

## **JUDICIAL SYSTEM IN EARLY KONBAUNG PERIOD (1752-1824)**

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### **Abstract**

The title of this paper is Judicial System in Early Konbaung Period. The name Konbaung Period or Konbaung Dynasty means from Alaungmintayagyi to Thibaw Min (1752-1885). This paper only presents the Early Konbaung Period which means the time ruled by the King from Alaungmintayagyi to Badon Min (1752-1819). My paper is presented only about the Judicial system and its procedures of making judgement in EarlyKonbaung Period. It is mentioned how judgement is made by (လွတ်ရုံးငါးရပ်) Hlut Yone Nga Yat and to understand what Hlut Yone Nga Yat is, Dhammathat emerged, setting ethics and duties and responsibilities of judges and lawyers.

**Keyword:** Judicial System in Early Konbaung Dynasty Duties of Judges.

### **Introduction**

It is important to have a fair Judicial system to build the solidity and tranquillity of a country. The Judicial system such as *Dhammathats* and *Yazathat* have been applied since early *Konbaung* period. The purpose of this paper is to reveal Judicial system of early *Konbaung*. This paper presents legal system in Early *Konbaung* period (1752-1824). This paper can be divided as follows:

- I. Meaning and the scope of the study: Early Kongaung Period.
- II. Sources of Law: *Dhammathat*, *Yazathat* and *Hpyathton*.
- III. Levels of Judiciary: Judicial Courts and their function.
- IV. Court Members and their Responsibilities.

Hence, this study assess how Judgement is made by Hlut Yone Nga Yat, what is Hlut Yone Nga Yat, *Dhammathat*, *Hpyathtons* and *Yazathat* means, how *Dhammathat* emerged and settings ethics and duties of Judges and witnesses.

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## I. Meaning and the Scope of the Study: Early Konbaung Period

Literally, the word *Konbaung* has two parts: Kon (in spoken word-gon), meaning high ground of Land; and baung, meaning realm. The meaning of *Konbaung* thus conveys the realm of a countrysafety surrounded by high ground of land. U Aung Zay Ya, after resisting and attacking back Mon and others to unite Myanmar during the chaos after the fall of Innwa, became the king all over Myanmar under the title of king Alaungmintaya.

According to MaungKyaw Shin in his "Building the Third Myanmar Kingdom"<sup>1</sup>, states that : "Konbaung kingdom was named after the bridge of land in South and Northward, which was built by Alaungsithu of Bagan Period in the east of *Yadanatheinga*. It was followed by King Alaungmintaya who also choose his RoyalCapital in the east of his native village, *Moksobo*, which was the victory place to conquer all over Myanmar. The kings from the reign of Alaungmintaya (1752) to Thibaw Min (1885) were called "eleven successive kings of *Konbaung*, which they ruled Myanmar was called '*Konbaung* Period'".

It is controversial to divide the time of *Konbaung* period into early one, or later one. Early Konbaung period is divided between 1752-1819.<sup>2</sup> The early Konbaung period is divided between 1752-1824<sup>3</sup>. This paper, however trace: 1752-1819 as the scope of the study in early Konbaung period.

## II. Sources of law: Dhammathat, Yazathat and Hpyathton

Although there were exceptionally a few changes in judicial system in the later Konbaung period, no fundamental changes occurred from the recorded Bagan period through Pinya, Innwa, Taungoo, Naungyan (The second Innwa period) towards the early Konbaung period. An absolute monarchy had been practiced during the time, but it has its own judicial system that is familiar with its customs, culture and society.

<sup>1</sup> ကျော်ရှင်း၊ မောင်၊ (၂၀၀၁)၊ တတိယမြန်မာတော်တည်ရန်၊ ရန်ကုန်၊ ပုံနှိပ်ရေးနှင့်စာအုပ်ထုတ်ဝေရေး၊ စာမျက်နှာ-၆။

<sup>2</sup> မာမာဝင်း၊ (၁၉၉၈)၊ ကုန်းဘောင်ခေတ်ဦးတရားစီရင်ရေး (၁၇၅၂-၁၈၁၉)၊ (မဟာဝိဇ္ဇာဘွဲ့အတွက်၊ သမိုင်းဌာန၊ ရန်ကုန်တက္ကသိုလ်၊ ၁၉၉၈တွင် တင်သွင်းသောကျမ်း)။

<sup>3</sup> Phyo Phyo Thet. (2006). Legel System In Early Konbaung Period (1752-1824), Thesis submitted to Yangon University for the degree of MRes in History.

That judicial system had been established by contributions of *dhammathats* produced by scholars, and *yazathats* issued by kings as royal orders. Kings issued their orders in accordance with *dhammathats* as their guides; at the same time, the *dhammathats* could prevail within the monarchical limits. They were interdependent where the king plays a pivotal role in the whole administrative system in the monarchical way. What *dhammathats* and *yazathats* were, in this sense, are important to be known.

According to Okudaira in his article in Journal of Asian and African studies, 2003, "How Judges Used *Dhammathats* (Law books) in their Courts"<sup>1</sup>, he explains that *Dharmasastras* or Hindu codes of Law helped to set create the scene to codify the customary laws unique to various races in the Southeast Asian countries where Theravada Buddhism have been in introduced as in Myanmar, stating that

"In Myanmar, before the compilation of the *Dhammasattan*, the *Dhammasastras* were brought from India to the territory of Mon kingdoms, who were earlies settlers in Myanmar. Hence, it is probable that the Mon writers had composed Pali *Dhammasattam* for Myanmar kings equivalent to the Sanskrit *Dhammasastra* during the Bagan period after king Anawyahta was converted to Pali Buddhism in the later part of 11<sup>th</sup> century. This original law book was often copied, revised and also translated into vernacular languages in the succeeding dynasties of Myanmar until the later half of the nineteenth century."

In his earlier study on Myanmar judicial system in his article "A Comparative Study on Two Different version of the *Manugye Dhammathat*: A leading Law Book in Eighteenth Century, Myanmar already has he stated that, several *Dhamathats* which were recopied, modified, translated into the vernacular from Pali during the reign of King Budon, and the 1782 version of *Manuge Dhamathats* consists of sixteen chapters, while that of Alaungphaya's time (1760) is fourteen chapters. He reminded that the new chapters were added to the former one and these chapters include essential

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<sup>1</sup> Okudaira, Ryuji. (2003), How Judges Used *Dhammathats* (Law books) in their Courts in 18<sup>th</sup> -19<sup>th</sup> Century Myanmar Burma with Special Reference to *Yezajo Hkondaw Hyathton* (Journal of Asian and African Studies, No.66, pp.319-329.

factors on kingship organization of state or the relationship between kingship and sangha (the monastic order) and 30 other new customary rules. In his viewpoint, the Myanmar kings were respectful to the *Dhammathats*, and ordered the Judges to study them, because these were permanent law, while promulgations (orders) of former kings were impermanent and these *Dhammathats* are a leading guide for society: 'a principle' in guidance, while prevailing customary rule were substantially 'a reality'. He explains that the existing *Dhammathats* of Myanmar, its ideas and characteristics were strange or seeming to have been unheard of to the Europeans at that time of their contacts to Myanmar, and the result were their misinterpretations.

If main law source of Myanmar Judicial system is *Dhammathat*, *Yazathat* is its component. It is another major source of Law. *Yazathat* is both "the science or the Art of King" and "the judicial decisions of the kings". According to Dr. Emil Forchhammer in his study in 1885, there were twenty-four works for *Yazathat*, seventeen of them are regarded to have been compiled before the eighteenth century.<sup>1</sup> According to Okudaira (2003)<sup>2</sup>, some are purely literary work at the sometime, some are contribution to the interpretation of Myanmar law. Such as the *mahayazathat* compiled by KaigzaManu Yaza, (ကိုင်းစားမန်ရာဇာ) minister to king Thalun (1629-48) is considered to be accepted as the most important type of the *yazathat*.

In its natural sense, although *the Mahayazathat* is itself a compilation of learned discourses presented to the king by scholars or ministers, and this type is known as "*Shaukhton*" literally, *Shaukhton* means presentation (shauk)+means of Judgement according to *the Dhammathats* (hton). Here *Hpyathton* came in: means of judgements or decisions made by judges of the courts according to *the Dhammathats* under the authority of the king.

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<sup>1</sup> Forchhammer, Emils. (1885). *The Jadine Prize: An Essay*, Yangon, the Government Press. pp.76-77.

<sup>2</sup> Okudaira, Ryuji. (2000). A Comparative study on Two different versions of the *Manugye Dhammathat*, A Leading Law Book in Eighteenth Century Burma (Myanmar), *Journal of Asian and African Studies*, No. 59, pp. 179-195.

To establish a peaceful country, kings issued various decrees or the royal orders, which often were the *yarzathat* themselves in order to maintain law and order.

The *Hpyathtons* played an important role in the history of Myanmar legal literature because they, in the course of time, made much contribution to the whole legal system as codes or references in courts, where judges followed the previous decisions as their guidelines.

According to For chammer, *Hpyathtons* were categorized into three groups.

- (i) anecdotes or decision attributed to mythical personages who appear as the wise and learned,
- (ii) decisions related to religious duty and conduct and
- (iii) judicial decisions of kings or courts in actual cases.

### **III. Levels of Judiciary: Judicial Courts and their Function**

Different levels of courts were established both at the royal capital and the provinces including rural areas in the early to kongbaung period for hearing legal cases to administer justice in dispute as fast and exact as possible. They are, according to Ba Thaug, the *Hluttaw*, the *Ashey yone*, the *Anaukyone* and *Taya Yone*. Just as well there were courts of *Khayaing-wuns*, *Myo-muns* and *Thugyis*.

#### **The Hluttaw**

In its sense, the Hluttaw was the highest organ of the state or country which could exercise a check on royal authorities, including the king, but it rarely did so because the main authority was *Wungyis* who were appointed by the king himself and they served at his pleasure. The *Hluttaw*, actually function matters concerning the administration of justice and provincial governors to follow its instructions. The kings had to hear some cases at the Hluttaw; if they were not present, the crown prince had to be at the Hluttaw, the king's younger brother or the elder sons had to attend there to decide matters concerning state affairs and to judge serious criminal cases. The

*wungyis* could pass judgements at the *Huttaw* only if none of them were present. Only civil cases that could not be settled by the Tayayone were to be filed to the *Hluttaw*, stated U Tin in his *Myanmar Min Oakchoatponsadon Hnint Bodacophaya Ei Yazathatkhawthaw Ameindaw Tam Gyi*.<sup>1</sup> In the monarchical kinship, the *Hluttaw* was the highest court of appeal as well as supreme court for law and order apart from the king and his wishes, and it had ultimate, apart also from religious affairs, civil jurisdiction.

### **The Asheyyone**

The Asheyyone (Eastern Court) was so-named because it was situated at the Eastern Gate of the Royal city. It functioned as the capital's criminal court, dealing with cases of theft, treason, prostitution, false weight and measures, the production of alcohol, slaughter of animals, rape, dacoity, sedition, etc., occurring within the *Shegyothat* or Royal City Area. Thus it was known as *yazawut-yone* (criminal court) in Myanmar language. It was open in two sessions: morning and evening.

### **The Anauk Yone**

The *Anaukyone* (Western Court) was so-named because it was situated at the Western Gate of the Royal City. The literal meaning of the *Anauk* is the back part or the western part of the Palace where ladies of the Royal Palace dwelt. It administered the affairs of the ladies of the Palace queens, princesses, ladies-in waiting, and wives of royal of officials. It can be regarded as Ladies' Court in the Myanmar monarchical period.

### **The Taya Youne**

*The Taya yone* (Civil Court) was so-named because it prevailed justice over affairs, and it was the civil court of appeals for cases from all over the country. The *Taya yone* possessed appellate jurisdiction over *Myowun's* courts, both parties involving in the cases before it to hearing. The *Tayayone* especially had jurisdiction over *kyunhmu* (disputes over the ownership of slaves), verbal abuse, land disputes, loan defaults and assaults, inheritance

<sup>1</sup> ဦးတင်၊ (၁၉၇၆)၊ မြန်မာမင်းအုပ်ချုပ်ပုံစာတမ်းနှင့်ဘိုးတော်ဘုရား၏ ရာဇသတ်ခေါ်သောအမိန့်တော်တမ်းကြီး (စတုတ္ထပိုဒ်)၊ ရန်ကုန်၊ အစိုးရပုံနှိပ်ဌာန။

cases, *ein-hmu* (legal cases involving a family), etc. Those cases were registered in the *Taya Yone* to be heard of at the *Hluttaw*, stated by Dr. Toe Hla in his "*Alaungmintayagyi Kongbaung Shwepyi*".<sup>1</sup>

**Courts of *Khayaing-wuns, Myo-wuns* and *Thugyis***

Outside the capital city where the Royal palace existed on the frontier areas of the *Shwegyothat* (royal city land), *wuns* and *thugyis*, who administered their areas according to geographical and their authoritativeness, had responsibility for affairs within their scopes.

The basic entity for administration is *ywar* (village), then the larger comes *myo* (town), then *khayaing* (district) thus village headmen were called *thugyis* (headmen), *myo-wuns* or (town-administer) for town, and *khayaing-wuns* (district- administrators) who had some authority as judges over affairs in authoritarianism step-by-step. "Petty cases are to be yours; serious are ours-or, big into small, small to be vanished is the core of the traditional legal mechanism of the Myanmar legal system interpreted as "to reduce the major cases to minor ones and by admonishment make the minor disappear to avoid causing hardship to the citizens" by Frank N. Trager and William J Koenig, in their "*Burmese sit-tan 1784-1826: Record of Rural life and Administration*"<sup>2</sup> is the true reason for the establishments of courts towards the rural areas.

**The *Byedaik***

It is noted that *Byedaik* is inclusive in this mechanism the *Byedaik* was not a court of law, but a privy council organized around the four junior councillors, in its origin, or the bachelor quarters for members of the king's retinue, in its sense. There, *Hluttaw* officials, officials of the judristic courts, including officials of the *Ashey Yone AnankYone, Taya Yone* and military officers gathered before entering the audience room, or the royal court or the *Hluttaw*.

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<sup>1</sup> တိုးလှ၊ ဒေါက်တာ။ (၂၀၀၂)။ အလောင်းမင်းတရားကြီး၏ ကုန်းဘောင်ရွှေပြည်၊ ရန်ကုန်၊ စာပေလောက စာအုပ်တိုက်၊ ၂၀၀၂။

<sup>2</sup> Tragen, F. N, and Koenig, W.J. (1979). *Burmese Sit-tans 1784-1826, Records of Rural Life and Administration*, Tucson, University of Arizona Press, p.375.

Minhla Nawrahta titled *atwinwun* of the *Byedaik* on 12 April 1807 made his decision over a serious case between a dispute of then the present king and landowner, while the king had engaged with the latter; he had the authority to settle the dispute as the *Byedaik-atwinwun*. Minhla Nawrahta has been their in charge of the case; he was well known as U Paw Oo, the consillor of the king.<sup>1</sup>

#### IV. Court members and their Responsibilities

##### 1. The officials of the *Hluttaw* and their Responsibilities

The functioning of the *Hluttaw* was performed by its officials. Because the *Hluttaws* was the Supreme Court of the country, its functioning was done by the highly officials including the consultants of the kings as *Wungyi*. Here is a list of *Hluttaw's* officials and their responsibilities, functioning the *Hluttaw*.

1. Four *Wungyis*: they served as regular ministers at the *Hlutta* was well as they served as king's main consultants over affairs of the country in the administration.
2. Four *Wundauks*: they were deputy *wuns*, assisting the *Wungyis*.
3. *MyinzuWungyi*: the minister whose responsibility was in charge of cavalry units in nature; however his cavalry units played one of the important role of military strength of the army of the king, affairs in his units were as important to be heard at the *Hluttaw*, which made him to be present there.
4. Two *Myinsayaegyis*: they were clerks of the cavalry units.
5. *Athinwun*: the minister whose responsibility was in charge of other service units.
6. *Amats*: they served in high-ranking positions in royal courts.
7. *Myedaingamat*: the amat or high-ranking official for land survey.

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<sup>1</sup> Phyto Phyto Thet, Legal System In Early Konbaung Period, (1752-1824), Thesis submitted to Yangon University for the degree of MRes, in History, 2006.



8. Four *Nargandaws*: they were receives of orders of the king and issuing them at the *Hluttaws* when in time of the king's absent there.
9. *NargandawByawtgyihmu*: the official who served as *Nargandaw* as well as the one in charge of servants of the Royal Guards.
10. *Twosayaedawgyis*: they were headclarks of the *Hluttaw* who had responsibilities to implement the swmmons of *Wunggyis* and *Wundauks*.
11. Four *Ameindawyaes*: they were recorders of the instructions of the *Hluttaw*.
12. Four *Athonsayaes*: they were general clerks of the *Hluttaw*.
13. Four *Awayyauks*: they were officers in dealing with strangers at froniers of the country.
14. Four *Myanmar Thangans*: they were Myanmar interpreters.
15. Three *Shan Thangans*: they were Shaniterpreters.
16. Two *Yun Thangans*: they were Yun interpreters (where yun is nowadays Laos' regions).
17. Two *Kathesabyans*: they were translators of *Khasi* (of nowadays north-western regions of Myanmar)
18. *Thitsadawyaes*: they were writers of oaths.
19. *Hlutsaunthwethaukgyi*: he was the chief of the *Hluttaw's* guard
20. *Letnettaik-wun*: he was the minister of the armaury.
21. Two *Letnettaiks*: they were controllers of the armoury.
22. *Kathaungmyaungtaikso*: he was the chief guard of the country's treasury.
23. *Kathaungmyaungtaiksaya*: he was the chief clerk of the chief guard of the country's treasury.

These were the *Hluttaw's* members who had been appointed by the king, and the numbers varied with the wishes of the king as stated in U Tin.

## **2. The officials of the *Ashaeyone* and their Responsibilities**

The *Ashaeyon* was the criminal court in *Kaungboun* administration. Here is the list of the officials of the *Ashaeyon* and their responsibilities.

1. Four *Myowuns*: they were district administrators, at the same times, judges for criminal cases within their administration. (Also, they served as mayors in their municipalities, safeguarding the danger of fire and maintaining transportation)
2. Four *Myosayaes*: they were city clerks.
3. Four *Htaunghmus*: they were prison directors.
4. Four *Htaungsachis*: they were prison secretaries.
5. Four *Shwepysisos*: they were respectable personnels.
6. *Myogyidagabo*: he was the chief of gate wardens.
7. Twelve *Shwemyodawdagabos*: they were the King's royal city's gate wardens.

It was because the Palace along with its city was built and bordered in a square form, there were four fronts from the palace where *Myowuns* were responsible to administer their respective duties along with his members in criminal cases. The result was that in the Criminal Court or the *Asheyone*, they must be present at every session.

### **3. The Officials of the *Anaukyone* and their Responsibilities**

The *Anaukyone* was unexceptionally concerned with the affairs of palace ladies; civil and criminal cases dealt with them. Here is the list of officials of the *Anauk Yone* and their responsibilities:

- (1) Four *Anaukwuns*: they were responsible to deal with the affairs, including civil or criminal cases concerning the palace ladies.
- (2) Four *Anaukwunsayaes*: they were secretaries to the *Anaukwuns*.
- (3) Four *Gadaw-sayaes*: they served as secretaries of wives of the kings princes, and others who resided in the royal area.
- (4) Four *Anaukyone-sayaedaws*: they were secretaries of that court.

Although the *Anaukyone* seemed to be less important in jurisdiction, the affairs of palace ladies played a pivotal role in Myanmar administration through out its history.

#### 4. The Officials of the *Tayayone* and their Responsibilities

The *Tayayone* was the civil court in its nature, dealing with civil cases that possessed appealed jurisdiction over *Myanmar's* courts. All civil cases had to be failed into it to be heard of. Here is the list of officials of the *Tayayone* and their responsibilities.

- (1) Four *Tayathugyis*: they were served as the chief judge of the *Tayayone* in civilcases.
- (2) Four *Tayanagans*: they had to record the details of each cases within the *Tayayone*.
- (3) Four *Tayasayaes*: they were clerks of the *Tayayone*.
- (4) Four *Ameindawyas*: they were assessors at the *Tayatone*.
- (5) *Kunbodein*: he was the collector of court fees from the last party at the *Tayayone*.

While the above mentioned three court: The *Hluttaw*, the *Asyaeyone* and *Anaukyone*, functioning affairs of national and royal concerned, the *Tayayone* functioned its affairs as today's domestic affairs, administering laws and orders within the country. Moreover, judges were dealing with various affairs in accordance with *Dhamathat* and *Yazathats* to deal with home affairs justly, and on the other hand; they were civilians, thus, positions for those judges were possible for those who could accesses to traditional source of laws: *Dhamathats* (Buddha's teaching); *Kyangans* (Pali Buddhist Scriptures), including all cannons of Buddhism; *Kyinthtone* of *Tayayone* (precedents; judistic proceedings); A meindaws (royal order) along with *Yazathats* (Judicial decisions by the king); *Lawkawut* (work about coutersy); and *Bedin* (six branches of knowledge) along with legal maxims, local customs, words of witnesses, ways of justification on evidence, etc... Thus they were recognized as suitable for the *Tayayone* as Judges to the whole home affairs.

## **Conclusion**

It was found that *Dhammathats* were identified by Myanmar ancient scholars and *Yazathats* and royal orders were issued by Myanmar King. Traditionally it is regarded that there were four courts namely Hluttaw, *Asheyyone*, *Anaukyone* and *Tayayone* in *Konbaung* period, especially in its early period. In this study, however, it is found that courts of *khayain-wun*, *Myo-wuns* and *Thugyis* in their village courts performed the judicial affairs all over the provinces of the rural areas of Myanmar. And, this study shows the officials of the courts and their duties and responsibilities in the legal system of early *konbaung* period of Myanmar, and justice was administered in these courts in conformity with the Myanmar, principle;" to mitigate major cases and to dissolve into minor ones as the core principle of Myanmar judistration.

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