"The Administration of Justice and Court Procedure in Myanmar"

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The learned writer has ably brought out the frame work of running of courts in Burma. But it is only narrative and fails to address the main issue, that the same is according to justice. Author knows that there is military rule in Burma and the administration of law has to be done in the context of the same. He is also aware of the fact that there has been lot of criticisms against the Judiciary and he should have defended the Judiciary. Just giving the frame work has no meaning, its commitment and to what extent Judiciary is fulfilling that commitment are more important. The allegation against the Judiciary is that it has become a tool to perpetuate the junta rule, that there is no separation of power and it is directly under Home Ministry.

The author stated rightly that administration of justice is carried out by the courts of different levels and Law No. 5/2000 is the basis for which seven principles have been laid down (a) It states that administration is to be independently done according law. The article cites no cases to justify that courts are functioning independently. On the contrary hundreds of cases which are political in nature have been perfunctorily decided in giving the maximum imprisonment. Even the Supreme Court has gone to the extent of legislating to favor the junta’s directive. In Burma Law Report 1991, a case has been reported which virtually changed the Law of Evidence. The decision of the Supreme Court was that confession/statement given before the Military Intelligence is admissible and conviction on that can be given. Whereas section 24 of the Evidence Act clearly states that such confession/statement before the police is in admissible.

The Article contains headings:- Establishment of courts in Burma, Judicial principles, Jurisdiction of Supreme Court, Powers of the Supreme Court, Jurisdiction and powers of other Courts in Myanmar, the rules of civil jurisdiction, civil litigation application of civil procedure, civil appeals, appeals from orders Reference, Revision, Review, supplemental proceedings, criminal powers of Courts supervision on administration of justice, training courses for judges recruiting
of judges. The layout may satisfy laymen but it is unsatisfactory to those who want to get a true picture of what is happening inside courts. For examples, many cases on injunction (O39 R-1), Stay of suits/ executions, attachment before judgment, suits against government, declaratory suits, mandamus, appointment of receiver, framing of schemes, interim orders, many such things which are very important in civil cases have been left out. The basic requirement that a civil case has to be initiated by plaint which must disclose the cause of action, the date when it arose, valuation of the suit and the relief claimed, must be clearly stated, have been overlooked.

Law No. 5/2000 is supposed to be the rock bottom of the court system. In 3 (b), it is stated that aiding in the restoration of law and order and regional peace and tranquility is a duty of the courts. The issue of Law and order lies with the police. How the court is dragged in? (c) States courts have duty to educate the public. The public has no access to get even the copies of the judgments. They are also never published in newspapers which the State controls (e) stated that justice to be in open court. (f) stated about right of defence. There have been several cases where trials had been conducted on annex to jail compound without any defense lawyer (g) states punishment is to be given to reform moral character. But maximum punishment is given in all political cases, violating this consideration.

The article stated that in any case adjudicated by the Supreme court, if the chief justice is of the opinion that any substantial question has arisen in the interest of the public he may cause such question to be heard and adjudicated again by the special appellate Bench (see section 8 of the Judiciary law). It was under this that a previous judgment was set aside reported in BLR 1991. There is no mention of this landmark judgment which now guides the court to enter conviction in all political cases irrespective whether there is evidence of guilt. In the conclusion part the article states that every 6 months a seminar is held by the supreme court relating to administration of justice. At the seminar Secretary-1 of SPDC delivers a speech to be honest and make speedy disposal of cases. The judges by implication are prone to be dishonest. Trials must be speedy never mind whether fair or not. In service training programs are conducted of efficiency”. In fact they are for regular brain washing. In short the article does not say anything of Independence of Judiciary and fair trial, the crux in administration of justice.