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# Understanding how the Burmese Legal System Works

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## Introduction

Myanmar, historically known as Burma, possesses a legal system that mirrors the tumultuous and diverse journey of the nation itself. With roots deeply embedded in the customs of the Bagan dynasty and subsequent royal periods, Myanmar's laws have evolved through centuries of indigenous tradition, complex colonial legacies, and shifting post-independence directives. To an outsider—and at times, even to its own citizens—the Burmese legal system is often seen as intricate, unique, and at times, opaque. Understanding how the Burmese legal system works is both a matter of practical importance and of appreciating the country's rich historical tapestry.

The story of Myanmar's laws begins with a foundation in customary norms codified in the Dhammathats, Royal Edicts, and judicial precedents from ancient courts. Mediation and restorative justice were hallmarks of early Burmese law, with emphasis on communal harmony and traditional dispute resolution. However, the transformation of Myanmar into a British colony in the late 19th century dramatically altered its legal landscape. The British introduced the common law model, statutory codes, and adversarial procedures—layering foreign principles onto existing local systems. Some customary law persisted, especially in matters of personal status, but the British legacy would come to dominate fields such as contract, criminal law, and commercial affairs.

The decades following independence in 1948 brought further change and complexity. The struggle to forge a national identity was reflected in judicial reforms, constitutional experiments, and the fluctuating authority of civil and military institutions. Various governments modified court structures, tweaked legal codes, and sought to balance between inherited colonial systems and indigenous norms. Today's Burmese legal edifice—anchored by the 2008 Constitution and the Union Judiciary Law of 2010—stands on the shoulders of these historic transformations.

The legal system in Myanmar is multifaceted and hierarchical, comprising a spectrum of courts from township level up to the Supreme Court of the Union. At its core, the law is shaped by a blend of sources: the Constitution, parliamentary statutes, principles inherited from English common law, and the enduring force of Myanmar Customary Law. Each of these sources interacts to create a legal environment that is neither wholly traditional nor fully modern, but rather a hybrid system reflective of Myanmar's complex realities.

Yet, the continued evolution of Myanmar's legal system has not been without significant challenges. Rule of law remains fragile, especially in the context of ongoing political instability, contested legitimacy, and enduring military influence. Judicial

independence, protection of human rights, and genuine access to justice are persistent concerns, especially in regions affected by conflict or governed by alternative justice systems. Corruption, outdated laws, and lack of transparency pose further obstacles, often undermining public trust in formal institutions.

This book is designed to provide a clear, accessible guide to the Burmese legal system, from its historical foundations to the present day. It explores the institutions, laws, and procedures that shape justice in Myanmar—covering both criminal and civil law—while also critically addressing the contemporary obstacles facing the pursuit of justice. By demystifying the structure and function of the legal system, the book aims to equip readers with the understanding necessary to navigate or engage with law and justice in Myanmar’s complex and dynamic society.

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## CHAPTER ONE: Historical Foundations of the Burmese Legal System

To truly understand the intricate workings of the Burmese legal system today, we must first embark on a journey back in time, to an era long before the arrival of foreign powers or the complexities of modern governance. The foundations of law in Myanmar are deeply rooted in the traditions and customs of the various kingdoms and dynasties that shaped the land for centuries, most notably during periods of consolidated rule such as the illustrious Bagan Dynasty. In this age of absolute monarchy, the legal landscape was a fascinating blend of royal authority, ancient custom, and the wisdom of learned judges.

The law of the land was not found in a single, codified document easily accessible to all, but rather in a confluence of distinct sources, each carrying its own weight and influence. Three primary pillars supported the legal structure of the pre-colonial Burmese kingdoms: Yazathat, the authoritative pronouncements of the reigning monarch; Dhammathat, the rich body of customary law that reflected the social norms and values of the people; and Phyat-htone, the accumulated wisdom found in the decisions rendered by the high courts and judicial bodies of the time.

Yazathat, literally meaning "King's Law," represented the direct will and legislative power of the monarch. These were royal edicts, ordinances, and decrees issued by the king, often in response to specific needs or to establish new rules and regulations for the administration of the kingdom. The king's word was supreme, and the Yazathat carried the undeniable force of law, binding upon all subjects. These royal pronouncements could cover a wide range of matters, from administrative regulations and tax collection to specific commands regarding public order or even moral conduct. They were a dynamic element of the legal system, allowing the ruler to shape the law according to the changing circumstances of the realm.

However, the king did not rule in a legal vacuum. The authority of Yazathat was often exercised within a framework that respected and interacted with the enduring force of customary law. This is where the Dhammathat comes into play, arguably the most distinctive and culturally significant source of pre-colonial Burmese law. The term "Dhammathat" derives from the Pali word "Dhamma," meaning righteousness, law, or truth, and "sattha," meaning treatise or text. These were essentially collections of legal principles and rules that had evolved over generations, reflecting the traditional ways of life, social customs, and ethical considerations of the Burmese people.

The origins of the Dhammathats are often traced back to ancient Indian legal

traditions, particularly the Hindu Dharmashastra, which provided a conceptual framework for law, duty, and righteous conduct. However, over centuries, these imported ideas were adapted, interpreted, and uniquely blended with indigenous Burmese customs and societal structures, resulting in a distinct body of Myanmar Customary Law. The Dhammathats were not simply static compilations; they were living documents, continually interpreted, elaborated upon, and sometimes even reformed by learned scholars, judges, and wise individuals who dedicated themselves to the study and application of these customary principles.

These legal treatises covered a vast array of civil matters that touched upon the daily lives of the populace. Issues such as marriage and divorce were governed by Dhammathat principles, laying out rules regarding spousal rights, the dissolution of marital unions, and the division of property. Laws of succession and inheritance were also primarily rooted in customary law, determining how property and titles were passed down through families. Adoption, a significant social practice, was likewise regulated by the rules and traditions preserved within the Dhammathats.

The emphasis within the Dhammathats was often on maintaining social harmony and resolving disputes in a manner that preserved relationships and community cohesion. While formal legal proceedings existed, there was a strong preference for mediation and arbitration as the initial steps in resolving conflicts. Village elders, local headmen, and respected community figures often played crucial roles as intermediaries, helping parties reach amicable settlements based on customary norms. This approach prioritized reconciliation and mutual agreement over adversarial confrontation, a stark contrast to legal systems focused solely on determining guilt or innocence through formal litigation.

The evolution of Dhammathat law was not a single, linear process. Different Dhammathats were compiled at different times by various scholars and judges, sometimes reflecting regional variations or slightly different interpretations of core principles. Notable Dhammathats include the Manusara Shwe Myin, compiled during the Konbaung Dynasty, which became a widely respected source of customary law. These texts were often written on palm leaves or folded paper manuscripts and were studied and applied by those involved in the administration of justice.

The third pillar of the pre-colonial legal system was *Phyat-htone*, which essentially means "decided cases" or "judicial precedents." While customary law provided the general principles, and royal edicts provided specific rules, the practical application and interpretation of these laws fell to the judicial bodies of the time. The *Hluttaw*, the King's Council, often served as the highest court, hearing appeals and rendering final decisions in important cases. Below the *Hluttaw* were other benches and courts operating at regional and local levels.

The decisions made by these judicial bodies, particularly the *Hluttaw* and other high

courts, were recorded and sometimes compiled, forming a body of case law that served as a guide for future decisions. These *Phyat-htone* helped to clarify ambiguous points in the *Dhammathats* or *Yazathat*, adapt legal principles to specific circumstances, and ensure a degree of consistency in the application of the law. While the concept of binding precedent in the sense of the English common law system might not have been as rigid, the decisions of superior courts carried significant weight and influence in the deliberations of lower tribunals.

The interplay between these three sources – *Yazathat*, *Dhammathat*, and *Phyat-htone* – created a complex yet functional legal system that served the needs of the Burmese kingdoms for centuries. Royal authority provided the necessary flexibility and power to legislate and administer the realm, customary law ensured that the legal system remained connected to the social fabric and values of the people, and judicial decisions provided practical guidance and interpretation, adapting the law to the realities of dispute resolution. It was a system that, while hierarchical and tied to the authority of the monarchy, also recognized the importance of tradition and the accumulated wisdom of past rulings.

In criminal matters, while specific royal decrees might address certain offenses, general principles regarding crimes and their punishments were often derived from customary law or established through royal ordinances. Punishments could be severe, reflecting the harsh realities of the time, and were intended to deter future wrongdoing and maintain public order. However, even in criminal cases, the process often involved investigation by local authorities and presentation before a judge or a panel of judges.

The administration of justice was decentralized to a certain extent. While the highest courts were situated at the capital, local headmen and officials often had the authority to hear minor cases and resolve disputes at the village or township level, often relying heavily on customary law and local mediation practices. This layered approach allowed for a degree of access to justice for ordinary people, even those living far from the royal capital. The system, while not without its flaws or potential for arbitrary application, aimed to provide a framework for resolving conflicts and maintaining order within the kingdom.

The judges and legal scholars of this era were highly respected individuals, often drawn from the ranks of the learned elite. Their understanding of the *Dhammathats*, their knowledge of past judicial decisions, and their ability to interpret royal decrees were essential for the proper functioning of the legal system. They played a crucial role not only in adjudicating disputes but also in preserving and transmitting the legal knowledge from one generation to the next, often through the compilation and study of the *Dhammathat* texts.

The reliance on customary law meant that the legal system was intimately connected

to the social structure and cultural norms of the time. It reflected the values placed on family, community, and traditional ways of life. Disputes within families, disagreements over land or property, and issues arising from social interactions were primarily addressed through the lens of these long-standing customs. The legal system was, in many ways, a reflection of the society it served, evolving slowly in response to internal social changes and the directives of the ruling monarch.

While the king held ultimate authority, the influence of the Dhammathats and the accumulated wisdom of Phyat-htone provided a degree of continuity and stability to the legal system. Rulers often sought counsel from legal scholars and relied on the principles enshrined in customary law, recognizing their legitimacy in the eyes of the people. This interplay between royal power and traditional norms created a balance, albeit one that could shift depending on the strength and disposition of the reigning monarch.

The process of dispute resolution, particularly in civil matters, often began with attempts at informal settlement at the local level. Only if these efforts failed would a case proceed to a formal court. This tiered approach emphasized the importance of community-based conflict resolution before resorting to the more formal and potentially disruptive process of litigation. The goal was often to restore harmony rather than simply to declare a winner and a loser.

The historical foundations of the Burmese legal system, rooted in the interplay of Yazathat, Dhammathat, and Phyat-htone, represent a sophisticated and nuanced approach to law and governance that evolved over centuries. It was a system that balanced the authority of the state with the enduring power of tradition and the practical realities of resolving disputes among the people. Understanding this pre-colonial landscape is crucial for appreciating the subsequent transformations and complexities that would come to define the Burmese legal system in later periods. It was a legal world shaped by kings, scholars, and the collective wisdom of a society deeply connected to its customs and history.

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