

## **Legal Sources in Myanmar**

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### **Abstract**

In every legal education, the most essential thing is to learn the legal sources of a country. To learn the Law subject, everyone needs to know the legal sources of each country where he or she lives. Whatever subject is taught in Legal Education or whatever Legal Profession is done for career, one must have known the Statutory Laws and Rules, Regulations, Orders and Directives, Conventions, Legal Treatises, Cases, Law Journals and Publications of various Legal Scholars. These are the legal sources of learning the law in everywhere including Myanmar. However, it is not enough to know those sources, what the Law students and Legal Professionals require the most is to know where to find and how to find those sources. As a saying goes, “To know the Law is to know where to find the Law”, it is very important to know how to find the Laws. Today, most of Law students cannot find the Laws and Cases as they do not bear in mind the importance of the above maxim. Moreover, during this IT age, there are a lot of online data resources via various official websites of different Ministries and organizations which can be downloaded from everywhere. Therefore, Law students and Legal Professionals in Myanmar need to know e-learning process from wherever they learn the Law. If they are able to find the necessary sources for their learning or career, they will exactly avoid waste of their time and they will get reliable sources within a short time so as to be higher or better than others.

### **Legal Sources in Myanmar**

Everyone who learns the Law needs to know legal sources for their study and professions. Generally, legal sources are found as many kinds by way of written Constitution, legislation, judicial precedents, custom, writings of legal experts and international instruments, etc. Legal sources differ as primary and secondary. Nowadays, these sources can be assessed by two ways as documentary sources and online sources. No man can carry all the books all the time and therefore, they have to rely on online sources via reliable websites. This paper is focused on the way to find the necessary sources within a short time for every person by highlighting the importance of knowing the legal materials.

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## Primary Sources

Primary law sources are Constitutions, Acts and Laws, Rules, Regulations, Directives, Orders and Notifications enacted by the various legislative organs and also the cases reported by the highest judicial organ, the Supreme Court.

The most primary sources of law in every country are the Constitutions. In Myanmar, there are 4 constitutions including the Government of Burma Act, 1935 which was enacted on 2<sup>nd</sup> August, 1935 with 159 Sections and 6 Schedules.<sup>2</sup> In 1947, the Constitution of the Union of Burma was enacted in which it was contained 234 Sections and 4 Schedules and the State practiced the Parliamentary Democracy System.<sup>3</sup> Then in 1974, the Constitution of the Socialist Republic of the Union of Burma was come out with 186 Sections, which transformed the State as a Socialist Democratic State.<sup>4</sup> On 29<sup>th</sup> May, 2008, the present Constitution of the Republic of the Union of Myanmar was adopted by the nation-wide referendum. This 2008 Constitution provides 457 Sections and 5 Schedules and the Union practices the genuine, disciplined multi-party democratic system.<sup>5</sup>

The second primary sources are legislations consisting of declaration of legal rules by a competent authority. It includes all methods of law making in any fashion and also any act done with the effect of adding to or altering the law as an act of legislative authority.<sup>6</sup>

In Myanmar, enacted laws were firstly codified and published as the Burma Code Volumes 1 to 13 by the British Government. Before the year of 1954, every Acts enacted were compiled in the Burma Code and the index of all Acts contain in the last Volume 13. From the year of 1955 to 1961, it was published yearly by the green color book. Then, the Revolutionary council published three volumes with the white book during the years of 1962 to 1974. After that, the Pyithu Hluttaw of the Socialist Republic enacted yearly Law books in the years of 1975 to 1987.

Since 1988, the State Law and Order Restoration Council published yearly Law books till 1997. In October 1997, the State Law and Order Restoration Council was substituted by the State Peace and Development Council which took the role of legislating the Laws and published yearly law books. Later, the Pyidaungsu Hluttaw enacted the laws with the signature of the President, U Thein Sein since 2010 and from the year of 2016 to March 2018, the President U Htin Kyaw signed the laws and after 30 march 2018, the President U Win Myint signs with the approval of the Pyidaungsu Hluttaw. For every law students and legal professionals, these are the essential sources in learning the law in every time.

There are totally 426 Acts in the Burma Code 13 Volumes<sup>7</sup>. Among the Burma Codes, Burma Code Volumes VIII, IX and XII are the most important volumes which contain the Penal Code, the Criminal Procedure Code, the Contract Act, the Civil Procedure Code and the Evidence Act because these laws are applied in the judicial proceedings of every Court.

<sup>2</sup> The Government of Burma Act, 1935

<sup>3</sup> The Constitution of the Union of Burma, 1947

<sup>4</sup> The Constitution of the Socialist Republic of the Union of Burma, 1974

<sup>5</sup> The Constitution of the Republic of the Union of Myanmar, 2008

<sup>6</sup> J. Austin, Jurisprudence, 3<sup>rd</sup> Edition, 1920, p-555

<sup>7</sup> Burma Code Volume 1-13

During the years of 1955 to 1961<sup>8</sup>, the Acts were published yearly and there are altogether 181 Acts and the Defence Services Act, 1959 is the well known and existing law among the laws of this period. This Act is taught in LL.B final year as the Military Law.

Then, the Revolutionary Council published 3 Volumes in the years 1962 to 1974<sup>9</sup>. There are 181 Laws in this time. At the time of Socialist Republic, 122 laws were enacted during the years of 1974 to 1988.<sup>10</sup> The well-known laws of this period are the Myanmar Citizens Law, 1982 and the Gambling Law, 1986, etc.

Since the date of 21<sup>st</sup> September, 1988, the State Law and Order Restoration Council enacted 136 Laws till the year 1997.<sup>11</sup> Among the laws of this period, the Narcotic Drugs and Psychotropic Substances Law, the Child Law and the Hotel and Tourism Law are the existing and well-known laws at the present time. On 15 November, 1997, the State Law and Order Restoration Council was abolished and the State Peace and Development Council was established by the SLORC Notification No. 1/1997.<sup>12</sup>

In 1998 to 2010, the State Peace and Development Council adopted 121 Laws<sup>13</sup> and among these laws, the Control of Money Laundering Law and the Anti-Trafficking in Persons Law are popular according to the committed crimes.

On 30<sup>th</sup> March, 2011, the new Government headed by the President U Thein Sein started their functions according to the provisions of the 2008 Constitution of the Republic of the Union of Myanmar.<sup>14</sup> During the time of 2011 to 2016, the Pyidaungsu Hluttaw enacted 233 laws with signature of the President U Thein Sein.<sup>15</sup> From the Law No. 26 of the Pyidaungsu Hluttaw, the President U Htin Kyaw signed the Laws and after 30 March, 2018, the President U Win Myint signs the laws up to the present time.

Till now, there are thousands of laws adopted in the Burma Code to the present time. Many laws are repealed or amended or enacted as fresh law according to the changing situation. Law students and legal professionals have to know those update laws. In this regard, three legal scholars published the list of updated laws. They are U San Lwin, U C. N Belo and U Kyaw Sein. Firstly, U San Lwin published the Myanmar Laws General Index<sup>16</sup>. Secondly, U C.N Belo published the Directory of Myanmar Laws in 2016<sup>17</sup> and lastly, U Kyaw Sein published the Myanmar Laws Index in 2017<sup>18</sup>. Therefore, these books are also essential to find the updated laws and to check the law is existing law or not.

Being law students and legal professionals, it is inevitable to learn judicial precedents or cases in connection with the related laws and provisions. In Myanmar, there are Case Digests, Law Reports and other reported cases are published yearly by the Supreme Court and from time to time by different legal scholars. It can be found as Selected Judgments of Lower Burma (1872-1892), Printed Judgments of Lower Burma (1893-1900), Lower Burma Rulings (1900-1922), Upper Burma Rulings (1892-1922), Burma Law Times (1907-1920), Indian Law Reports Rangoon Series (1923-1937), Burma Law Journal (1922-1927), All India Reporter

<sup>8</sup> The Acts and Rules 1955 - 1961

<sup>9</sup> The Revolutionary Council Laws (Volume 1-3) (1962- 1974)

<sup>10</sup> The Laws, Rules and Procedures (1974 – 1988)

<sup>11</sup> The Laws, Rules, Orders and Notifications (1988- 1997)

<sup>12</sup> The Laws, Rules, Orders and Notifications (Volume 2 of 1997)

<sup>13</sup> The Laws, Rules, Orders and Notifications (1998 - 2010)

<sup>14</sup> Myanmar Encyclopaedia, 2012, p- 8

<sup>15</sup> The Pyidaungsu Hluttaw Laws (2011-2016)

<sup>16</sup> San Lwin, U, The Myanmar Laws General Index, 3<sup>rd</sup> Edition, 2013

<sup>17</sup> C.N Belo, Directory of Myanmar Laws, 1<sup>st</sup> Edition, 2016

<sup>18</sup> Kyaw Sein, U, Myanmar Laws Index (To 2016 December), 1<sup>st</sup> Edition, 2017

Rangoon (1923-1937), Rangoon Law Reports (1937-1942; 1946-1947), Burma Law Reports (1948-1988), Myanmar Law Reports (1989-till now)<sup>19</sup> and Digests of reported cases to the highest Courts in Myanmar.

### Secondary Sources

As the secondary sources, there are textbooks, legal treatises, articles, journals and legal dictionaries written by famous legal scholars. Moreover, in some cases, interviews with the related persons are also the reliable sources to collect the data. Among the outstanding jurists, there are some significant scholars by their masterpiece books. For Myanmar Customary Law, U Mya Sein, U Maung Maung Hla Thaung, U Khin Maung Sein and Dr. E Maung are very famous by their excellent works. For Criminal Law, U Kyaw Sein, U Ba Kyaing and U Thet Phay wrote clear explanations for the Penal Code with relevant cases. U Phay Than Tin and U Aung Thein also write about the business law brilliantly. U Mya is also one of famous legal scholars by his three volumes of Civil Procedure Code. Dr. Maung Maung is an unforgettable person for his excellent writings about Myanmar constitution. Relating to Evidence, U Bo Thar's 'The Introductory Treatise on the Evidence Act' is a famous one.

There are also University Research Journals (yearly published), Law Journals (published twice a year by the Union Attorney General's Office) and Judicial Journals (yearly published by the Supreme Court) which are the journals to find legal articles of Myanmar. Occasionally, legal articles may be found in the Newspapers and Weekly Journals.

### Online Resources

Nowadays, there are many reliable websites which make easily assessable if one knows the right link. Therefore, it is compiled the links of the official websites to find the enacted laws, rules and reported cases. They are-

<http://www.burmalibrary.org/show.php?cat=404>

<http://www.unionsupremecourt.gov.mm/>

<http://www.oag.gov.mm/>

<http://www.president-office.gov.mm/>

<https://myanmar-law-library.org/law-library/laws-and-regulations/>

<http://www.myanmarconstitutionaltribunal.org.mm/>

<http://www.mlis.gov.mm>

In the above links, there are all laws and regulations of different period in Myanmar and also all the reported cases of Myanmar. Moreover, international legal instruments and some of legal articles can also be found in that links. Therefore, every law students and legal professionals should always note the links so as to enable to find the required legal resources everywhere and every time.

Although the basic knowledge of finding the laws is taught in the first year, law students do not notice that how much this is important not only for their legal education but also for their future legal professions. Therefore, many of them face difficulties when they find the necessary resources. This shows that law teachers should emphasize the importance of knowing the right book of legal sources and should do the tests to check the knowledge of

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<sup>19</sup> <https://myanmar-law-library.org/law-library/laws-and-regulations/>

students' ability of finding the legal resources. That is what this paper tries to highlight "Knowing the law is to know where to find the law" by describing all the enacted laws by different Governments and the links of those laws because online resources are very useful in this IT age for all law students and legal professionals near or far wherever they are.

## **References**

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2. The Constitution of the Socialist Republic of the Union of Burma, 1974
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### **Acts and Laws**

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3. The Laws, Rules and Procedures (1974 – 1988)
4. The Laws, Rules, Orders and Notifications (1988- 1997)
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8. The Revolutionary Council Laws (Volume 1-3) (1962- 1974)

### **Books**

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### **Websites**

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7. <http://www.mlis.gov.mm/>