



The Judicial System and Court Proceedings in Myanmar

Introduction

Situation of the Union of Myanmar

Total Land Area

population

outh.

ayin,Chin,Bamar,




Country vast potential

Myanmar has a wide variety of ecosystems such as :

- land,
- mountain,
- forest,
- wetland,
- coastal and
- marine ecosystems.

The country is rich in resources and enjoys an unusually great diversity of flora and fauna. Forests, wetlands including mangroves, swamp forest, lakes, marshes and seas provide a natural habitat for this large variety of biological species. Myanmar's rivers, numerous streams, creeks, lakes and seas also provide home to a large variety of fresh water and marine fish, shrimps and prawns species.

Myanmar has rich mineral deposits and also has a large potential of energy resources such as hydro carbons and a great potential of hydropower.



“Burma is fairly rich in Minerals, Gold, Silver and other valuable metals have been found in small quantities in various parts: fine marble is work near Mandalay, Coal of fair quality has recently been discovered in several parts of Upper Burma. Mogok supplies the world with rubies: and sapphires are found there, and in the Shan States. Petroleum is obtained in large quantities at Yenangyoung in Upper Burma, and smaller quantities in Arrakan and else-where. Jade and amber are extracted in considerable quantities in the northern part of the people. Cotton, sesames, and tobacco are extensively grown and orchards are found near every village but rice covers about five-sixths of the total area under cultivation. The soil is lavish in its yield, requires little labour and no artificial stimulus beyond the ash of the past year’s stubble, which is burned down and worked into the land. Upper Burma though inferior in point of fertility to the low-lying tracts of Lower Burma, is far from unproductive. The chief crops are rice, maize, millet, wheat, pulses, tobacco and sesames”.

Original and Development of Legal System in Myanmar

Legal Framework and Judicial Administration In olden days

Dammathat - collections of *Corpus Jurist* of Myanmar customary traditions conventions and *ratio decidendi* of eminent judges and learned personal in their decisions or writings, collected and consolidated versions of Myanmar Customary Law throughout the ages. Indeed, *Dammathets* are composed of Legal Rules and Principle for Civil matters and Civil Law; mainly relate to Marriage, Divorce. Partition, Succession, Inheritance and Adoption etc. Those Legal Rules and Principles are based on egalitarian Rights relating to equality under Law; and still being apply by the present day courts of the Union of Myanmar.

Phyahton – the Judicial decisions passed by Courts, Benches and the King's Hluttaw; like the present day Law Reports (Rulings) of Supreme Court.

Legal System at present

The legal system of the Union of Myanmar is a unique combination of the customary law of the family, codified English common law and recent Myanmar legislation. The principles of English common and statutory law were implanted in Myanmar by the British law codes of the pre-independence India Statutes. These statutory laws, based on and incorporating the English common and statutory law of the time, include the Arbitration Act, Companies Act, Contract Act, Evidence Act, General Clauses Act, Negotiable Instrument Act, Registration Act, Sale of Goods Act, Transfer of Property Act, Trusts Act and the Civil and Criminal Procedure Codes.

Where there is no statute regulating a particular matter the Courts are to apply Myanmar's general law, which is based on English common law as adopted and molded by Myanmar case law, and which embodies the rules of equity, justice and good conscience. Where there is no relevant statutory general law on point, the Myanmar Courts are obliged to decide the matter according to justice, equity and good conscience.

Development

- ❑ After becoming an independent State, the Supreme Court and High Court were established and Courts at different levels were also formed under the Union Judiciary Act, 1948.
- ❑ On 2nd March 1962, the Revolutionary Council took over the sovereign powers and the judicial system was transformed into socialist system. The Revolutionary Council abolished the Supreme Court and the High Court and established the Chief Court instead.
- ❑ Under the 1974 Constitution, 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 level of courts.
- ❑ On the 26th of September, 1988 when the State Law and Order Restoration Council promulgate the Judiciary Law, 1988 for the formation of the Courts at different levels and for the administration of Justice in the Union of Myanmar. It was subsequently repealed by the Judiciary Law, 2000 which was promulgated on June 27, 2000 by the State Peace and Development Council, for the promotion of the Judiciary, and to revamp the formation of Courts.

The present Judicial System of Myanmar

- ❑ On the 28th of October 2010, the Union Judiciary Law had been enacted to adopt the present Judicial System under the Constitution of the Republic of the Union of Myanmar, 2008

Judicial Principles

The administration of justice shall be based upon the following principles (Section 3 of the Judiciary 2010)

- (a)** to administer justice independently according to law;
- (b)** to dispense justice in open Court unless otherwise prohibited by law;
- (c)** to obtain the right of defence and the right of appeal in cases according to law;
- (d)** to support in building of rule of law and regional peace and tranquility by protecting and safeguarding the interests of the people;
- (e)** to educate the people to understand and abide by the law and nurture the habit of abiding by the law by the people.
- (f)** to cause to compound and complete the cases within the framework of law for the settlement of cases among the public.
- (g)** to aim at reforming moral character in meting out punishment to offenders.

- ❑ No penal law shall have retrospective effect.
- ❑ Any person who committed an offence shall be convicted only under the relevant existing law at the time of its commission. Moreover, he shall not be sentenced with a penalty more than that which is applicable under the said law.
- ❑ If a person is convicted or acquitted by a competent court for an offence, he shall not be retried for such offence unless a superior Court sets aside such convicting or acquitting judgment and passes order for retrial.

Judiciary

Formation of Courts under section 293 of 2008 Constitution

S.293 - Courts of the Union are formed 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 law;
- (b) Courts martial;
- (c) Constitutional Tribunal of the Union;

Formation of Courts at Different Levels under Judiciary Law,2010

Under the Judiciary law, 2010 the following courts were established in the Union of Myanmar-

- The Supreme Court of the Union of Myanmar
- The High Court of the Region or the State
- Court of Self-Administered Division
- Court of Self-Administered Zone
- District Courts
- Township Courts
- Other Courts established by Law

THE FORMATION OF COURTS IN MYANMAR

THE SUPREME COURT OF THE UNION

HIGH COURTS OF THE REGION (or) THE STATE

COURT OF THE SELF-ADMINISTERED DIVISION

COURT OF THE SELF-ADMINISTERED ZONE

DISTRICT COURTS

TOWNSHIP COURTS

SPECIAL COURTS

**JUVENILE COURTS
(TO TRY JUVENILE OFFENCES)**

COURTS TO TRY MUNICIPAL OFFENCES

COURTS TO TRY TRAFFIC OFFENCES

The Supreme Court

Formation

The Supreme Court of the Union is the highest organ of the State Judiciary of the Union of Myanmar. The Supreme Court consists of team a minimum of 7 to a maximum of 11 judges, including the chief justice.

Jurisdiction

The Supreme Court is the highest court of appeal. It exercises both appellate and revision powers. It also has original jurisdiction which enables it to hear cases as the court of first instance. It is the only court in Myanmar which can try maritime cases in its original jurisdiction

Only the Supreme Court of the Union has original jurisdiction in the following matters-

- (a) Matters arising out of bilateral treaties concluded by the Union;
- (b) Other disputes between the Union Government and the Region or State Government except the Constitutional problems;
- (c) Other disputes among the Regions, among the State, between the Region and the State and between the Union Territory and the Region or the State except Constitutional problems;
- (d) piracy, offences committed at international water or airspace, offences committed at ground or international water or airspace by violating the international law;
- (e) Cases prescribed under any law;



Subject to any provision of the Constitution or any other law, the Supreme Court of the Union, has the jurisdiction on:

- (a) The appeal against the judgment, decree or order passed by the Supreme Court of the Union by exercising its original jurisdiction.
- (b) The appeal against the judgment, decree or order passed by the High Court of the Region or the State
- (c) The appeal against the judgment, decree or order passed by other Court in accord with law.

The Supreme Court of the Union has the jurisdiction on revision in accord with law against the judgment or order passed by a Court.

The Supreme Court of the Union has the jurisdiction on confirming death sentence and appeal against the death sentence.

The Supreme Court of the Union:

- (a) Has the Jurisdiction on a case transferred to it by its own decision.
- (b) Has the Jurisdiction for the transfer of a case from a Court to any other Court.

The Supreme Court of the Union:

- (a) Has the power to issue the following writs:
 - (i) Writ of Habeas Corpus;
 - (ii) Writ of Mandamus;
 - (iii) Writ of Prohibition
 - (iv) Writ of Quo Warranto;
 - (v) Writ of Certiorari;
- (b) At the time of the occurrence of the following situation, the right to claim the rights contained in section 377 of the Constitution shall not be suspended unless it is required for public security:
 - (i) in time of war;
 - (ii) in time of foreign aggression;
 - (iii) in time of insurrection;

Duties and Powers of the Supreme Court of the Union

The Supreme Court of the Union is the superior court of record and has supervisory powers over all courts in the Union and its decisions are binding upon all courts.

A case finally and conclusively adjudicated by the Supreme Court exercising its original jurisdiction, or a case finally and conclusively adjudicated by the Supreme Court on the final and conclusive decision of any court may, on being admitted for special appeal by the special Bench in accordance with the procedures, be heard and adjudicated again by the Special Appellate Bench. The Special Appellate Bench will consist of a total of 3 Justices including the Chief Justice. Only when substantial question are arisen will the Supreme Court interfere by way of appeal by special leave in criminal and civil matters. The decision of the Special Appellate Branch is final and conclusive.

The Supreme Court of the Union:

- (a) shall supervise all Courts in the Union;
- (b) may direct to adjudicate the important cases of the High Court of the Region or State, Courts of Self- Administered Division, Self - Administered Zone and District Courts by a bench consisting of more than one judge.

The Supreme Court of the Union is entitled to submit the bills relating to the judiciary to the Pyidaunsu Hluttaw in accord with the stipulated manners.

Appointments of Supreme Court Staff

The Chief Justice of the Supreme Court may, subject to such rules and restrictions as may be prescribed by the Pyidaungsu Hluttaw appoint so many and such clerks and other judicial officers as may be found necessary for the administration of justice and the due execution of all the powers and authorities granted to the Supreme Court of the Union.

High Courts of the Region or the State

Formation

The High Courts of the Region or the State are established under the Judiciary Law, 2010.

Composition

From a minimum of 3 to a maximum of 7 judges of the High Court of the Region or State including the Chief Justice of the High Court of the Region or State may be appointed in each High Court of the Region or State.

The President shall, in co-ordination with the Chief Justice of the Union, relevant Chief Minister of the Region or State, appoint a person who fulfils the qualification under section 310 of the Constitution and section 48 of this Law as the Chief Justice of the relevant Region or State, with the approval of the Region or State Hluttaw.

The President shall appoint the persons in respect of whom the Chief Minister of the Region or State co-ordinates with the Chief Justice of the Union, and who fulfill the qualifications under section 310 of the Constitution and section 48 of this Law as the Judges of the High Court of the Region or State with the approval of the Region or State Hluttaw.

Jurisdiction

The High Courts of the Region or State have the following jurisdictions in accord with law:

- (a) adjudicating on the original case;
- (b) adjudicating on the appeal case;
- (c) adjudicating on the revision case;
- (d) adjudicating on the cases prescribe by any law;

The High Court of the Region or State has the jurisdiction:

- (a) to adjudicated on a case transferred to it by its own decision within its jurisdiction of the Region or State;
- (b) to adjudicate on transfer of a case from any court to any other court within its jurisdiction of the Region or State.

© Original Civil Jurisdiction – unlimited pecuniary jurisdiction in original Civil Suit.

The High Court of the Region or State may, in exercising its jurisdiction, adjudicate on cases by a judge or a bench consisting of more than one judge as determined by the Chief Justice of the Region or State.

The District Court , The Court of Self- Administered Division; the Court of Self-Administered zone

Formation

The District courts of Self-Administered Division and Self Administered Zone are established under the Judiciary Law, 2010.

Composition

In every District Court, a District Judge is appointed by the Supreme Court of the Union. Judge may also be appointed by the Supreme Court of the Union depending on the volume of work. Those Judges are conferred with judicial powers by the Supreme Court of the Union in accordance with the provisions of the Criminal Procedure Code and Civil Procedure Code.

Jurisdiction

The District Judges Self-Administered Division and Self Administered Zone are conferred with original criminal jurisdictional powers, criminal appellate and revision jurisdictional powers according to the Criminal Procedure Code. They also invested with original civil jurisdictional powers, civil appellate and revision jurisdictional powers according to the Civil Procedure Code. As courts of original jurisdiction they hear and determine serious criminal cases and civil cases.

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|---------------------------|--|
| (1) District Judge | Pecuniary Jurisdiction to try original civil suit for a maximum value of 500 million Kyats |
| (2) Deputy District Judge | Pecuniary Jurisdiction to try original civil suit for a maximum value of 100 million Kyats |

The Township Courts

Formation

The Township courts are established under the Judiciary Law, 2010.

Composition

In every Township court a Township Judge is appointed by the Supreme Court of the Union. Additional Township Judges or Deputy Judges may also be appointed by the Supreme Court depending on the volume of work. Those Judges are conferred with judicial powers by the Supreme Court in accordance with the provisions of the Criminal Procedure Code and Civil Procedure Code.

A Township Judge is the officer in charge of court administration matters. He or she also has the power to distribute all cases received in the Township court to other judges of Township courts. But every judge has independent jurisdiction over cases assigned to him or her.

Jurisdiction

Township courts are mainly courts of original jurisdiction. The judges appointed to a Township court are Township Judges, additional Township Judges and Deputy Township Judges. Township Judges by virtue of their posts are specially empowered as Magistrates who can pass sentences of up to seven years imprisonment where as an Additional Township Judge, if he or she is especially empowered with such special magisterial powers, may award sentences not exceeding seven years. The remaining Deputy Township Judges can impose sentences according to their magisterial powers.

Some of the civil cases in which the amount in dispute or value of the subject matters is not exceeding 10million kyats are adjudicated in Township courts. They also exercise Juvenile Jurisdiction specially conferred under 1993 Child Law.

(1) Township Judge Pecuniary Jurisdiction to try original civil suit for a maximum value of ten million Kyats.

(2) Additional Township Judge Pecuniary Jurisdiction to try original Civil suit for a maximum value of seven million Kyats.

(3) Deputy Township Judge Pecuniary Jurisdiction to try original civil suit for a maximum value of three million Kyats.

Other Courts Constituted to Try Separate Cases

Separate court can be established either under special provisions in any law or in respect of those cases which occur irregularly in populous areas. Separate courts specially constituted by the Supreme Court to achieve speedy and effective trial under some special laws include:-

- Juvenile Courts**
- Courts to try Municipal Offences**
- Courts to Try Traffic Offences**

Juvenile Courts

The State Law and Order Restoration Council enacted the Child Law of 1993. The Child Law, 1993 was adopted to implement the rights of the child envisaged in the United Nations Convention on the Rights of the Child. In the administration of Justice in the Union of Myanmar a juvenile offender is usually tried summarily by a competent court irrespective of the severity of the offence. In ordinary circumstances the legislature intended the juvenile offender to be punished as leniently as possible so that he or she may be able to enter the mainstream of life with a clear conscience, confident, efficient and with high normal. To achieve that spirit, juvenile offenders cannot be sentenced to death or transportation for life, or whipping.

In accord with the Child Law, Township courts are conferred with powers to try juvenile offences. A separate Juvenile court (Yangon) has been constituted to try juvenile cases occurring at 20 townships in Yangon City Development Area. A separate Juvenile court (Mandalay) has been constituted to try juvenile cases occurring at 5 townships in Mandalay City Development Area. Apart from that, Juvenile court has been established separately township within the Court House.

Courts to try Municipal Offences

7 separate courts have been opened in Yangon after consultation with the Yangon City Development Committee to try municipal offences. Such offences include; violating provisions of the City of Yangon Municipal Act, Rules, By-Law, Orders and Directions still in force and those under the Yangon City Development Law enacted by the State Law and Order Restoration Council, 4 separate courts have also been established in Mandalay after consultation with the Mandalay City Development Committee, to try municipal offences.

Courts to Try Traffic Offences

In order to try offenders violating vehicle rules and road discipline, 7 separated courts in Yangon City Development area and 2 separated courts in Mandalay City Development area, exclusively for that purpose have been constituted in consultation with the Traffic Rules Enforcement Supervision Committee.

The Legal Profession

There are 2 classes of Lawyers in Myanmar. They are Advocates and Higher Grade Pleaders. Advocates are authorized to practise in all courts including the Supreme Court and Higher Grade Pleaders are licensed to practice in subordinate courts only, i.e. State and Divisional courts, District courts, and Township courts. Both classes of lawyers are also allowed to practise in all Revenue Tribunal, subordinate to the Ministry of Finance and Revenue and other separate courts.

In early 1997 there were approximately 6,400 locally qualified legal practitioners in Myanmar and still only a few resident foreign –qualified lawyers.

Legal practitioners in Myanmar are made up of "advocates" and "pleaders". Advocates are entitled to appear before any Court or tribunals in Myanmar. However, pleaders are only entitled to appear before those courts and tribunal for which they are specifically licensed (in practice, all courts except the Supreme Court.)

The activities of legal practitioners (*i.e.* advocates and pleaders) in Myanmar are governed by the legal Practitioners Act 1879 and the Bar Council Act 1926. The Legal Practitioners Act is mainly concerned with the entry qualifications, practice and discipline of pleaders, whereas the Bar Council Act creates the Bar Council (run along similar lines to Bar Council Act creates The Bar Council region), determines the necessary qualifications of persons wishing to practice as advocates and is responsible for the conduct of advocates.

The minimum educational requirement to become an advocate is a Bachelor of Laws degree (L.L.B), a post graduate Bachelor of Law degree (B.L) or a post graduate Registered Lawyer certificate (R.L) and three years practice as a pleader. In order to become a pleader (without the right to become an advocate), one must pass the Higher Grade Pleader's examination. To become a judicial officer or judge it is necessary to have completed the requirements for admission as an advocate and to pass a special examination held by the Public Service Commission.

A legal practitioner may, by private agreement, settle the terms of his/ her engagement and the fee to be paid for his/ her professional services, and may institute and maintain legal proceeding to recover any fee due to him/her. Legal practitioners are not exempt from liability in respect any fee loss or injury due to any negligence in the conduct of his/ her professional duties and may be sued in respect of such.

Judicial mottos

- Adjudicate as to the laws;
- Adjudicate fairly and speedily;
- Act as to the procedure;
- Maintain the integrity and reputation of the court.



Thank You

Court Martial

Under Section 319 - the Constitution of the Republic of the Union of Myanmar 2008

The Courts-Martial shall be constituted in accord with the Constitution and the other law and shall adjudicate Defence Services personnel.
(No other Court shall take cognizance of any cases relating with military personnel.)


The Constitutional Tribunal of the Union

Formation of the Constitutional Tribunal of the Union

- ❑ **Section 320** - The Constitutional Tribunal of the Union shall be formed with nine members including the Chairperson.
- ❑ **Section 321** – The President shall submit the candidature list of total nine persons, three members chosen by him, three members chosen by the Speaker of the Pyithu Hluttaw and three members chosen by the Speaker of the Amyotha Hluttaw, and one member from among nine members to be assigned as the Chairperson of the Constitutional Tribunal of the Union, to the Pyidaungsu Hluttaw for its approval.

Functions and Duties of the Constitutional Tribunal of the Union

- ❑ **Section 322** – The functions and the duties of the Constitutional Tribunal of the Union are as follows:
 - a) Interpreting the provisions under the Constitution;

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- b) Vetting whether the laws promulgated by the Pyidaungsu Hluttaw, the Region Hluttaw, the State Hluttaw or the Self-Administered Division Leading Body and the Self-Administered Zone Leading Body are in conformity with the Constitution or not;
 - c) Vetting whether the measures of the executive authorities of the Union, the Regions, the States, and the Self-Administered Areas are in conformity with the Constitution or not;
 - d) Deciding Constitutional disputes between the Union and a Region, between the Union and a State, between a Region and a State, among the Regions, among the State, between a Region or a state and a Self-Administered Areas and among the Self-Administered Areas.
 - e) Deciding disputes arising out of the rights and duties of the Union and a Region, a State or a Self-Administered Area in implementing the Union Law by a Region, State or Self-Administered Area;
 - f) Vetting and deciding matters intimated by the President relating to the Union Territory;
 - g) Functions and duties conferred by laws enacted by the Pyidaungsu Hluttaw(Parliament of the Union).

Effect of the Resolution of the Constitutional Tribunal of the Union

□ **Section 323** - In hearing a case by a Court, if there arises a dispute whether the provisions contained in any law contradict or conform to the Constitution, and if no resolution has been made by the Constitutional Tribunal of the Union on the said dispute, the said Court shall stay the trial and submit its opinion to the Constitutional Tribunal of the Union in accord with the prescribed procedures and shall obtain a resolution. In respect of the said dispute, the resolution of the Constitutional Tribunal of the Union shall be applied to all cases.

□ **Section 324** - The resolution of the Constitutional Tribunal of the Union shall be final and conclusive.