

## Women's Rights under Myanmar Customary Law

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### Abstract

Myanmar Customary Law is the personal law of Myanmar people professing the Buddhist religion. Myanmar Customary Law is mainly concerned with such family matters as marriage, divorce, adoption, succession and inheritance, matrimonial rights, and with religious usage and institution. The sources of Myanmar Customary Law are four in number. They are: *Dhammathats*, Customs, Judicial precedents and Legislation. According to Myanmar historical records, there had often emerged women who had been documented for their achievement in drivers spheres such as in education, health, commerce and also in social and administrative sectors. The equality of women is recognized not in the home only, but in public life as well. In successive accepted legal rules of Myanmar *Dhammathats* relating to a Myanmar Buddhist couple, husband and wife are "Tenant-in-Common" not "Joint-Tenant". The partition of property can be made on divorce or on succession at the death of one spouse and there are certain prescribed rules on the method of partition under Myanmar Customary Law. The aim of this paper is to know the rights of women under Myanmar Customary Law relating to marriage, divorce, adoption, succession and inheritance and matrimonial rights.

**Key words:** Myanmar Customary Law, the rights of women relating to marriage, divorce, adoption, succession and inheritance and matrimonial rights.

### Introduction

Every citizen of a country has the right to freely follow his customs, culture and traditions and to profess the religion of his choice subject to certain limitations. These fundamental rights expressly granted by the constitution. In Myanmar there are four main religions, namely- Buddhism, Hinduism, Islam and Christianity. Accordingly, they have their own family laws and are governed by their respective family laws. The Myanmar Laws Act (1898) vests force and validity in family law in its section 13(1), and according to section 13(3), matters which cannot be decided by either customary or statutory law, shall be decided by the rule of justice, equity and good conscience.

### Rights given under Myanmar Customary Law

Myanmar Customary Law governs personal matters of Myanmar Buddhist people. It is composed of Myanmar *Dhammathats*, prevailing customs, judicial precedents and legislation. Like other family Laws, Myanmar Customary Law is mainly concerned with such family matters as marriage, divorce, adoption, succession and inheritance, matrimonial rights.

The *Dhammathats* are the main and important source of Myanmar Customary Law, which is a corruption of the Sanskrit word *Dharmasastras*<sup>1</sup>. The *Dhammathats*, or treatises of "rules which are in accordance with customs and usage and which are referred to in the settlement of disputes relating to person and property" are a principal source of Myanmar Customary Law<sup>2</sup>. Myanmar Customary Law evolved from customs that have been followed by Myanmar people since the ancient times. Judicial precedents of Myanmar Customary Law are really judicial decisions made by the highest courts in Myanmar by or under the authority of the sovereign which purport to apply established principles of human affairs. They are really "judge made law" and sometimes also called as case-Law. Legislation is that source of law which consists in the declaration of legal rule by a competent authority.

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<sup>1</sup> Kirk Wood v. Maung Sin, 2 Ran 693 (776) P.C

<sup>2</sup> King Wunmingyi Digest, Vol. I, 2

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As Myanmar Customary Law itself is a customary law only, if customary law and enacted law are contradicting, enacted law will prevail.

## Marriage

Marriage is a civil institution into which the Buddhist religious element enters not at all. The most important element of the Myanmar Buddhist Marriage, which is commonly described as a “consensual contract” is “consent”.<sup>3</sup> As the consistent feature of the Myanmar family has been the freedom of the individual, a woman has her freedom of choice for her spouse.

To constitute a valid marriage among the Myanmar Buddhists,

- (a) the man should attain his puberty,<sup>4</sup>
- (b) the woman should be spinster above twenty years of age, except a widow, a divorcee, and a spinster under twenty years of age who has obtained her parents’ or guardians’ consent,<sup>5</sup> the parties must give their mutual and free consent to become husband and wife presently,<sup>6</sup>
- (c) the parties must be mentally competent to contract,<sup>7</sup>
- (d) No subsisting marriage for women<sup>8</sup> and
- (e) If there is no marriage ceremony, the couple must openly live together as husband and wife.<sup>9</sup>

In the present day, marriage on swearing of oath has become popular and fashionable with young people who go before a judge or magistrate to swear an oath and sign affidavits, in the presence of two witnesses, such as friends and elders, stating their competence and intention to marry. The affidavit is then kept by the parties, the young man keeping the young woman's and vice versa, as “certificate of proof and marriage.” “This procedure saves the expense of big ceremonies and receptions, is quicker and looks more ‘legal’ in that there are documents to keep which bear stamps and seals and signatures.”<sup>10</sup> This is something like the changing trend of marriage system.

In making affidavits for marriage, all essentials of a valid marriage shall be considered by Myanmar Customary Law itself and not otherwise. Consequently it is clear that in the case of court marriage of minor girl, who has not attained twenty years of age but completed her eighteen years of age, she also must receive prior and clear consent from her parents or guardians to perform the marriage before the court of law although she has attained her majority under the Majority Act and she is competent to valid contract under the Contract Act which has nothing concerned with marriage under Myanmar Customary Law.

<sup>3</sup> Mg Mg, Dr, Law and Custom in Burma and the Burmese Family, 1963, 54-57

<sup>4</sup> Maung Thein Maung v. Ma Saw, 6 Ran, 340

<sup>5</sup> Ma E Sein v. Maung Hla Min, 3 Ran, 455 (F.B)

<sup>6</sup> Maung Tun Maung v. Ma Aye Kyi, 14 Ran, 215 (F.B); Ma Thein Tin v. Maung Pho Thone A.I.R 1930 Ran, 210; Maung Sein Nyunt v. Ma E Kyi 1962 B.L.R (H.C) 404

<sup>7</sup> Section 11 of The Contract Act, 1872

<sup>8</sup> Section 494 of the Penal Code

<sup>9</sup> Maung Tun Maung v. Ma Aye Kyi, 14 Ran, 215 (F.B); Maung Maung v. Ma Sein Kyi, 1940, Ran 56; U Tun Sein v. Ma San Myint, AIR 1938 Ran 115; Ma Kyin Mya v. Maung Sit Han, 1937 Ran 103; Maung San Aung v. Ma Kyi Kyi Wai, 1963, B.L.R 995; Ma Mya Mya Kyi v. Ko Aung Myint, 1964 B.L.R 199; Ma Tin Thein v. Maung Win Khing, 1965 B.L.R 149; U Pu Lay v. Daw Chit, 1974, Civil Second Appeal No. 32

<sup>10</sup> Mya Sein, U, Myanmar Customary Law, 10 edition, 2004, 39

For a woman to enter into a valid marriage, she must not have a subsisting marriage tie. This requirement does not apply to men, for polygamy is permitted by the Customary Law. In spite of polygamy being sanctioned by the Dhammathats which state that “a man may marry as many as ten wives if he can maintain them all by his own skill and labour”. If a husband takes a second wife during the life time of first marriage, first marriage of wife is called the first wife and second marriage of wife is called the second wife, not call a lesser wife or inferior wife.

Myanmar Customary Law contains no prohibition forbidding marriage between a Myanmar Buddhist and a person of another race or religion. Therefore, in the case of mixed marriages between Buddhists and non-Buddhists, the validity of marriage depends upon the capacity of the other party to enter into the marriage. In those cases the conflict laws problem may arise. The choice of law between Myanmar Customary law and other laws might occur. Regarding the marriage between the Myanmar Buddhists and non-Buddhists, before the 1954 Special Marriage and Succession Act, most of the Buddhist women who entered into contract with non-Buddhist men entirely lost their rights and status.

In 1954, to protect the Myanmar Buddhist women, the Government enacted the Myanmar Buddhist Women Special Marriage and Succession Act, This Act totally and fully protected the Myanmar Buddhist women contracting into marriage with other religions. All case law on marriage, rights and the status of a Myanmar Buddhist wife who enters into marriage with a non-Buddhist husband, is now by operation of the Myanmar Buddhist Women's Special Marriage and Succession Act, 1954.

The object of passing the Buddhist Women's Special marriage and Succession Act was to remedy the wrongs suffered by Myanmar Buddhist Women when they married people belonging to other faiths as they were deprived of their rights to inherit on the death of the husband. Thus, the status of wives of non-Buddhist husband under the 1954 Special Act is now having the status and equal footing among themselves.

There are some problems related in marriage under Myanmar Customary Law, namely, breach of promise of marriage, seduction and maintenance etc., which will be analyzed in this paper.

### **Breach of Promise of Marriage**

A Myanmar Buddhist man or woman who is at the age of majority could make a valid promise of marriage at any time. If one of the parties failed this promise, the other party could sue for damages for breach of promise of marriage.<sup>11</sup>

In 1965, the Chief Court stated that “under the circumstances as stated, a suit for damages against a male (who breached his promise to marry) can be made.”<sup>12</sup> The Chief Judge, Maung Maung, that in matters regarding marriage and cohabitation among Myanmar Buddhist, Myanmar Customary Law must be the primary focus of reference. A promise to marry cannot be considered on the same level as mercantile and commercial dealings. In any civilized country, matters concerning marriage and establishing a family are not considered on the same level as transactions involving the buying and selling the goods. They are considered delicate and important social matters. Therefore, when a dispute arose as a result of a breach of promise, the case should not be decided merely by reference to a superficial analysis of the Contract Act. Myanmar custom and culture need to be deeply analyzed in order to achieve a result that would be just to parties in the case, and that would be acceptable to the society to which they belong.

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<sup>11</sup> Ma Ngwe Yin v. Mg Po Taw, 7 B.L.T 14; Mg Tun Aung v. Ma E Kyi, 14 Ran 215 (F.B)

<sup>12</sup> Maung Ko Gyi v. Daw Ohn Khin, 1965 B.L.R (CC) 913

## Damages for Seduction

Where a Myanmar Buddhist man seduces a woman and she becomes pregnant as a result, she was entitled to sue for damages even in the absence of a promise of marriage. Another important question of law to be considered is whether the Myanmar Buddhist woman has a right for criminal action after the defendant promising to marry her, he seduced her and caused her to become pregnant and subsequently, refused to marry her.

In *Maung Kyaw Win v. The Union of Myanmar*,<sup>13</sup> it was held that the man took the sex of a woman by giving promise that he would marry her and later broke the promise. He is liable to prosecute under Section 417 of the Penal Code.

## Maintenance of Wife

Every husband has a duty to maintain his wife and child. This responsibility is a social responsibility. If the husband neglects or refuses this duty, a wife or a child may claim for maintenance. In so doing, a wife or a child has two remedies available for securing maintenance. The first is a civil suit according to the Myanmar Customary Law and the other is by way of proceeding under Section 488 of the Criminal Procedure Code.

In the Criminal proceedings the maximum sum that can be realised is a hundred kyats per month<sup>14</sup> to meet the bare necessities of life. But in the civil suit of maintenance, the sum that can be realised has no limit. This is the main difference between a criminal proceeding and a civil proceeding.

In the case of *Ma Saw Nwe v. U Aung Soe*<sup>15</sup>, it was stated that “A Suit for maintenance is a suit of a civil nature within Section 9 of the Civil Procedure Code”. Furthermore, in the case of *Dr. Tha Mya v. Ma Kin Pu and another*<sup>16</sup>, the High Court decided as follows:

“In Myanmar Customary Law the general rule is that the wife is entitled by way of maintenance, to an amount which is one-third of the income acquired by the exertions of her monogamous husband. But when the husband takes a second wife the amount of the maintenance to which the first wife is entitled is one-sixth of his income.”

Thus, either under a criminal proceeding or a civil suit only a legally married wife can claim her maintenance. A woman who illegally stays with a man cannot claim her maintenance.

## Rights of Property in Marriage

According to the Custom of the country the wife takes a great deal of trouble in the acquisition of property. Hence the position of a Myanmar Buddhist woman as regards ownership of property is very peculiar.

During the subsistence of the marriage the wife has an interest in all the properties belonging to either or both.<sup>17</sup> It is usual to regard all properties acquired by the spouses during the covertures, except inherited property, as belonging equally to the husband and wife.<sup>18</sup>

The Myanmar Buddhist married couple are not commercial partners but tenants in common.<sup>19</sup> Property jointly acquired by the husband and wife during covertures is ordinarily

<sup>13</sup> *Maung Kyaw Win v. The Union of Myanmar*, 1976 B.L.R (C.C), 9

<sup>14</sup> Now being, fifty thousand kyats, Section 488 of the draft law of amending, The Criminal Procedure Code

<sup>15</sup> *Ma Saw Nwe v. U Aung So*, 1939 R.L.R, 525

<sup>16</sup> *Dr. Tha Mya v. Ma Kin Pu and another*, 1940 R.L.R., 807

<sup>17</sup> *U Pe v. U Maung Maung Kha*, 10 Ran, 261(268) P.C

<sup>18</sup> *Maung Pan Hla v. Maung Tun Nyein*, 41 I.C., 410

deemed to be in the possession of the husband.<sup>20</sup> Husband and wife are joint owners as well as joint possessors, and the husband is usually deemed to be manager of the family.<sup>21</sup>

The different kinds of properties of a Myanmar Buddhist married couple are *Payin*, *Kanwin*, *Lettetpwa*, and *Hnapazon*. *Payin* is the property which had belonged to the spouses individually before their marriage<sup>22</sup> less his or her ante-nuptial debts.<sup>23</sup> *Payin* is also known as *atetpa*. *Lettetpwa* is the property accruing to either spouse individually either by particular exertion or by succession after his or her marriage.<sup>24</sup> It is the joint property of the marriage. *Hnapazon* is the property acquired by the spouses during the marriage by their exertion or from the produce of the property they already have.<sup>25</sup> It is the jointly acquired property of the marriage. *Kanwin* is the property given by the bridegroom and the parents of the couple (as also presents from friends and relations) to the bride at the time of marriage for the joint purposes of the married couple.<sup>26</sup>

### Divorce

Under Myanmar Customary Law, there are three grounds for dissolution of marriage;

- (1) Divorce by mutual consent;<sup>27</sup>
- (2) Divorce by husband's entry into priesthood;<sup>28</sup> and
- (3) Divorce on account of matrimonial fault.

### Divorce by Mutual Consent

A mutual divorce is valid without a decree of the Civil Court or a deed of divorce or the presence of *Lugyis* (Elders).<sup>29</sup> But if a deed of divorce be drawn up it must be on a properly stamped paper as required under the provisions of the Law Amending the Myanmar Stamp Act.<sup>30</sup> Partition of property when there is divorce by mutual consent, when the husband has married once-*Payin*- When *eindaunggyis* divorce by mutual consent without fault on either party and the parties do not stand in the relation of *nissiya* and *nissita*, each is entitled to take back his or her *atetpa* property<sup>31</sup> as the principle of *nissaya* and *nissita* is not applicable to such cases.<sup>32</sup>

### Joint Property

Where husband and wife mutually agree to a divorce and the parties do not stand in the relation of *nissaya* and *nissita*, the joint property of the parties should be equally divided between them,<sup>33</sup> whether they are *eindaunggyis* or *ngelin-ngemaya*.<sup>34</sup> But where the husband

<sup>19</sup> U Pe v. U Maung Maung Kha, 10 Ran. 261 (279) P.C; Ma Htwe v. Ma Tin U, 1953, BLR 29; Ma Ohn Kyi v. Daw Hnin Nwe, 1953, BLR 332

<sup>20</sup> Maung On Sin v. Ma O Nat, 11 U.B.R. (92-96), 303

<sup>21</sup> Ma Thaing v. Maung Tha Gywe, 11 U.B.R (02-03), Ex. 1

<sup>22</sup> U Pe v. U Maung Maung Kha, 10 Ran. 261 (268) P.C

<sup>23</sup> P.L.P.S. Chettyar Firm v. U Maung Nge, A.I.R. 1935 Ran. 399

<sup>24</sup> U Pe v. U Maung Muang Kha, 10 Ran. 261 (268) P.C

<sup>25</sup> U Pe v. U Maung Muang Kha, 10 Ran. 261 (268) P.C

<sup>26</sup> Maung Shwe Kho v. Ma Mya, 9 B.L.T. 87; Ma E Nyun v. Maung Tok Pyu, II U.B.R. (97-01), 39; Ma Hla Aung v. Ma E, S.J. 219; Lu Gale v. Maung Sein, 6 L.B.R. 16; Maung Ba v. Ma Ok, II U.B.R. (02-03) mar., 1

<sup>27</sup> Ma Hnin Ngon v. Maung Aung, S.J. 73.; Ma Mai Hla v. Maung Po Thone, 7 Ran 98

<sup>28</sup> Maung Nyunt Tin v. Ma Pu, 1954 BLR 76

<sup>29</sup> Ma Ami Gyi v. Maung Hmut, 11 U.B.R. (97-01), 37

<sup>30</sup> The 2011 Pyidaungsu Hluttaw Law No. 2, 29 September, 2011

<sup>31</sup> Ma Paing v. Maung Shwe Phaw, 5 Ran 296 (332) F.B

<sup>32</sup> May Oung, U, Leading cases of Buddhist Law, 108

<sup>33</sup> Manugye, Book 12, Chapter 3

<sup>34</sup> Maung Hmon v. Maung Meik, 11 U.B.R (04-06), 1

and wife stand in the relation of *nissiya* and *nissita*, the *nissaya* gets two thirds and *nissita* one third of their joint property.<sup>35</sup>

### **Inherited Property**

On a divorce by mutual consent the *nissiya* gets two-thirds and the *nissita* one-third of the inherited property.<sup>36</sup> Partition of property when there is divorce by mutual consent, when the husband has married twice-where a man marries two wives in succession and his second wife desires to divorce him and he consents to it, on divorce and partition, the second wife is entitled to get two-ninths of the property brought by the husband to the first marriage, one-sixth of the jointly acquired property of the first marriage, two-ninths of the property inherited by the husband during the first marriage, one-third of the jointly acquired property of the second marriage<sup>37</sup> one-sixth of the property inherited by the husband during his second marriage.<sup>38</sup>

If it is the first wife who desires to divorce the husband and the husband consents to it, on divorce and partition, the first wife is entitled to get one-third of the property brought by the husband to the first marriage, half of the jointly acquired property of the first marriage, one third of the property inherited by the husband during the first marriage, one-third of the jointly acquired property of the second marriage,<sup>39</sup> and one-sixth of the property inherited by the husband during his second marriage.<sup>40</sup>

### **Divorce by Husband Ordination**

If the husband becomes a monk let the wife wait seven days after the expiry of which she is at liberty to marry again, and he shall have no right to claim her subsequently as his wife<sup>41</sup> If a wife marries a second husband on her (former) husband entering the monkhood, no prosecution shall be instituted against the second husband for seduction, but let him restore her to the former husband.<sup>42</sup>

### **Matrimonial Faults**

There are two kinds of matrimonial faults. They are:

- (1) Ordinary matrimonial fault
- (2) Grievous matrimonial fault.

Ordinary matrimonial faults included: (a) misrepresentation,<sup>43</sup> (b) adultery on the part of the husband,<sup>44</sup> (c) Taking another wife by the husband,<sup>45</sup> (d) desertion,<sup>46</sup> and (e) ordinary cruelty.<sup>47</sup>

Grievous matrimonial faults included: (a) adultery on the part of the wife,<sup>48</sup> and (b) grievous cruelty.<sup>49</sup>

<sup>35</sup> Ma Myin v. Maung Twe, 11 UBR (04-06), 12

<sup>36</sup> Ma Sai v. Maung Yan Gin, 2 U.B.R (14-16 ), 127

<sup>37</sup> Maung Po Nyun v. Ma Saw Tin, 3 Ran 160

<sup>38</sup> C.T.P.V. Chetty Firm v. Maung Tha Hlaing, 3 Ran 322 (f.B)

<sup>39</sup> Maung Po Nyun v. Ma Saw Tin, 3 Ran 160

<sup>40</sup> C.T.P.V. Chetty Firm v. Maung Tha Hlaing, 3 Ran 322 (f.B)

<sup>41</sup> Manugye Dhammathat, Vol. V, Chapter XVII

<sup>42</sup> Attasankhepa Vannana Dhammathat, Section 321

<sup>43</sup> Ma Khin v. Maung Gale P.J 130

<sup>44</sup> Ma Thein Nwe v. Maung Kha, 7 Ran 451

<sup>45</sup> Maung Hme v. Ma Sein, 9 L.B.R 191 (F.B)

<sup>46</sup> Daw Khin Pu v. Dr. Tha Mya, 1949 BLR, 283; Dr. Tha Mya v. Daw Khin Pu, 1951 B.L.R 108

<sup>47</sup> Maung Kywe v. Ma Thein Tin, 7 Ran 790

## Ordinary Matrimonial Faults

### (a) Misrepresentation

When a man had been induced by misrepresentation to marry a girl or a girl had been induced by misrepresentation to marry a man, the deceived person may claim dissolution of the marriage.<sup>50</sup>

### (b) Adultery on the part of the husband

Adultery by itself on the part of the husband does not entitle the wife to claim a divorce.<sup>51</sup> In the case of *Mrs Joubert Bwa v. Joubert Bwa*,<sup>52</sup> it was held that having the infectious disease from the husband to the wife is an apparent fact that the husband committed adultery with a prostitute. Infecting the wife by mean of that way is another kind of cruelty and entitled the wife to claim a divorce.

### (c) Taking another wife by the husband

According to the *Dhammathats*, the husband may marry many wives and the old decisions taking another wife by the husband is not grievous fault. Thus the first wife cannot claim for divorce.

### (d) Desertion

If the wife having no affection for the husband deserts him for one year and during that period he does not maintain her then he may dissolve the marriage tie if he likes to do so. If the husband having no affection for the wife deserts her for three years and during that period he does not maintain her then she may dissolve the marriage tie if she so desires.<sup>53</sup>

Where a Myanmar Buddhist husband deserts his wife and for three years neither contributes to her maintenance nor has any communication with her the marriage tie is automatically dissolved is incorrect. Such conduct on the part of the husband evidences his desire for dissolution of the marriage bond and cannot in itself suffice to dissolve the bond created by mutual consent of the husband and wife. For that bond to be dissolved it is necessary that the wife reciprocates the desire, the reciprocation may be express or by conduct clearly pointing in that direction.<sup>54</sup>

### (e) Ordinary cruelty

Cruelty by the husband or the wife, is a matrimonial fault for which the other party can claim divorce. Cruelty may be in any means. Some mental pains are rather worse than the physical cruelty. Hence, one spouse is entitled to divorce if the other spouse makes cruelty leads to mental pain.<sup>55</sup>

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<sup>48</sup> *Ma Me Hla v. Maung Po Thone*, 7 Ran 98

<sup>49</sup> *Daw Pu v. Maung Tun Kha*, 1946 Ran 229

<sup>50</sup> *Manugye*, Book V, Chapter VII

<sup>51</sup> *Ma Thein Nwe v. Maung Kha*, 7 Ran 451

<sup>52</sup> *Mrs Joubert Bwa v. Joubert Bwa*, 1948, B.L.R 132

<sup>53</sup> *Manugye*, Book 5, Chapter 17

<sup>54</sup> *Dr. Tha Mya v. Daw Khin Pu*, 1951 B.L.R 108(S.C)

<sup>55</sup> *Mrs Protima Ghosh v. Bimalandu Ghosh*, 1963, BLR, 526

## Grievous Matrimonial Faults

### (a) Grievous cruelty

In order to constitute cruelty ill-treatment in the shape of physical violence or infliction of mental pain must be done with indifference or delight in pain caused to the sufferer.<sup>56</sup>

While a single act of cruelty (or cruelty on one occasion only) will attract the rule of partition as on divorce by mutual consent. Where cruelty is aggravated by the guilty party who, instead of being repentant, is desirous of divorce or by it being committed with intent to force the other party to seek divorce or by frequent repetition of acts or cruelty or amounts to grievous hurt within the meaning of Section 320 of the Penal Code, the guilty party forfeits his or her interest in the joint property of the couple. *Atetpa* property of an *eindaunggyi*, here also will be saved from forfeiture similar to that in the matter of adultery by the wife.

### (b) Adultery on the part of the wife

Under Myanmar Customary Law, husband can take *hnapazon* property only when he can prove that his wife is living in adultery.<sup>57</sup>

Until the husband proves adultery on the part of the wife in a suit for divorce, the wife does not forfeit her share in the joint property on mere allegation of adultery; so the joint property of the marriage must be divided on the footing that the marriage has become dissolved by desertion.<sup>58</sup>

### Partition of property on divorce

Under Myanmar Customary Law, partition of property could be made only after divorce.<sup>59</sup> For the purpose of partition on divorce, the properties of Myanmar Buddhist married couple may be classified as follows;

- (1) *payin*
- (2) *lettetpwa*
  - (a) ordinary *lettetpwa*
  - (b) *lettetpwa* by succession
- (3) *hnapazon*

In deciding the method of partition, three points must be taken into consideration, namely:

- (1) whether the parties are *eindaunggyis* or *ngelin-ngemaya*;
- (2) whether the parties stand in the position of *nissaya* and *nissita*;
- (3) whether the divorce is by mutual consent or for some matrimonial fault.<sup>60</sup>

### *Eindaunggyi and ngelin-ngemaya*

For the purpose of partition on divorce when neither the husband nor the wife has married once before, they are to be classed as *ngelin-ngemaya* (husband and wife of youth).<sup>61</sup>

<sup>56</sup> Daw Pu (a) Daw Pu Gyi v. Maung Tun Kha, 1946 R.L.R, 125

<sup>57</sup> Daw Thein Mya v. Daw Kyin (a) Akyin, 1984 B.L.R, 328

<sup>58</sup> Ma Dun Mai v. Maung San Tun, A.I.R 1938 Ran 168

<sup>59</sup> Daw San Yi v. Ma Kyawt Kyawt Khin, 1984 B.L.R, 76

<sup>60</sup> S.C. Lahiri, Principles of Burmese Buddhist Law, VI Edition, 1957, 107-108

<sup>61</sup> NAVR Chettyar Firm v. Maung Than Daing, 9 Ran 524(529) S.B

Even if one of them has married once before, still they are to be classed as *ngelin-ngemaya*.<sup>62</sup> When *ngelin-ngemaya* divorce and soon after re-unite, they are still to be classed as *ngelin-ngemaya*.<sup>63</sup>

But when both the husband and wife have married once before, they are to be classed as *eindaunggyi* (previous married persons).<sup>64</sup>

### **Custody of Children (parental rights)**

In dealing with application of the custody of the child, the welfare of the child is of paramount importance and out weight any other considerations.<sup>65</sup>

In *Ma Tin Nyunt v. Ko Aung Thin*,<sup>66</sup> the applicant Ma Tin Nyunt applied to the court to have chance to care for the 10 months old child. As her husband suspected the wife of not caring well for the child because of difficulties in delivery, the child was left with her husband Ko Aung Thin when they were separated. Dr. Maung Maung, justice of the Chief Court, held that “In cases of custody of children, previous judicial decisions are only for guidance and the most important factor for the court to take into consideration is the welfare of the child”. Especially when the child is of a tender age, the mother is more appropriate for the custody than the father. This is the natural rule practiced by all nations.

### **Rights of inheritance**

Inheritance is the subject which most strikingly indicates the equality of Myanmar Buddhist women with men. Myanmar Buddhist married women are entitled to definitely equal right of inheritance, compared to men. This is a very distinct feature of Myanmar Customary Law of inheritance.

The most important general principle of Myanmar Law of inheritance is that: “On the death of a husband or wife, without children, the survivor succeeds to the whole of the estate.”<sup>67</sup>

Where there is an “*orasa* child”, the *orasa* takes a quarter share and the surviving spouse takes the remaining three quarter. Among the children, the *orasa* has a privileged position. On the death of the parent of the same sex, the *orasa* can claim one-fourth share of the estate. If in accordance with the requirements of *orasaship*, either a son or a daughter may become an *orasa*. There is no distinction between son and daughter to be *orasa*. On the remarriage of the surviving parents, all the children have the right to claim for inheritance.

### **Adoption**

Myanmar Customary Law recognizes the adoption. Any person who is competent to contract can adopt a child<sup>68</sup> and a boy or a girl or an adult can be adopted. A woman or man has the right to adopt a child according to Myanmar Customary Law. Myanmar Child Law<sup>69</sup> states that “Every child shall have the right to be adopted in accordance with law without discrimination of sex.”

<sup>62</sup> *Ma E Nyun v. Maung Tok Phyu*, 11 UBR (97-01), 39

<sup>63</sup> *Ma Saing v. Maung Yan Gin* 2 U.B.R (14-16), 127

<sup>64</sup> *Manugye* Book 12, Chapter 3; *Ma Saing v. Maung Yan Gin*, 2 U.B.R (14-16), 127

<sup>65</sup> *Mg Aung Khin v. Ma Saw Hla*, 1958 B.L.R (H.C), 311

<sup>66</sup> *Ma Tin Nyunt v. Ko Aung Thin*, 1963 B.L.R CC, 287

<sup>67</sup> *Maung Waik v. Maung Nyein II*, U.B.R (1897-01), 146

<sup>68</sup> *Maung Maung, Dr, Law and Custom in Burma and the Burmese Family*, The Hague, Martinus Nijhoff, 1963, 89

<sup>69</sup> Myanmar Child Law, 1993, Section 7(a)

Under Myanmar Customary Law, adopted child is the heir of the adoptive parents. Since there is no distinction of male and female for inheritance under Myanmar Customary Law, the girl child who was adopted has got the right to inherit from her adoptive parents. Adoption in Myanmar is related to not only the parental hood but also the property right. But there must be registered the deed of adoption according to “The Registration of Kittima Adoption Act, 1939.”

### **Findings and Discussions**

A consistent feature of the Myanmar family has been the freedom of the individual. The equality of women is recognized not in the home only, but in public life as well. The Myanmar commoner chooses as wife an equal, to be his helpmate, they shared their daily life, its common toil and interest, their children grew up under the case of an equal man, an equal woman. The amount of the maintenance of wife and child under criminal proceeding is not fair for the prevailing period. In civil suit, to get maintenance of the wife who does not have own-earning is not suitable for her.

### **Conclusion**

Myanmar women play an active part in the economic, social and cultural sectors of the nation. Myanmar women not only are capable of fulfilling their duties whether for family or for the sake of others, they are also known to have valour and perseverance and capability equally with men in overcoming difficulties. Till today they have been actively participating in promoting national spirit, patriotic spirit and the Union Spirit as well as in developing the Myanmar society and nurturing the younger generation. At a time when Myanmar was building up a new modern nation, the Myanmar women were urged to serve the better interest of the nation by taking part in nation- building tasks with courage, conviction and perseverance in parallel with men. In keeping with the tradition of our history, Myanmar women have played each of their roles to the best of their ability in striving for the benefit of the nation and the people, in effecting the development and advancement of the Myanmar society and in nurturing the new generation to have a high standard of morality and patriotic spirit. Thus indeed, Myanmar women roles are of great importance to our country.

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