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Personal Law and Colonial Legacy: State-Religion Relations and Islamic Law in Myanmar

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Chapter 4: Personal Law and Colonial Legacy: State-Religion Relations and Islamic Law in Myanmar

Melissa Crouch[1]

During British colonial rule, the customs and traditions of religious communities in colonies across the world were subject to a process of codification in matters of personal law, and for Muslim communities this often resulted in the codification of Islamic personal law. Burma was no exception, and a few years after the final stage of annexation by the British in 1885, a system of personal law for Muslims was introduced. As part of British India up until 1937, the law that was recognised and imported was largely identical in substance to 'Mahomedan law' (also known as Anglo-Muhammedan Law) as constructed by colonial authorities in British India.

For many, it may come as a surprise that the state of Myanmar recognises any form of Islamic law at all, particular given the anti-Muslim violence since 2012. Even those who studied Muslims in Myanmar, such as Yegar (1972; 2002), have paid little attention to the practise of Islamic personal law as recognised by the state. The only work that has been

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published to date is Hooker's (1984) broad comparative overview of Islamic law in Southeast Asia, which includes a chapter on Burma. There is a large body of scholarship on the construction of Anglo-Muhammedan law in the context of India,[2] but this was never the case in Myanmar. There is no current academic work on how the secular courts of Myanmar have recognised and decided cases concerning Islamic law, or whether the approach of the courts has shifted over time in light of social and political developments.

For those who are familiar with Islamic personal law systems in other post-colonial contexts, the line of inquiry in this chapter is distinctive for several reasons. First, there have never been efforts to codify Islamic personal law in Myanmar, beyond the brief mention in the Burma Laws Act 1898. Second, there have never been efforts to expand the system of Islamic personal law with the creation of Islamic courts, instead these matters have always been heard and determined by the general courts. This means that the adjudication of Islamic personal law in Myanmar is distinct in comparison with other countries in Southeast Asia, where a special system of Sharia courts usually has the task of deciding cases of Islamic personal law. Third, there have also never been efforts to abolish the right to Islamic personal law completely in Myanmar, although some legislative efforts that purport to protect the rights of Buddhist women had the effect of reducing the scope of Islamic personal law in cases of interreligious marriage.

In this chapter, I seek to situate the development of Islamic personal law post-independence in the broader context of the shifting relations between religion and the state in Myanmar. I consider how and why Islamic law exists in Myanmar today. I do this by

[2] For example, Strawson (1999) examines the construction of Islamic personal law in India through the compilation of volumes such as *The Hedaya* by Charles Hamilton in 1791 and Sir Williams Jones' translation of a text on the law of inheritance, *Al Sirajiyyah*, 1792.

exploring two avenues of inquiry, the origins and development of Islamic personal law in Myanmar, and the subsequent persistence of Islamic law during the socialist and military regimes. I demonstrate that although the Islamic personal law imposed on Muslims in Burma by the British may have been 'artificial' at the time it was introduced (as Hooker claims), we now need to consider the ways in which it has evolved and developed over time. This includes how it is used by the courts today, and what Islamic personal law means to Muslims in Myanmar today.

For those who have been aware of the existence of Islamic personal law in Myanmar, it has generally been assumed that 'the law of Burma's Muslims was, in substance and content, the Anglo-Muhammadan law of India' (Hooker 1984: 47). This chapter seeks to address and deconstruct this claim. While it may have been the case that the courts primarily referred to British Indian jurisprudence prior to independence, I suggest that we need to reconsider the development of Islamic personal law since independence, in order to understand how its meaning and practise have changed over time. I consider the extent to which the courts have developed a distinctive line of jurisprudence on matters of Islamic law, and how state policies towards religion have influenced its development. This goes to the question of authority: what is the source of the courts authority, what legal texts do they rely on and to what extent and why this has changed over time? It also raises questions about why Muslims use the secular courts to resolve disputes in a majority-Buddhist state. I argue that the secular courts are one point of interaction between Muslims and the state, which provides insight into how disputes that arise between members of religious communities are resolved. It also reflects some the layered history of the legal system in Myanmar, that has been influenced by colonial rule, parliamentary democracy, socialist rule, and military rule.

The Foundations of Islamic Law in Myanmar

Islamic law in Myanmar can be understood as having been imposed on Burma through a process of ‘double colonisation’. The first act of colonisation was that Islamic law was constructed by British Indian authorities prior to the annexation of Burma. The second act of colonisation was the transfer of this same body of law into Burma without any regard for local Islamic practise. This included the adoption of all laws that applied to Muslims in British India up until 1935. Based on this double act of imposition, Islamic personal law in Burma developed in three stages. Prior to independence, colonial judges drew on the jurisprudence of Anglo-Muhammadan law from British India and Islamic personal law primarily applied to Indian Muslims, who compromised the wealthiest section of the Muslim population in Burma at the time. But in the post-independence period, due to the growing political uncertainty and the violence directed against Indians and Muslims, many fled Burma. This second phase, from 1948 to early 1960s, was also characterised by the courts increasing reliance on precedent as developed by courts in Burma. This lead to the third stage, from the late 1960s to the present in which Islamic personal law was primarily accessed by Burmese Muslims and the Islamic law that was applied was administered by judges who were primarily non-Muslim and who had no training in Islamic law.

The Origins of Islamic Personal Law

There are several factors that led to the recognition of Islamic personal law by the colonial state in Burma. The first was the broader fate of Burma’s subjugation by British India after the final stage of annexation in 1885. The second was the introduction of British Indian legislation for Muslims in Myanmar. The third was the gradual control and limitations placed

on Islamic personal law through laws passed by the legislature, most copied from British India.

The development and origin of Islamic law as it was adopted in Burma is intimately related to its colonial history as a former part of British India. The source of colonial personal laws in British India can be traced back to 1765, when the East India Company was given the right to collect revenue in three areas - Bengal, Bihar and Orissa (Sen 2010: 131; Hardy 1973). This led to a separation between religious and secular laws, which was formalised in 1772. The Governor General, Warren Hastings, issued a directive that the Qur'an was to be used to resolve disputes concerning inheritance and marriage for Muslims (Sen 2010: 132), and there was also to be separate personal law for Hindus. In order to overcome the judges' lack of expertise on either Islamic law or Hindu law, the courts were supported by local experts in Hindu and Islamic law (Lau 2010: 381). This system by which judges relied on local religious authorities to provide guidance in matters of religion remained in place for over 90 years. In 1864, this practice finally came to an end because colonial authorities deemed that local religious experts were no longer needed to assist judges due to the body of case law that had accumulated and the publication of English language compilations of religious laws (Anderson 1996; 1990). In their view, Islamic law had been defined and determined, and judges could now make decisions without need for assistance from local religious authorities.

Unlike in India, there appears to be no evidence that any research or inquiry was conducted into local practices of Islamic communities, despite the shortcomings of this process. Consistent with Keck's argument that Muslims were an invisible minority during the colonial period (Keck 2008), Islamic religious leaders were never relied upon to advise the courts on the law that applied in Burma when it was part of British India. This suggests an

assumption or ignorance on the part of the British about the existence of Muslim communities in Burma at the time it was colonised. It also indicates that in Burma colonial authorities assumed that British Indian law was relevant because most Muslims were thought to be Indian, due to the mass migration of Indians to Burma during the colonial period (Chakravati 1971). Similarly, the colonial legislature incorporated the same laws as were being passed for Muslims in British India, as I discuss next.

Legislative Borrowing

By 1890, not long after the end of the third Anglo-Burman War and the annexation of Burma to British India, the Indian Codes were applied to Burma as a province of British India. Staple bodies of law, from criminal law to property to contracts, were copied wholesale from India. Several laws were passed to establish a hierarchy of courts and administrative control, although different approaches were taken to the governance of Upper Burma and Lower Burma. In 1897, a Legislative Council was established in Rangoon and the role of its members was to assist the Lieutenant General in drafting legislation for Burma. In reality, it took most of the laws from British India, with no innovation. Up until 1922, the two courts from which official law reports were produced were the Chief Court in Rangoon and the Court of the Judicial Commissioner in Mandalay (see Cheesman 2014), and the High Court in Rangoon.[3]

The final stage of the annexation of Burma to British India occurred in 1885, over twenty years after the end of the reliance on Islamic religious authorities in Indian courts. Thirteen years later, in 1898, the courts were granted jurisdiction over customary law through

[3] For a list of all Burma law reports, see Crouch and Cheesman (2014).

the introduction of the Burma Laws Act 1898.[4] This Act remains valid today, and at the time achieved two goals. First, Upper Burma came under the umbrella of British India as the final stage of annexation. In terms of the ethnic nationalities in Upper Burma, some came under separate judicial and administrative systems under British rule. For example, customary law applied in Shan State, provided that punishments were 'in conformity with the spirit of the law in force in the rest of British India'.[5]

The second effect of the Burma Laws Act 1898 was that it allowed for the recognition of customary law in matters of family personal law. The most important provision is section 13:

> Where in any suit or other proceeding in the Union of Burma it is necessary for the Court to decide any question regarding succession, inheritance, marriage or caste, or any religious usage or institution: (a) the Buddhist law in cases where the parties are Buddhists; (b) the Muhammadan law in cases where the parties are Mohammedans; and (c) the Hindu law in cases where the parties are Hindus, shall from the rule of decision, except in so far as such law has by enactment been altered or abolished, or is opposed to any custom having the force of law.

The field of customary law, however, was only preserved in the confined areas such as marriage, inheritance and divorce. This was granted as a concession on the basis that it did

[4] The Burma Laws Act (India Act XIII, 1898) (4th November, 1898). Prior to this, Hooker suggests that it was the Burma Courts Act XVII/1875 that provided the earliest source of colonial authority for application of Islamic personal law in Burma. There only appears to be one reported case prior to 1898.

[5] Burma Laws Act 1898, s 11.

not interfere with the 'aims of empire and entrenchment of colonial rule' (Huxley 2014). This included customary law for the adherents of three world religions: Muslims, Hindus and Buddhists.[6] This raises the question: what was this customary law for Muslims, and how did it develop? To answer this, British authorities turned to the case law of British India, as they did in most other areas of legal practise.

In addition, there were several other laws introduced by the British that only applied to Muslims, yet all came ready made from British India. The Kazis Act 1880 allowed the government to appoint a *kazis* (that is, qadi or judge) to preside at a marriage or other ceremony, although it appears that this law was never implemented (Yegar 1972: 78). There are also two laws governing *wakf*, that is, the dedication of property for a charitable purpose. The Mussalman Wakf Validating Act 1913 provided for the creation of *wakf* either for the purpose of supporting children or descendants, or for the person's own benefit, or for payment of debts. The Mussalman Wakf Act 1924 provides for the supervision and accountability of *wakf*. These laws were copied from British India and were intended to protect the interests of landholders (Kozlowski 1985).

The practise of adopting legislation from British India ended in 1937, when the Government of Burma Act 1935 came into force. This law established Burma as a separate colony with its own Legislative Council. The effect of this change in administration meant that all legislative amendments, additions and changes to Islamic personal law in India after this date were not adopted as a matter of presumption in Burma.[7]

The Operation of the Burma Laws Act 1898

[6] Burma Laws Act 1898, s 13(1).

[7] For example, the Shariat Act 1937 of British India was not introduced in Myanmar.

At the same time that the colonial legislature cemented a form of Islamic law by legislation in Myanmar, the courts were drawing on British Indian precedent from 1898 up to the 1940s to develop a body of law on matters of marriage, inheritance, divorce, child custody and succession for Muslims. Given the little scholarly attention this development received, I first turn to Hooker's work and demonstrate the limitations of his work. I then show how the courts were attuned to the needs of Muslim staff and how English-language Anglo-Muhammedan texts became a staple reference for the courts.

Hooker on the Burma Laws Act 1898

For Hooker, Islamic law was an anomaly that did not really belong in Burma. Professor Hooker has written prolifically on the legal systems, customs and traditions of Southeast Asia.[8] His work in Malaysia and Indonesia in particular is based on extensive experience there, and focuses on how legal texts are actually understood and applied in local practice. His work on legal history in Southeast Asia includes some discussion of the Burmese legal system in the context of broader trends and patterns in law and legal institutions in Southeast Asia.[9] He conducted a review of case law from 1898 up until the 1960s, and he focuses on two basic questions: Who is a Muslim? And, what is Muslim law in Burma? Yet in addressing these questions, his work on Burma appears to have been limited to English-language legal sources, and was unlikely to have been based on any field research due to the restrictions on foreigners visiting the country at that time (see Crouch 2014). He also appears

[8] See, for example, Hooker 1972; 1978a; 1978b; 1980; 1984. For a comprehensive review of the life and work of MB Hooker, see Bell (forthcoming).

[9] On Islamic law in Burma see Hooker 1984: 44-84; on Burmese law texts see Hooker 1978a: 17-25, 143-147; and Hooker 1975: 85-94.

to assume that Islamic personal law was a new arrival for Indian Muslim migrants, and does not recognise that Muslims existed in Myanmar long before the introduction of colonisation (see Thant Myint U 2010).

Hooker opens his work with the claim that 'Islam in Burma had an artificial character to an outstanding degree'[10] (Hooker 1984: 44) and follows this in a footnote with the statement that '[t]he past tense is used to emphasise that Islam in Burma is now largely a matter of history'. This chapter refutes this statement and demonstrates that Islamic law in Burma must not be relegated to history, but acknowledged in the present. Hooker erroneously adopts a 'frozen in time' approach, and so his work, which constitutes the only detailed scholarship in English on Islamic law jurisprudence in Burma, should be treated with caution.

Further, his sole focus on the courts, rather than also looking to other forms of dispute resolution goes against the philosophy of legal pluralism, that is, the need to recognise the existence of legal norms beyond state law. This is rather ironic given that legal pluralism is an idea which he pioneered (see for example, Hooker 1975), although it is understandably more difficult to access such sources. Despite the fact that Hooker focused considerably on *fatawa* (Islamic legal opinions) in contexts such as Indonesia (Hooker 2003; 2008), he appears to have overlooked the existence of *fatawa* in Burma and the role it may play in resolving personal law disputes.

Despite these shortcomings, Hooker's work nevertheless provides a starting point for the analysis of Islamic personal law as it was practised during the colonial period, and can be contrasted with current practice. Hooker's focus is primarily doctrinal and focuses on the

[10] Writing 20 years later, Yegar (2002: 29) also uses the term 'artificial' in describing Islamic personal law in Myanmar, but it appears that his claim that it came to an end is also based on Hooker's factually incorrect claims.

extent to which colonial courts, and later post-colonial courts, in Burma relied on Indian case law on Islamic personal law. He conducts a detailed review of case law issues of the validity of gift, questions of guardianship, marriage and divorce, inheritance and succession, apostasy and conversion, and also crime. He demonstrates that in most instances, established precedent from Indian courts prevailed. He does highlight one area that was distinct, which were cases concerning Zerbadi (Burmese Muslims), where the court was often asked to consider whether Burmese Buddhist law or Muhammedan law applied. He demonstrates that the courts refused to accept the argument that 'Buddhist law should apply to Zerbadis, as they had not necessarily consented to Buddhist law prior to colonialism.

There are many ways in which Hooker's thesis of the artificiality of Islamic law in Burma could be challenged. One example of a more ingrained approach was the recognition given in the rules of the court itself to the Islamic practises of its staff.

Recognition of Islamic Practise in the Court Rules

In a similar approach to the legislature that copied laws from British India, the courts policies and manuals were also adapted from British India. These rules demonstrated an awareness of and accommodation for the practise of Islam. One example of court policies that mirrored colonial practise in British India is the Court Manual. The High Court Manual was a compilation of the rules and regulations of the court that was first published in Burma in 1930.[11] The Court Manual stipulated two key areas in which Islam needed to be respected by the court administration. First, it required judges to be aware of 'Mahomedans Sacred days' by ensuring that no court cases were heard on days of significance for Muslims. This included five particular days of the year: Muharram, the 9th and 10th days of the first month of

[11] See the *High Court Office Manual 1930.*

the Islamic calendar;[12] the anniversary of the birth of the prophet Muhammad, known in Myanmar as *Fatiha-i-duwazhdaham*; *Eid-ul-Fitr*, the celebration to mark the end of the month of fasting; and *Eid-ul-Adha*, the Feast of Sacrifice, to commemorate Abraham's willingness to sacrifice his son Ismail.

Second, the Court Manual went on in the same section 19 to state that:

> All Mohamedan employees of the Court who may ask for it should be granted leave for a sufficient time not exceeding two hours to say their juma prayers at such time as may be locally desired on Fridays, provided that, if necessary, the time is made up by extra work during some part of the day.

In 1958, the Court Manual was revised and updated to reflect the changes to the court system and practise after independence. There were also orders to similar effect concerning religious festivals issued by the High Court that were printed in the *Upper Burma Reports*. For example, the court issued a memorandum to determine the 'Muhammadan festival' dates.[13] However, by late 1913, the courts ceased the practice of determining the festival dates, and judges were instead instructed to 'obtain the necessary information by making enquiries each year locally beforehand'.[14] The courts' memorandum gives no reason for its decision to end this practise.

[12] This is when Sunni Muslims remember Moses leading the Israelites out of Egypt; Shia Muslims commemorate this day as the Day of Ashura, to remember the death of Husayn ibn Ali, the third Shia Imam and the grandson of Muhammad.

[13] Circular Memorandum No 5 of 1910, in *Upper Burma Rulings* (1910-1913, Vol 1), p 197.

[14] Circular of Memorandum No 15 of 1913, in *Upper Burma Rulings* (1910-1913, Vol 1), p 254.

In 1913, the courts issued a memorandum affirming that Muslim employees were to be permitted by the court to obtain permission for two hours leave to say prayers on Fridays, although employees were required to make up for those hours.[15] When the Courts Manual was updated in 1959, this was reduced by half an hour and the time of day was specified:

> All Mahomedan employees of the Court who may ask for it should be granted leave from 12 noon to 1:30pm on Fridays to enable them to say their Jumma prayers, provided that, if necessary, the time is made up by extra work during some part of the day.[16]

Although this was likely taken from British India, this can also be seen as one indication that there was court staff in Burma at the time who were Muslim. This is not surprising, given that Indians were brought into Burma for their skills and familiarity with the British colonial complex, and it was Indians who staffed a large part of the colonial civil service in Myanmar. Traces of this can also be found, for example, in photos on the walls of the Union Supreme Court building in Naypyidaw today. One photo hanging in the upstairs library depicts judges during the colonial period surrounded by staff who, by appearance and dress, were clearly from India and some of whom were likely to be Muslim.

Aside from the court administration and regulations, the more substantive body of Islamic law was developed through hearing court cases and the application of Anglo-Muhammedan texts, as I discuss next.

[15] Circular Memorandum No 13 of 1913, in *Upper Burma Rulings* (1910-1913, Vol 1), p 254.

[16] *High Court Office Manual 1959*, s 30(1).

Anglo-Muhammedan Law as a Basis for Case Law

The development of the courts approach to the application of Islamic law in Myanmar started with case law and precedent established in British India. In terms of Islamic personal law, during the first fifty years of the application of Muhammedan law, from 1890 up until independence in the late 1940s, there were over 60 reported court cases on appeal in Supreme Court or High Court. The *Burma Law Reports* provide an important source of historical evidence not only of the existence of Muslims and their use of the secular courts in Myanmar, but also of the practice of Islamic law as mediated by state authorities. Up till 1948, many different sources of Islamic law were referred to with little consistency, and judges only demonstrated knowledge of legal sources from British India written in English (Hooker 1984). A significant proportion of disputes during this period raised issues of Islamic law related to inter-religious marriage (Ikeya 2013), and the question before the court was often which law (Burmese Buddhist law, or Muslim law) would apply. This began to change after independence.

There were a range of sources and guides that courts came to rely upon for the interpretation and application of section 13 of the Burma Law Act 1898 when cases of Islamic personal law arose in the courts. One primary textbook that came into popular use by lawyers and judges during the parliamentary period is *Mulla's Principles of Muhammedan Law*. This volume was first published in 1906 by Sir Dinshaw Faridunji Mulla and remains an authoritative casebook of precedents on Islamic personal law from British India, based on the Hanafi school of law.[17] While this book is now in its 20th edition, most legal practitioners in Myanmar rely on a 1970s or 1980s edition of this volume. The book does include

[17] The Hanafi school is one of four schools of law and is prevalent across approximately one third of the Muslim world, including India, Pakistan, Afghanistan, Syria, Jordan and Lebanon: Kamali, 2008: 73.

legislative developments on Islamic personal law in India, but these are not relevant to the context of Myanmar. While other English-language texts such as Ameer Ali's *Mahomedan Law* (1912), Wilson's *Digest of Anglo Muhammadan Law* and other such volumes were used in the early 1900s in Burma, by 1940s and 1950s it appears that *Mulla's* became one of the standard references for courts and the legal profession, in addition to already established case law. It is not surprising that an English textbook became the most popular reference, as up until the 1960s English was the primary language of the courts in Burma.

A brief review of *Mulla's* with reference to some court cases in Burma provides insight into how the courts developed Islamic personal law. *Mulla's* essentially addresses five main areas of law: inheritance, *wakf*, marriage and divorce, and guardianship. As a preliminary matter, it addresses the issue of conversion to Islam and how a court determines if a person is a Muslim. The general position is that courts do not have authority to 'test' a person's belief, but rather accept as sufficient the testimony of a person who 'accepts the unity of God and the prophetic character of Mahomed' (Mulla 2012: 20). This was often a highly controversial issue in Burma, and the courts in the early 1900s were generally inclined to the view that Burmese women had usually 'stimulated conversion to Islam' to marry Muslim men,[18] and so should not be bound by Islamic law. This has recently reemerged as an issue in Myanmar, with a draft law preventing conversion proposed in 2014.

Having determined that the parties are Muslim, the second preliminary matter addressed in *Mulla's* is that the courts are to presume that a Muslim who comes before the court is a Sunni Muslim, unless proof that they are Shia is offered (Mulla 2012: 28). For example, in the case of *Shahar Banoo* the court had to consider who was the rightful trustee

[18] *Ali Asghar v Mi Kra Hla U* [1916] LBR 461.

of the will of a deceased Shia Muslim man.[19] Even within Sunni Islam, there were cases were the courts were required to decide which of the four schools of law applied to the case at hand. For example, there were cases brought before the courts where one of the parties to the case was of the Shafi school of law, and the other party to the case was of the Hanafi school, and in such a case, the court had to decide which of these schools of law would apply to the applicants.[20]

Aside from this distinction the parties were generally referred to by the court as 'Mahomedans', although at times the court was more specific in terms of ethnicity. Occasionally, the court would note that the parties were Chulia,[21] or 'Zerbadis'.[22] One case even refers to the Zerbadis as 'native Mussulmans',[23] which appears to acknowledge the long history of some Muslim communities and suggests that there was recognition at the time that not all Muslims were recent migrants. As *Mulla's* was written as a textbook for British India, and later amended for post-independence India, it does not mention issues of identity that were specific to Burma.

Aside from the identity of the applicant, *Mulla's* lays out the laws of inheritance according to the Hanafi school of law, which is based on the authoritative works of Al Sirajiyyah (by Shaikh Sirajuddin) and Al Sharifiyyah, a commentary on the former by Sayyad Shariff (Mulla 2012: 64). These sources are frequently relied upon by the Islamic Religious Affairs Council of Myanmar in the *fatwa* it issues, but they are not cited by the

[19] *Shahar Banoo v Aga Mahomed Jaffer Bindaneem and others* [1904] LBR 66.

[20] *Rahima Bi alias Ma Ta v Mahomed Saleh* [1914] LBR 54.

[21] *Mohamed Khan v Damayanthi Parekh and two others* [1952] BLR (HC) 356.

[22] See for example *Ma Pwe v Ma Hla Win* [1894] UBR 536.

[23] *Ahmed and another v Ma Pwa* [1895] UBR 529.

courts. *Mulla's* also sets out the particular principles in relation to wills, relying on the *Hedaya*, a Hanafi text first composed by Shaikh Burhan ud Din Ali in the twelth century, and later translated into English by Charles Hamilton on the command of the Governor General of India, Warren Hastings (Mulla 2012: 132).

A second key focus of *Mulla's* is the principles surrounding *wakf*, that is, the dedication of property for a religious or charitable cause, which implies the end of the owner's rights and 'detention in the implied ownership of God' (Mulla 2012: 197). A *wakf* may be created either orally or in writing and is managed by a person known as the *mutawalli*. Disputes over *wakf* arise if a *mutawalli* is perceived to be unfit to continue their duties of administering the *wakf*, or if there is suspected misuse of the trust property. Cases may also be brought to ensure that endowments are appropriated for the purposes to which they had been originally dedicated. For example, concerns may arise if the *mutawalli* is using the *wakf* as his own private property. These cases revealed the deep rifts within the Muslim community, such as the dispute over the administration of a mosque in Rangoon between the Randheria and the Surati Muslim communities in the early 1900s.[24]

The final two themes dealt with by *Mulla's* are marriage and divorce, and guardianship. The section on marriage considers how to determine when a marriage has taken place, and stresses the necessity of the proposal and acceptance. It outlines what counts as *mahr* (dower), that is, money or other property that the wife is entitled to from the husband in consideration for the marriage (Mulla 2012: 371). It also details the three types of divorce: *talak* by the husband; *khula*, 'by consent', which is often considered to be the right of the wife to seek divorce (although *Mulla's* does not use these terms); and *mubara'at*, by contract

[24] *Mahomed Ismail Ariff and others v Hajee Hamed Moolla Dawood and another; Mahomed Ismail Ariff and others v Mahomed Suleiman Ismail Jee and others* [1916] BLT 141.

(Mulla 2012: 307). Finally, on guardianship, *Mulla's* refers extensively to the Guardianship and Wards Act 1890, which was also adopted in Burma from British India, and which prevails over Islamic personal law in cases of conflict (Mulla 2012: 431).

Islamic personal law in Myanmar was therefore modelled closely on the English language Anglo-Muhammedan texts that were produced in British India. Mulla's provides one example of the core principles that were applied, and this was a volume that gained particular currency in Myanmar, and remains in use in the courts today.

Independence and the Development of Islamic Personal Law

Personal law existed prior to the constitutional right to religion and therefore has operated in Burma largely independent of it. All constitutions in Myanmar have emphasised that past laws continue to operate unless specifically repealed. Further, constitutional provisions on religion have not affected the status and practise of Islamic personal law, and this explains why Islamic law has endured through socialist and military rule.

Law, Religion and Islam in Myanmar

The main debate concerning law and religion that arose during the parliamentary period post-independence in 1948 was what place religion, particularly Buddhism, should be given in the Constitution. The transition to independence and subsequent period of parliamentary democracy was turbulent and chaotic. The new government under U Nu had to deal not only with the armed struggle launched by the Community Party of Burma (see generally Linter 1990), but also ethnic insurgency due to the breakdown of political agreement (Smith 1999). The army therefore had reason to consolidate its role in politics and administration. In terms

of the judiciary, while the courts were restructured it remained based on its common law colonial heritage. The Constitution guaranteed independence for judges, who were now Burmese, not foreigners, although of the 11 judges on the Supreme and High Court in 1948, all had studied overseas (Myint Zan 2004). With independence in 1948, the judgments of the Supreme and High Courts of Burma, the two apex courts under the 1947 Constitution of the Union of Burma, were compiled in a series then called the Burma Law Reports. Up until 1962, the Law Reports consisted of the decisions of the Supreme Court and High Court and were mainly in English, with some cases reported in Burmese. From 1948 to the 1960s, there were 20 cases on Islamic personal law reported in the Burma Law Reports. Yet these cases only represent ones that were heard in the High Court or Supreme Court on appeal, and so the likely number of cases brought to the court at first instance is unknown.

In 1953, the Burma Muslim Dissolution Marriages Act 1953 was introduced to modify and limit the system of personal laws by allowing women the right to divorce (Huxley 1990: 248). Although the law stated that it does not affect the 'original Islam code of law', this was with the exception of a woman's rights to divorce under the law. The basis on which a divorce would be granted included if her husband's whereabouts was unknown, if he had failed to live with her for one year, if he was abusive, or 'any other ground of divorce by Muslim Law given as a reason for divorce' (s 1(c)). The law also clearly stated in section 6 'that the divorce is affected if the married Muslim woman changes her religion', therefore allowing apostasy to affect the validity of a marriage.

The major debate on religion during the parliamentary period was the constitutional position of Buddhism. The 1947 Constitution initially did not identify Buddhism as the religion of the state. Prior to independence, during the drafting of the Constitution, there were

some members who proposed the constitutional recognition of Buddhism; however General Aung San was said to have been opposed to this proposal (Smith 1965: 230).

Yet Aung San was assassinated half way through the Constituent Assembly debates in 1947, and after his death the debate shifted. Ne Win proposed to include a provision that recognised the special position of Buddhism, after being inspired by the provision in the Irish Constitution that preserved a 'special position' for Catholicism.[25]

The 1947 Constitution as it was introduced recognised that Buddhism had a special position as the religion of the majority of the population (s 21(1)), but it also provided for equality before the law regardless of 'religion, sex or race' and prohibited discrimination based on religion (s 13, 21(3)). It went on to provide that '[a]ll persons are equally entitled to freedom of conscience and the right freely to profess and practise religion subject to public order, morality or health and to the other provisions of this Chapter' (s 20). The explanation to this provision noted that it did not extend to 'any economic, financial, political or other secular activities that may be associated with religious practice'. The Constitution also specifically noted four other religions or beliefs that were followed at the time – namely Islam, Hinduism, Christianity and Animism (s 21(2)). U Nu stressed that the government would work to 'faithfully implement' the provisions on religious freedom in the Constitution (U Nu 1951: 73). There were no reported court cases that concerned section 20 during the period of parliamentary democracy, so it remains unclear how s 21(1) on the special position of Buddhism was to be reconciled with s 21(2) on the recognition of other religions. No laws were ever challenged in the courts on the basis of their constitutional validity in relation to the provisions on religion.

[25] Constitution of Ireland 1937, s 44(1).

This uneasy and ambiguous balance between the special position of Buddhism and the recognition of other religions changed when the 1947 Constitution was amended in the early 1960s. This was highly controversial and indicated that the idea of a secular state in Burma was fragile and open to compromise. The impetus for this constitutional amendment came as early as 1956, when U Nu, leader of the faction of the AFPFL renamed the Union Party, declared that he would work to make Buddhism the state religion (Maung Maung 1963: 117). Following the caretaker government, U Nu successfully contested the elections of February 1960, in part because of his promise to make Buddhism the state religion. A State Religion Inquiry Committee was subsequently appointed to consider the proposal to make Buddhism the state religion (Maung Maung 1963: 119). The proposal was opposed by groups such as the National Minorities Alliance, a coalition of Muslim, Christian and other minority religious leaders, led by Burmese Muslim and well-known lawyer U Than Tun. When the Committee, led by former Chief Justice U Thein Maung, toured parts of the country, it faced significant opposition. For example, when the Committee members travelled to Myitkyina by train it was pelted with stones, and so a curfew was declared under section 144 of the Criminal Procedure Code to restore order in Myitkyina, Kachin State.[26]

Despite the opposition to this proposal, on 26 August 1961, the proposal received the approval of two-thirds of representatives in both chambers and so the Constitution was amended to make Buddhism the state religion.[27] A provision was also inserted to compel the

[26] News article on file with author: 'Train Bringing State Religion Commission Stoned, Turned Back' 20 December 1960. I have argued elsewhere that s 144 of the Criminal Procedure Code has created an 'everyday emergency' in Myanmar: see Crouch forthcoming.

[27] The Constitution (Third Amendment) Act 1961, s 21, and The State Religion Promotion Act 1961 in Smith (1965: 329-335).

Union Government to allocate 50 per cent of its 'annual current expenditure for matters connected with religion'. This concerned religious minorities such as the Kachin (who are majority Christian), who perceived this amendment as having the effect of imposing Buddhism on minorities (Farrelly 2014).

Further provisions were also added to protect and promote the teachings of Buddhism, to require the state to support the restoration of pagodas, and for the provision of hospitals specifically for members of the Sangha (ss 21, 43). The religion of Buddhism was mentioned as occupying a 'special position' as the religion of the majority of the population (s 21(1)). It maintained a list of four other religions and beliefs – Islam, Christianity, Hinduism and Animism – although this list does not appear to be exclusive but rather identifies the four main belief systems at the time (s 21(2)). Further, the amendments inserted a prohibition on the abuse of religion for political purposes'. In addition to the Constitution, a national law known as the State Religion Promotion Act 1961 was also passed, which required all schools to teach the Buddhist Scriptures to Buddhist students, and to prisoners in prison.

After Buddhism was officially established as the state religion by way of constitutional amendment in October 1961, hostility and tensions towards by Burmese Muslims significantly increased.[28] A second amendment was passed in response to backlash from minorities. The amendment inserted s 21(6), and amended s 20 to include the word 'teach'. This was intended to reaffirm the teaching of religion in schools, and the right of parents to ensure their children was taught about their religion. Yet this failed to ease the tensions, and the military coup of 1962 was also the end of Buddhism's short-lived status as the state religion. There was little time for the government to implement the proposal, and the

[28] For historical analysis of the dynamics between Buddhism, politics and the state more generally, see for example Smith (1965); Mendelson (1975); Spiro (1982); and Brohm (1975).

courts never had the opportunity to consider the implications of this constitutional amendment. The shift from a secular state to a religious state, and then to a socialist regime post 1962, had a profoundly negative effect on relations between religious minorities and the state.

Socialism, the Military and the Marginalisation of Islam

The socialist period, followed by the period of military rule, effectively relegated religion to the private sphere. The effect of the changes made to the legal system during the period from 1962 up until 2010 was to undermine the system of public law, and with it the right to constitutional review. I would suggest that it was civil law, including Islamic personal law cases, that were least affected by these changes.

On 3 March 1962, General Ne Win declared that the military had taken over by forming the Revolutionary Council. The political and judicial landscape underwent radical reform. The Revolutionary Council began by abolishing the parliament in March 1962, and later that same month doing away with the existing structure of the judiciary by closing the Supreme Court and the High Courts, and establishing the Chief Courts in its place (Myint Zan 2000: 31). The Special Criminal Courts and Appeals Court were then established, with three members drawn from the Revolutionary Council and Revolutionary Government (Cheesman 2009).

The socialist period had an effect on Islamic personal law in two ways. Before I address these, I need to emphasise that Hooker's claim that the last reported case on Islamic personal law took place in 1960 is factually incorrect (Hooker 1984: 54). Hooker's research on Islamic law in Burma wrongly states that 'no reliable data on Muhammadan law have emerged from Burma since 1964' (Hooker 1984: 76). Hooker's research was published in

1984, although it appears that he had not had the opportunity to read Abdul Ghafur's authoritative book on Islamic Law (in Burmese) which was first published in 1984 (and recently republished in 2014). Further, Hooker presumably did not speak to any Burmese lawyers. If he had, they could have pointed him to the court decisions that were published in Burmese in this area, as it is the custom of all Burmese lawyers to keep their own personal libraries of the Burma Law Reports (see Crouch and Cheesman 2014). Rather, Hooker's work is perhaps an indication of the reality that the last case on Islamic personal law in the English language was reported in 1963 (Myint Zan 2000); after this period all Islamic personal law cases up to the present are in the Burmese language.

After 1962 it became increasingly difficult for Muslims to enter the civil service, including the judiciary. In 1972, significant structural changes were made to the judiciary with the introduction of the People's Judicial System. This was preceded by the removal of all professional judges from the bench and their replacement with members of the Burma Socialist Programme Party (BSPP), the majority of whom had no legal qualifications (Myint Zan 2000: 36). Some of the former judges were reappointed to the position of 'court advisor', although this was purely an advisory role. The courts initially heard only criminal cases until June 1973 when civil cases began to be heard.

One consequence of the restructuring of the courts and the replacement of all judges with 'people's judges' is that few Muslims after this time were able to enter the judiciary. This is in contrast to the parliamentary period, when there were several prominent Muslim judges and politicians. One example was U Si Bu, a Kaman Muslim who was one of three judges on the trial of Aung San's assassin.[29] After the military coup, Muslims generally faced

[29] See Maung Maung 1962. His son, Major Maung Aung, was the Deputy Minister of Immigration Major Maung Aung.

greater difficulties seeking employment in the civil service, or getting promoted. One consequence of this is that there are few Muslim judges in the courts today. This led to the ironic situation that Muslims who use the courts and access Islamic personal law have their cases heard by judges who are non-Muslim and who generally have no training in Islamic law.

At the constitutional level, while the 1974 Constitution included provisions for equality before the law regardless of religion and provisions on freedom of religion (ss 22, 147), these provisions were subject to wide limitations that justified state interference in these freedoms. For example, the national races could exercise religious freedom, along with other cultural rights, on the broad condition that 'the enjoyment of any such freedom does not offend the laws or the public interest' (s 21(b)). This right was further subject to the limitation that it was not 'to the detriment of national solidarity and the socialist social order' (s 153(b)). The socialist order therefore came first, and religion was secondary to this. The right to have a religion was also mentioned along with the right to freedom of thought and conscience, although it was made clear that religion and politics should not mix (s 156(a)-(c)).

The socialist period brought the country to ruin economically, and there was growing unrest and the democracy protests of 1988. This led to the demise of the socialist regime in 1988 after the take-over of the military. This led to a period, from 1988 until 2010, during which time there was no constitution. Although the Supreme Court was re-established in 1988, evidence of interference in the judiciary by the executive remained on-going and the courts were a far cry from their former independent status during the parliamentary period. One of the main changes in state-religion relations in the 1990s was that religious affairs was

given its own ministry, and the Sangha was further controlled by law,[30] both measures were a way of bringing religious organisations under state control.

From 1993 to 2007, a National Convention was hosted by the military for the purpose of drafting a new constitution. The proposal in terms of religion was to include a provision almost identical to that which appeared in the 1947 Constitution. The resulting 2008 Constitution therefore returned almost word-for-word to the statement on religion under the 1947 Constitution. The main provision granting the right to religious freedom is s 34:

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

The limitations on this right, 'public order, morality or health', are in line with general limitations by international standards. It is further limited by s 360(a), which states that the right excludes 'any economic, financial, political or other secular activities that may be associated with religious practice'. The 2008 Constitution goes on to explicitly recognise 'Islam' alongside Christianity, Hinduism and Animism, and the special status of Buddhism (ss 361-2), similar to the 1947 Constitution. These provisions have yet to be interpreted or applied in court, and it is unclear whether this list is exclusive. For example, it is unclear whether the 2014 draft law banning interreligious marriage (see Nyi Nyi Kyaw this volume) would be interpreted as upholding the 'special position' of Buddhism, or whether it could actually be interpreted and struck down for restricting the freedom of followers of a 'recognised' religion such as Islam.

[30] The Law Relating to the Sangha Organization No 20/90. See Matthews 1995.

The Constitution also prohibits the manipulation of religion for political gain, and contains the same ban on inciting hatred or conflict between religious communities (s 364). There is an additional provision that was not in the 1947 Constitution, which gives sweeping powers to the Union to 'assist and protect the religions it recognizes' (s 363), presumably those mentioned above, at its absolute discretion. There have not yet been any court cases in relation to these provisions.

The 2008 Constitution also provides for protection from discrimination on the basis of religion (s 348). Mention of the right to have a religion is also made along with a list of cultural and linguistic rights, subject again to similar limitations of 'Union security, prevalence of law and order, community peace and tranquillity or public order and morality' (s 354(d)). The Constitution also contains some peculiar restrictions, such as the statement that members of religious orders are ineligible to vote in elections (s 392(a)), which presumably affects several hundred thousand Buddhist monks in the country (Lidauer and Saphy 2014). One feature of the political environment post-2011 is that there has been little reference to the constitutional provisions on religion, despite the potential for it to be a source of authority in resolving present tensions.

The Development of Case Law on Islamic Personal Law

While Islamic personal law in theory was still available and applications could be made on matters of marriage, inheritance, divorce and child custody, in reality the number of overall cases reported in the Burma Law Reports declined after the 1960s. Most of the cases on Islamic personal law that reached the Supreme Court after the 1960s concerned matters of

inheritance[31] or *wakf*.[32] This is consistent with the reality that wealth is often tied up in property due to the dysfunction of the banking system in Myanmar, and so it is disputes over property in relation to inheritance claims that more often go on appeal to the Supreme Court (Nardi and Kyaw Lwin 2014).

One development after the 1960s was the publication of some Burmese-language texts on Islamic personal law. These took on the role of summarising, and at times substituting for, Anglo-Muhammadan English textbooks, given that the courts no longer operated in English and the levels of English comprehension of judges declined dramatically. The primary book on Islamic Law (in Burmese) which is still referred to today is by Professor Abdul Ghafur (first published 1984, revised 2014), and copies can be found in the library at Yangon University Law Department today. There is also a volume on Mohamedan law by U Win Kyi (1984). More recently, U Khin Maung (2000), who was the former Deputy Director of the High Court from 1984-1985, has also written on Islamic law. The common characteristic among these volumes is that they address the narrow matters of Islamic personal law such as marriage, inheritance and divorce; they are generally consistent with Anglo-Muhammadan law and therefore the Hanafi school of law as articulated in volumes such as *Mulla's Principles,* and they primarily cite from these volumes as well as from established case law from India and Burma.

[31] See for example *Mahmut Yakut Mansa hnin Ayut Itsamel Atiya* (1973) BLR (CC) 15-17; *Daw Rahema hnin Daw Thi pa hnit* (1975) BLR (CeC) 79-83; *U Bo Gyi hnin U Ko Gyi* (1985) BLR (CeC) 6-8; *Daw Than Myin hnin Daw Tin Myin (ka) Daw Cho Tu* (1993) MLR 66-72; *Ma Ôn Than ba ku-hnit-se hnin Ma Hla Hla Than pa le* (2001) MLR (CI) 493-504.

[32] *Saya Chè hnin Daw Tin Tin pa shi* (1994) MLR 45-55; *U Chit Pe vs Daw Mya May* (1966) BLR 710; *U Ahmed Ebrahem Madar vs M Chella Sarmi Swar bir & 10 others* (1966) BLR 15.

It is difficult to make a general assessment of who accessed the court, because there have been so few reported court decisions and the court decisions that are reported rarely mention the applicant's identity in terms of ethnicity or socio-economic status. However, appeal cases would suggest that the courts are generally accessed by well-off, urban Muslims, and in situations where the applicants were unable to obtain the resolution they sought through religious leaders.

The Myanmar legal system today still recognises Islamic law for Muslims in matters of personal law such as marriage, inheritance, divorce, *wakf* (charitable trust), *zakat* (alms) and child maintenance. These matters are usually heard at first instance by the Township Courts,[33] but these cases are not reported. The only cases now reported in the Myanmar Law Reports are cases heard in the Supreme Court, which in matters of personal law are likely to be appeal cases. The Myanmar Law Reports are also a highly restricted publication and only about 20 cases are published per year in an annual volume (Crouch and Cheesman 2014). There have only been a handful of reported cases on Islamic personal law in the Supreme Court in the past decade.[34] I select two of these cases for discussion to illustrate the kinds of appeal cases on Islamic personal law that come before the Supreme Court and how the court deals with these cases. The Burma Laws Act still remains the primary legal touchstone of authority for the courts.

In the case of *Daw Ma La & 5 others v Daw Myin Myin Kain,* the question before the court was whether a Buddhist daughter could inherit from her deceased Muslim mother. In

[33] This depends on the nature of the matter and the amount of money involved, and cases may be appealed to the District Court, High Court and Supreme Court.

[34] It should be noted however, that this may be consistent with the more general trend of the Law Reporting Committee, which has only reported a very small number of cases per year since 1972 to the present.

2000, the inheritance claim was heard at first instance in the Yangon Division High Court. The case was originally brought by the daughter, Daw Khin Myin, who was Buddhist. Her deceased mother had been married three times. Her mother's first husband had been Muslim and they had three children who were said to be Muslim. Her second husband, who was the father of Daw Khin Myin, was 'Hindu Buddhist' and her mother was also said to practise Buddhism for sixty years. But one year before her death, the mother was alleged to have converted back to Islam. After her mother's death, Daw Khin Myin sought her share of the inheritance. By the time the case reached the Supreme Court on appeal, the original applicant had passed away and her five sons and daughters (the grandsons and granddaughters of the deceased) continued to pursue the claim. The original appeal was unsuccessful, then in 2005 the applicants applied for the case to be heard under the Supreme Court's revisional jurisdiction. The inheritance claim included property in Yangon, gold and gems.

The court had to consider both the religion of the deceased at the time of death, and the original religion of the daughter at the time of birth. Both parties agreed that Daw Thein Shin died as a Muslim, and the court held that the distribution of the inheritance must be according to Islamic law under s 13 of the Burma Laws Act 1898, citing the case of *Daw Pu v Amat Issasi Maesimar*.[35] The court also cited precedent for the principle that the estate of a deceased person who had converted from Buddhism to Islam before their death cannot be inherited by Buddhists.[36]

In considering the religion of the applicant, it was argued that the Caste Disabilities Removal Act 1850 had the effect of preserving a person's right to inheritance, even if they had converted to another religion. The Caste Disabilities Removal Act 1850 is another law

[35] (1955) BLR (HC) 21.

[36] *Asha Bibi v Ma Kyaw Yin and others* (1920) BLT 217.

that was derived from British India along with six other laws, which were originally designed to address the issue of inheritance for Hindus. It was previously held under Hindu law that a person who converted out of Hinduism to another religion lost their rights of inheritance, but the Caste Disabilities Removal Act 1850 overturned this. The Supreme Court of Myanmar, in interpreting this law, held that this law only intended to preserve the right of inheritance of the person's original religion (presumably the religion at birth) in the event that they changed religion, but it did not aim to remove all limitations on inheritance due to differences in religion. In this case, the Supreme Court held that the applicant, Daw Khin Myin, was 'born' Buddhist and was not Muslim. On this basis, the court held that she did not have any right to inherit the property and the case was dismissed.[37] Interestingly, the court noted that if the applicant had been born 'Muslim' and later converted to Buddhism, she would still have been entitled to part of the inheritance.

The separate case of *U Ba Min v Daw Mya Mya & two others* was heard in 2007. The case was brought by three siblings after a breakdown of an agreement concerning the inheritance property from their parents. The deceased parents and their children (the plaintiff and respondent) were all Sunni Muslims. After their death in 2002, the land their parents had owned was divided equally between the three of them, but not in accordance with Islamic Law. The agreement was signed in front of the chairperson of the Ward Peace and Development Council and several other witnesses were present. Later, one of the siblings disagreed and took the case to court, seeking a settlement according to Islamic law, which would mean that he and his brother would receive more than their sister. While the original agreement was not disputed, the applicant claimed that he had been coerced into signing the agreement. The case was first heard in the Mandalay Division High Court, but was dismissed

[37] *Daw Ma La pa nga hnin Daw Myin Myin Kain pa le* (2005) MLR (CI) 1-12.

as the court found no evidence of coercion. In 2007, the applicant appealed to the Supreme Court. The Supreme Court held that the siblings had initially agreed to divide the property equally between the three of them, and this agreement was witnessed by authorities from their ward. The Supreme Court also cited precedent to the effect that a person could not make a complaint about the distribution of an estate three years after an agreement had already been made.[38] The Supreme Court noted that if the case had been brought to the court soon after the deceased's death, then it would have been obliged to decide the case according to Islamic law. But in the circumstances of the agreement made and the time that had passed, it held that it would not interfere in this matter to re-decide the distribution of the inheritance according to Islamic law. The Court dismissed the applicants challenge.[39]

In both the 2005 and 2007 case, the court referred to past precedent from the parliamentary and socialist period. Case law was cited both in relation to evidential and procedural elements of the case, as well as in relation to substantive aspects of Islamic personal law. This suggests that the use of precedent has remained unaffected by the various political periods in Myanmar, at least in matters of personal law and that where available courts prefer to cite established case law from Myanmar, rather than legal commentaries or comparative case law. No religious authorities gave evidence in court in these cases.

Conclusion

Given the wide timeframe that this chapter has sought to cover, from 1898 to the present, it has only been able to provide a broad review of law and religion in Myanmar and the place of Islamic personal law within this system. This study is clearly limited in several ways. Most

[38] *U Aung Nyun hnin Maung Ohn Myin* (1981) MLR (CI) 121.

[39] *U Ba Min hnin Daw Mya Mya pa hnit* (2007) MLR (CI) 75–89.

people in Myanmar do not have access to the law, and even if cases are brought to the courts, most cases do not go on appeal. Even if they do appeal to the Supreme Court, the case reporting today is highly selective. Of all the reform efforts taking place and areas of law in need of research, legal scholars may wonder why I have chosen to focus on what may seem to be an obscure area of law. I have argued in this chapter that Islamic personal law provides a unique window into the courts as one site of interaction between the state and Muslim communities. It is a reflection of the code-like application of law by the courts and also the role that courts play in resolving civil disputes. In addition, the case study of Islamic personal law is one example that can further our understanding of the origins of Myanmar's legal system as a colonial construct and as a form of double colonisation with strong ties to the legal system of the former British India.

I have argued against Hooker's understanding of Islamic personal law in Myanmar is limited to a useful explanation of the pre-1960s period. While the incorporation of Islamic personal law into state law was initially cut-and-pasted from India, I demonstrate that we need to appreciate how Islamic personal law has been sustained and developed since then. Islamic personal law in Myanmar has demonstrated resilience, having weathered socialist rule and the military regime. This is partly because the effects of the socialist and military period most heavily affected public law, while the practise of private law was affected to a lesser extent. While we can identify the initial roots of the courts' authority on matters of Islamic personal law in the Burma Laws Act 1898, the case law that has developed subsequent to this has generally followed similar lines as Anglo-Muhammadan jurisdiction, typified in volumes such as *Mulla's Principles*, with the exception of the issue of inter-religious marriage. There is therefore little room for judicial interpretation, reference to *fiqh*, or to Islamic *fatwa*.

M Crouch (2015) ‘Personal Law and Colonial Legacy’, in M Crouch (ed) *Islam and the State in Myanmar: Muslim-Buddhist Relations and the Politics of Belonging*. Oxford University Press.