

FAMILY STATUS OF BUDDHIST MONK AND NOVICE UNDER FAMILY LAW

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ABSTRACT

When a man obtains Buddhist monkhood or ordains as a novice, his family status does not terminate. He is still a child, a husband or a father as he is before obtaining Buddhist monkhood or ordaining as a novice, so he has the rights or duties to maintain his parents or his wife or his child. However, he cannot enter into an engagement or marriage because such doing is contrary to public order or good morals and is void. If he is an illegitimate child, he can take an action for legitimation. Moreover, if he is an illegitimate father, he can take the registration of legitimation. In case of adoption, he cannot be an adopter, but can be the adopted.

Keywords: Family status of Buddhist monk and novice, Betrothal , Marriage, Legitimation, Adoption

1. INTRODUCTION

Family is the smallest unit, but important in society, because all members in society come from family. Family includes parents and children. If spouses cannot have children or have not enough children, they can adopt another person. Under the Thailand Civil and Commercial Code Book V : Family, family status of person

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starts from being the betrothed, husband and wife, parents and child, the adopter and adopted. The law sets conditions, qualifications or rules for constitution of such status, relation, rights and duties between family members i.e husband and wife shall cohabit as husband and wife, shall maintain each other according to his or her ability. Parents are bound to maintain their children and to provide education for them during their minority, or children are bound to maintain their parents. Such the rights and duties also apply to adopter and adopted person.

Above mentioned status, relation, rights and duties shall be applied to all natural persons in family. However, for Buddhist monks or novices who have obtained monkhood or have ordained as a novices for long time, they are natural persons under the law, they also have priest status which causes them apart from their family and they live in temples by refraining from sexual misconducts. It looks like that their lives are nearly cut off from layman-life. In consequence, some legal problems shall be considerable whether obtaining monkhood and ordaining as a novice in Buddhism has any effects to Buddhist monk and novice on the family status, relation, rights and duties provided by family law.

2. LEGAL PROBLEMS CONCERNING FAMILY STATUS OF BUDDHIST MONK AND NOVICE

Buddhist monk (Bhikkhu) are generally man on completion of twenty years of age and has obtained monkhood. Bhikkhu means the beggar; the seer the danger of the round of rebirth; and the destroyer of all defilements. The lives of all Buddhist monks are governed by the code of monastic disciplines or 227 precepts (Phraphromkhunaphorn (P.A. Payutto) 2008 : 288). Novice or Samanera is usually man under twenty years of age and has ordained by taking the Threefold Refuge,

he is governed by 10 precepts and shall take some religious observances. (Phraphromkhunaphorn (P.A. Payutto) 2008 : 439). Before becoming Buddhist monk or novice, they have family status; being child of parents, husband of wife or father of child, but after obtaining monkhood or ordaining as a novice, they shall leave their family and shall live in temples, cannot live with their family anymore and generally they are also well-beloved by Buddhist people. Such way of life and special status of Buddhist monk and novice leads to some legal problems as follows :

1. Does family status of man who obtaining monkhood or ordaining as a novice terminate ?

Family status means being legitimate child, husband or father. All Buddhist monks and novices usually have such family status like other natural people. The question is whether monkhood or being a novice causes such family status to terminate?

In legal aspect, If marriage is made on registration, status of being legitimate child or father is not terminated even such marriage is voidable or void, or such marriage terminates by death, divorce or being cancelled by the Court (Ratsada Egabutra. 2001 : 40) Therefore, even man has been in monkhood for long time or for his lifetime, such family status always remains and is not terminated. On Buddhist side, after attaining enlightenment, the Buddha went to Kapilabastu to see his relatives; his father - Suddhodana, wife - Pimbayasodhara, and son - Rahula, and went to the heaven of the Thirty - three Goods (Tavatingsa) to see his mother - Sirimahamaya (Somdejkrumphraparamanuchitchinoros. 1983 : 244-258, 335-346) and the Buddha praised the monk who maintained and supported his parents that such doing is well-done and it is the way of great sages (Committee on Text Books.

2015 : 217-220). It was shown that the Buddha placed an importance on family status before obtaining monkhood and supported the monk to maintain his parents. Thus, according to both family law and Buddhist tradition, family status of Buddhist monk as child or father always remains. He still has rights and duties under the family law, that means he shall maintain his parents until his parents are gone, but his parents shall not maintain him because he already has been sui juris. In case Buddhist monk is legitimate father, he shall maintain his child and can exercise parental power with his wife.

If Buddhist monk is legitimate husband before obtaining monkhood and the marriage still exist, such obtaining monkhood shall not cause the marriage terminated, it is only the ground of action for divorce provided in section 1516 (4) or (4/2), so being husband and wife, system of properties, rights and duties between husband and wife are still remain (Kansinee Tipmontien. 6 (2) : 52-55). However, the relation in aspect of cohabitation between the monk and his wife is prohibited by code of monastic discipline which does not allow the monks have any sexual intercourses with any women. Therefore, Buddhist monks cannot cohabit as husband and wife with his wife anymore.

If Buddhist monk is not legitimate child of his father because his parents do not get marriage on registration, or his father does not take legitimation, or if he is not legitimate husband of wife because the marriage is not on registration, he shall not maintain his father, his wife and his child as provided by law. On the other hand, he also does not have right to be maintained by his parents, wife and child. His mother, however, is always his legitimate mother even she does not get marriage on registration as provide in section 1546, and Buddhist monk is also legitimate child of his mother, so he shall maintain his mother, but his mother does

not have the same duty because Buddhist monk has been mature. In case the monk is not legitimate father of his child, such status still remains and his child can take action of legitimation as provided in section 1555 and section 1556. For novice, his family status including the rights and duties are like to Buddhist monk. There is pretty difference i.e. parents are bound to maintain novice until he becomes mature,

2. Can Buddhist monk or novice constitute family status ?

The constitution of family status means the declaration of intention to conclude agreement or contract which leads to family status i.e betrothal, marriage, legitimation, an action of legitimation and adoption. The problem is whether Buddhist monk or novice can constitute such family status by conditions and rules as provided in family law. It can be considerable as follows:

2.1 Can Buddhist monk or novice get the betrothal?

In legal aspect, the betrothal means agreement between man and woman to make marriage on registration and cohabit as husband and wife (Prasopsook Boondej. 2016 : 43). Civil and Commercial Code Book V sets the conditions of betrothal i.e the man and the woman have completed seventeenth year of age, if the betrothal is contrary this condition, it shall be void as provided in section 1435, if a minor will conclude a betrothal, the consent of the persons is required; parents, father or mother or adopter, or the guardian as provided in section 1436 and Betrothal is not valid until the man gives or transfers the property which is Khongman to the woman as evidence that he will marry her after the betrothal has taken place as provided in section 1437. In case of betrothal between Buddhist monk and woman, if they agree to get marriage on registration after Buddhist monk leaving monkhood, and Buddhist monk also gives or transfers Khongman to the woman, such betrothal may be completed under the law.

In this case, however, there is opinion that the betrothal shall be subject to general principles of the declaration of intention to conclude juristic act, if the objective of betrothal is contrary to public order or good morals, such betrothal is void as provided in section 150 such as betrothal between brother and sister of full blood is contrary to good morals, and the marriage between them is prohibited by law, so betrothal is void (Prasopsook Boondej. 2016 : 50). Under Spouse law (Thai ancient law) section 40 and section 41, and the Case of the First Parajika Act B.C. 2463, if Buddhist monk have any sexual intercourses, he shall commit Parajika, if he takes betrothal with the woman, the betrothal should be void (Senee Pramote. 1965 : 25). Even other person concludes betrothal on behalf of Buddhist monk and novice without their consents, such doing leads to the antagonistic way of priesthood, causes impurities to Buddhism. This betrothal, therefore, is contrary to public order or good morals and is void (Sa-ad Naweejaroen. 1950 : 26) According to these opinions, it can be concluded that the betrothal is a contract, it shall be subject to the general provisions of juristic act and contract law. When the code of monastic discipline prohibits Buddhist monk and novice from having any sexual intercourses with woman, and people usually give them the respect as they are the priests, the betrothal between them and woman is contrary to the monastic disciplines and creates impurities to Buddhism, so such betrothal is void as provided in section 150.

2.2 Can Buddhist monk or novice conclude the marriage ?

Generally, the marriage means the status of man and woman who cohabit for social and legal aims (Prasopsook Boondej. 2016 : 109). Civil and Commercial Code sets conditions of marriage as follows: (1) the man and woman shall have completed their seventeenth year of age as provided in section 1448, (2) the man and woman shall not be an insane person or adjudged incompetent as provided in section 1449, (3) the man and woman shall not be blood relations in the direct

ascendant or descendant line or brother or sister of full or half blood as provided in section 1450, (4) An adopter cannot marry the adopted as provided in section 1451, (5) the man and woman shall not be already the spouse of another person as provided in section 1452, (6) the widow could marry again when previous marriage has been terminated not less than three hundred and ten days as provided in section 1453, (7) In case of marriage of a minor, consent of his or her parents or the guardian is required as provided in section 1454, and (8) the man and woman shall agree to take each other as husband and wife as provided in section 1458. Moreover, marriage shall be effected only on registration being made as provided in section 1457.

The marriage which is made against abovementioned conditions has different effects. If the marriage is contrary to the conditions as specified in (2), (3), (5) and (8), such marriage is void as provided in section 1494. If the marriage is contrary to the conditions as specified in (1) and (7), such marriage is voidable. If the marriage is contrary to the condition as specified in (4), it causes the adoption to be dissolved as provided in section 1598/32. Moreover, the marriage which is made in contravention of condition as specified in (6), if the Registrar allows to record such marriage, is completed by law. And in this case, if the woman gives birth to a child within three hundred and ten days from the day of termination of the marriage, the child shall be presumed to be the legitimate child of the new husband as provided in section 1537.

There is a question whether Buddhist monk or novice and woman, if they are not contrary any abovementioned conditions, can get marriage on registration? It may be easily answered that they cannot get marriage on registration in any ways because Buddhist monk and novice are prohibited by monastic disciplines to have

wife, but in legal aspect, there are still arguments, the first opinion is that marriage will be void when it is made against only aforesaid conditions in (2), (3), (5) and (8) as provided in section 1495, therefore, the marriage which is made not against any conditions is not void such as in case of unregistered marriage or the adopter married with the adopted person, Court cannot renounce these marriages to be void (Phairote Kamphusiri. 2017 : 131), or the marriage between the foreigner who enter illegally into Thailand and Thai, the marriage between the man and woman being pregnant with another man, or the marriage between spouses who believe in different religious, these marriages are not void (Prasopsook Boondej. 2016 : 310). According to this opinion, Buddhist monk or novice and woman may get marriage on registration.

The second opinion is that such marriage may be void as provided in section 150 because, in Thai ancient law, Buddhist monk or novice could not marry. Though the marriage in this case is not prohibited by current Civil and Commercial Code, but the permission for such marriage is contrary to public order or good morals (Chatchai Ukgharawiboon. 2009 : 159). Moreover, beyond the conditions as provided in Chapter V, there is another condition i.e. Buddhist monk and novice cannot marry or have wife, if they do against this condition, the marriage shall be against public order or good morals and void (as provided in section 150), this is the condition which is not written in Civil and Commercial Code (Senee Pramote. 1965 : 69, Sa-ad Naweejaroen. 1950 : 48, and Serm Winijjhaikul. 1949 : 37)

I agree with the second opinion that the marriage in this case is void as provided in section 150 which is the general principle. In my opinion, it can be interpreted that there are two aspects of being void of the marriage; (1) the marriage which is made against conditions in (1) - (8) and is void as provided in

section 1495 and (2) the marriage which is contrary to public order or good morals and is void as provided in section 150. These two aspects of nullity of the marriage have different effects i.e. the marriage which is void as provided in section 1495 has more special aspects than the marriage which is void as provided in section 150 because only the judgment of the Court shall effect the void of the marriage which is made against the aforesaid conditions in (2), (3), and (8) as provided in section 1496, and any interested person may allege or apply for a judgment of the Court effecting the void of the marriage which is made against the condition in (5) as provided in section 1497. Therefore, if there is no the judgment of the Court or an allusion of the any interested person, the void marriage is still completed legally (Prasopsook Boondej. 2016 : 312), the man and woman are spouses, having the rights and duties to each other, child born during that time is legitimate child, and the spouse who has married in good faith shall not lose the rights acquired before pronouncing the final judgment effecting the void of the marriage as provided in section 1499. But nullity as provided in section 150 is null from the beginning, cannot be ratified, and its nullity may be alleged at any time by any interested person as provided in section 172. Therefore, the marriage between Buddhist monk or novice and woman which is void in this aspect, even made on registration, is null from the beginning. It is hold that there is no the marriage from the beginning, Buddhist monk or novice and woman are not husband and wife, they do not have the rights or duties to each other, child born during that time is illegitimate, and there is no special aspects of nullity as provided in section 1499.

2.3 Can Buddhist monk or novice take the registration of legitimation ?

If the man and woman cohabit without marriage on registration and woman gives birth to child, child is only mother's legitimate child. Child shall be legitimate

of father by three methods as provided in section 1547 i.e (1) father and mother take marriage on registration later, (2) father takes the registration of legitimation or (3) the Court judges that child is legitimate. If Buddhist monk's and novice's child is illegitimate and Buddhist monk or novice wants his child to be legitimate, he cannot get marriage with his wife because the marriage is void. However, Buddhist monk or novice can take the registration of legitimation, or his child can take an action for legitimation as provided in section 1555 and section 1556. If Buddhist monk or novice is illegitimate child, he can also take an action for legitimation. These methods are not contrary to public order or good morals because it is the institution of family status existing before becoming monk or novice.

2.4 Can Buddhist monk or novice adopt another person or be adopted?

In adoption, the adopter shall be not less than twenty five years old, provided he is at least fifteen years older than the adopted person as provided in section 1598/19. If the adopter or adopted person is married, he must obtain consent of his spouse as provided in section 1598/25. For the adopted person, If he is not less than fifteen years of age, he must give the consent as provided in section 1598/20. If he is a minor, the consent of his parents or the order to permit of the Court is required as provided in section 1598/21.

There is a question whether Buddhist monk or novice can adopt another person? The first opinion is that expect to the qualification on age of the adopter, section 1598/19 does not provide another qualifications, therefore, Buddhist monk or novice or nun can adopt another person or can be adopted because being parents and child between the adopter and the adopted person is only fictitious parentage (Prasopsook Boondej. 2016 : 748) But the second opinion, on the other hand, is that the way of life of Buddhist monk is different from layman, Buddhist

monk shall live by the contentment and quietude of heart, but the objective of the adoption is to give a new family to child who will be adopted, so the adoption is greatly contrary to the life-way of Buddhist monk. Moreover, there has been the regulation issued by the Council of Sangha Ministers in B.C. 2496, which prohibit Buddhist monk adopt another person, as result, Buddhist monk cannot adopt another person (Ajaree Meeinkerd. 1998 : 99)

I agree with the second opinion because the adoption is mostly child-adoption and adopted persons are both boys and girls, if Buddhist monk adopts child, he shall maintain the adopted child until the adopted child becomes mature, and it causes exceedingly effects to the life-way of Buddhist monk. Lastly, even Buddhist monk is not prohibited by law to adopt another person, but the Council of Sangha Ministers has been prohibited such adoption, therefore such adoption is not suitable to Buddhist monk at all.

The next question is whether Buddhist monk can be adopted? In my opinion, Buddhist monk should not be able to adopt another person according to aforesaid reasons, but when Buddhist monk has qualification to be adopted, and abovementioned regulation does not prohibit being adopted, so Buddhist monk can be adopted.

For novice, most novices are not completed twentieth year of age, they do not have the qualification to be adopted, so they cannot adopt another person. However, a novice has the qualification to be adopted, so he can be adopted like other people.

3. CONCLUSION

Under family law and Buddhist traditions, family status i.e. being child, father, or husband of the man who obtaining monkhood or ordaining as a novice does not terminate. If Buddhist monk or novice is legitimate child, husband, or father, he shall maintain his parents, wife or child. If a novice is minor, he has the right to be maintained by his parents until he becomes sui juris. If Buddhist monk or novice is illegitimate child, husband or father, he does not have such rights. Concerning with the constitution of family status, Buddhist monk and novice cannot conclude the betrothal and marriage because such betrothal and marriage is void. However, Buddhist monk or novice is illegitimate father, he can take the registration of legitimation, and in case of adoption, Buddhist monk and novice cannot adopt another person, but they may be adopted.

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