

# Rights of Myanmar Women Endowed by Myanmar Customs and Traditions

## 1.0 Introduction

It is from the customs and traditions of a race or a country that one may discern its characteristics and its status.

It can be seen from the Dhammathats, Razathats and the Myanmar Customary laws that Myanmar women, from birth to death, enjoy equal rights with men without any discrimination in accordance with the Myanmar customs and traditions.

In fact, Myanmar women tend to be more privileged in over nights.

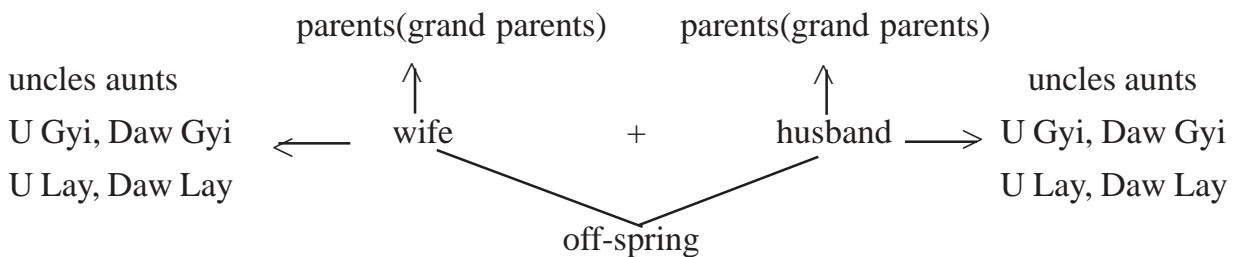
Customs with their full features do not come about over-right Myanmar customs, imbued with the influence of Buddhist ethics involving fairness and empathy, and with intermingled cultures have developed over time eventually to be applied as the Myanmar Customary Law.

Customary law as a principle is understood and accepted by the majority, and it can at times be more effective than the statutory law.

This paper presents the rights enjoyed by Myanmar women based on the customs practised over the centuries in the following categories.

- (1) At birth
- (2) In marriage
- (3) On inheritance

## 2.0 The Myanmar Family



No matter who a Myanmar women marries there is no need for her to change her name, her religion nor her lineage. Furthermore, the relationship system of her children does not differ from that of the father's. Neither the wife nor the children are required to

take the husband's name or that of his lineage. It is seen in the Dhammathat that relations on both sides have equal status and the same means of address.<sup>1</sup>

### 3. Conception and Birth

The vested rights of Myanmar women are put into effect even before birth. Traditionally, there has never been a discriminating preference for boys over girls. Both are regarded as "jewels" treasured objects. A girl is equally welcomed as a boy.

Even in this age of advanced technology, when it is possible to know in advance whether the embryo is a girl or a boy, there is no desire to abort the pregnancy if it is a girl as is the practice in some societies. And such kind of custom at no time will come about in the Myanmar Society where mutual obligations and duties of parents, the off-spring, the wife and the husband, and the practice of Buddhist ethics prevail.

Some countries, depending on their political, social and customary situations, are known to have legalized abortion. In Myanmar, according to the penal code and the Razathat, abortion is not permitted. In the case of an abortion occurring, action is taken on both parties for violation of Act(312) of the Razathat Gyi.

By tradition, Myanmar women are obliged to take care of the child in her womb. A child born out of two parents is their off-spring by blood and is their legitimate child. It can never be termed as illegitimate and inheritance is their vested right.

By the Myanmar Customary Law, a wife may sue a husband for maintenance both for herself and for her children. But only a legally married wife may claim for maintenance. As regards the father's liability to maintain his children, whether born out of a legitimate mother or out of wedlock, so long as they are unable to maintain themselves there are the express provisions of Section 488 of the Criminal Procedure Code.

Furthermore, in consideration of the fact that the cost of food, clothing and lodging becomes greater as the children becomes older, it has been ruled in the case of Criminal Revision No.422 B, Meilawi Quashuda @ U Ba Thein vs Khadiza Bi Bi, that they are entitled to a larger amount of maintenance. It was also held in the case of Ko Than Tin vs Ma Hlaing, 1976, B.L.R=p.177, that even if the child has attained majority, if it is not able to maintain itself, the father has the liability to maintain his child.

Whether a child may sue its father for maintenance is determined in the case of Ma Aye Ti Nyein vs U Kyi Lwin, 1987, by the cheif court, as following.<sup>1</sup>

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1. Thirty- six Dhammathats compiled by Kinwunmingyi U Kaung- vol 26

In a Myanmar family, the father, being acknowledged as the head of the household, has the duty to provide subsistence for his wife and children. Therefore, if failure occurs on the part of the father to fulfil his duty, there should be a way to remedy this situation. Thus, it is deemed to be fair and just to rule that, on failure of the father to abide by his duty towards his child, the child may sue against its father for maintenance.

Legal adoption is customarily accepted and both man and woman are eligible to adopt a child while at the same time, there is no sex-discrimination on the child to be adopted.<sup>1</sup>

Thus, Myanmar women enjoy vested rights in equity with men, starting from conception through birth, marriage, divorce, inheritance and partitioning of estate.

#### **4.0 Marriage**

A significant trait and an inherent character of a Myanmar woman is her modesty and her sense of propriety maintained through shame and fear of sinning.

So thus, the Myanmar Customary Law provides distinctive marital rights for Myanmar women which are more than that can be said for women of some other countries.

The Commission on Status of Women established by the United Nations to deal with global problems concerning marriage have resolved upon the following issues:

- (1) Whether a cohabiting of a man and a woman constitutes a valid marriage or not
- (2) Whether the wife has access to family rights and other rights or not
- (3) Whether the married woman is liable to adverse situations or dangers on her marriage or not

And again, in 1962, the United Nations General Assembly resolution for adopted the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962).

While international bodies are endeavouring to find solutions for the human rights issues faced by women in marriage over the world Myanmar women have enjoyed a high standard of privileges and rights throughout history since the days of the Pyu Kingdom(5th to 9th Century A.D) and still do. How Myanmar women are privileged with customary marital rights is put forward here in the light of the three issues mentioned above.

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1. Myanmar Child Law, p- 430, 7 (a)

#### 4.1 Validity of Marriage

An agreement to become husband and wife should be contemporaneous with the cohabitation of a man and woman forming an integral part of a valid marriage. Only then would a wife be entitled to her due rights and status.

In many countries over the world, women have to face with anxiety and concern over the validity of their status in marriage.

In Myanmar, customary laws concerning marriage have been established based on the values placed on a woman's modesty, dignity and virginity by the society at large and to safeguard them. If a Myanmar Buddhist man and woman, who are otherwise competent to marry, cohabit with the intention of becoming husband and wife, then they are a married couple in the eye of the law. Because a public living together as husband and wife is all that is required to constitute a valid marriage, there can be no question of the legality of the status of the wife even though it may not be a registered marriage.

The Manugye refers to three modes of becoming man and wife, namely:

- (a) a man and woman given in marriage by their parents, who live and eat together,
- (b) a man and woman brought together by the intervention of a go-between, who live and eat together, and
- (c) a man and woman who come together by mutual consent and live and eat together.

It has been judicially interpreted that living and eating together is not an essential condition of marriage but merely a proof of marriage.

The essentials of a valid marriage in the present day are as following:

To constitute a valid marriage between a Myanmar Buddhist man and a Myanmar Buddhist Woman,

- (1) the man should attain his puberty.<sup>1</sup>
- (2) the woman should be a spinster above 20 years of age, a widow, a divorcee, or a spinster under 20 years of age who has obtained her parents' or grandian's consent,
- (3) the parties must give their mutual and free consent to become husband and wife presently.<sup>2</sup>
- (4) both shall not be of unsound mind
- (5) the woman shall not have an unseparated legal husband
- (6) In the absence of direct proof, then they shall live together as husband and wife publicly.<sup>3</sup>

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1. Mg Thein Mg vs. Ma Saw, 6 Ran 340

2. Mg Sein Nyunt vs. Ma Aye Kyi, 1962, B.L.R 404

3. Ma Tin Thein vs. Mg Win Khaing, 1965, B.L.R 199

It after celebrating a marriage according to the Myanmar custom of marriage either party abandons his or her Buddhist faith and converts to another faith and the remaining party still remains a Buddhist, the marriage does not thereby become dissolved.

It was held in the case of *Ma Aye Tha vs. Ma Thein Khin* that, when a Myanmar Buddhist having a wife whom he has married as a Myanmar Buddhist changes his religion into Christianity, there is no automatic dissolution of the Myanmar Buddhist marriage, so his subsequent marriage with another Christian woman is invalid.

According to the Myanmar Customary Law, polygamy is permitted. Although this is socially not favoured nor popular, it has to be mentioned that the second wife is given an equal status with the first wife and is not deemed to be lesser in status. It was ruled in the case of *Daw Kyi Kyi vs Mrs. Mary Wain*<sup>1</sup> that the terms first wife and second wife are to be used in place of superior wife and inferior wife. One has to marvel at the extent of the rights given to Myanmar women.

In Myanmar, the most important element of the Myanmar Buddhist marriage, which is commonly described as a ‘‘consensual contract’’ is **consent**. The law and custom today is that, without the free consent of the bride and bridegroom there cannot be a valid marriage. And so it was thus held in the case of *Mg Sein Nyunt vs Ma Aye Kyi*. And again, it was also held in the case of *Mg Kyi vs Ma Ohn Myint* that signing affidavits in front of a judge or a magistrate with a mutual consent of both parties also would validate a marriage.

The first three articles in the International Convention concerning marriage require:

- full and free consent of both parties to be married
- specification of minimum age for marriage, and
- registration of marriages

Therefore it can be maintained that Myanmar customs do not depart from the objectives of the International Convention on consent to Marriage, Minimum Age for Marriage and Registration of Marriage. Myanmar women have long been accorded with marital and family rights as well as inheritance rights by Myanmar Customary Law.

Special marriage and Succession Act for Buddhist women, 1954, protects and safeguard the rights of women marrying a non-Buddhist man. Section 26 in this Act states that all matters relating to succession of persons married or presumed to be married under this Act shall be decided in accordance with the Buddhist "dhammathat" as if they and all members of their family were Myanmar Buddhists.

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1. *Daw Kyi Kyi vs Mrs. Mary Wain* 1971 Ma Ta Sa 52

2. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, Nov, 1962

Thus so, foreigners and expatriates residing in the Union of Myanmar and who have sought wives among the Myanmar women, cannot seek refuge behind their own personal law when questions of maintenance, divorce or inheritance arise. In much the same way, relatives of the said foreigner cannot contrive to deprive the Myanmar Buddhist wife and the children thus produced of their rights and entitlements.

Moreover, according to the proviso of Section 25(1) of the aforesaid Act, Myanmar Buddhist women are protected from cruelty and unjust treatment with the following rights.

Provided that on account of a marriage between a non-Buddhist man and a Buddhist woman not being permitted by any religious custom that has the force of law, if that man divorces or deserts or causes distress in a cruel manner whether by physical torture or not, notwithstanding anything contained in that custom or law -

- (a) that man shall not only surrender his share of property owned by both but shall pay indemnity to the Buddhist woman;
- (b) the Buddhist woman shall have the right of custody of all children, and
- (c) that man shall provide maintenance for minor children <sup>1</sup>.

#### **4.2 Rights of a married woman over family property and entitlement**

Myanmar women are characteristically shrewd and practical and it is not uncommon for women to enter into business ventures working on par with men. One may observe the significant role Myanmar women have taken in fields like agriculture and trade.

Usually, the husband and the wife share in the toils of earning and of running the home; they share in the fruits of the labours. Where one has brought property in at marriage or after as a gift received, or by succession, for example, the other too acquires a share in the property. It might not be wrong to conclude that this equal right stems from the social custom which acknowledges their role which they earn as partners to their men.

The community of property in the Myanmar family led the Judicial Commissioner of lower Myanmar, Sir John Jardine, to observe that- “The Buddhist law favours the equality of the sexes, and in many ways treats marriage as creating a partnership in goods” (Mg Hla Aung vs Ma E, 1883, s j 219) <sup>2</sup>.

It has been held that Myanmar Buddhist couple are not joint tenants nor business partners but tenants in common.<sup>3</sup>

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- 1. Extracts from laws, Rules and Manuals Relating to Right enjoyed by Myanmar Women, MNCWA
  - 2. Mg Hla Aung vs Ma E, 1883, sj 219
  - 3. Ma Ohn Kyi vs. Ma Hnin Nwe, 1953, B.L.R. Hlultaw p 392

Married couples hold during the subsistence of their marriage an interest in all the properties belonging to either or both.<sup>1</sup> For example, when a house and land is bought with the money won from lottery, both husband and wife are entitled to that house and land whether it is bought in the husband's name or in both.

Universally, there are two types of "property" in the management of the matrimonial estate. They are-

- (1) joint property
- (2) personal property

"Joint property" is the property commonly owned by the husband and the wife. The husband is to manage this kind of property. In case of divorce, the property is divided equally between husband and wife.

"Personal property" is that property which is acquired by the husband (or) the wife individually through self-exertion before or after marriage. In most Western and Eastern countries, this type of property may be separately owned as a personal property.

The United Nations Economic and Social Council urged its member countries to abolish unequal marriage norms concerning property rights of married woman and to replace them with favourable legal provisions giving equal opportunities to married woman as following:-

- " The Economic and Social Council,
- Considering that the equality of rights of spouses during marriage and at its dissolution has been proclaimed in the Universal Declaration of Human Rights,
- Believing that the statutory matrimonial regimes in many countries are incompatible with this principle, some of them depriving the wife during marriage of her at the dissolution of marriage of her share in property in the acquisition of which she has participated either directly or indirectly.
- Recommends that Member States should take all necessary from their legislation, and draws their attention to the desirability of separation of the property belonging to the spouses at the time of marriage and either for the separation of property acquired during marriage or for common ownership of property acquired by both spouses during marriage, such community property to be administered jointly by the spouses; and either case, on dissolution of marriage **property acquired during marriage would be divided equally between them or their heirs."**

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1. Ma Aye Tin vs. Daw Thant, 1940, RLR . 831



It is observed that in many countries in the West, the East and the Middle-East, married women, though living together with the spouse under one roof, do not have the same rights in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.

In fact, they are deprived of the vested rights that we Myanmar women enjoy under Myanmar Customary Law. The matrimonial status of the people of those worlds is such that although the persons cohabit, the finance and properties are not coowned; and rights are not shared. Thus giving reason for United Nations Economic and Social Council to intervene.

It has been over a thousand years that the concept of sharing on equal grounds in a household had been practised by Myanmar families in accordance with the Dhammathats and the customary law. The Dhammathats had much to say about the happy home, the rights and duties of husbands and of wives, mostly through sayings and moral teachings.

A Myanmar marriage is a life of co-existence binded by love, compassion and goodwill. It would be appropriate here to cite the view expressed by a foreigner on the Myanmar marital system.

Mr. Harvey, the historian, observed that- "The Myanmar man chose as wife and equal, to be his helpmate; they shared their daily life, their children grew up under the care of an equal man, an equal woman, gaining the benefit of a father's as well as a mother's example."

Just as free and mutual consent is placed high in importance for a valid marriage, Myanmar women are also given full and equal rights in the case of divorce and partitioning of property.

It may be necessary to delve a bit into the terms and conditions of divorces in other societies so as to make evident the rights enjoyed by Myanmar women.

According to the Myanmar Customary Law, a divorce may be effected through any one of the following- (1) by mutual consent (2) when the man enters priesthood (3) for some matrimonial fault.

By the Myanmar custom, a man cannot divorce the wife on his own accord and without reason.

By the Mohammedan Law, a man can divorce the wife on his own accord by saying, 'Talat' without giving any reason.

In Christianity, a woman cannot file for divorce on grounds of cruelty. A separation is the most she can get.



The Hindu Customary Law held that the wife cannot file for divorce on any grounds including polygamy.

One significant right that Myanmar women have is the right to file for divorce on the grounds of cruelty. In order to constitute cruelty, ill- treatment in the shape of physical violence or infliction of mental pain must be done.<sup>1</sup> Physical assault by the husband on his wife is considered to be a matrimonial fault and a divorce may be granted to a wife on proof of a single act of cruelty on the part of the husband <sup>2</sup>.

The fact that violence against women is protected by the Myanmar Customary Laws is made evident by the proof of the laws cited above.

On divorce by mutual consent and that based on matrimonial fault of one spouse, the wife gets one -third of the property inherited by the husband and an equal share of the joint property acquired by the joint exertions of the parties. Thus, it is seen that the rights decreed by the Myanmar Customary Law in the case of partitioning on divorce are impartial and are in line with the legal criteria set by international instruments for women's right.

#### **4.3 Liability of Married Women to Adverse Situations or Imperilment**

It has been mentioned that by the norms of the Myanmar custom only mutual consent is essential for a marriage to be valid and that there is no need for ceremony. It needs to be added here with emphasis that the dowry system is not practised as it is in some countries. Subsequently, the Myanmar bride does not stand the risk of having to face aggression or aggravated cruelty for not being able to meet the dowry demands.

In case of breach of promise of marriage between Myanmar Buddhists of age, the jilted party may file a suit against the unwilling party for damages for breach of promise of marriage or seduction or both.

Even in cases where circumstances seem not applicable to the rule, special facts are put into consideration. In the case of *Mg Ko Gyi Vs Daw Oh Khin*, the minor daughter *Ma Thet Htar* and the man *Mg Ko Kyi* promised to marry each other and in consideration of the man's promise given to both to marry the daughter, the mother promised to consent to her daughter contracting marriage. Since at Myanmar Customary Law, a minor girl cannot contract a valid union without her parents' consent, the agreement between the man and

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1. Mrs. Pritima Ghosh vs Bima L. Ghosh, 1962, Burma Code, 526
  2. Ma Gyan vs. Su Wah, 11 lower Burma (1897-01) p.28

the mother of the girl was a valid contract. Therefore the agreement was deemed as a tri-partite, and Daw Oh Khin was able to successfully claim damages for breach of promise of marriage against the man through consideration of special facts<sup>1</sup>.

On deciding on the amount to be paid for damages, factors such as seduction, the mental grievance afflicted, the marital future effected and the status of the girl are all put into consideration.

Furthermore, by the Customary law, a girl can also sue her in-laws for damages for breach of promise of a gift of property set apart by the bridegroom or his parents at the time of marriage for the joint purposes of the couple, (Kanwin)<sup>2</sup>.

A Myanmar Women also has the right to claim restitution of conjugal rights. It was held according to the Myanmar Customary Law that, as there was no right of divorce on mere caprice (without a valid reason) in a Myanmar Buddhist husband or wife, so a suit between a Myanmar Buddhist married couple for restitution of conjugal rights would lie.<sup>3</sup> The plaintiff must prove absence of fault on his or her part, and that the defendant has withdrawn from cohabitation without justifiable cause.

In this case of Khun Mg Ngwe vs. Daw Nan Saw<sup>4</sup>, the wife filed for a suit for restitution of conjugal rights against her husband who has left her to take a second wife, and won the case.

In view of the instances of Myanmar Customary laws and the corresponding cases cited above, one may aptly conclude that the issues implicated in some marriages around the world and resolved by the Commission on Status of Women as areas of concern, are in actuality vested rights of women in Myanmar.

## **5.0 Right of Inheritance**

The third category in presenting the rights enjoyed by Myanmar women based on custom and tradition is the right to inherit.

By the age- old Dhammathats and the present-day Myanmar Customary law, the inheritance rights have no discrimination between man and woman, husband and wife,

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1. Mg Ko Gyi Vs Daw Ohn Kin, 1965, B.L.R. P 916
  2. Ma Aye Tin Vs Ma Byaw, 8 Ran P-266
  3. Lahiri, S.C, Principles of Modern Burmese Buddhist law, 1951, Calcutta
  4. Khun Mg Ngwe vs. Daw Nan Saw, 7 BLT P.94

widow and widower, son and daughter, grandson and granddaughter. The variation in inheritance right is based only on the degree of relationship with the deceased. and the general order of succession more or less goes down in descending order in which there is no sex-discrimination whatsoever. Myanmar custom gives vested right to inherit to all descendants in posterity.

On this point, the distinction between the inheritance rights of Myanmar Women and those of women in other countries is made obvious.

In order to appraise the value of the rights endowed upon Myanmar Women, it will be necessary to make a comparative study with other countries.

Concerning with the Inheritance Rights of Women, Resolution 884 DI (XXXIV), as recommended by Social Committee, E/3672, is as follows:-

- " The Economic and Social Council,
- Considering that the principle of equality of rights for men and women is solemnly proclaimed in the Charter of the United Nations,
- Recalling its resolution 504 D (XVI) of 23 July 1953 concerning the application of this principle to the status of Women in private Law,
- Nothing that, in the legal systems of many countries, inheritance rights of women, in intestate as well as in testamentary succession, are not equal to those of men,
- Nothing that, in some systems, the Law deprives women of all inheritance rights, while in other systems the share of a women is a fraction of the share of a male heir in the same degree of relationship.
- Nothing also, that, in some systems, the male heir is always preferred to the female in the order of succession, and that in some countries the inheritance rights and the capacity of women to make a will, to accept or refuse an inheritance or to be administrators or executors of estates, are affected by marriage in a manner incompatible with the principle of equality of spouse,
- Nothing further that, in some legal systems, the interest of the widow in the estate is either smaller than that of the widower, or is affected by special restrictions,
- **Recommends** that Governments of State Members of the United Nations and members of the specialized agencies take all possible measures **to ensure equality of inheritance rights of men and women** by providing that men and women, in the same degree of relationship to the deceased, shall be

entitled to equal shares in the estate and shall have equal rank in the order of succession, and by providing further that the inheritance rights and the capacity of women to make a will, to accept or refuse an inheritance and to be administrators or executors of estates shall not be affected by marriage and that the interest of the widow in the estate shall be equal to that of the widower."

It is only when the inheritance rights of Myanmar Women is compared to those which prevailed in many countries, it is seen that Myanmar Women have enjoyed the rights that other women are deprived of since time immemorial.

A Myanmar Buddhist does not have the right to dispose of his or her property by means of a will. Inheritance, therefore, is by intestate succession only.

The equality of women with men, and their role in the family as managers and sharers, is pointed out as the reason for the absence of testamentary power.

In 1866, the Chief Commission of lower Burma directed that "no will by a Burmese Buddhist having heirs, which dispose of property, movable or immovable, contrary to the Burmese Buddhist law of inheritance should be admitted as valid."<sup>2</sup>

According to the Myanmar Customary laws on inheritance, the husband or wife, who ever may survive the deceased, stands to inherit the Estate. It was held in the case of *Mg Wait Vs Mg Nyein* that a widow or widower is entitled to inherit not only the joint property but also his share of the property that he is to inherit<sup>3</sup>.

Not only does a son and a daughter have equal rights to a place in the order of succession, each has the right to equal shares.

A significant rule of the Myanmar Customary law is the status and privileges given to an Orasa in a monogamous family, the presence of whom may diminish the quantum of the shared taken by the surviving husband or wife, as is in the case of *Kirkwood vs. Maung Sin*<sup>4</sup>.

The Orasa child is the eldest born child capable of undertaking the responsibilities of a deceased parent. There can be but one Orasa in a family. The three essential conditions for the status of Orasa are (a) that the child is a first born; (b) the child attains majority; (c) the child, being a son, is competent to help in the acquisition of family properties and discharge the father's responsibilities, or being a daughter, is competent to help the mother in the management and control of the family properties and household<sup>5</sup>.

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1. Resolution 884 DI (XXXIV), U.N. Economic and Social Council, 1962
  2. Dr. E Maung, *Burmese Buddhist law*, 1970
  3. *Mg Wait vs. Mg Nyein*, 11 U.B.R. (1897-01) p 46
  4. *Kirkwood vs. Mg Sin*, 11 Ran, p-693(787) PC
  5. Dr. E Maung, *Burmese Buddhist Law*, 1970

Therefore, it can be seen that ‘Orasa’ is a term which can be applied to both son & daughter.

Kinwunmingyi U Kaung has also stated much to the same effect.

When put up against the Recommendations and Resolutions of the Economic and Social Council, on inheritance rights, the rights given to Myanmar Women throughout the ages are seen to comply.

In the study made by the Commission on the Status of Women it was found in the legal system of some societies, that parental authority is given only to the father; that even on the passing away of the father, the authority is not handed to the mother; that on divorce, custody of children is given only to the father; and thus, are not in compliance with the principles underlying stability and equality. It was recommended that both parents should have equal share of responsibilities and interest.

Myanmar being a conventional country of great traditions, the mother is given priority in considering for the custody of children.

In the case of Ma Tin Nyunt Vs. Ko Aung Thein, great deliberation was given in the interest of the child. If the child is very young then the mother would be more appropriate to look after the baby. Thus, it was held that, on the provision that the mother is not immoral nor unfit for custodial responsibilities, the child should be in the custody of the mother.

Where the husband and wife divorce by mutual consent, the husband is entitled to the custody of the sons and the wife to that of the daughters. It was deemed that very young sons ought to be left in the custody of the mother until they are sufficiently grown up. This is the view of the Dhammathats <sup>1</sup>.

In this case of Daw Khin Yee vs. U Tun Oung <sup>1</sup>, the decision in favour of Daw Khin Yee, the mother, ruled that unless she is shown to be by reason of her depraved moral character or such other sufficient reason, unfit to have the custody of her children, there is no reason why the mother should not have the right to attain custody of her children, not even on the grounds of poverty. This showed that Myanmar Women are as much or even more, entitled to custodial rights of children as men.

Therefore it can be stated, with modest pride, that Myanmar Women, especially mothers, have been endowed with rights that others are fighting for.

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1. Daw Khin Yee vs. U Tun Oung, 1967, B.L.R p-207

## 6.0 Conclusion

Myanmar Customary law is not Statutory Law. But, although it may not be so, it may be found in the Dhammathats, Yazathats and the treatises, the judicial decisions and precedents, old and new.

The Dhammathats do not lay down the “Law” as it is known today; they reflect the customs and the rules which act and play in society, and when the reflections are, the customs and rules are accepted as having binding force. Thus they have been applied along the ages, then in history, and frequently referred to now in the modern times when the Myanmar Customary Law is the norm. The Myanmar Customary law is the living law of custom that is in consonance with the principles of “Justice, equality and good conscience” and which applies among the Myanmar people who profess the Buddhist faith.

Looking at all these laws, rules and dictums, one can recognize the fact that Myanmar Women have always enjoyed equal rights with men since time immemorial.

And again, on viewing at the findings and recommendations of the commission on the Status of Women on the rights of Women that are found to be lacking in some countries and are to be taken in as issues, we may find that those rights in particular are the vested rights of Myanmar Women endowed by the Myanmar Customary law.

Myanmar Women do not face sex-discrimination since birth, and throughout her life. Daughters are as much appreciated as sons. Myanmar Women have the right to marry on their own free will. They also can file a suit for divorce on grounds of cruelty or other matrimonial fault and can claim damages for breach of promise of marriage. In the case of being deserted by the husband for no valid reason, a Myanmar woman has the right to claim for restitution of conjugal rights. Otherwise, she can claim for maintenance from the man. In marriage also, the wife lawfully holds equal share and interest in the joint property acquired from the exertion of either or both. And during the continuance of the marriage tie one of the married couple cannot alienate his or her own share in the joint property without the consent of the other. Thus the wife has much say in the management of the family properties.

When a divorce is put into effect by mutual consent, given the required conditions, the wife gets an equal share of the joint property.

According to the Myanmar Customary law, a testamentary disposition (in the form of a will) by a Myanmar Buddhist is invalid, and if either one of a married couple dies, the survivor whether it be husband or wife stands to inherit the estate.

As polygamy is permitted, when a husband takes another wife he is both socially obliged and legally binded to be responsible for both wives. Moreover, both the first wife and the second wife have equal rights and entitlements.

Either the son or the daughter whoever may be the ‘Orasa’ (the eldest child) has the right to the privileges of being on ‘Orasa’.

And finally, Myanmar Women as mothers have equal, even preferential, rights for custody of the children.

Myanmar is a country of age- old traditions and customs and also a land overwhelmed with love and goodwill. The life of a Myanmar family revolves around reciprocal goodwill and fulfillment of the rights and duties of members of the family as prescribed by the customary laws and social rules.

It has been shown that these customary laws are in line with the recommendations and resolutions of the International instruments such as the Commission on the Status of Women.

In Conclusion, I would like to state on behalf of all the Myanmar Women that, in view of fact that we have equal rights with men in many aspects endowed as vested right by dint of the Myanmar Customary law, we are happy and proud to be born in this land as Myanmar women and we are resolved to fulfill our role as partners in building a peaceful, developed and modern nation as best as we could.



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2. Kaung U; “ မြန်မာဓမ္မသတ်ကျမ်း(၃)စောင်တွဲ အမွေခန့် ”
3. Lahiri, “ Principles of modern Burmese Buddhist Law, ”
4. Mya U, “ အမွေမှုများ ”
5. Mya Sein U, “ Myanmar Customary Law ” 9th Addition(2000)
6. Daw Than Nwe Dr,“ Law and Woman in Myanmar ” Paper read at the Research Meeting held under the auspricles of University of Yangon.
7. Daw Thida Oo “ Myanmar Customary Law for woman. ”
8. Tin Aung Aye Dr ” သုတဥပဒေမိတ်လင်စုံ ”

## Acts and Laws

1. The Buddhist Women's Special Marriage and Sucession Act, 1954 (Act No: 32 of 1954)
2. Penal Code
3. Succession Acts
4. The Myanmar Divorce Act
5. The Christian Marriage Act
6. The Hindu Marriage Act (1995)
7. The child law (1993)