

CURRENT LEGAL FRAMEWORK ON ISLAMIC FAMILY LAW IN MYANMAR

Like its neighboring country India, Myanmar has become an independent country on 4th January 1948 and announced as “Union of Burma”. Although Myanmar becomes an Independent country, legal matters are somehow still under the influence of British. Since British colonial time, Islamic law has been recognized as one of the family law of Myanmar and it has been practicing at civil courts of Myanmar till today. This presentation therefore presents the current legal framework on Islamic Family Law in Myanmar.

Islamic Law has been applied as a family law for Muslims since the time of Monarchy although Islam is one of the minority religions. It has been developed at the British colonial era. When Myanmar becomes an independent country Islam has been recorded as the third major religion and recognized as one of the Country’s religions according to its constitutions. In its first constitution which was drawn in 1947, it is stated that;

“The State recognizes Islam, Christianity, Hinduism and Animism as some of the religions existing in the Union at the date of coming into operation of this Constitution.”

Although this constitution was written before Myanmar was an Independent country; it was replaced by the Constitution of the Socialist Republic of the Union of Burma in 1974. The 1974 Constitution also mentioned that;

“The national races shall enjoy the freedom to profess their religion, use and develop their language, literature and culture; follow their cherished traditions and customs, provided that the enjoyment of any such freedom does not offend the laws or the public interest.”

“Every citizen shall have the right to freely use one’s language and literature follows one’s customs, culture and traditions and professes the religion of his choice.”

This constitution came to an end in 1988. Then new Constitution of the Union of Myanmar has been adopted in 2008. In this constitution also describes that;

“Every citizen is equally entitled to freedom of conscience and the right to freely profess and practice religion subject to public order, morality or health and to the other provisions of this Constitution.”

“Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality;”

“to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths.”

As stated in those above mentioned constitutions, every citizen has the rights to apply their family laws according to their religions and culture. Therefore, Islamic Family Law has been applied for the Muslims, especially to deal with the matters relating to Muslims personals.

Although Islamic family law has been applied for Muslim community, yet there has no codified Islamic Law. In 1937, British government attempted to pass the Muslim Personal Law which was based on the *Sharia*, however it has never been officially applied in Myanmar. In addition, the general level of Islamic knowledge in Myanmar legal system is fairly low; the Court has to rely upon the translations of standard texts, interpretation of Quran and rulings for the disputes among the Muslim personals.

The application of Islamic Family Law has been settled by the section 13 of Burma Law Act, 1898 which has been practiced till to date. According to this Act, any question regarding to succession, inheritance, marriage, or any religious usage or institution is necessary for the Court to decide with the Personal Laws of Muslims.

Yet Islamic Family Law has not been codified, some definition and procedure of Islamic Family Law in Myanmar can be found in the rulings as well. For example, matters relating to *Waqf* was decided and ruled out in the case of *Daw Ein & others v. Daw Chan Thar & others* that *Waqf* shall be decided by Islamic Family Law. The Court also defined the procedure of valid *Waqf*. This case has been applied as a leading case for *Waqf* so far. Besides the meaning and validity, of *Waqf* and specific procedures were laid down in the case of *Saya Cair v. Daw Tin Tin & others*.

Another law deal with *Waqf* is the **Trust Act (1882)**, provides that “But nothing herein contain affects the rules of *Muhammadan law* as to *Waqf*...” *Waqf* is therefore the part of the Islamic family law of Myanmar and it has been applied so far, unlikely other Islamic countries.

On the other hand, there is a question that Islamic Law or Civil Law will be used to decide the matters regards to the **Gift**. **Gift** matters are governed by both Islamic Law and Civil. Matters of **Gift** are although decided by Islamic Family Law; it owes respect to the Civil Law. As an example, donation or giving for the religious purposes is totally concerned with religious usage and religious institution. These matters are governed by Islamic Family Law. Meanwhile in **the Transfer of Property Act (1882)** (Civil Law) provides that;

“Nothing in this Chapter relates to gifts of movable property made in contemplation of death, or shall be deemed to affect any rule of *Muhammadan law*.” Therefore, if the **Gift** concerning with immoveable properties, shall be governed by the Civil Law however it does

for religious purpose.

Also for the essentials of valid marriage were laid down in the case of *Maung Kyi & other v. Ma Shwe Baw* and it has been applied as the binding law for all Islamic marriage matters. Moreover, the rights of inheritance and the rights of heir were ruled out in the case of *Habiba v. Swa Kyan* and no case has been over ruled yet. Every disputes concern with inheritance has been decided by interpretation of *Quran (fathwa)* and rulings at civil courts of Myanmar. Although divorce matters were formerly set up by rulings and interpretation of *Quran* like marriage and inheritance matters, in 1952 **the Myanmar Muslim Dissolution of Marriage Act** was proposed and it was entered into force in 1953. In accordance with this Act, a Muslim woman has the right to divorce her husband with appropriate cause and any judge including a Buddhist has the power to pass judgment in a Muslim divorce case.

Basically, there are two kinds of Muslims in Myanmar, ie *Shia* and *Sunni*. In general, although they can be divided into several groups inside each sect; however they are viewed only as *Shia* and *Sunni* by the law. The majority of Myanmar Muslims are the *Sunni Hanafi*, therefore the rules of Islamic Family Law more rely upon the *Sunni Hanafi Law*. There has no codified law and lack of Islamic law knowledge in legal system of Myanmar; as a result, the expert opinions which come from the religious associations are importance at the presence of the Court but not necessarily.

Furthermore, there are conflict of laws arise especially when the case involve in the mixed marriage of Muslim and non-Muslim because these matters are also silent in **the Burma Laws Act** which is the principal source of personal laws. As Myanmar is the Buddhist country, the Government tried to prevent the rights of Buddhist woman when she marries with non- Buddhists. Hence **the Buddhist Women Special Marriage & Succession Act (1954)** was issued. As a consequence, family law problems that occur among the mixed

marriages with Myanmar Buddhist women must be decided by this Act.

Moreover, the matters relating to Islamic Family Law are under the jurisdiction of civil courts and almost all judges are non-Muslims. Therefore Islamic Family Law matters are decided by comparing with Buddhist customs according to their view and sometimes ruled out through the Buddhist customs. Therefore, the present application of Islamic Family Law is not definitely same as British colony Era, not totally same as *Sharia* law of other Islamic countries as well and Muslims of Myanmar has to abide it anyhow.