace and tranquility;
- (c) Educating the people to understand and abide by the law and cultivating in the people the habit of abiding

by the law;

- (d) Working within the framework of law for the settlement of cases;
- (e) Dispensing justice in open court unless otherwise prohibited by law;
- (f) Guaranteeing in all cases the right of defense and the right of appeal under the law; and
- (g) Aiming at reforming moral character in meting out punishment to offenders.

According to present judiciary, the Supreme Court is the highest court for all its subordinate courts in Myanmar and administers all functions of administrations of justice as for the matters related to the supervision and administration of courts, judiciary and court management and the appointment of judicial officers and the designation of duties, rights and privileges of judges.

As the ascending designations of judicial personnel for appointing judicial occupations, Judicial Officer Grade 4 is appointed as Deputy Township Judge in subordinate court or also Deputy Staff Officer at Supreme Court or other court's administration, Judicial Officer Grade 3 as Township Judge or Additional Township Judge or Staff Officer, Judicial Officer Grade 2 as Deputy District Judge or Assistant Director, Judicial Officer Grade 1 as District Judge or Deputy Director, next up to one as Divisional or State Judge or Additional Divisional Judge or Director and the highest is Director General in Supreme Court.

The present system of judicial recruitment in the Union of Myanmar, almost all the Judicial Officers or the Judges were normally recruited from among the persons graduated from the Institute of Laws, Yangon University and the other Universities. In addition to that, those who were graduated from the two-year Registered Lawyers' Course which is a post-graduate course were also recruited. All these law institutes and courses were conducted and funded by the government.

Recruitments to judicial service were made at single point of entry. The minimum educational requirement for a candidate is either a Bachelor's degree in law from a recognized University or a Bachelor's degree in any subject plus a Registered Lawyers' certificate. Selection was made after the candidates appear in written examinations which include proficiency in languages both Myanmar and English, laws and general knowledge of current affairs both internal and international are also included. Those who passed the written examinations were still subjected to personal interviews and psychological tests. The selected candidates are appointed as Judicial Officer Grade 4 which is the lowest rank in judicial service.

As the practice of training for pre-service training, all of government servants from all departments had to attend the institute called the Central Institute of Public Services. The newly appointed Judicial Officers were sent to the Central Institute of Public Services for an initial training of public servant for a

A Report on the Development of Judiciary in the Union of Myanmar (Tun Tun Aung)

period of about three months and it was followed by on-the-job training course on criminal, civil, administration of court and logistics subjects theoretically at the Supreme Court and practically at the Supreme Court and its subordinate courts. On completion of training courses, the qualified trainees are appointed as Deputy Township Judges.

For other trainings for judicial personnel in-service, Subsequent trainings for the appointed judge throughout his or her career are Refresher Courses for short term and advanced level of senior judges, Seminars and Workshops etc. conducted by the Supreme Court. According to present Judicial Education, Changes and progress of the country's political, economic systems and social environments necessitated the judges to be in tune with the times and up to date, if not ahead in all fields. So refresher courses, workshops, trainings and seminars were conducted regularly. Some lasted days, others a few months. Lectures and discussion topics included laws, procedures, administrative matters such as preparation of budget, accounting procedures, inspection methods, logistics, periodical reports and returns and lately even language especially English.

The Supreme Court usually sponsored seminars once a year. The state and divisional judges are required to attend these seminars. Agendas include among others the policies of state's system, directives and landmark rulings of the Supreme Court, methods for prevention of bribery and corruption, delay reduction methods and consistency in punishment. Many problems, difficulties and experiences encountered by the lower courts were exchanged and shared by the participants in the presence of the Judges of the Supreme Court and explanations and solutions were given by the responsible officials of the Supreme Court.

Another method applied by the Supreme Court to increase the education of the judges is to rotate them from one region to another. Myanmar with a population of 51 millions is made up of 135 national races with diverse customs and cultures. So transferring the judges from one region to another, from the city to the remote places and vice versa has the effect of widening their knowledge and perception of the country thereby making them more broad-minded, compassionate, deliberative, mature and wiser and in short, a better and more learned judges.

The Supreme Court is responsible for the smooth functioning of all subordinate courts and the efficiency of judges. So the training courses for judicial officers were given by the most experienced senior personnel of the Judicial Service career. The emphasis is on the practical side, especially the day to day trial of a case and its speedy disposal.⁴⁷ The Supreme Court has provided the maxims that - "Dispense justice fairly and speedily", "Follow the procedures", "Be free from bribery and corruption", and "Maintain the

integrity of court with probity". From 1988 to November, 2005, Myanmar Legislature enacted 186 new laws, repealed 9 laws and 175 new laws are also prevailing up to now. From British colonial judiciary up to now, 777 laws exist in force in Myanmar.⁴⁸

Since 1988, Myanmar changed its political system based on market-oriented economy. She called on National Convention for drafting a new constitution in line with her future system. Hence, it will be required to take into consideration for her history and society, all former systems and experiences, and its present situation as time and growth demand. The judiciary of one state is vitally based on not only its political, economic and social circumstances but also her traditional custom and society.

In drafting basic principle of new constitution, it has been aimed to establish the judiciary and formation of courts as the Supreme Court of the Union, High Courts of the Regions and States, Courts of the self-administered division, Courts of the self-administered zones, District Courts, Township Courts, other Courts constituted by the law.⁴⁹ Present judiciary in Myanmar is expected and practiced as for the basic of future judicial system in proportion to new drafting constitution.

In proposed Constitution's draft, the judicial power of the State is, in accordance with constitution or by the other laws, distributed to the Supreme Court of the Union, High Courts of the Regions and States, Courts of the self-administered division, Courts of the self-administered zones, District Courts, Township Courts, other Courts constituted by the law and judges appointed in accordance with law; to the Courts Martial; and to the Constitutional Tribunal. The judges appointed by law are to take charge of the entire judicial affairs across the whole Union at the courts established by the Constitution or any other existing laws.

Subject to the future Constitution, necessary laws are to be enacted for the proper judicial powers of the Union Supreme Court, the High Courts of regions or states and their subordinate Courts at different levels, and the effective functions and systems of respective courts; or for the matters related to the supervision and administration of courts, judiciary management and the appointment of judicial officers and the designation of duties, rights and privileges of judges. The present judiciary is the forefront to the future system that is lead as pillars in the Myanmar current judicial system.⁵⁰

As legal dilemma for school caning, it presumed the duties of teachers to admonish for students for many decades after WWII. For traditional concept, it must be accepted by society and parents. On the other hand, the Penal Code is prohibited for voluntarily hurt and it is amount to an offence. But most of regions and its communities accepted that school caning was for the benefits of students and their future. And Ministry of Education has also issued directives three times, starting from the 1950s saying there shouldn't be

any corporal punishment in schools.⁵¹

As to public thought and opinion in Myanmar after 1990s, the parental interest on students and the view of some parents and students in some urban area are gradually changed that school caning is inappropriate as punishment for the benefit and future of student. In 1993, the Child Law was enacted and provided to protect the rights of child.⁵² Parents and Teachers Associations (PTA) at schools also discussed on this dilemma and some are not agreed in legal perspective because it could be amount to corporal punishment for students. But some of parents and students are still accepted by themselves it as a good tradition to admonish student's morality. In traditional perspective, the duties of teacher are not only to teach their students to become clever, polite but also highly educated citizens of country. The dilemma on school caning is critical and complex based on regional area and its community concept.

A discussion about school caning, parents and teachers are responsible for the cultivation of a child's talents, personality and manners and at times children will need to be disciplined. For this reason caning, an example of corporal punishment is commonly used by parents and teachers alike as a means of punishment. Some people believe caning is effective and many believe it is not.⁵³

Conclusion

The principles and practice of English Law have shaped for good and all the laws of Indo-British legal system to Myanmar. The very conception of law has been re-oriented. Law is regarded as expression of justice. In Myanmar, the Supreme Court and its subordinate courts have performed all the functions of judicial mechanism and present judiciary. Most of the legal principles and practices from Common Law system are still extensively applied in courts for many decades for fair and just of people. But on the other hand, those will be not appropriate to apply with current changing system and present custom of society; it will be filled up by legislation as enactment for new laws, amendment and repeal for old laws and by judicial precedents decided by courts.

To command the confidence of the public for judiciary, it is essential that the Court should act in absolute good faith and adjudicate fair to both parties. The legal maxim still extensively practiced in Myanmar's Court is "Not only that justice is done, but also that justice should seem to be done". These cardinal principles of justice and liberty in framing and administering the law constitute a significant legacy of Common Law rule. It is to be fervently hoped that they may long endure. Living laws are needed for a

living society, and the bloodstream of law needs to be constantly renewed and nourished so that it may accommodate changes in its continuity, youth in its age.⁵⁴

To conclude the legal dilemma on school caning with my opinion, it must not be practised on the grounds not only by the enacted law but also for benefit of student. On the point of my view, it can be affected mentally and physically disadvantages on the student and must be abolished on school caning which could be amount to an offence. But it is a controversial issue in the society between the common law concept and traditional law concept. The concept of school caning is changing upon the regional areas and community but most of Myanmar society and people still accepted as admonishment for the benefit of student. There is no offence accusing on the ground of such school caning before Courts until now.

It can be seen from the above that the history and practices of the Myanmar Legal System and particular judiciary are based upon the principles of the Common Law Legal System and mixed with Myanmar Customary Law system. The present Judiciary needs to take a hand in developing the law to harmonize the statutes and the living customs and changing circumstances of the society.

Endnotes

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