



# Notes on Buddhist Law Volume III Marriage

*British Burma Judicial Commissioner*

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Volume III

Marriage

By Judicial Commissioner, British Burma

## **Preface**

Take a fourth share amongst them, others that the eldest son takes this fourth, while Mount Tet Too is clear that the mother keeps all until her death. One Native Judge of long experience had never had such a case before him: another had, but only once. A third venerable Judge, on being consulted as to the meaning of texts, compared himself to a man wakening in a dream of times gone-by. Several who insist that by strict law a man may divorce his wife, or a wife her husband without any cause whatever, have stated that they never themselves had occasion to pass any such decree. All the many Native Judges whom I have consulted, whether they held that opinion or not, are united in saying that where one party absolutely objects to a divorce and refuses to ratify or acquiesce in an abandonment, the only possible way of effecting a divorce is by suit and decree in a Civil court. But some have stated the rule at first as if the fiat of the divorcing party were sufficient, and then have limited their meaning and stated that such fiat of the party or award of elderly persons had no efficacy in itself. The difference of statement is something like what foreigners might make about the English law, in asserting from observation of the fact that many injured wives suffered desertion and adultery without complaint, that the English law empowered the husband to commit such wrongs, or from knowing the effect, not the cause of judicial separation, that he has a right to injure her provided he satisfies his wife with a separate establishment. These confusions result partly from the vagueness of the *Menu Kyay* and the universal ignorance of the Hindu codes, but chiefly from the prevalent practice of compromise.

It is plain that some rules of interpretation are required in construing old books of Burmese law, especially as we have no reports of judicial decisions. The Dhammathats show very clearly that the writers were avowedly and strongly influenced by notions, however derived, of what was reasonable and equitable. I would therefore suggest that some of our own rules of interpretation may fairly be applied, such as "the established rule of construction that general words and phrases, however wide and comprehensive in their literal sense, must be construed as bearing only on the immediate object of the Act, and as not altering the general policy of the law, unless, of course..."

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