

**BUDDHIST  
JURISPRUDENCE AND  
PRE-CONSTITUTIONAL  
PRINCIPLES**

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and  
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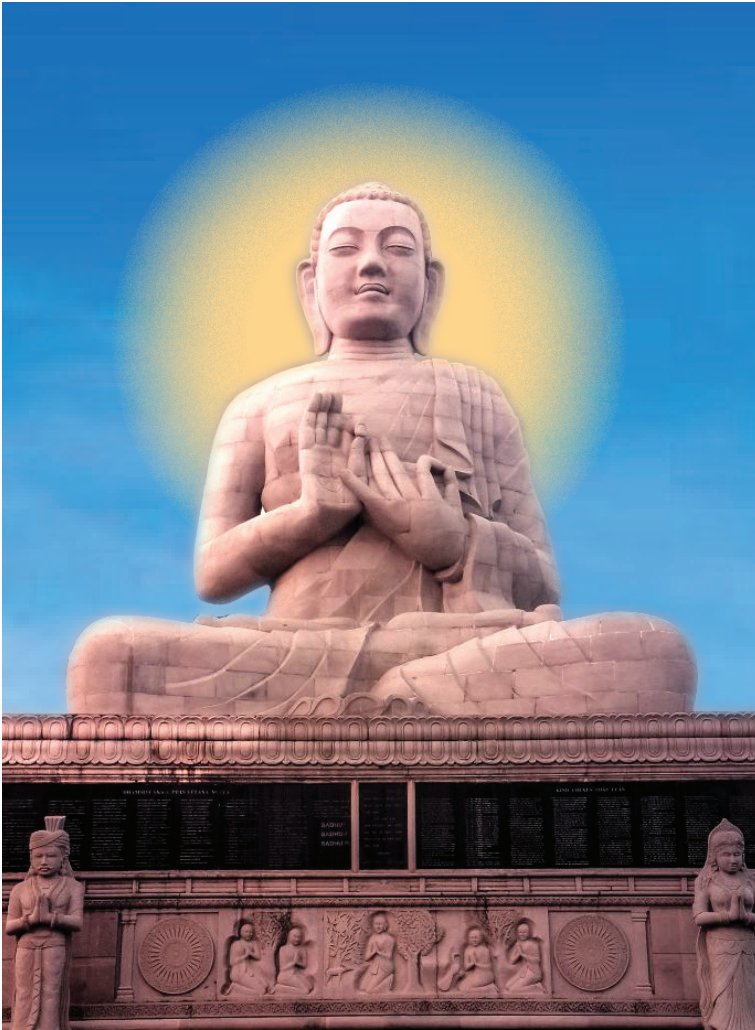
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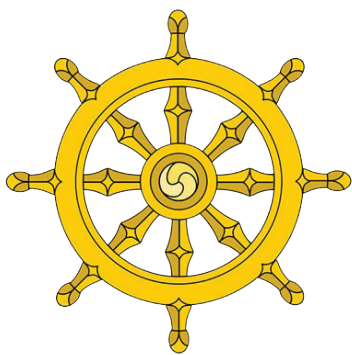
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*'I shall go to Banaras where I will light the lamp that will bring light unto the world. I will go to Banaras and beat the drums that will awaken humankind. I shall go to Banaras and there I shall teach the Law.'*

*-The Buddha*



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## A PREVIEW OF THE BOOK

The illuminating words and actions of the Buddha laid the foundation for a way of life which inspired the marked changes in spiritual, philosophical and religious traditions. Great scholars have committed in providing religious and philosophical perspectives, writing copiously on the Buddha and his words. His teachings and edicts deeply affected every societal and legal structure in geographies historically under Buddhist influence.

This book attempts to compile the codes, rules, legal precepts and laws from the Buddha's teachings, from different Buddhist schools, traditions and Buddhist-influenced secular States into a format which enables, a cogent review alongside Western philosophical and jurisprudential models and their frameworks. This will demonstrate the rules, rights and responsibilities that the Buddha elucidated. It provides a legal and even pre-constitutional format for the conduct and protection of communities which were similar to but long pre-dated, most Western jurisprudential concepts and constitutional democracy.

At its aegis, Buddhist philosophy, and thus, its related codes of ethics and law, held sway over vast swaths of territory. The spread of Buddhist influence during the Maurya Dynasty under King Asoka in 255 BC extended from Tibet to Sri Lanka and covered all of present day India, Pakistan, Central Asia and Bangladesh. By the 4th century, Buddhism prospered throughout Mongolia and China, followed by Korea and Japan in the 5th century and, South East Asia as far as Indonesia and even into the Philippines by the 7th and 8th centuries.



Throughout this work, we will rely upon the commentaries and interpretations from the various works of scholars, theorists and practitioners from both Buddhist and Western cultures. As to the former, we acknowledge that Sanskrit, Pali and Classical Tibetan are subject to varied interpretation. With regard to the latter, the book will draw comparison with Western philosophies and legal frameworks, where such comparisons enrich one's appreciation of both the similarities and unique characteristics of the different legal traditions and their philosophical basis.

May this book inspire others as the Buddha said:

*'Thousands of candles can be lit from a single candle and the life of the candle will not be shortened. Happiness never decreases by being shared.'*

*Sonam Tobgye (Retired Chief Justice of Bhutan and  
Chairman of the Constitution Drafting Committee)*



## INTRODUCTION

The teachings of the Buddha have served humanity for centuries. However, they have been viewed mostly in the realm of spiritual or philosophical ethos and predominantly within the confines of monastic walls. In full frame of his teachings, the Buddha also provided many precepts, edicts and laws which, when appropriately considered, have positive potential impacts upon the moral and spiritual fibre of contemporary legal jurisprudence. The root of Buddhist teachings is the notion of Dharma. Dharma is an aspect of truth or reality. It is that which actually holds society together and directs our nature.

To support this endeavour, this book assembles an array of Buddhist practices, norms and laws from the Buddha's teaching, and edicts. It includes recorded discourses to his enlightened followers, the 'Arhats', as well as content from the extensive records assembled in the *Tripitika*. The *Tripitika*, or 'triple basket' in Pali language, categorizes the discourses of the Buddha from the first century by Sermons, Monastic law (*Vinaya Pitika*) and Metaphysics. The *Tripitika* was the principal result of the First Buddhist Council, which assembled soon after the Buddha's death when his principal disciples and 500 senior monks met under the auspices of King Ajatashatru<sup>1</sup>. In this context, Amartya Sen noted:

*'In the history of public reasoning in India, considerable credit must be given to the early Indian Buddhist, who had great commitment to discussion as a means of social progress. That commitment produced, among other results, some of the earliest open general meetings in the world. The so-called 'Buddhist councils', which aimed*

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<sup>1</sup> Ajatashatru (Sanskrit: Ajātaśatru, Pāli: Ajātasattu; 492 to 460 BCE or early 5<sup>th</sup> century B.C.) was a king of the Haryanka dynasty of Magadha in East India.



*at settling disputes between the different points of view, drew delegates from different places and from different schools of thought. The first of the four principal councils was held in Rajagriha shortly after Gautama Buddha's death; the second about a century later in Vaishali; and the last occurred in Kashmir in the second century CE. But the third-the largest and the best known of these councils-occurred under the patronage of Emperor Ashoka in the third century BCE, in the then capital of India, Pataliputra (now called Patna). These councils were primarily concerned with resolving differences in religious principles and practices, but they evidently also addressed the demands of social and civic duties, and furthermore helped, in a general way, to consolidate and promote the tradition of open discussion on contentious issues.'*<sup>2</sup>

When referring to the Vinaya, the Buddha's code of discipline which enumerated individual's duties, Thomas William Rhys Davids, the English scholar and founder of the Pali Language Text Society said:

*'So fundamental are the human interests involved, so sane and wide is the wisdom that envisages them, that the utterances are as fresh and practically as binding today and here as they were then at Rajagaha. Happy would have been the village or the clan on the banks of the Ganges where the people were full of the kindly spirit of fellow-feeling, the noble spirit of justice which breathes through these naïve and simple sayings.'*<sup>3</sup>

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<sup>2</sup> Amartya Sen, *The Argumentative Indian*, (London: Penguin Allen Lane, 2005) p.15.

<sup>3</sup> (<http://www.tipitaka.net/tipitaka/study/pageload.php?book=004&page=01>).



In this sense, and given the profound nature of their philosophical foundations, it is now a propitious moment to present Buddhist-inspired procedural and substantive laws, codes and pre-constitutional elements. This knowledge could help us rethink and supplement contemporary legal systems worldwide for the benefit of humanity.

Similar to Buddhism and the role of Dharma within it, in Western societies, the prevailing philosophical and religious tenets, were often consciously or unconsciously embedded into laws, codes and constitutional constructs which eventually evolved as ‘universal truths’ as found in the work of pre-Socratic philosopher Parmenides (circa 475 BC), the founder of metaphysics and ontology and, a key influencer of Western philosophy. Also, in the case of Plato’s and Aristotle’s philosophy of ‘Teleology’, which explains phenomena in terms of the purpose they serve rather than the cause by which they arise.

Furthermore, in consonance with Buddhist philosophy, Aristotle’s notion of ‘Realism’, the attitude or practice of accepting a situation as it is and being prepared to deal with it accordingly and, Jeremy Bentham’s and John Stuart Mills’s doctrine of ‘Consequentialism’ which holds that the morality of an action is to be judged solely by its consequences are both key philosophical jurisprudential underpinnings. The Buddhist theory of Karma (car-ma) (cause and effect) is similar to the doctrine of ‘Consequentialism’. Karma is the result of a person’s actions and is the cycle of cause and effect. The Buddha said:

*‘All that we are is the result of what we have thought: it is founded on our thoughts, it is made up of our thoughts. If a man speaks or acts with a pure thought, happiness follows him, like a shadow that never leaves him.’<sup>4</sup>*

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4 F. Max Muller (ed.), *The Sacred Books of the East, Vinaya Texts, Volume 10 Part I, Dhammapada*, p.54.



To further the point, consider Immanuel Kant's theories of 'Deontology', derived from the Greek word 'deon', which is the study of the nature of duty and obligation. Deontology held that morality of an action should be judged according to a series of rules which would determine whether the action itself is right or wrong, rather than the consequences of the action.

Today, we find elements of all these philosophies in prevailing jurisprudences, legal codes and legislation including the national Constitutions, where they provide social guidance and restraints. One finds myriad precursor elements of these concepts within the teachings and codes of social conduct enumerated by the Buddha well before they were codified by any Western philosopher. Considering that the Buddha's philosophies, edicts and practices were deeply embedded into legal and social constructs of diverse ancient Buddhist influenced Kingdoms which flourished from 260 BC to the 12<sup>th</sup> century AD and beyond, throughout South, Central, East and Southeast Asia. We find important examples of hallmark juridical philosophies centuries before they ever 'originated' and flourished in the West.

The Buddha was one of the world's first social reformers. His philosophy and jurisprudence have a 2500 year track record of social and juridical impact. The good of human kind is a principle ethical component of Buddhist practice. Under Buddhist precepts, for example, King Asoka promoted human rights and established free hospitals and education. It is for this reason that a review of the Buddha's work and the philosophy behind it may enable Western based jurisprudence to be viewed in an amplified light. This could in turn, support the holistic evolution of jurisprudence worldwide.



## CHAPTER 1

### The Origin of Law

Many of the principal tenets of Western law originate from Aristotle's concept of Natural Law. As codified by the Greeks and enshrined as a universal principle, Natural Law holds that all men are equal and thus, the law is binding upon every individual.

Aristotle's school of thought in ancient Greece, however, held that law was guided by uniform principles which could provide stability. Law was an 'embodiment of reason', whether individually or in the community.<sup>5</sup>

Whilst Aristotle's natural law concept ultimately prevailed in the modern day largely as refined by St. Thomas Aquinas in the 13<sup>th</sup> century, his was one of two principle philosophical currents in classical ancient Greece. Many of the earlier Sophists, including Plato (Aristotle's teacher), had previously highlighted the relativity of human ideas and rejected absolute standards. As sceptics, they held that the basis of law was the self-interest of the law maker.

Subsequent thinkers, in different historical moments have varied in their philosophical tenets:

- 1) John Austin's writing in the 1800's, defined law as a series of both explicit and implicit commands from a higher authority. The law reflected the sovereign's wishes and is based on sovereign power backed by sanctions and punishments. It is not divine law or based upon human inspired moral precepts.<sup>6</sup>

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<sup>5</sup> Otfried Hoffee, Aristotle's Nicomachean Ethics, 2010.

<sup>6</sup> John Austin, The Province of Jurisprudence Determined, 1995.



- 2) Herbert Lionel Adolphus Hart's writing in the 1900s, defined law as a union of primary and secondary rules. Laws that impose duties or obligations on individuals are described by Hart as 'primary rules of obligation'.<sup>7</sup>
- 3) Max Weber, in his 1954 publication, on Law in Economy and Society, argued that '*Law exists if it is externally guaranteed by the probability of coercion (physical or psychological) to bring about conformity or avenge violation and, is applied by a staff of people holding themselves especially ready for that purpose*'.<sup>8</sup>
- 4) B.K. Chaturvedi Chanakya defined law as an interpretative social practice that contains implicit moral principles and values.
- 5) Former Harvard Law School Dean, Roscoe Pound, in writing in the 1930's, said that the law is related to justice, reason, human nature and ethics. It is also an instrument of social change.
- 6) Alexander Bickel held that, '*Law is the principal institution through which a society can assert its value*'.<sup>9</sup>

In democratic societies, one can argue that the law represents the solemn will of the State pronounced through the legislative power for the common good. According to Richard A. Posner, '*In primitive society, people believed in self-help*'.<sup>10</sup> It is the depletion of food resources for an ever increasing human population and their unbridled avarice that encouraged the development of a multitude of laws. Such similar concept is depicted in the

7 H.L.A. Hart; The Concept of Law, 1961.

8 Max Weber, Law in Economy and Society, p.31-33.

9 Alexander Mordecai Bickel; The Least Dangerous Branch, 1962.

10 Richard A. Posner, A theory of Primitive Society, with Special Reference to Law, Volume III No 1.



tale of *Mangpos-bkurbair Gyalpo (Mahasammatta)*<sup>11</sup>. Francis Fukuyama wrote:

*'As men lost their primeval glory, distinctions of class (varna) arose, and they entered into agreements one with another, accepting the institution of private property and the family. With this theft, murder, adultery and other crime began, and so the people met together and decided to appoint one man among them to maintain order in return for a share of the produce of their fields and herds. He was called "the Great Chosen One (Mahasammatta), and he received the title of raja because he pleased the people.'*<sup>12</sup>

This tale of the Great Chosen One (*Mahasammatta*) contains the Buddhist theory of the emergence of the State and political leadership. It was claimed to be the first instance when the human greed lead to the commission of crime. It also recognises dispute settlement, impartiality, fairness, equality and selflessness. *Mahasammatta* was Raja because he charmed the others by *Dhamma* (norm). The people obeyed and respected the *Mahasammatta* because he preserved peace and settled the conflicts among the people by way of *Dhamma*.

The *Mahasammatta* enunciates many profound legal principles including social contract theory<sup>13</sup>, the principle of freedom of choice from a rational-choice model of collective action and public choice theory similar to the principles propounded by Bentham, James Buchanan and Kenneth Arrow. Laksiri Jayasuriya noted:

11 Mangpos-b. Hewkurbair Gyalpo or Mahasammatta which literally means the King elevated by many and whose legitimacy was based on popular consent as the first king of Buddhist legend. Refer to gsbjoddpagsam 'khrishing 3<sup>rd</sup> edition (1999), page 93 and Thierry Mathou, 'The Politics of Bhutan: Change in Continuity', Journal of Bhutan Studies, 2008, p.235.

12 Francis Fukuyama, *The Origins of Political Order*, 2011.

13 Agganna Sutta. (Agganna Sutta is the 27<sup>th</sup> Sutta of the Digha Nikaya collection. The Sutta describes a discourse by the Buddha with Brahamin Bharadvaja and Vesetha, who their family and clan to become monks.



*'In many respects Buddhist ideals of statecraft embodying principles and practices such as the rule of law, deliberative democracy, procedures of governance and the social policies of the Asokan welfare state bear a striking similarity to Enlightenment values in Europe.'*<sup>14</sup>

The Buddha believed that a just government could be obtained by having moral rulers who cared for the welfare of the people rather than for themselves. The Dhammaraja, a leader with the 'ten royal virtues' (*dasaraja dhamma*) is the ideal leader. The 'ten royal virtues' are as follows:

- 1) *Dana*: Generosity and charity;
- 2) *Sila*: High morality, ethic, principles and exemplary;
- 3) *Pariccaga*: Selflessness for common good;
- 4) *Ajjava*: Courage, uprightness, and impartial;
- 5) *Maddava*: Civility and kindness;
- 6) *Tapa*: Self-control;
- 7) *Akkadha*: Without prejudice;
- 8) *Avihimsa*: Non-violence;
- 9) *Khanti*: Patience, resilient and empathy; and
- 10) *Avirodha*: Harmony, non-obstruction and to respect the will of the people.<sup>15</sup>

<sup>14</sup> Laksiri Jayasuriya, 'Buddhism, Politics, and Statecraft', in International Journal of Buddhist Thought & Culture, September 2008, Vol.11, pp.41-74.

<sup>15</sup> Good Governance: A Buddhist Perspective Dr. Tavivat Puntarigivat Buddhist Socialism: (A Concept of Good Governance in Southeast Asia).



According to the Pali scriptures:

*'It became necessary to extend natural socialism to the political foundations of the community when oppression in the community became intolerable. People saw fit to invest a particularly capable, just leader with their trust and power. This leader or raja would govern in such a way that no one could oppress anyone else, and the community would thus enjoy contentment.'*<sup>16</sup>

### **Obedience to Law**

Based on the above references, in both Western and Eastern thoughts, obedience to the law occurs for different reasons. It may be because, it reflects divine will as in theocratic constructs or it is considered right to do so (natural law) or as Thomas Hobbes, the 17<sup>th</sup> century English Philosopher stated that law is part of the social contract.

In this regard, the Buddha said:

*'Continue, Brethren, in the practice of Right Conduct, adhering to the Rules of the Order; continue enclosed by the restraint of the Rules of the Order, devoted to uprightness in life; train yourselves according to the Precepts, taking them upon you in the sense of the danger in the least offence.'*<sup>17</sup>

### **Enlightened Laws**

Buddhism is also a repository of what are referred to as, 'enlightened laws'. Because of their intrinsic relation to the spiritual nature of Buddhism, enlightened laws are those that

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<sup>16</sup> Me and Mine; Selected Essays of Bikkhu Buddhadasa, p. 188.

<sup>17</sup> F. Max Muller (ed.), Sacred Books of the East, Buddhist Suttas, Akankheyya Sutra, Volume 11, p.210.



strike to the heart of, and comprehend the human condition. The relevance of enlightened laws are that they are never eroded by time, geography, race, class (*jati-vitakka*), nationalism (*janapada-vitakka*), egotism or pride (*avannatti*).

Among the first spoken words of the Buddha upon attaining enlightenment was as following:

*'I shall go to Banaras where I will light the lamp that will bring light unto the world. I will go to Banaras and beat the drums that will awaken humankind. I shall go to Banaras and there I shall teach the Law.'*<sup>18</sup>

In his teachings, the Buddha presented five categories of law:

- 1) Laws for dharma followers (*Nyan-thoskyikhrims*);
- 2) Laws for Saints, (*Byangchub Sems-dpa'ikhrims*);
- 3) Laws of Enlightenment (*Bbde bar gshegsa'ikhrims*);
- 4) Monastic Laws (*Dge 'dun gyikhrims*); and
- 5) Secular Laws (*Rang or Kungyikhrims*).

According to the Vinaya these are broken down into, 18 origins of law, 32 branches of law and 39 digests of law.<sup>19</sup>

The Buddha gave ten reasons for promulgating his first set of laws, which focused on the rapidly expanding monastic community. In the first division of the 'Vinaya Pitaka' which lays the legal framework for the monastic community and their relation to their lay supporters, the Buddha said:

<sup>18</sup> S. Radhakrishnan, Religion and Culture, p.121.

<sup>19</sup> Andrew Huxley, 'Buddhism And Law—The View From Mandalay' in Journal of the International Association of Buddhist Studies, 1995, p.67.



*'I am enacting rules of training (sikkhapada, precepts):*

- 1) *'for the monks,*
- 2) *'for the well-being of the Community,*
- 3) *'for the convenience of the Community,*
- 4) *'in order to curb miscreants,*
- 5) *'for the ease of well-behaved monks,*
- 6) *'in order to restrain misbehaviour in the present,*
- 7) *'in order to check future misbehaviour,*
- 8) *'in order that those who have no faith (in this religion) may acquire faith,*
- 9) *'in order that those who have faith may be further strengthened in their faith, and*
- 10) *'in order that the good Doctrine (Dharma) may last long and for the promotion of discipline.'<sup>20</sup>*

K.N. Jayatilleke enumerated on the Budhha's precepts as:

*'We observe a utilitarian and pragmatic motive behind the legislation. Besides, the rules are meant to serve the interests of the Community as a community as a whole, while making things easy for those whose behaviour is good and serving as a deterrent to others. The legislation is also inspired by public opinion and seeks to promote public confidence in the institution.'<sup>21</sup>*

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<sup>20</sup> K.N. Jayatilleke, *Dhamma Man and Law*, p.7.

<sup>21</sup> K.N. Jayatilleke, *Dhamma Man and Law*, p.7.



One sees that Buddhist ethics and laws are founded on the notion of social concern, duty and the perfectibility of the individual. He explains:

*'We see that the Buddhist ethical theory is teleological in so far as its conceptions of right and wrong are goal-determined by the notions of the Summum Bonum and the good of mankind. At the same time Buddhist ethics has also been stated from a deontological standpoint, where men in society, including monks and nuns, are said to have certain duties to perform by virtue of the stations in life they occupy, although the fundamental obligation of all should be to seek finally to attain Nirvana for it is only then that one's obligations are over (kata-karaniya). Man's social duties are to be performed not merely out of a sense of duty but as far as possible out of a spirit of service (caga), love (metta) and understanding (panna), the opposite of greed, hatred and ignorance.'*<sup>22</sup>

Reflecting the range of application and use of the law, Guru Padmasambhava, the 8<sup>th</sup> century Buddhist master who guided the spread of Buddhism in Tibet and Bhutan said:

*The spiritual law resembles a silken knot that fastens tight;*

*The secular law resembles Golden Yoke that is firm and heavy;*

*And spread the spiritual law resembling silken knot which is both soft and tight;*

*Codify and enact mother laws, statutes and by-laws;*

*A law can be categorized into secular, spiritual and Thangthrim;*

---

22 K.N. Jayatilleke, Dhamma Man and Law, p. 52.



*Codify and enact mother laws, statutes and by-laws;*

*A law can be categorized into secular, spiritual and law for public trial (Procedure or Thangthrim).<sup>23</sup>*

### **Western and Buddhist Philosophical and Jurisprudential Parallelisms**

Buddhist philosophy contains striking parallels to the thoughts of the great Western philosophers and legal thinkers on society and law. Like the pre-Socratic Greek philosopher, Parmenides, the Buddha questioned the purpose of life.

Natural law, according to the Buddha is that which controls human life and existence without a creator or supernatural force. Like the Greek sceptics, the Buddha questioned and challenged dogmatism. He advocated Empiricism and emphasized the role of empirical evidence in the formation of his teaching rather than innate ideas or traditions. In fact, he became enlightened through his practiced rationalism and empiricism derived from experience and meditation. As a rationalist and sceptic, the Buddha said:

*'Do not accept my teaching out of respect for me. Examine it and rediscover the truth in it for yourself.'<sup>24</sup>*

He, like the Romanticists and Humanists, emphasized individualism, self-awareness, self-cultivation and mindfulness to reawaken human values. His views incorporated harmony, rationality and truth. The Buddha also recognized the preciousness of life. He was also an Egalitarian who believed in the equality of all people.

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<sup>23</sup> Drodül Sangye Lingpa (1340-1396), Kathang Sertreng or Golden Garland Chronicles, pp.694-702.

<sup>24</sup> Jean-Francois Revel & Mathieu Ricard, The Monk and the Philosopher, p. 218.



As a result of their philosophical symmetry, the Buddha's teachings and edicts related to law and the rule of law which aligns in great measure to those of right-minded Western Jurists. The Buddha pronounced, that law is a universal norm and a true standard of views and values to be followed equally and justly without regard to class, social status or economic conditions. The Buddha said:

*'The gift of law exceeds all gifts; the sweetness of the law exceeds all sweetness; the delight in the law exceeds all delights; the extinction of thirst overcomes all pain.'*<sup>25</sup>

The Buddha made the 'Wheel of Law' as one of the most enigmatic symbols of Buddhism. As pronounced in the sermon to his five lead disciples:<sup>26</sup>

- 1) The spokes of the wheel are the rules of pure conduct;
- 2) Justice is uniform like the length of the spokes;
- 3) Wisdom is the tire; and
- 4) Modesty and thoughtfulness are the hub in which the immovable axle of truth is fixed.<sup>27</sup>

In these, one finds significant philosophical parallels in the fundamental intentions and constructs of key elements of Western and Buddhist jurisprudence. Under Buddhism, law is designed to serve the welfare and happiness of the many - '*Bahujana hytaya, bahujana sukhaya*'. In Western parlance, this is a utilitarian concept strikingly similar to those espoused by Jeremy Bentham and John Stuart Mill.

<sup>25</sup> F. Max Muller (ed.), *The Sacred Books of the East, Vinaya Texts, Volume 10 Part I, Dhammapada*, p. 84.

<sup>26</sup> They are the five "Excellent Disciples" of Buddha namely (1) kunsheskaun Di nya, (2) rtathul, (3) rlang pa, (4) mingchen and (5) bzungLdan.

<sup>27</sup> Paul Carus, *The Gospel of Buddha, Compiled from ancient records*, p.87.



Western and Buddhist philosophers would also agree that, the law gives form and direction to the society and the world. Law is a system of rules usually enforced through a set of institutions, providing an objective means for governing conduct and maintaining order in a society. Nagarjuna<sup>28</sup>, widely considered as one of the most important Buddhist philosophers, wrote in the 2<sup>nd</sup> century A.D:

*As the earth is to living and non-living entities, law is to human beings.*<sup>29</sup>

Similarly, Mipham Rinpoche, one of the greatest Buddhist scholars of the late 1800's to early 1900's said:

*Good laws are the guardian and protector of the world. Hearing that it punishes the guilty would appease the good people but frighten the bad ones.*<sup>30</sup>

### **The Purpose and Objective of Law in Society**

Law serves many purposes and functions in a society. In the best of circumstances, law establishes standards, maintains order, resolves disputes, protects liberties and rights and promotes peace and tranquillity for the common good.

In the West, Sir William Blackstone the 18<sup>th</sup> century British Jurist held that, '*Law is the embodiment of the moral sentiment of the people.*' The 18<sup>th</sup> century Philosopher and Jurist Jeremy Bentham held that legislature must strive to ensure the happiness of all citizens by ensuring their subsistence, abundance, equality and security.

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28 Nagarjuna was an Indian Mahayana Buddhist thinker, scholar and philosopher, (150-250) AD.

29 Refer Suhrida Lekha.

30 Mipham Rinpoche, Rajanitishastra, p.116.



Within the Buddhist context, the objective of law is the stability, peace and tranquillity of all sentient beings. Rupert Gettin stated:

*‘The attitude towards secular law reflected in the Sutta Pitaka is in some ways very similar. Laws arose in response to a general failure in morality, and they safeguard the general good; disregarding those laws means that society will slip further towards chaos.’<sup>31</sup>*

The Buddhist principle found within the Sixteen Virtuous Acts of Social Piety<sup>7</sup> (*Michosg.tsangma bcu-drug*), are an example of the laws promoted by the 17<sup>th</sup> century Bhutanese theocrat, Zhab-drung Ngag-dbangr Nam-rgyal to promote social stability and freedom. The Sixteen Virtuous Acts of Social Piety are:

- 1) Do not kill or steal;
- 2) Do not hold wrong views;
- 3) Do not go against the wishes of ones parents;
- 4) Do not be disrespectful to elders, learned persons and leaders;
- 5) Do not harbour evil or ill thoughts towards family or friends;
- 6) Do not refrain from helping neighbours;
- 7) Do not be dishonest;
- 8) Do not follow bad examples;
- 9) Do not be greedy or selfish;

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<sup>31</sup> Rebecca Redwood French and Mark A. Nathan, *Buddhism and Law*, p.76.



- 10) Do not inspire evil thoughts in others;
- 11) Do not be late in repaying debts;
- 12) Do not cheat;
- 13) Do not act differently towards the rich and the poor or those of high or low status;
- 14) Do not listen to evil advice;
- 15) Do not be deceitful; and
- 16) Do not be short-tempered or lose ones patience.

Law in this philosophical frame, encouraged virtue, preventing vice and immorality. The Buddha said:

*'For the punishment or correction of such men as are not ashamed of vice' - 'Durmangana-pudgala-nigrahaya.'*<sup>32</sup>

### **Secular Buddhist Law**

Historical examples of Western Jurisprudence in most of the areas covered by the Sixteen Virtuous Acts are extensive and easily available. A large portion of Buddhist jurisprudence written for the monastic order is also accessible. The Vinaya laws, for example, are the rules and procedures that govern the Buddhist monastic community, or Sangha promulgated by the Buddha himself. Moreover, D.N. Bhagvat noted that the *Mahapadesas* include:

- 1) *'The promulgation of a rule by the Buddha himself,*
- 2) *'The promulgation of a rule by the Sangha consisting of elderly and leading men at an Avasa;*

<sup>32</sup> J. Terjek (ed.), *Collected Works of Alexander Csoma de Koros*, p.218.



- 3) *'The promulgation of a rule by learned and elderly Bhikkhus; and*
- 4) *'The promulgation of a rule by a Vinayadhara at an Avasa.'*<sup>33</sup>

Early secular Buddhist jurisprudence, however, has not been uniformly maintained. The early instances in history where leaders converted to Buddhism and redrafted their laws to incorporate key principles and elements of the Buddha's laws, rules and teachings into their legal systems have been in large part, diffused within a scattered historical record.

As the middle age Buddhist kingdoms and republics fell or, were incorporated into larger nation States, key principles of their codes may have remained, but these have not been uniformly inventoried, codified or sourced to their Buddhist origin. In this sense, it is easily possible to conjecture that many countries no longer in the Buddhist orbit, still retain laws, the principles and tenets of which, originated from Buddhist philosophy as it interfaced with local culture, but that are simply no longer historically sourced in this manner.

In countries with appreciable Buddhist influence today, we find that Buddhist legal principles, concepts and traditions, in rare instances, exist side by side with Western legal practice in corollary legal systems. More commonly, Buddhist legal principles, concepts and traditions have been merged or fully supplanted. The actual condition varies from country to country. The causes are multivariate and include conquest, trade, religious conversion and more recently colonialism and globalism. Colonialism has played a critical role in supplanting traditional norms and

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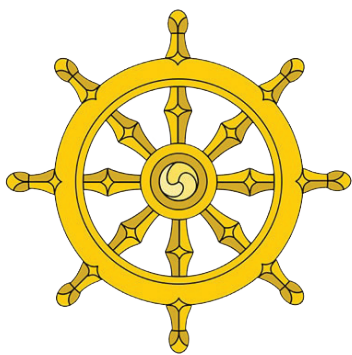
<sup>33</sup> D.N. Bhagvat, *Early Buddhist Jurisprudence*, p.84.



practices world-wide. Globalization and the rise of the modern nation state function under more uniform international norms.

Irrespective of these trends and pressures, some Buddhist-influenced nation states have made great efforts to enshrine Buddhist principles into their contemporary legal systems. This has been done in deference to history and, to ensure broader societal comprehension and acceptance by traditional communities.

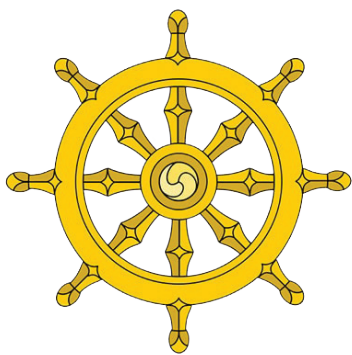






*'Wheel of perfect Law,  
Which he shall turn in sight of all the world.  
The mighty drum whereon the Prince did beat,  
Till the sound filled all lands, doth signify  
The thunder of the Gospel of this Buddha  
Sets forth; and those rare jewels scattered thence  
The untold treasures are of that good Law'*

*-Sir Edwin Arnold (Light of Asia)*



## CHAPTER 2

### Legal Typologies and Philosophical Models of Justice

Laws fall into various typologies and categories. This includes natural law (*jus naturale*), positive law (*jus positivum*), and moral law. It also includes their operational applications as found in criminal and civil law, substantive and procedural law, public and private law, international law and others. Within the foundational realm of legally applicable principles and philosophies, Buddhism, adds Righteous and Universal laws into its overall jurisprudential mix.

Buddhist laws generally resonant with Western classifications of Natural, Positive, and Moral laws. There are also many parallels in the realms of international law. The theory of impermanence and the temporariness of things form the central theme of Buddhist ‘Natural Law’ (*Rang bzhingyikhrims*).

Positive laws are described in the *bcaspa* ‘*ikhrims*, which literally translates as, ‘*positive law*’ or ‘*law of orders*’. These laws address elements of life with greater specificity than that provided by Natural Law.

Moral laws regulate conduct and determine what a person should and should not do within the construct of Buddhist guidance and spiritual ethos. Within this frame, the actions one takes determines ones destiny (karma).

#### **Natural Law**

Natural law in Buddhism is the process which controls human life and existence bereft of divine force or intervention. Within that construct, the Buddha pronounced that law is a universal



norm and a true standard of views and values to be followed equally and justly without regard to class, social status or economic conditions.

From a Western perspective, natural laws denote a system of rules and principles for the guidance of human conduct, which is independent of enacted or positive laws. The cardinal principles of natural justice are:

- 1) *No one can be a judge in their own cause (nemo iudex in causa sua).*
- 2) *Hear the other side (audi alteram partem); and*
- 3) *No one should be condemned unheard.*

The Romans followed the Greek conception of natural law. They classified laws into *Jus Civile*, *Jus Gentium*, *Jus Naturale* and *Jus Divinum*. The 20<sup>th</sup> century British Judges such as Lord Widgery held that the principles of natural justice were those fundamental rules, the breach of which will prevent justice from being seen to be done.

Returning to the Buddhist perspective, the *Mahā- Hamsajātaka* describes equal justice, as an element of natural law and a cause of well-being and happiness. This is illustrated metaphorically through the conversation between the King of the Geese and the King of *Kasi*:

*'Dost thou, my lord, enjoy good health and is all well with thee?*

*'I trust thy realm is flourishing and ruled in equity?*



*'O King of geese my health is good and all is well with me;*

*'My realm is very flourishing and ruled in equity.'*<sup>34</sup>

Referring to Buddhaghosa, Andrew Huxley also wrote:

*'Equity is diversely termed in law: sometimes as a convenience, because it is ministreth among men in a fit proportion, answerable to the person, the matters, the place and the time.'*<sup>35</sup>

### **Positive Law**

In the West, 'Positivism' emerged as a reaction to the idealism advocated by natural law. Positivism as a scientific attitude rejects *a priori* speculations and seeks to confine itself to the data of experience.

Justice from a positivist lens, implies the fair application of the law and protection from unfettered abuse and intentional misinterpretation. Justice as described might fit the characterization provided by John Rawls who saw justice as an attempt to generalize and carry to a higher order of abstraction and the traditional theory of social contract as represented by Locke, Rousseau, and Kant. According to Rawls, *'Justice is the first virtue of social institutions.'*<sup>36</sup>

Western philosophers and jurists wrestled with this positivistic concept of justice for centuries. Socrates was held to have espoused the notion that justice is virtue and wisdom whereas, injustice is vice and ignorance. Plato praised justice as one of the four virtues namely wisdom, courage, temperance and justice,

<sup>34</sup> Edward Byles Cowell, *The Jataka, Or, Stories of the Buddhas Former Births*, p.199.

<sup>35</sup> Rebecca Redwood French and Mark A. Nathan, p.175.

<sup>36</sup> John Rawls, *A Theory of Justice*, p.3.



which are required to support the perfect State. Cephalous, an Aeolian Prince in Greek mythology and an oft-referred spokesperson for Greek tradition espoused that one should live up to their legal obligations and be honest.

Lord Denning summarized the Justinian Code, 533A.D. as follows:

*'The precept of the law are these: to live honestly, not to injure your neighbour, to render each man his due.'*<sup>37</sup>

Centuries later, the US Supreme Court Justice Benjamin Nathan Cardozo stated:

*'The final cause of law is the welfare of society.'*<sup>38</sup>

This is not to say that there were not many adverse opinions and applications of justice throughout the course of history. To quote one, Thrasymachus, the ancient Greek Sophist simply said, *'justice is nothing more than the interest of the stronger.'*

What it does mean, however, is that with the advent of democracy, oppression and arbitrary behaviour came to be considered a root cause of social ills. In this view, positivist justice was the critical means to eliminate systematic abuse and oppression.

Centuries before the above debates were occurring, the Buddha had laid out his own guidance on this matter. Justice in Buddhism, is a social virtue. The Buddha said to the King of *Kosala*:

*'My lord king, to judge a cause with justice and impartiality is the right thing.'*<sup>39</sup>

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<sup>37</sup> Lord Denning, *What is next in the law*, p.14.

<sup>38</sup> *The World of Benjamin Cardozo* p.87.

<sup>39</sup> Jacob Neusner, *Gods Rule: The Politics Of World Religion*, p.246.



D. N. Bhagvat also wrote:

*‘The Sangha was also guided by that notion of justice which according to Plato is “the right of ordering human relationship”. It involves the view that ‘each citizen (in the case of the Sangha each inmate) has an equal claim on the common good in respect of equal needs, and the corollary implied therein in that differences in response to claims are differences that the common good itself requires’. This means in simpler language, that all legal matters were settled in Sangha, not through the interference of a supreme authority, but through the appeal to the whole body of the inmates regarding their idea of the common good. Thus no individual was crushed under the wheel of law nor was any individual vested with supreme authority. All stood on the same level and the Sangha ruled over them.’<sup>40</sup>*

### **Moral Law**

In Buddhism, moralistic laws shape both internal and external behaviour. They regulate conduct and determine what a person should and should not do. As Buddhism believes that the destiny of people does not originate from supernatural beings but from one’s own conduct, human beings are regarded as the creators of their own destiny based on their own actions. The Buddha said:

*‘By oneself the evil is done, by oneself one suffers;  
‘By oneself evil is left undone, by oneself one is purified.  
‘Purity and impurity belong to oneself, no one can purify another.’<sup>41</sup>*

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40 D.N. Bhagvat, Early Buddhist Jurisprudence, p.iii.

41 F. Max Muller (ed.), Sacred Books of the East, Vol. 10, p. 46.



In pronouncing the judgment in the Book of the Dead (*Bar do thosgrol*), the Lord of Purgatory decrees:

*None can nullify the results of one's own action of the commission of offence... One has to suffer for the wrongs committed by one's own action. No one can escape from the breach of laws. However, by acknowledging crimes and through personal actions, the condemned person may be redeemed and liberated.*<sup>42</sup>

Thus, moral laws pave the way to the development of individual qualities and self-emancipation. Lon Luvois Fuller, a noted legal philosopher and former professor at Harvard Law School wrote:

*'Law and morality are intimately related to each other. Laws are generally based on the moral principles of society. Laws, to be effective, must represent the moral ideas of the people.'*<sup>43</sup>

### **International Law**

It is generally considered that Nation States should endeavour to promote goodwill and cooperation and encourage the settlement of international disputes by peaceful means in order to promote international peace and security. Peace loving nations, as members of the international community, should respect international law and customary law, including those of *Jus Cogens*, *pacta sunt servanda*, principles of equality, principles of reciprocity, etc.

Contemporary institutions like the United Nations are repository to laws, conventions and treaties which manage a diverse array of agreements related to international relations. Most of these

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42 Dasha Nakphey, *Bar do thosgrol* folio, pp. 516-519 & Chham Yig (A Manual of Dance) pp.104 & 105.

43 L.L. Fuller, *The Morality of Law*, 1969.



are commonly accepted and generally adhered to, although the capacity of the United Nations to assure compliance is irregular.

Centuries prior to the formation of the United Nations, the Buddha had demonstrated his concern for International Relations and its impact on human welfare. The Buddha said:

*'For I consider that I must promote the welfare of the whole world, and hard work and the dispatch of business are the means of doing so. Indeed there is no better work than promoting the welfare of the whole world. And whatever may be my great deeds,'<sup>44</sup>*

The Buddha also spoke to the need for promoting goodwill amongst States. The Buddha said:

*'And let him cultivate goodwill towards all (the world, a boundless (friendly) mind, above and below and across, unobstructed, without hatred, without enmity).'<sup>45</sup>*

Similarly, regarding the cooperation amongst nations, fostering respect for international law and treaty obligations, and settlement of international disputes by peaceful means in order to promote international peace and security, the Buddha said:

*'O king, do not foster hostility towards neighbouring kings. Whoever hates, will be repaid with hatred by his foes.*

*'Cultivate ties of friendship (mitra-bandham ca kuryas) with neighbouring kings. O mighty lord, for other peoples, honour kings who are steadfast in friendship.'<sup>46</sup>*

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44 6<sup>th</sup> Edicts of Ashoka.

45 F. Max Muller (ed.), *The Sacred Books of the East*, Vol.10, Part II, p.25 (It is Sutta-Nipata 1.8).

46 K.N. Jayatilleke, *Dhamma Man And Law*, p.29.



In order to maintain international peace, secure the common interest to promote economic and social advancement of all people, the Buddha said to the King of Kosala:

*'The prosperity and security of one nation should not depend on the poverty and insecurity of other nations. Majesty, lasting peace and prosperity are only possible when nations join together in a common commitment to seek the welfare of all. If you truly want Kosala to enjoy peace and to prevent the young men of your kingdom from losing their lives on the battlefield, you must help other kingdoms find peace. Foreign and economic policies must follow the way of compassion for true peace to be possible. At the same time as you love and care for your own kingdom, you can love and care for other kingdoms such as Magadha, Kasi, Videha, Sakya, and Koliya.'*<sup>47</sup>

Presaging various components of extant UN mandates, Buddhism abjure violence and war as a means of conflict resolution. It focuses on teaching people a philosophy based on non-violence which is to be practiced at all times. The Buddha propounded:

*'The Declaration on Sanctity of All Sentient Life'*

Within the Karaniya Metta Sutra where all sentient beings were recognized as deserving compassion, equal respect and protection. This vision forms the basis of a commonly chanted invocation stanza:

*'Dukkappaththacanidduka*

*'Bhayapaththacanibbhaya*

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<sup>47</sup> Thich Nhat Hanh, Old Path White Clouds, Walking in the footsteps of the Buddha, p.274.



*'Sokappaththcanissokha*

*'Honthusabbepipanino'*

This stanza means:

*'May those who suffer physically overcome physical suffering,*

*'May those who are in fear overcome fear,*

*'May all those who are suffering mentally overcome that suffering,*

*'May I strive to make all sentient beings happy.'*

The following text highlights the Buddha's belief in the importance of and the means to assure peaceful co-existence. It refers to the discussions he held with the leaders of the Republic of Vaiji who wished to avoid confrontation with the neighbouring kingdom of Magadha. In the text, the Buddha, refers to himself as '*Tathagata*', an honorific title:

*'Ananda, some time ago the Tathagata had the opportunity to speak with Vaiji's leaders about the seven practices of No-Regression. They include: gathering together for discussion, cooperation and unity, respecting laws that have been enacted, respecting and following worthy leaders, refraining from rape and other violent crimes, protecting the ancestral shrines, and respecting teachers who have attained the Way. As the people of Vaiji continue to observe these seven practices, that, the Tathagata believes it would be impossible for Magadha to defeat Vaiji.'*<sup>48</sup>

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<sup>48</sup> Thich Nhat Hanh, *Old Path White Clouds, Walking in the footsteps of the Buddha*, p.541.



The Buddha said:

*'Venerable Ananda, have you heard whether or not the people of Vajji still regularly gather together in large numbers to discuss politics?'*

Ananda answered:

*'Lord, I have heard that the people of Vajji often assemble in large numbers to discuss the political situation.'*

The Buddha:

*'Then Vajji still prospers, Ananda. And Tell me do you know whether or not they still display a spirit of cooperation and unity during their meetings?'*

Ananda:

*'Lord, I have heard that they enjoy great cooperation and unity.'*

The Buddha:

*'Well then, Vajji still prospers. Ananda, do the people of Vajji still respect and follow the laws that have been enacted in their country?'*

Ananda:

*'Lord, I have heard that they respect and follow all their laws.'*

The Buddha:

*'Then it is certain Vajji still prospers. Ananda, do the people of Vajji respect and listen to worthy leaders'<sup>49</sup>*

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<sup>49</sup> Thich Nhat Hanh, *Old Path White Clouds, Walking in the footsteps of the Buddha*, p. 540.



Ananda:

*'Lord, I have heard that the people of Vajji respect and listen to worthy leaders.'*<sup>50</sup>

The Buddha continued:

*'So long, Ananda, as the Vajjians meet together in concord, and rise in concord, and carry out their undertaking in concord;*

*'So long as they enact nothing not already established, abrogate nothing that has been already enacted, and act in accordance with the ancient institutions of the Vajjians as established in former days;*

*'So long as they honour and esteem and revere and support the Vajjian elders, and hold it a point of duty to hearken to their words;*

*'So long as no women or girls belonging to their clans are detained among them by force or abduction;*

*'So long as they honour and esteem revere and support the Vajjian shrines (Chetiyani) in town or country, and allow not proper offerings and rites, as formerly given and performed, to fall into destitute;*

*'So long as the rightful protection, defence and support shall be fully provided for the Arahants (holy men) among them, so that Arahants from a distance may enter the realm, and the Arahants therein may live at ease, so long as may the Vajjians be expected not to decline the World, a boundless but to prosper.'*<sup>51</sup>

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50 Thich Nhat Hanh, *Old Path White Clouds, Walking in the footsteps of the Buddha*, p. 540.

51 Kancha Ilaiah, *God as Political Philosopher*, p.79.



### **Righteous Laws within Buddhism**

In Buddhism, *Dhammanuvatti* implies living in conformity with ‘righteous laws and principles’, both in one’s personal life and in one’s work. Laws should encompass cardinal, spiritual, cultural, ethical, legal and moral values. These values were elucidated in the *Silasamannata* as:

- 1) Harmonious moral conduct;
- 2) Maintaining a level of conduct that meets community standards;
- 3) Adhering to community rules;
- 4) Not making oneself an object of distrust in the eyes of the community;
- 5) Refraining from conduct which would be detrimental to the community; and
- 6) Contributing to a homogenous and equal respect for the community laws and compliance therein.

*Silasamannata* is one of the Six Ways of bringing harmony in the community. They are:

- 1) Body moral conduct;
- 2) Generosity;
- 3) Speech moral conduct;
- 4) Mind moral conduct;
- 5) *Silasamannata*; and
- 6) Right view.



### **Universal Laws within Buddhism**

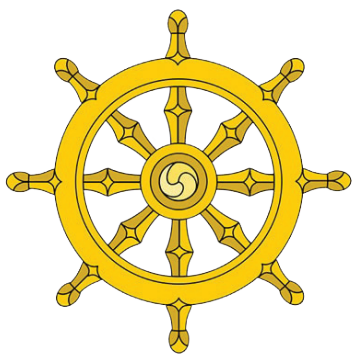
The Buddha promulgated a broad array of laws touching different areas of social life. In many ways, the compilation of guidance within Universal Buddhist laws is similar in nature to those found in the Western Stoic notion of the '*koinosnomos*' or 'universal law'. In toto, these laws included:

- 1) Physical laws (*utu-niyama*);
- 2) Laws related to living matter (*bijaniyama*);
- 3) Psychological laws (*citta-nyama*);
- 4) Moral laws (*kamma-niyama*); and
- 5) Spiritual laws (*Dharma-niyama*).<sup>52</sup>

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<sup>52</sup> K.N. Jayatilleke, *Dhamma Man And Law*, p.15.





## CHAPTER 3

### Offences related to the Administration of Justice

An effective judicial system embedded with judicial structure which includes the Buddhist Monastic order is necessary to ensure the legitimacy of the State and other institutions. The administration of justice includes those persons, mechanisms, structures and procedures, which enable an effective investigation, prompt prosecution and timely resolution.

#### **Courts**

The 20<sup>th</sup> century American philosopher, Ronald Dworkin contemplating the origin of courts and court procedure said:

*‘Perhaps the institution of justice started as I imagined courtesy starting; in simple and straight forward rules about crime and punishment and debt.’<sup>53</sup>*

The Buddha referred to the court as the ‘Hall of Justice’:

*‘Let no one speak falsely to another in the hall of justice or in the hall of the assembly, let him not cause (any one) to speak (falsely), nor approve of those that speak (falsely), let him avoid all (sort of) untruth.’<sup>54</sup>*

Here, the Buddha enunciated the principle of perjury for a person who makes a false declaration or submits false evidence in the hall of justice.

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<sup>53</sup> R. Dworkin, *Laws Empire*, p.74.

<sup>54</sup> F. Max Muller (ed.), *The Sacred Books of the East*, Volume 10 Part II, p. 64.



### **Judges (*sutta-dhara*) and Judicial Qualifications**

Judicial qualities and temperament determine judicial success. According to Socrates, the four essential qualities of a good judge are *'to hear courteously; to answer wisely; to consider soberly; and to decide impartially'*. Under Buddhism, a commendable judicial temperament implies having compassion, decisiveness, open mindedness, sensitivity, patience, freedom from bias and commitment to equal justice. The Buddha said:

*'These are the qualifications always ascribed to one who rightly fills any judicial office, and are called the four Agatis. They are the special attributes of a good king sitting as judge.'*<sup>55</sup>

In terms of the procedure for appointing judges within the monastic structure, the Buddha stipulated:

*'And thus shall he be appointed. First the Bhikkhu is to be requested (whether he will undertake the office). Then some able and discreet Bhikkhu is to bring the matter before the Sangha, saying, "Let the venerable Sangha hear me. If the time seems meet to the Sangha, let the Sangha appoint a Bhikkhu of such and such a name as taker of the voting tickets. This is the motion (natti)."*<sup>56</sup>

Recognising gender equality, the Buddha also established the precedent of appointing women as judges. According to Dr. B.B. Singh:

*'...the Buddha had entrusted Visakha, a lay-woman of repute, the responsible task of judicial investigation into a disputed matter and also to give her judgment. Though*

55 F. Max Muller, *The Sacred Books of the East*, Volume 20 Part III, p. 25 (IV,9).

56 F. Max Muller, *The Sacred Books of the East*, Volume 20 Part III, p. 25 (IV,9).



*Visakha was an exceptional personality, elevating the women in the public life to the extent that they could act as judges...'*

D.N. Bhagvat also states:

*'When the inquiry was being made a committee of arbitrators was appointed among whom there was a lay-woman. The lay-people as far as we know had no share in judicial procedure of the Sangha and hence the instances where a lay-woman was one of the members of the jury, is an unique occurrence.'*<sup>57</sup>

K.N. Jayatileke wrote:

*'When king Pasenadi complained to the Buddha that his queen have given birth to a daughter his comment was:*

*'A woman child, O Lord of man, may prove*

*Even a better offspring than a male'.<sup>58</sup>*

### **Judicial Bench and Appellate System**

The Buddha promoted the use of a differentiated bench of justices for effective administration of the law. The following quote provides an example of the actual practice of managing cases at differentiated levels of judicial authority.

*'They in turn investigated matters and if they thought he was not a thief they released him but if they suspected that he was a thief they made him over to the justices (suttadhara) ... they in turn to a panel of eight judges (attha-*

<sup>57</sup> D.N. Bhagvat, *The Early Buddhist Jurisprudence*, p.115.

<sup>58</sup> K. N. Jayatilleke, *Dhamma Man And Law*, p.74.



*kulika) ... they in turn to the president, who investigated the case and if he thought that he was not a thief, released him but if he was convinced that he was a thief called for the book of precedents (paveni-potthaka).<sup>59</sup>*

## **Jury**

The western concept of trial by jury has its roots in the Frankish conquerors. It was Henry II of England who regularized this type of proceeding to establish royal control over the machinery of justice, first in civil proceedings and subsequently in criminal trials. However, such a concept was already established centuries earlier in Buddhism through the use of juries or commissions. The Buddha also spoke of the appropriate judicial temperament for jury members:

*'A Bhikkhu to be chosen on such a jury must be possessed of ten qualities - he must be virtuous- he must be living enclosed by the restraint of the rules of the Patimokkha - he must be upright in life, trained according to the precepts, taking them upon himself with a sense of the danger in the least offence-he must be versed in the tradition, a custodian of the tradition, a storehouse of the tradition-whatsoever truths, lovely in their origin, lovely in their progress, lovely in their consummation, set forth the higher life, both in its spirit and in its letter, in all its purity and in all its perfectness, in such truths must he be well versed, of such must he be full, they must be laid up in his words, and dwelt on in his heart, being penetrated throughout through right insight-both the Patimokkhas must have been completely handed down to him in their full extent, he must have well divided them, well established them, well investigated them, both sutta by sutta and in every detail - further he must be an expert in the Vinaya, irrefutable therein-he*

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59 K. N. Jayatilleke, Dhamma Man And Law, p.81.



*must be competent to point out (the right course) to both friends and foes, to get them to understand a thing, get them to see it and recognise it, able to pacify them-he must be clever (in judging) both as to the origin and as to the settlement of disputes-he must understand legal questions, the origin thereof, the close thereof, and the way that leads to the close thereof.'*

*'I enjoin upon you, O Bhikkhus, to appoint on the jury a Bhikkhu possessed of these ten qualities.'*<sup>60</sup>

With regard to the use of a jury and the taking of a vote in the decisional process, the Buddha said:

*'A special officer called the "arbitrator" (salaka-gahapaka-lit. vote-taker), noted for his impartiality, knowledge of the law and voting procedure was unanimously elected by a formal resolution of the assembly to take charge of the voting. Every attempt was made to secure unanimity in the voting but if a division appeared inevitable, the motion was put to the house and decided by the majority vote (yebhuyyasika). Voting could be by secret ballot (gulhaka), open ballot (vivataka) or by "the whispering method" (sakanna-jappaka).'*<sup>61</sup>

### **Offences against the Administration of Monastic Law**

The *Patimokkha* is the code of monastic discipline developed at the first Buddhist Council following the Buddha's death. It is contained in the Vinaya within the *Suttavibhanga*. The *Patimokkha* consists of 227 rules for fully ordained monks and 311 rules for nuns.

60 F. Max Muller, *The Sacred Books of the East*, Volume 20 Part III, p.50 (IV, 14,19.) & 51 (IV, 14,20.).

61 K. N. Jayatilleke, *Dhamma Man and Law*, p.80.



Within the hundreds of rules laid down in the *Patimokkha*, are a set which relate to the effective administration of justice. These included:

- 1) *'To tell a novice of a Bhikkhu having committed a grave offence.*
- 2) *'To refuse to answer when the Sangha is making a formal inquiry into an offence.*
- 3) *'To stir up for decision a matter which has already been settled according to law.*
- 4) *'To conceal a serious offence committed by a Bhikkhu.*
- 5) *'Not to submit to the decision of the majority when one is admonished for an offence and say that one cannot do so until a consultation with one who is an acknowledged authority on law.*
- 6) *'To regard minor rules of the Patimokkha as insignificant, boring and leading to perplexity.*
- 7) *'To be ignorant of the rules of the Patimokkha.*
- 8) *'To grumble after having declared consent to the proceedings of the Sangha which are conducted according to law.*
- 9) *'To rise from one's seat and go away without having declared consent when the Sangha is engaged in conducting a trial.'*<sup>62</sup>

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62 D.N. Bhagvat, *Early Buddhist Jurisprudence*, pp.37 & 38.



## CHAPTER 4

### Justice and Supporting Judicial Procedure

In the West, the concepts, categorizations and applications of justice have evolved and been refined over time. Entire tomes have been written on various legal typologies and their differentiated purposes. The list includes Commutative justice, Compensatory justice, Constitutional justice, Corrective justice, Cultural justice, Deterrent justice, Distributive justice, Economic justice, Environmental justice, Global justice, Institutive justice, Political justice, Popular justice, Preventive justice, Procedural justice, Punitive justice, Reformative justice, Retributive justice, Social justice, Substantive justice, etc.

The Buddha, simply said that the need for justice emanates from the need to rectify actions reflecting four forms of prejudice:

- 1) *‘The prejudice caused by love or desire;*
- 2) *‘The prejudice caused by hatred;*
- 3) *‘The prejudice caused by delusion or stupidity; and*
- 4) *‘The prejudice caused by fear.’<sup>63</sup>*

There are, however, some key symmetries between Western and Buddhist judicial philosophies. Social, Economic and Political justice, for example, aim to abolish inequalities which may result from wealth, opportunity, status, race, religion, caste, title, etc. These align to the Buddhist moral principle that all people are equal. The Buddha said:

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63 M. Pivec, *Affective and Emotional Aspects of Human – Computer*, p. 201.



*'It takes great courage to stand up for and protect what is right... Do not violate the rights and commitments of others.'*<sup>64</sup>

To take another example, Aristotle considered justice as 'distributive' and/or 'corrective'. Distributive justice stresses the role of the state. It promotes equality in relation to the exchange of goods in accordance with the amount and quality of labour contained therein.

Corrective justice as advocated by Aristotle, includes payment for services, compensation for damage and punishment for a crime. In alignment with Aristotle's notion of corrective justice, the Buddha simply stressed the individual's right to 'take what is their due'.

Additionally, the Buddhist laws of *rGyalpo Melongdong* from the *Tripitika*, are similar in concept to deterrent and reformatory judicial philosophies. The intention of Buddhist law is to promote virtues and vitiate vices. Justice can promote the harmonious reconciliation of individual conduct with the general welfare of society. As stated in the Vimalakirti Nirdeśa Sūtra:

*'When one's mind is purified, society will also be purified.'*

### **Legal questions requiring formal settlement under Buddhist Monastic Law**

According to the Buddha, there were four kinds of legal questions that required judicial settlement. There were legal questions arising out of offences, business, disputes and censures.<sup>65</sup>

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64 D.N. Bhagvat, *Early Buddhist Jurisprudence*, p.33.

65 F. Max Muller, *The Sacred Books of the East*, Volume 20 Part III, p.35 (IV,14,2).



### **Legal questions of offence**

The Buddha enumerated the origins of offence that give rise to legal questions of offences as:

*'There is an offence that originate in deed, but not in word nor in thought. There is an offence that originates in word, but not in deed nor in thought. There is an offence that originates in deed and in word, but not in thought. There is an offence that originate in deed and in thought, but not in word. There is an offence that originates in deed and in thought, but not in words. There is an offence that originates in words and in thought, but not in deeds. There is an offence that originates in deed and in word and in thought. These are the six.'*<sup>66</sup>

### **Legal question of business**

Buddhism defines legal question of business as:

*'Whatsoever is to the Sangha a thing which ought to be done; An obligation, a matter for which leave ought to be formally asked, The proposal of a resolution, The proceeding by natti-katuttha-kamma, or by natti-katuttha-kamma, that is official duty which may be the subject of the legal question of business.'*<sup>67</sup>

### **Legal question of dispute**

The Buddha held that there are three causes of 'wrong-doing' and three causes of 'right-doing' that gives rise to a legal question of dispute.

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66 F. Max Muller, The Sacred Books of the East, Vol. 20 Part III, p. 40 (IV,14,6).

67 F. Max Muller (ed.), The Sacred Books of the East, Vol. 20 Part III, p.44 (IV,14,15).



*'In case, O Bhikkhus, the Bhikkhu of right mind discuss, saying, "This is the Dharma," or "This is not the Dharma" or "This is not a most grave offence." Whatsoever quarrel, strife, contention, difference of opinion, contradiction, opposition, cantankerousness, or contention there may be in such a discussion is called a legal question arising out of a dispute that is right.*

*'And so when the Bhikkhus have a wrong mind, or an undetermined mind, the legal question arising out of such dispute is respectively a legal question arising out of dispute that is wrong or undetermined.'*<sup>68</sup>

*'If, O Bhikkhus, whilst the case is being enquired into by those Bhikkhus, pointless speeches are brought forth, and the sense of any single utterance is not clear, I enjoin upon you, O Bhikkhus, to settle the case by referring it (to a jury or commission).'*<sup>69</sup>

### **Legal questions of censure**

According to the Buddha, the instances or actions giving rise to a legal question of censure are:

*'Herein, O Bhikkhus, men of greedy mind are given to censure, men of evil mind are given to censure, men of foolish mind are given to censure, accusing others of breaches of morality, or of behaviour, or of error in doctrine, or of adopting a wrong means of livelihood.'*<sup>70</sup>

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68 F. Max Muller, The Sacred Books of the East, Vol. 20 Part III, p.41.

69 F. Max Muller, The Sacred Books of the East, Vol. 20 Part III, p. 49.

70 F. Max Muller, The Sacred Books of the East, Vol. 20 Part III, p. 39.



## **Procedural Law and Due Process**

Procedural or Adjective law deals with the rules of procedure governing evidence, pleading and practice. It pertains to and prescribes the practice, method, procedure or legal machinery by which substantive law is enforced or made effective. Jethro K. Lieberman wrote:

*'The lineage of the due process clauses of the Fifth and Fourteenth Amendments has been traced to a charter of Henry I in 1100, but it is more commonly found in the Magna Carta of 1215 (and repeated in the more enduring Magna Carta of 1225 issued by his son King Henry III.)'<sup>71</sup>*

It structures the judicial process by which a Court hears and determines a case to ensure a fair and consistent application of due process.

'Due process of law' was a historic and fundamental feature of Buddhist jurisprudence. As His Eminence Jamgon Kongtrul Rinpoche, the 19<sup>th</sup> century Tibetan Scholar and poet said:

*Satisfy both loser and the winner through impartial and due process.*

The Buddha outlined procedural processes as guidelines for a vast array of proceedings. This included, for example, the means by which an Act of Rebuke (*Tagganiya-kamma*) would occur and for what offence. An Act of Rebuke was a proceeding for the gravest of charges against a defendant in monastic society which could lead to their expulsion from the monastic order.

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<sup>71</sup> Jethro K. Lieberman, *The Enduring Constitution*, p. 275.



Carrying out an Act of Rebuke required that the person be warned of the offence, reminded of the law he has violated and charged with the offence. The offender would then be prosecuted following agreement of the Sangha (concord). The process was required to be carried out in the presence of the parties with the approval of the persons in the relevant Sangha. The Buddha said:

*'When they have been warned, they ought to be reminded (of the Rule in the Patimokkha) against which they have offended);*

*'When they have been reminded, they ought to be charged with the (particular) offence;*

*'When they have been charged with the offence, some discreet and able Bhikkhu ought to lay the matter before the Samgha, saying, Let the venerable Samgha hear me.*

*'If the time is fit for the Sangha (to do so) let the Sangha carry out the Tagganiya-Kamma against the Bhikkhus'.<sup>72</sup>*

The Buddha clarified that lawful proceeding under the strictures of the *Tagganiya-kamma* (Act of Rebuke) should be considered against an individual by the Sangha. In addition to the criminal offences of murder, theft and sexual crimes, which will be covered in detail in the later chapter, there were a number of other offences which merited such review. For example:

*'And when the Blessed One had rebuked those Bhikkhus in various ways - speaking of the evils of being hard to satisfy in the matter of support or nourishment, of wishing for much, of discontent, of love, of society, and*

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72 F. Max Muller (ed), Sacred Books of the East, Vinaya Texts, Volume 17 Part II, Kullavaga, pp.331 (I,1,4) & 332 (I,2,1).



*of sloth.....Let the Sangha, therefore, O Bhikkhus, carry out the Tagganiya-Kamma (Act of Rebuke) against those Bhikkhus'.<sup>73</sup>*

In Buddhism 'Insubordination' was also considered grounds for an Act of Rebuke (*Tagganiya-kamma*). The Buddha said in cases of insubordination, one should:

*'Let the Sangha therefore, O Bhikkhus, carry out the Nissaya-kamma (Act of Insubordination). Thou must remain under the superintendence of others.'<sup>74</sup>*

Additional potential grounds for an Act of Rebuke (*Tagganiya-kamma*) included:

*'When he is a maker of strife quarrelsome, a maker of disputes, given to idle talk, and a raiser of legal questions in the Sangha; When he is dull, stupid, full of faults, and devoid of merit; When he is living in lay society, in unlawful association with the world.'<sup>75</sup>*

A less serious set of faults could also potentially subject one to an Act of Rebuke:

*'When he has failed in morality as regards moral things - when he has failed in conduct as regards transgression-when he has failed in opinion as regards the principal matters of opinion.*

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73 F. Max Muller (ed), Sacred Books of the East, Vinaya Texts, Volume 17 Part II, Kullavaga p.330 (I,1,2.) & 331 (I,1,4).

74 F. Max Muller (ed), Sacred, Sacred Books of the East, Vinaya Texts, Volume 17 Part II, Kullavaga, p.344 (I,9,2).

75 F. Max Muller (ed.), Sacred Books of the East, Vinaya Texts Volume 17 Part II, Kullavaga, p. 335 (I,4,1).



*'When he speaks in dispraise of the Buddha; when he speaks in dispraise of the Dharma; when he speaks in dispraise of the Sangha. These are three things, O Bhikkhus against him.'*<sup>76</sup>

In addition to these procedures, the Buddha also laid out rules and procedures for the following instances:

*'The Proceeding in presence must be performed, or the Proceeding for the consciously innocent, or the Proceeding in the case of those who are no longer out of their mind, or the Proceeding on confession of guilt, or the Proceeding by majority of the chapter, or the Proceeding for the obstinate, or the Proceeding by covering over as with grass'.*<sup>77</sup>

### **Equal justice under Law**

Buddha held to the principle of equality. According to Dr. Yubraj Sangroula:

*'Buddhist philosophy preached the "principle of equality of all, i.e., sarbjana hitaya sarbe jana sukhaya."*<sup>78</sup>

Through this principle, Buddhism stresses on the importance of equality before the law and that the law should serve the best interests of society as a whole without granting privileges or immunities to a favoured class. In the *Dharmasangiti Sutra*:

*'The Law is equal for all beings. For low or middle or high, the law cares nothing. The Law has no regard for the pleasant. Impartial is the Law...The Law does not seek refuge. The refuge of all the world is the Law...The Law has no preferences. Without preference is the Law.'*<sup>79</sup>

76 F. Max Muller (ed), Sacred Books of the East, Volume 17 Part II, p. 336 (1,4,2) & p.336 (15,1).

77 F. Max Muller (ed.), Sacred Books of the East, Volume 13 Part I, Patimokkha, p.68.

78 Yubraj Sangroula, Jurisprudence: The Philosophy of Law, p.152.

79 Arturo Speziale, The Ethical and Religious Values of Ancient India, p. 127.



Buddhaghosa, the 5<sup>th</sup> century Indian Buddhist Commentator explained the terms ‘*Dhammika*’ as one who rules with justice (*nayena*) and impartiality (*samena*). When speaking of the ‘*Dhammaraja*’ or legitimate ruler of the land, he said that the Dharma (doctrine of righteousness) has been declared as the ruler of rulers, and the highest in the world (*settho jane*).

On this theme, D.N. Bhagvat wrote on the trial of Ananda, the primary attendant of the Buddha and one of his ten principal disciples:

*‘The practice of merciless justice in the Sangha. No favourite, however great, could ever be spared for the wrong he had committed or rather for the wrong the Sangha supposed he had done.’*<sup>80</sup>

### **Right to a Fair Trial**

The principle of equality before the law often includes the right to a fair trial in order to ensure the proper administration of justice. The right to a fair trial has been defined in numerous national and international human rights instruments. Under Article 39 of the Magna Carta:

*‘No freeman shall be arrested or imprisoned except by lawful judgment according to the law of the land’.*

This is a key precedent for due process of law clauses found in subsequent laws and constitutions of different countries including, the 5<sup>th</sup> Amendment of the US Constitution.

Article 14 of the 1966 International Covenant of the Civil and Political Rights (ICCPR) includes the provision for a fair trial. This right entitles individuals to be recognised as a subject and not as an object of the law.

<sup>80</sup> D. N. Bhagvat, Early Buddhist Jurisprudence p. 114.



## Right to Silence

The legal principle of the right to silence guarantees an individual the right to refuse to answer to avoid self-incrimination. The origin of the right to silence is attributed to Sir Edward Coke in the late 17th century. Jethro K. Lieberman wrote:

*'Combining the Fifth Amendment right against self-incrimination and the Sixth Amendment right to counsel, the Court has fashioned a doctrine, epitomized in the Miranda case, but by no means resting there, that requires the police in a variety of circumstances to desist from even questioning suspect.'*<sup>81</sup>

As we shall see in significantly greater detail in subsequent chapters, exercising one's silence in Buddhist monastic procedure was a critical element of demonstrating innocence.

## Recantation

Apropos to US legal parlance, to recant means to formally and publically withdraw or repudiate a prior statement or testimony. On this practice, The Buddha said:

*'Now at that time the Bhikkhu Uvaa, being examined in the midst of the Sangha with an offence, when he had denied then confessed it, when he had confessed it then denied it, made counter-charges, and spoke lies which he knew to be such.*

*'Then, O Bhikkhus, let the Sangha carry out the tassa-papiyyasika-kamma (the Proceeding in the case of the obstinately wrong).'*<sup>82</sup>

81 Jethro K. Lieberman, *The enduring Constitution, An Exploration of the First Two Hundred Years*, p.282.

82 F. Max Muller, *Sacred Books of the East, Vinaya Texts*, Vol. 20 Part III, Kullavagga, p. 27 (IV,11,1) & 28 (IV, 11,2).



## **De Minimis Charges, Frivolous Actions and Groundless Charges**

Throughout history, authorities had to decide at what level and with what severity matters needed to be addressed, if at all, and whether they are to be addressed administratively or judicially. Frivolous cases detract from legitimate dispute resolution. The legal principle of triviality is *de minimis non curat lex*.

On this topic, Andrew Huxley translated the following from the work of Buddhaghosa:

*'The Elders ask what kind of thing it is.*

*'What time? What place? And was it still brand new?*

*'Worth less than five? De minimis applies.*

*'And thus, they judged the pains that must accrue?*

*'It is by examining the Four Variables (thing, time, place, and use) that we can calculate true value.'*<sup>83</sup>

Under contemporary law, a person shall be guilty of initiating frivolous litigation, if they launch a malicious or mala-fide prosecution with a perverse intent to embarrass or harass another person without having a reasonable basis for the prosecution or knowing that the prosecution does not involve a concrete controversy or case. Regarding such frivolous case, the Buddha said:

*'There are three things, O Bhikkhus, which when they characterise a Bhikkhu, the Samgha, if it likes, should carry out the Pabbaganiya-kamma against him; (that is*

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<sup>83</sup> Rebecca Redwood French and Mark A. Nathan, *Buddhism and Law*, p. 174.



*to say), when he is characterised by frivolity of action-when he is characterised of frivolity of speech– when he is characterised of frivolity of action and of speech.’<sup>84</sup>*

A groundless charge is without any basis or foundation. The test for determining a groundless charge is to discover that the materials available on record, even if un-rebutted would not make a case. The Buddha directly addressed this when he stated:

*‘Whatsoever Bhikkhu, in harshness, malice, or anger, shall harass (another) Bhikkhu by a groundless (charge of having committed) a Parajika offence, thinking to himself;*

*“Perchance I may (thus) get him to fall from this religious life’- Then at some later time, either when he is pressed, or without his being pressed, the case turns out to be groundless, and the Bhikkhu confesses his malice-that is a Samghadisesa.”<sup>85</sup>*

Similarly, under the modern penal law, if a person maliciously institutes a case with malafide intent without having a reasonable basis will be held liable for cantankerous litigation.

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84 F. Max Müller, (ed.), Sacred Books of the East, Vinaya Texts, Volume 17 Part II, Kullavagga, p. 355 (I,14,1).

85 F. Max Müller (ed.), The Sacred Books of the East, Vinaya Texts Volume 13 Part I, Patimokkha, p. 9 & 10.



## CHAPTER 5

### Buddhist Procedural Steps for Trial

In addition to outlining the content of lawful proceedings, the Buddha provided comprehensive procedural steps to guide the conduct of a trial. Its purpose was to maintain unimpeded proceeding. According to Zhabs-drung Ngag-dbangr Nam-rgyal's Kathrim of Bhutan, trial means '*having the quality of an unimpaired, slowly flowing heavenly stream of justice*'.<sup>86</sup>

These steps were subsequently outlined in the *Sammukha-Vinaya* (Rules of Procedure). These were further expanded upon in the *Seven Practices of Reconciliation (saptadhikarana-samtha)*.

The complete set of the Buddhist procedural steps for trial are:

- 1) Presence before a Judge (knowledgeable in the teaching of the Master);
- 2) Legal Counsel (*trnastaraka-vinayana*);
- 3) Opening Statement (*purvapaksah*);
- 4) Defence Reply and Pleading (*codyam or pariharah*);
- 5) Rebuttals (*Jatih and Jatyuttarah*);
- 6) Witnesses (*smrti-vinayana*);
- 7) Cross Examinations (*sammukha –vinayana*);
- 8) Judicial investigation (*rTagpag.sum; Triparigchath, dribangag-la rtagpa, regpartsa-la rtakpa, mThong-bag. zugs-la rtagpa*);

<sup>86</sup> Michael Aris, Sources for the history of Bhutan, p.125.



- 9) Closing Statements (*Nigamanam or Upasamharah*);
- 10) Judgment (*Iyadhuyasikiya-vinayana*); and consensus (*Yadbhuyasikiya –vinayan*);
- 11) Appeal (*pratijnakaraka – vinayana*); and
- 12) Reconciliation (*amudha-vinaya*) and (*tatsvahaisya-vinayan*)

The ‘*Raksha Mancham*’, the Dance of Purgatory<sup>87</sup> from The Book of the Dead (*Bar do thosgrol*) discovered by Karma Lingpa, the famous 14<sup>th</sup> century Buddhist master serves as an important cultural education in Buddhist societies familiarizing people with Buddhist jurisprudence.

Consisting within this trial process, as presented above, it embodies an array of the legal procedural principles and also includes the production of the accused before a judge in person, equal justice, due process, open and fair trial, the right to legal counsel, the right to be informed of the charges, prosecution for the crimes, defence through rebuttal, production and establishment of evidence and *ratio decidendi* (the reasoned decision) based on facts and evidence.

### **Habeas Corpus**

In the West, the Habeas Corpus Act was first enacted in 1679 by the English Parliament. It is also enshrined in Article I, Section 9 of the USA Constitution. Habeas Corpus requires the physical presence before a judge and a court of law. More specifically, Habeas Corpus means recourse in law to a person, ‘*we, a Court, command*’ that you have the body present.

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<sup>87</sup> T.W. Rhys Davids, *Dialogues of the Buddha* Vol. III, p, 99.



The concept of the right to be heard before a court was well enshrined in Buddhism before Habeas Corpus was embedded into Western legal dogma. The Buddha said:

*'Cases of dispute must be settled before a duly constituted meeting of the Sangha, and in the presence of the accused person.'*<sup>88</sup>

As we have seen, a 'Proceeding in Presence' requires the presence of the accused, the Dharma, the Vinaya and the Sangha. As the Buddha said:

*'A person's presence was more important than his words.'*<sup>89</sup>

*'The presence of the accused was essential.'*<sup>90</sup>

*'He who confesses, and he to whom the confession is made, both are present. This is the presence of the particular individual in such a case.'*<sup>91</sup>

The right of defence is the principle pillar of criminal law to ensure that no person should be condemned unheard.

### **Evidence**

A cardinal principle of justice is that no person shall be convicted unless the charges are substantiated, proven and supported by witnesses and/or evidence.

Dignaga, one of the Buddhist founders of Buddhist logic (*hetu vidya*), created the first system of Buddhist logic and epistemology

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88 F. Max Muller, Sacred Books of the East, Vol. 20 Part III, p. 3 (IV,3).

89 Thich Nhat Hanh, Old Path White Clouds, p.385.

90 D.N. Bhagvat, Early Buddhist Jurisprudence, p. 96.

91 F. Max Muller (ed.), The Sacred Books of the East, Vinaya Texts, Vol. 20 Part III, Kullavagga, (IV,14,33), p.64.



(*Pramana*). Dignaga's *Pramana Sutra* includes the following five-part syllogism akin to evidentiary procedure guidelines:

- 1) A statement requiring to be proven: the hill is fiery (*pratigya*);
- 2) A statement of reason: because it is smoky (*hetu*);
- 3) Smoky is fiery: kitchen is also smoky (*udharana*);
- 4) Application of general rule: So the hill (*upayan*); and
- 5) Conclusion: the hill is fiery (*nigamana*).

Dignaga argued:

*'There is fire on the hill. Because there is smoke, just as in the kitchen etc.*

*'Wheresoever there is smoke, there must be some fire, as in the kitchen etc.*

*'And there is such a smoke on the hill.'*<sup>92</sup>

Sakya Pandita Kunga Gyelsthen, a 13<sup>th</sup> century Tibetan spiritual leader and Buddhist scholar and the fourth of the five Sakya forefathers' work on *Treasury of Epistemology* (*Tshad ma rigs pa'i gter*) is still relied upon by the lamas in Bhutan and Tibet. The Venerable Mathieu Ricard summarized his position on evidence as follows:

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92 F. Th. Stcherbatsky, *Buddhist Logic*, p.277.



*'According to Buddhism, three criteria allow a statement to be considered valid: verification by direct experience, irrefutable deduction, and testimony worthy of confidence.'*<sup>93</sup>

In terms of witness character, the Buddha said that a witness is a person who:

*'...refrains from lying and is devoted to truth. On being summoned as a witness before an assembly or a court of law, he claims to know what he knows, he does not claim to know what he does not know, he claims to have seen what he saw and does not claim to have seen what he did not see; he does not utter a conscious lie for the sake of himself or for the sake of others for some trifling gain.'*<sup>94</sup>

There are also five categorizations of insufficient evidence. They are:

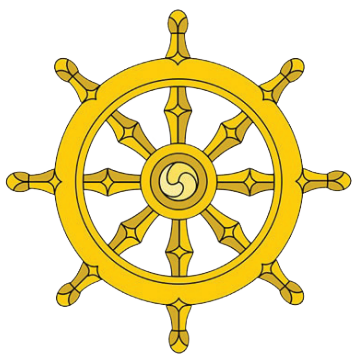
- 1) Inconclusive (*Sabayi-bhichara*);
- 2) Contradictory (*Birudha*);
- 3) Controversial (*Prakanan-sama*);
- 4) Counter-questioned (*Sadhya-sama*); and
- 5) Ill-timed (*Kalatita*).

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<sup>93</sup> Jean-Francois Revel & Mathieu Ricard, *The Monk and the Philosopher*, p.40.

<sup>94</sup> K. N. Jayatilleke, *Dhamma Man and Law*, p.58.





## CHAPTER 6

### General Principles of Liability

Western Criminal justice system has two essential pre-conditions of guilt: ‘criminal intent’ or ‘evil mind’ (*mens rea*) and ‘commission of an act’ (*Actus Rea*). The act of an individual by itself does not necessarily constitute guilt or crime, unless it is accompanied by criminal intent (*Actus non facit reum, nisi mens sit rea*). In this regard, the Buddha held that wrong-doing arises because of mind, as he said:

*‘Mind is the fore-runner of (all evil) conditions. Mind is chief: and they are mind made. If, with an impure mind, one speaks or acts, then pain follows one even as the wheel, the hoof of the ox.’<sup>95</sup>*

*(cittena niyati loko, cittena parikissati, cittassa ekadhammassa sabbeva vasam anvaguti)*

In Buddhist jurisprudence, the commission of crime has the following stages:

- 1) The intention to commit crime or mind (premeditated act) (*Parikalpa*);
- 2) Preparation to commit crime or execution of plan (*Prayatna*);
- 3) The commission of the crime (*parinispanna*); and
- 4) Remorselessness.

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95 Ven. Narada Maha Thera, Dhammapada, The Sacred Book of Buddhists p.2.



## **Intention or Purpose**

Western law holds that a person acts purposely with respect to a material element of an offence, when the element involves the nature of the defendant's conduct or a result thereof and it is the defendant's conscious objective to engage in a conduct of that nature or to cause the result of the conduct.

Petra Kieffer-Pulz, noted that of the seven general legal principles which underlie early Buddhist law, the one most related to criminal liability is the principle of differentiation between intentional and negligent acts:

*'Intention is a central topic in Buddhist monastic law. Intention is so significant that the negligent commission of an intentional crime does not result in an offence, whereas the negligent or intentional commission of a negligent crime leads to an offence. If, for instance, a monk were to sit down on a child who happened to be lying on a chair but concealed by, say, a blanket or piece of cloth, and in so doing the monk kills the boy, no offence involving expulsion (parajika) occurs, because homicide is an intentional delict, and intention is missing here. But if a monk drinks a glass of fruit juice, thinking it to be fruit juice, while the fruit juice has become alcoholic after being left in the sun for too long, he commits the offence of drinking alcohol because this is a negligent delict, and one becomes guilty of transgression with or without intention.'*<sup>96</sup>

## **Knowingly**

Knowingly in western legal parlance means, when the matter is a direct result of the defendant's conduct and, the defendant is aware that it is practically certain that his conduct will cause that

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<sup>96</sup> Rebecca Redwood French and Mark A. Nathan, *Buddhism and Law*, p. 54.



result. With regard to this element, in the case of the commission of a homicide, the Buddha said:

*'Whatsoever Bhikkhu shall knowingly deprive the life of a human being, or shall seek out an assassin against a human being, or shall utter the praises of death, or incite another to self-destruction, saying, 'Ho! my friend! what good do you get from this sinful, wretched life? death is better to thee than life?' if, so thinking, and with such an aim, he, by various argument, utter the praises of death or incite another to self-destruction-he, too, is fallen into defeat, he is no longer in communion.'*<sup>97</sup>

The Buddha thus clarifies that the person so described, is fully guilty of a criminal action and will be subject to the gravest level punishment allowed within the monastic order for a *Parajika* offence under the rules of the *Vinaya*. The Buddha also referenced the concept of knowingly in terms of the eating of meat:

*'Let no one, O Bhikkus, knowingly eat meat (of an animal) killed for that purpose. Whoever does so, is guilty of a dukkata offence.'*<sup>98</sup>

### **Culpability**

Culpability, in both Western and Buddhist legal parlance, is being blameworthy for the commission of a fault or the breach of a duty imposed by law. It generally implies that an act performed is wrong, but does not involve any evil intent by the wrongdoer. The connotation of the term is fault rather than malice or a guilty purpose. If the law does not prescribe culpability sufficiently then it has to be established that the person acted purposely, knowingly, or recklessly.

<sup>97</sup> F. Max Muller, Sacred Books of the East, Vinaya Texts, Patimokha, Vol. 13 Part I, p. 4.

<sup>98</sup> F. Max Muller, Sacred Books of the East, Vinaya Texts, Mahavagga, Vol. 17 Part II, p. 117 (VI,32,1).



Mitigating and aggravating circumstances are two legal principles considered in the sentencing phase of criminal trial found both in Western and Buddhist laws. Mitigating circumstances lessen the gravity of an offence whilst aggravating circumstances compound it.

Commonly considered mitigating circumstances in both Western and Buddhist law include:

- 1) No record of a prior criminal conviction;
- 2) The crime committed under the affliction of extreme mental or emotional distress;
- 3) The crime committed accidentally;
- 4) The victim is a participant or has consented to the criminal act;
- 5) The person believed of having a reasonable justification or extenuation for the conduct;
- 6) An accomplice in a crime and the participation in the crime is minor;
- 7) Acted under duress or under the domination of another person; or
- 8) The person was impaired on account of mental disability or intoxication.

Common aggravating circumstances found in both Western and Buddhist law include:

- 1) Is a habitual offender or a recidivist;



- 2) Is a part of another crime;
- 3) Caused a grave risk of death or serious bodily injury;
- 4) Negligently caused bodily injury with a deadly weapon;  
or
- 5) Heinous, atrocious, or cruel crime.

The principles of mitigating and aggravating circumstances are both applied in the *Bar do thosgrol (Book of the Dead)* written by Tertön Karma Lingpa, who lived from 1326 to 1386.

The trial is choreographed and is a part of the annual Tsechu festivals in Bhutan. The proceeding is presided over by the Lord of Purgatory, *g.shin-rjelasmkhan*. The accused is represented by his defence counsel *dlha dkarpo* and the prosecutor represented by a prosecutor, *Dre Nagpo*.

The accused, in the Book of Dead, defends himself through counsel by invoking the doctrine of necessity and ignorance of law (*ignorantia juris*). He pleads that any punishment should be mitigated given these considerations.

The prosecutor (*Dre Nagpo*) invokes the doctrines of *actus reus* and *mens rea* and submits that the accused, *nyelbum* is charged for indiscriminately slaughtering innocent wildlife in the mountains, sadistically ensnaring and killing countless fish, remorselessly poisoning rivers and oceans, burning and destroying the natural habitat of innumerable sentient beings and vandalizing the sacred monuments and desecrating temples.

Aggravating circumstances in this instance are defined by the Four Aspects of Sins (*sdig-pa'iyanlagbzhi*). The four aspects



of aggravating circumstances (*g.zhi*, *bSampa*, *sbyorba* and *mTharthug*) are:

- 1) ‘*The preceding thought of intending, “I will do such a misdeed!”*’;
- 2) ‘*The deliberate engagement in the act and pursuing it with effort*’;
- 3) ‘*The actual deed of killing, experiencing the act; and*
- 4) ‘*The conclusion of rejoicing in the act without feeling regret.*’<sup>99</sup>

### **Punishment**

The aim of criminal justice is that ‘*the guilty shall not escape and the innocent shall not suffer.*’<sup>100</sup> Therefore, punishment should protect society from the criminal and the criminal from themselves. The six recognized aims of punishment are deterrence, protection, reformation, retribution, reparation and vindication. The five most common criminal punishments involve incapacitation, deterrence, retribution, rehabilitation and restoration.

According to the Vinaya, there are multiple classes of offences. These are ‘*pârâgika*, *samghâdisesa*, *thullakkaya*, *pâkittiya*, *pâtidesaniya*, *dukkata*, and *dubbhâsita offences.*’<sup>101</sup> Punishment of course differed based on the level of severity.

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<sup>99</sup> Erik Pema Kunzang translated Dakini Teachings, Padmasambhava’s Oral Instructions to Lady Tsogyal, p.37.

<sup>100</sup> See American Law Report: Annotation & Cases. ALR Federal 2d. p.278.

<sup>101</sup> F. Max Muller, Sacred Books of the East, Vinaya Texts, Mahavagga, Vol. 13 Part I, p. 244 (II,3,5).



According to D.N. Bhagvat:

*'The highest penalty inflicted was the unconditional dismissal of the culprit from the Sangha; under no means that person (monk) could be readmitted to the institution.*

*'The mildest form of penalty was formal confession. The former was prescribed on the Para.'*<sup>102</sup>

### **Alternative Sentencing**

While a defendant convicted of a criminal offence is generally sentenced in accordance with the law, within Buddhism, there were substantive provisions for alternative sentencing. The Buddha elaborated a full listing of alternative sentences from the mundane to the extraordinary. These included:

- |                              |   |
|------------------------------|---|
| 1) <i>Desana karaniya</i>    | Confession, the making one to confess or declare his crime  |
| 2) <i>Samvarah karaniyah</i> | Obligations, the giving for security, the act of binding, trying, or the state of being tied, bond and confinement; |
| 3) <i>Tarjaniam</i>          | the menacing, reproving, blaming, censuring (of a criminal);  |
| 4) <i>Nigarhaniam</i>        | a reproaching, rebuking, aversion;  |
| 5) <i>Pravasaniyam</i>       | an exiling, banishing, expelling, exile banishment, expulsion;  |
| 6) <i>Pratisamharanlyam</i>  | confiscation (and expulsion);   |

<sup>102</sup> D.N. Bhagvat, Early Buddhist Jurisprudence, p.106.



- |                                  |   |
|----------------------------------|---|
| 7) <i>Utksepaniyam</i>           | ejection, expulsion, the act of expelling one from a place.                               |
| 8) <i>Apattivutthanam</i>        | an erecting of his fall, restoration and absolution from crime;                           |
| 9) <i>Parivasah</i>              | changing one's abode;   |
| 10) <i>Mulaparivasah</i>         | the changing of one's original place (a foundation);                                      |
| 11) <i>Mulapakarsaparivasah</i>  | a second removal from his establishment;  |
| 12) <i>Manapyam</i>              | the act of making one glad, cheerful, merry, or the state of rejoice greatly, exultation; |
| 13) <i>Mulamanapyam</i>          | the act of making one heartily rejoice or the state of heartily rejoicing;                |
| 14) <i>Mulapakarsamanapyam</i>   | the act of erecting one's heart again to be glad and cheerful;                            |
| 15) <i>Cirnamanapyam</i>         | prudent, enjoyment or merriment (one that has been made joyful);                          |
| 16) <i>Avarsanam [Avarhanam]</i> | a faithful and very pure extraction. <sup>103</sup>                                       |

### **Concurrent and Consecutive Sentencing**

Concurrent and consecutive sentence refers to when a person found guilty of more than one offence will serve their imprisonment term for each offence, at the same time or successively. Within a monastic context, according to Jotiya Dhirasekera, the Buddha advocated for concurrent sentencing:

<sup>103</sup> Terjek (ed.), *Collected Works of Alexander Csoma de Koros*, p. 232.



*'This is called combined penalty or Samodhanaparivasa, as the period of punishment for the different offences are to run concurrently and not successively. This renewal of punishment to serve a sentence again either under Manatta or under Parivasa is known as Mulaya-patikassana or being dragged back to the beginning.'*<sup>104</sup>

### **Accomplice liability**

Accomplice liability allows the court to find a person criminally liable by association for acts committed by a separate person if their actions in some form aided or abetted the offending actor. If one aids, assists, or encourages another in the commission of a crime, whether before, during or after, they can be considered as an 'accomplice' and thus liable for criminal sanction. Within the monastic context the Buddha applied the notion of accomplice liability when, for example, he said:

*'Whatsoever Bhikkhu shall stand by over-hearing when Bhikkhus are quarrelling, or making a disturbance, or engaged in a dispute, hoping to hear what they shall utter; if he does it to that end alone-that is a Pakittiya.'*<sup>105</sup>

Patrul Rinpoche, a Tibetan Nyingma teacher and author (1808-1887), wrote more precisely on the Buddhist notion of accomplice liability in secular contexts, particularly, as it relates to theft or the killing of sentient beings:

*'However any participation, down to merely offering hunters or thieves some food for their expedition, is enough to bring you an equal share of the effect of evil action of their killing or stealing.'*<sup>106</sup>

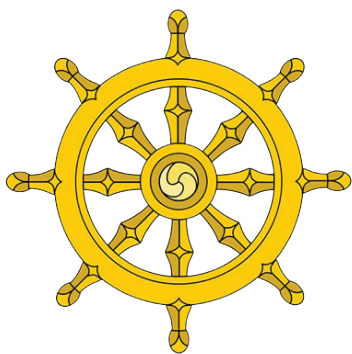
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104 Joytiya Dhirasekera, Buddhist Monastic Discipline, p. 212.

105 F. Max Muller, Sacred Books of the East, Vinaya Texts, Patimokkha, Pakittiya Dhamma, Vol. 13 Part I, p. 51.

106 Patrul Rinpoche, Words of My Perfect Teacher, pp.106 & 107.





## CHAPTER 7

### Affirmative Defences to Liability

An affirmative defence, if proven, defeats or mitigates the legal consequences of the defendant's otherwise unlawful conduct. In civil lawsuits, affirmative defences may include statutes of limitations, statutes of fraud, waiver, or other procedural or regulatory considerations. In criminal prosecutions, common affirmative defences include self-defence, infancy, insanity and the statute of limitations. For example, in the case of an insanity defence, if a person is found to be clinically insane, suffering from a mental abnormality or a chronic condition that significantly impairs the person's capacity to make sagacious judgments, a judicial authority may order a civil commitment, unless it is of the opinion that such a commitment will not further reform or rehabilitate the defendant or that failure to do so will jeopardize public safety.

The Buddhist jurisprudence entertains affirmative defences as well. Petra Kieffer-Pulz wrote extensively on this theme:

*'The first legal principle is no crime or penalty without a law (nullum-crimen, nulla poena sine lege). According to this principle, the first person to effect a prescription is never liable to punishment, a fact mentioned in the anapatti clause of each Pratimoksa rule.*

*'The second is the principle of in culpability; insanity or mental disorder protects one from punishment. There are several other causes for in culpability, some of which appear frequently (for example, illness), but none of them is as general as mental disorder; this is also found in the anapatti clause of each Pratimoksa prescription.*



*'The third principle is the differentiation between intentional and negligent acts. Intention is a central topic in Buddhist monastic law. Intention is so significant that the negligent commission of an intentional crime does not result in an offence, whereas the negligent or intentional commission of a negligent crime leads to an offence. If, for instance, a monk were to sit down on a child who happened to be lying on a chair but concealed by, say, a blanket or piece of cloth, and in so doing the monk kills the boy, no offence involving expulsion (parajika) occurs, because homicide is an intentional delict, and intention is missing here. But if a monk drinks a glass of fruit juice, thinking it to be fruit juice, while the fruit juice has become alcoholic after being left in the sun for too long, he commits the offence of drinking alcohol because this is a negligent delict, and one becomes guilty of transgression with or without intention*

*'A fourth legal principle is the gradual differentiation of offences, the central subject of the casuistries in the Vibhanga. Because determination of the appropriate offence depends on whether all factors for a certain offence are in fact present, offences may vary. In the case of theft, for example, one precondition for a parajika offence is that the stolen goods have to be worth more than five masaka. Now, if one steals an object worth less than five but more than one masaka, the most serious possible offence is a "grave offence"; if it is less than one masaka, the offence is simply one of "wrongdoing".*

*'The fifth principle is the absorption of offences. In the Vinayas, early signs of absorption are found in the category of the yavatatiyaka-sanghadisea offences (matters requiring a formal meeting of the Order, which are only*



*completed with the third admonition). Infraction of these rules does not immediately lead to a Sanghadisesa offence. Only after the completion of the recitation of the formula for admonishing does one incur a Sanghadisesa offence. Only after the completion of the recitation of the formula for admonition does one incur a Sanhadisesa offence.*

*'If the perpetrator resists when the motion is recited, "offence of wrongdoing" arises; if he still resists when the first two resolutions are recited, "grave offences" arise. But all these offences are absorbed by the Sanghadisesa offence, which occurs with the completion of the third resolution.'*<sup>107</sup>

### **The Defence of Insanity**

Buddhism has always been supportive of the notion of the affirmative defence of insanity for one who claims to have been insane at the time of commission of the infraction. The Milinda Panha (Questions of Milinda) is a Buddhist record of a dialogue between the Buddhist sage Nagasena and the Indo-Greek King Menander also known as King Milinda. The document is dated between 100 BC- 200 AD. During the dialogue, Nagasena told Milinda:

*'So then, O king, there is no punishment according to the offence of a madman. It follows that there is no sin in the act done by a madman, it is a pardonable act'*<sup>108</sup>

### **The Defence of Infancy and Intoxication**

Buddhist practice also included the 'Defence of Infancy' and a limited defence for 'Intoxication'.

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107 Rebecca Redwood French and Mark A. Nathan, Buddhism and Law, p, 53 & 54.

108 F. Max Muller (ed.), Sacred Books of the East, The Questions of King Milinda, Vol. 36 Part II, p.19 (IV,5,18).



The Defence of Infancy is a doctrine known as *doli incapax*. Historically, in Buddhist law, this only applied to a child up to 10 years of age. Minors of ten years or younger were not held liable for any offence they committed.

‘Intoxication’ shall not constitute a defence unless it negates an element of the offence and is administered to the person without the person’s knowledge or against the person’s will.

If a person due to self-induced intoxication is deluded of a risk of which the person would have been aware had the person been sober, then the person’s unawareness of the risk would not be a defence.

According to Buddhist laws:

- 1) ‘One of the ninety sins or faults is *Sura maireyamadya panam* which means drinking intoxicating liquor extracted of corn (or wine) and other mixed liquors.’<sup>109</sup>
- 2) ‘One of the fundamental articles in the Doctrine of Buddha is *Madyapana viratihthat* connotes desist from drinking any intoxicating liquor.’<sup>110</sup>
- 3) *And the man who gives himself to drinking intoxicating liquors, he, even in this world, digs up his own root.*<sup>111</sup>

### **Ignorance of Law**

The Latin Maxim *Ignorantia juris non excusat* means that ignorance of law excuses no one. This legal principle holds that a person may not escape liability for violating a law merely because they were unaware of it. The Buddha had the same perspective. He believed that the ignorance of law could be

109 Terjek (ed.), Collected Works of Alexander Csoma de Koros, Edited by, p.225.

110 Terjek (ed.), Collected Works of Alexander Csoma de Koros, p.235.

111 F. Max Muller (ed.), The Sacred Books of the East, Vinaya Texts, Vol. 10 Part I, Dhammapada, p.61.



taken into consideration during the sentencing. In the *Raksha Mangchham*, the Dance of the Judgement of the Dead from *Bar do thosgrol* the accused, *Nyalbum*, defends himself by saying:

*The offences were committed not in flagrante delicto... It was through my ignorance and lack of understanding. Had I known the presence of you while I was alive, I would not commit all these.*<sup>112</sup>

Similarly, the defence council, *Lha Karpo* defends the accused by saying:

*The King of Purgatory be compassionate. The accused from Zanglin was ignorant and insane. Hence, he committed the sins through ignorance and insanity. It was not done knowingly and intelligently.*<sup>113</sup>

### **The Doctrine of Necessity**

A person who raises the ‘necessity defence’ admits to committing what would normally be a criminal act, but claims the circumstances justified it. The person did not cause or contribute to the threat. They acted out of necessity at all times and, the harm caused wasn’t greater than the harm prevented. An application of the ‘defence of necessity’ is also used in the Dance of the Judgement of the Dead from the *Bar do thosgrol*. Therein, the accused invokes the defence of necessity as:

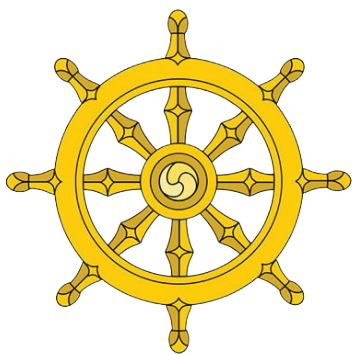
*My life was abounded by scarcity and deprivation of food and clothing. There were many women and children with me without food. Therefore, I killed many animals. We were starved for many years. There was nothing besides meat. We had no cereals to eat and no alcohol to drink for many years.*<sup>114</sup>

112 *Bar do thosgrol* Folio, 509 & *Chham Yig*, p.97.

113 *Bar do thosgrol*, folio, 510 & *Chham Yig*, p.98.

114 *Bar do thosgrol*, Folio, 507 *Chham Yig* p.97.





## CHAPTER 8

### Judicial Decision Making Process

The Buddha provided seven means, (subsequently captured in rules or maxims), for appeasing a quarrel. They are:

- 1) Evident decorum and decency (*Sammukhavinayah*);
- 2) Lawful decency (*Smrtivinayah*);
- 3) Prudent decency (*Amudhavinayah*);
- 4) What many may do properly (*Yadbhuyasikiya*);
- 5) Which is always a desirable property (*Tattva svabhavaisiyah*);
- 6) It is as proper as a couch made of (*trnastarakah*) green herbs (*Stirnaprastarakah*); and
- 7) It is worthy (*Pratijnakarakah*).<sup>115</sup>

Within that frame, the primary purpose of Buddhist proceedings was not to punish but to uncover the mental state of the parties. The role of the judge was to supervise the process of calming and harmonizing the mental state of the disputants. David Loy noted:

*'The goal of a legal proceeding was to calm the minds and relieve the anger of the disputants and then through catharsis, expiation, restitution, and appeasement to rebalance the natural order.'*<sup>116</sup>

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115 Terjek (ed.), *Collected Works of Alexander Csoma de Koros*, p.232.

116 David Loy, *The Great Awakening: A Buddhist Social Theory*, p. 136.



## **Mediation**

The Buddha demonstrated a clear predilection towards conciliation, arbitration, negotiation and forgiveness, over discord and conflict. As part of the judicial process, therefore, internal settlement between the parties was widely encouraged.

The Buddha held that mediation brings wisdom and that the absence of mediation fosters ignorance. Since, it was the source of animosity between the parties, which needed to be addressed to resolve a conflict, the root cause was considered more important than the dispute itself. Buddha thus directed his followers in judicial proceedings to:

*'Listen carefully to both sides without prejudice. Carefully consider everything you hear to determine which things are in accord with the teaching and which things are not. Things in accord with the teaching lead to peace, joy, and liberation. They are the things I myself practice. Things I have cautioned against and which I do not practice are not in accord with the teaching. When you understand what things are in accord with the teaching and what things are not, you will know, how to help both sides find reconciliation.'*<sup>117</sup>

## **Considerations within Judicial Decision-Making**

There are many instances, when only a judicial decision will resolve a matter. The Buddha was clear in his teachings about the process of reaching and rendering judgment.

A *'well-weighed verdict'* requires the application of natural justice, a consideration of the evidence and the application of the rule of law. All of which, will lead to a reasoned or *ratio decidendi* judgment. Rupert Gethin said:

<sup>117</sup> Thich Nhat Hanh, *Old Path White Clouds, Walking in the footsteps of the Buddha*, p.309.



*'Not to pass judgement in haste or anger, but appropriately, such that punishment fits the crime.'*<sup>118</sup>

Buddhism holds that one who does not anchor on truth, tramples justice. Even while applying an impartial law, one must through wisdom discern right from wrong to render justice.

Since the objective of the Buddhist law is to protect the citizenry and respect the Dharma, the Buddha enumerated the '*five crimson principle*' to provide necessary guidance to derive this outcome. The Buddha held, for a judge to be forthright in their duty:

*'Temper his verdict with compassion. He will try to consider each case with clear wisdom and make his verdict in accord with five principles. The five principles are:*

*'First, he must examine the truthfulness of the facts presented.*

*'Second, he must ascertain that they fall within his jurisdiction if he renders a judgment with full authority, it is effective, but if he does so without authority, it only causes complication; he should await the correct conditions.*

*'Third, he must judge justly; that is, he must enter into the mind of the defendant. If he finds that the deed was done without criminal intent, he should discharge the man.*

*'Fourth, he should pronounce his verdict with kindness but not harshness; that is, he should apply a proper punishment but should not go beyond that. A good ruler will instruct a criminal with kindness and give him time to reflect upon his mistakes.*

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118 Rebecca Redwood French and Mark A. Nathan, *Buddhism and Law*, p.72.



*'Fifth, he should judge with sympathy but not in anger; that is, he should condemn the crime but not the criminal. He should let his judgment rest upon a foundation of sympathy, and he should use the occasion to try and make the criminal realize his mistakes.'*<sup>119</sup>

The Buddha separately stated:

*'You first have the advice of a being all-wise like me; it is no wonder if you should judge your case fairly and justly avoiding the four ways of wickedness.'*<sup>120</sup>

The Buddha also emphasized the need to hear all the parties before a decision is made. When a case arises, each party has to be heard carefully, and the arguments considered and evaluated before judgment is rendered (*Iyadhuyasikiya-vinayana*). As the Buddha cautioned:

*'He is not thereby just because he hastily arbitrates cases. The wise man should investigate both right and wrong.'*

*'The intelligent person who leads others not falsely but lawfully and impartially, who is a guardian of law, is called one who abides by law.'*<sup>121</sup>

K.N. Jayatilleke further clarified:

*'When a dispute arises, he should pay equal attention to both parties and hear the arguments of each and decide according to what is right. He should not act out of favouritism, hatred, fear or folly. He should hear the*

119 Bukkyo Dendo Kyokai (Society for the Promotion of Buddhism), *The Teachings of Buddha*, pp. 466, 467 & 468.

120 E.B. Cowell (ed.), *The Jataka or Stories of the Buddha's Former Births*, p.1.

121 Ven. Narada Maha Thera, *Dhammapada*, p.136.



*arguments of each side and act according to what is right.*<sup>122</sup>

The judge is thus exhorted to come to a decision only after carefully considering all relevant facts and applying the legal principles of *Yukti Ayukti* roughly, reasoning from proof and deduction from the circumstances to avoid unreasonable conclusions. A judge who fails to follow these rules is likely to lose prestige and suffer a loss of status amongst his colleagues, as well as the confidence of the people. As the Buddha stated:

*'He who arbitrates hastily or rashly cannot be just. The wise one arbitrates taking into account both right and wrong.*

*'The wise one who leads others rightly, lawfully, and impartially is called the just and righteous.'*<sup>123</sup>

The story of *Rathalatti Jataka*, of the Jataka Tales focuses on the need to hear both sides of a story before coming to judgment.

*'Wise men, O king, of partial views beware,  
Hear both sides first, then judgement true declare'.*

*'The warrior prince a well-weighed verdict gives,  
Of righteous judge the fame for ever lives.'*<sup>124</sup>

### **Judgement of Legal Questions in Monastic Society**

Within the historical monastic context, the actual resolution of a legal question was done in accordance with established procedure provided by Vinaya, including through a reliance

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122 K.N. Jayatilleke, *Dhamma Man and Law*, p.13.

123 Silananda Brahmachari, *The Eternal Message Of Lord Buddha*, p, 81.

124 *The Jataka*, Professor E.B. Cowell, Vol. V-VI, No. 331, p.70.



on a majority vote of those considering the matter. Voting was conducted through either a secret method, the whispering method, or an open method.<sup>125</sup>

With regard to the procedure, the Buddha said that legal questions were to be settled by the ‘Proceeding in Presence’ and by the ‘Proceeding on Confession of Guilt’. According to the Venerable Nyanatiloka:

*‘ Panha-bykarana - There are, O monks, four ways of answering questions: there are questions requiring a direct answer; questions requiring an explanation; questions to be answered by counter-questions; questions to be rejected (as wrongly put.) ’<sup>126</sup>*

The Proceeding in Presence has been introduced in prior chapters, but, here, it is explained in more detail, as is the Proceeding on Confession of Guilt.

*‘...And what therein belongs to the Proceeding in Presence? The Presence of the Dhamma, and the presence of the Vinaya, and the presence of the particular individual. And what therein is the presence of the Dharma, and of the Vinaya? The Dhamma, and the Vinaya, and the teaching of the Master, by the aid of which that legal question is settled. That is the presence in such a matter of the Dhamma, and of the Vinaya. And what therein is the presence of the particular individual? He who confesses, and he to whom he confesses, both are present. That is the presence of the particular individual in such a proceeding. And what therein belongs to the Proceeding on confession of guilt? The carrying out of, the accomplishment of, the proceeding by, the performance of, the acceptance of, the pacification*

125 F. Max Muller (ed.), Sacred Books of the East, Vinaya Texts, Kullavagga, IV, pp.14 & 19.

126 Ven. Nyanatiloka, Buddhist Dictionary, p.147.



*of the official act (the Kamma) by the Proceeding on confession of guilt. That is what belongs therein to the Proceeding on confession of guilt.*'<sup>127</sup>

Within Buddhist philosophy the notion of confession was important as, one's silence carried the presumption of innocence. The Buddha said:

*'Whoever have incurred a fault, let him declare it. If no fault have been incurred it is meet to keep silence!*

*'Now, venerable Sirs, it is by your silence, that I shall know whether you are pure. As to each one question put there must be an answer, so, in such a meeting as this, each question is put as many as three times. Then if any Bhikkhu when it has been three times put, knowingly omit to declare a fault incurred, he is guilty of uttering a conscious lie. Venerable Sirs, the uttering of a deliberate lie has been declared by the Blessed One to be condition hurtful (to spiritual progress). Therefore a fault, if there be one, should be declared by that Bhikkhu who remembers it, and desires to be cleansed therefrom. For fault, when declared, shall be light to him.'*<sup>128</sup>

Jotiya Dhirasekera, explains the rationale for confession:

*'However; the virtue of confession cannot be in the mere act of owning one's guilt. We should really seek it in the acceptance of penalties and punishments by the offender band in his determination to abstain from the repetition of such offences in the future (ayati-samvaraya). It is also declared by the Buddha both in the Sutta and in the Vinaya*

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127 F. Max Muller (ed.), The Sacred Books of the East, Vol. 20 Part III, Kullavagga, p.62 & 63 (IV, 14,30.).

128 F. Max Muller (ed.), Sacred Book of the East, Vol. 13 Part 1, p.2.



*that the ability to admit and accept one's error and make amends for it as well as safeguard against its recurrence is the basis of progress (Vuddhi esa bhikkhave ariyassa vinaye yo accaya accayato disva yathadahammam patikaroti ayatim samvaram apajjati). That this attitude to crime and its correction was monastic discipline alone is clear from the Buddha's advice to king Ajatasatthu in the Samannaphala Sutta. The Vinaya too, records a similar incident where the Buddha advises the man, who being instigated by Devadatta, lay in ambush to assassinate him. This comprehensive process of confession, however, seems to have undergone considerable change in the history of Patimokkha recital. '129*

With regard to deciding the outcome of disputes, the Buddha said:

*'I allow you, O Bhikkhus, to settle such a dispute by the vote of the majority. A Bhikkhu who shall be possessed of five qualifications shall be appointed as taker of the voting tickets-one who does not walk in partiality, one who does not walk in malice, one who does not walk in folly, one who does not walk in fear, one who knows what (votes) have been taken and what have not been taken. '130*

*'And what herein is meant by the vote of the majority? The carrying out of, the accomplishment of, the proceeding by, the undertaking of, the acceptance of, the pacification by the official act (the Kamma) by the vote of the majority. That is what is meant herein by the vote of the majority. '131*

129 Jotiya Dhirasekera, Buddhist Monastic Discipline, p.189.

130 F. Max Muller (ed.), The Sacred Books of the East, Vinaya Texts, Vol. 20 Part III, Kullavagga, p. 25 (IV,9).

131 F. Max Muller (ed.), The Sacred Books of the East, Vinaya Texts, Vol. 20 Part III, Kullavagga, p.54 (IV,14,25).



The Buddha summarized the correct resolution of a legal question as follows:

*'There are three things, O Bhikkhus, by which, when a Tagganiya-kamma (Act of Rebuke) is characterized, it is a proceeding in accordance with the Dharma, a proceeding in accordance with the Vinaya and is easy to be settled; (that is to say), when it has been carried out in a full assembly of qualified persons, according to law, and in the presence of the litigant parties- when it has been carried out after the accused person has confessed himself guilty. A Tagganiya-kamma, O Bhikkhus, characterized by these three things is in accordance with the Dharma, and in accordance with the Vinaya, and is easy to be settled.'*<sup>132</sup>

On the contrary, according to the Buddha, an official act performed unlawfully by a complete congregation is no real act and ought not to be performed. A seemingly lawful act performed before a complete congregation is no real act and ought not to be performed:

*'There are, O Bhikkhus, four kinds of official act (which a Samgha perform); an unlawful act performed by an incomplete congregation, an unlawful act performed by an incomplete congregation, and a lawful act performed by a complete congregation.*

*'If, O Bhikkhus, an act is unlawful and performed by an incomplete congregation —such an act, O Bhikkhus , is objectionable and invalid on account of its unlawfulness and of the incompleteness (of the congregation). Such an act, O Bhikkhus, ought not to be performed, nor is such*

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132 F. Max Muller (ed.), *The Sacred Books of the East, Vinaya Texts*, Vol. 17 Part II, Kullavagga, p.335 (I,4,1).



*an act allowed by me. “If, O Bhikkhus, an act is unlawful and performed by a complete congregation —such an act, O Bhikkhus, is objectionable and invalid on account of its unlawfulness.*

*‘If, O Bhikkhus, an act is lawful and performed by an incomplete congregation —such an act, O Bhikkhus, is objectionable and invalid on account of the incompleteness ( of the congregation),*

*‘If, O Bhikkhus, an act is lawful and performed by a complete congregation—such an act, O Bhikkhus, is unobjectionable and valid on account of the incompleteness (of the congregation). Such an act, O Bhikkhus, and ought to be performed, and such an act is allowed by me.*

*‘Therefore, O Bhikkhus, you ought to train yourselves thus: “Lawful acts which are performed by complete congregations—such acts will we perform’.<sup>133</sup>*

*‘I prescribe, O Bhikkhus, that you should protest, if an unlawful act is being performed.’<sup>134</sup>*

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133 F. Max Muller (ed.), *The Sacred Books of the East*, Vol. 17 Part II, *Vinaya Texts, Mahavagga*, pp. 263 & 264.

134 F. Max Muller (ed.), *The Sacred Books of the East*, Vol. 13 Part I, *Vinaya Texts, Mahavagga*, p. 265 (II,16,6).



## CHAPTER 9

### Judicial Outcomes

#### **Innocence and Acquittal**

Unlike the western interpretation, the right to silence is viewed differently in Buddhism. Silence was considered a sign of innocence. The preceding chapter clarifies that by the nature of monastic proceedings, an admission of guilt or responsibility was a critical element of the established procedure. In the absence of a confession of guilt, the lack of other controverting evidence was determinative.

As a result, in Buddhism a demonstration of innocence would thus lead to acquittal. The Buddha clarified five conditions for acquittal:

*‘There are five things which make a grant of acquittal to those who are conscious of innocence to be according to law. The Bhikkhu must be innocent and without offence, others must have censured him, he must ask the Sangha for acquittal as being conscious of innocence, the Sangha must grant it, the Sangha must be duly held and duly constituted. These, O Bhikkhus, are the five things which make a grant of the acquittal of those who are conscious of innocence to be according to law.’<sup>135</sup>*

#### **Pardon or Dispensation for Insanity**

The Buddha provided clear indications where a pardon could be allowed to one who was insane at the time of the commission of an offence. The Buddha stated:

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135 F. Max Muller (ed.), Sacred Books of the East, Vinaya Texts, Vol. 20 Part III, Kullavagga, p.18 (IV,4,11).



*'What are the three cases in which grants of dispensation for those who are no longer insane are valid?*

*'In the first place, O Bhikkhus, in case a Bhikkhu be insane and out of his mind; and by him, when so insane and out of his mind, many things unworthy of a samana have been committed, as well in speech as in act. And either the Sangha, or a number of Bhikkhus, or a single Bhikkhu, warns him in respect thereof, saying, "Does the venerable one call to mind that he has committed such and such offence?" And he really not remembering it, answers, "I do not remember, Sirs, that I have been guilty of such and such an offence." Then if the Sangha grants him the dispensation for those who are no longer insane, that grant is valid.*

*'Again, O Bhikkhus, in case a Bhikkhu be insane and out of his mind. And he, not really remembering it, answer, "I remember it, Sirs, but as if in a dream." Then if the Sangha grants him the dispensation for those who are no longer insane, that grant is valid.*

*'Again, O Bhikkhus, in case a Bhikkhu be insane and out of his mind, "Does the venerable one call to mind that he has been guilty of such and an offence?" And he, being still insane, acts in the way of an insane person, saying, "I act so, and you act so likewise. It beseems me, and it likewise beseems you." Then if the Sangha (afterwards) grant him the dispensation for those who are no longer insane, that grant is valid.*

*'These are the three cases, O Bhikkhus, in which the grant of the dispensation for those who are no longer insane is valid.'<sup>136</sup>*

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136 F. Max Muller (ed.), Sacred Books of the East, Vinaya Texts, Vol. 20, Part III, Kullavagga, p. 21 & 22 (IV,5,2), 21 (IV,6,2) & i22 ((IV,7,1).



### **Mis-trial and Trial De Novo**

Procedural law guides a court in the conducting of trials or administrative proceedings. A violation of procedure can lead to a mistrial before a verdict is reached.

The Buddha held fast to the concept of procedural protections to ensure the rights of defendants, centuries before it became a principle of modern Western judicial practice. This is reflected in the exceptional attention to procedural detail which exists in order to assure due process.

The Buddha, for example, decreed, that there were ten instances when an Act of Rebuke was a violation of the Dharma and the Vinaya, and thus unlawful. These were:

*‘There are other three things, O Bhikkhus, by which, when a Tagganiya-kamma has been characterised, it is against the Dhamma, and against the Vinaya, and difficult to be settled; (that is to say), when it has been carried out though no fault has been committed-when it has been carried out for a Pârâgikaor or a Samghâdisesa offence-when it has been carried out though the fault has been confessed. A Tagganiya-kamma, O Bhikkhus, characterised settled.*

*‘There are other three things, O Bhikkhus, by which, when a Tagganiya-kamma has been characterised, it is against the Dhamma, and against the Vinaya, and difficult to be settled; (that is to say), when it has been carried out without the accused person having been warned - when it has been carried out without the accused person having been called upon to remember (whether he has or has not committed the offence)- when it has been carried out without the accused person having been convicted. A Tagganiya-kamma, O Bhikkhus, characterised settled.*



*'There are other three things, O Bhikkhus, by which, when Tagganiya-kamma has been characterised, it is against the Dhamma, and against the Vinaya, and difficult to be settled; (that is to say), when it has not been carried out in a properly constituted meeting properly conducted - when it has been carried out without justice - when it has been carried out without the presence and approval of all the Bhikkhus belonging to the particular circuit. A Tagganiya-kamma, O Bhikkhus, characterised by these things is settled.*

*'There are other three things, O Bhikkhus, by which, when a Tagganiya-kamma has been characterised, it is against the Dhamma, and against the Vinaya, and difficult to be settled; (that is to say), when it has been carried out without the accused person having been heard - when it has been carried out without justice - when it has been carried out without the presence and approval of all the Bhikkhus belonging to the circuit. A Tagganiya-kamma, O Bhikkhus, characterised by these three things is settled.*

*'There are other three things that is to say, when it has been carried out without the accused person having been convicted – when it has been carried out without justice – when it has been carried out without the presence and approval of all the Bhikkhus belonging to the circuit.*

*'And in a similar way each of the three things in paragraphs 2 and 3 of this section are united with the two things just repeated in each of paragraphs 4,5, and 6, to make six further cases in which Tagganiya-kamma is declared to be against the Dhamma, and against the Vinaya, and difficult to be revoked.'*<sup>137</sup>

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137 F. Max Muller (ed.), Sacred Books of the East, Vinaya Texts, Vol. 17 Part II, Kullavagga, p.333 & 334 (I,2,1) & 333 ((I,2,1).



Summary of an Act of Rebuke are:

- 1) When it has not been carried out in a full assembly of properly qualified persons, according to law and justice and in the presence of the litigant parties, when it has been carried out without the accused person having been heard, when it has been carried out without the accused person having confessed himself guilty. A Tagganiya-kamma, O Bhikkhus, characterized by these three things is against the Dhamma, and against the Vinaya, and difficult to be settled;
- 2) When it has been carried out though the fault has been confessed;
- 3) When it has been carried out without the accused person having been warned;
- 4) When it has been carried out without the accused person having been called upon to remember (whether he has or has not committed the offence);
- 5) When it has been carried out without the accused person having been convicted; and
- 6) A Tagganiya-kamma, O Bhikkhus, characterised to be Dhamma, and against the Vinaya, and difficult to be settled.

Additionally, the Buddha acknowledged that changes in testimony could also lead to a trial *de novo*. The Buddha allowed that a deposed person may reopen a case:



*'When a legal question, O Bhikkhus, has been thus settled, if a disputant re-open the question, such re-opening is a Pakittiya. If one who has conveyed his consent complain of the decision, such complaint is a Pakittiya.'*<sup>138</sup>

### **Finality of Judgment**

In order to have certainty on law there has to be a finality of Judgment. Unless appealed, if the judgment of one court is allowed to be re-tried in another court, there will be no end to the case. The finality of Judgment conforms to the doctrine of *Res-Judicata*.

In Buddhist practice, the judgment should be final. D.N. Bhagvat wrote;

*'The verdict of the Sangha (declared by the majority) was always final provided that the jury, the witnesses and the judge or arbitrator, did not depart in the slightest degree from the tradition, spirit and the precept of the Vinaya.'*<sup>139</sup>

### **Appeal**

The right to judicial review is an element of natural justice and constitutionally grounded in many jurisdictions globally. Historically and irrespective of the finality of judgement, the right to appeal was also well established within Buddhist practice.

The *Pratijnakaraka-vinayana* refers to the right to appeal and lays out some of the reasons under which a decision may be overturned. The violation of '*Nati*' was a principal ground for appeal. As noted prior, *Nati* is a Pali term which means '*proceeding in presence*' or '*due process of law in motion*'. A proceeding in

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138 F. Max Muller, *The Sacred Books of the East, Vinaya Texts, Vol. 20, Part III, Kullavagga*, p. 47 (IV, 11,2.).

139 D.N. Bhagvat, *Early Buddhist Jurisprudence*, p.97.



presence implied a proceeding ‘in the presence’ of the Dharma, the Vinaya, the Sangha and the accused. A failure to meet these conditions was a violation of due process. These included:

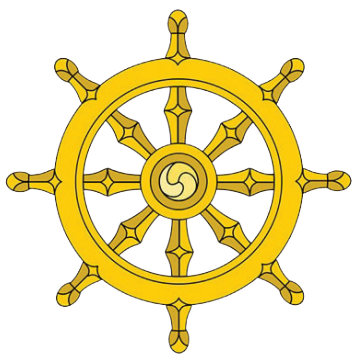
*‘When the matter in dispute is trivial - when the case has not run its course (that is when the necessary preliminaries of submission to arbitration have not been carried out) - when regarding the matter in dispute the Bhikkhus have not formally remembered, or been formally called upon to remember, the offence - when the taker of votes knows that those whose opinions are not in accordance with the law will be in the majority, or probably may be in the majority - when he knows that the voting will result in a schism in the Samgha - when he is in doubt whether the voting will result in a schism in the Samgha - when the votes are irregularly given - when all do not vote equally - when they do not vote in accordance with the view (which they really hold). These are the ten cases in which the voting is invalid.’<sup>140</sup>*

According to *Upali*, one of the ten chief disciples of the Buddha and a principle architect for prescribing of monastic discipline in the first Buddhist Council, a ‘declaration without investigation’ is also a ground for an appeal.

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140 F. Max Muller (ed.), *The Sacred Books of the East, Vinaya Texts*, Vol. 20 Part III, *Vinaya Texts*, Kullavagga, p.26 ((IV,10,1) & 27 (IV,11,1)).





## CHAPTER 10

# Philosophical Basis of Sentencing and Punishment

### The Concept of Punishment

The concept of punishment has long been discussed and debated by moral philosophers, social theorists and criminologists. Its varied applications over time, reflected prevailing views of state, power, society, morality and religion. Broadly speaking, the purpose of punishment was either for retribution, deterrence, incapacitation, rehabilitation and/or restoration. To utilitarian philosophers like the 18<sup>th</sup> century philosopher, jurist and social reformer Jeremy Bentham, punishment could be justified only if the harm that it prevents is greater than the harm inflicted on the offender. Under Immanuel Kant's deontology, there was a supreme principle of morality he referred to as the 'Categorical Imperative'. Under this perspective, retribution was the predominant concern in order to maintain the order of things. This meant, inflicting what was deserved rendered with all other considerations made irrelevant.

In Buddhism, the concept of punishment considers karma, the cause and effect. The Buddha said:

*'All that we are is the result of what we have thought: it is founded on our thoughts, it is made up of our thoughts. If a man speaks or acts with an evil thought, pain follows him, as wheel follows the foot of the ox that draws the carriage.'*<sup>141</sup>

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141 F. Max Muller (ed.), *The Sacred Books of the East, Vinaya Texts, Volume 10 Part I, Dhammapada*, p.3.



Buddhists believe that crime begets negative karma as it stems from greed, hatred and ignorance. The reason humans suffer is because of ignorance. As long as humans are ignorant, they will continue to commit crime and immoral acts. Buddhism infuses this understanding of the source of negative action into the theory and application of punishment.

In a broader secular context, the philosophies of reform, correction, distribution and deterrence also held sway in Buddhist societies. K. N. Jayatilleke said:

*'In contrast, Buddhism holds that although sanctions have a place in law, the law itself is based on consent resulting from understanding, friendliness and mutual interest. The role of sanctions is secondary. Buddhism speaks of virtuous behavior arising out of respect for the dictates of our conscience (attadhipateyya), respect for public opinion (lokadhipateyya) and respect for righteousness or Dharma (dhammadhipateyya) in the Buddhist sense of the term. Conscience for Buddhism is by-product of our accumulated and recurrent experiences in many lives and is generally deemed trustworthy but sometimes misleading. While Buddhism thus promotes a frame of mind in which there would be respect for just laws out of love and understanding, it is not unmindful of the fact that there is a class of people, who refrain from crime mainly out of the fear of punishment in this life. The Buddha refers in one place to a class of people who "out of fear of punishment in this life do not plunder the goods of others". Although the goal of Buddhism is a state in which there is freedom from fear (abhaya), it recognizes the importance of cultivating a sense of moral shame (hiri) and moral dread (ottappa) in the initial stages of one's moral development... This*



*implies, inter alia, that penal laws must be based on a primarily reformatory and only secondarily deterrent theory of punishment.*<sup>142</sup>

Buddhist law also has a humane element. K. N. Jayatilleke wrote:

*'In the Ratnavali, which is a "discourse to a king" (raja-parikatha), Nagarjuna, the well-known Mahayana philosopher states the Buddhist attitude to the criminal. You must punish them out of compassion and from a desire to turn them into worthy persons as you do as regards worthy sons; and you must not be moved by hatred or by the desire for material gain. As a consequence of compassion, mercy should be shown to those who are punished, imprisoned or beaten in accordance with the law (nyayato), prisoners should be well looked after, no one should be imprisoned for life and there should be no mutilation or execution of criminals, though banishment is permitted.'*<sup>143</sup>

### **Reformative Theory**

Reformative theory, identifies the major purposes of criminal law is to correct those who have erred and to reform them so that they may become positive contributors to the society. Reformative theory is a direct response and reaction to deterrent theory, which fails to take into consideration the underlying social and psychological causes of crime and the experiences of the offender.

In this line, reformists look at sanctions as instruments of rehabilitation to be used to remould behaviours. This is precisely because they believe that criminals are not born, but are the result of societal factors and experiences. Given this latter premise,

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142 K. N. Jayatilleke, *Dhamma Man and Law*, pp.60 & 61.

143 K. N. Jayatilleke, *Dhamma Man and Law*, pp.70 & 71.



it follows that it is the responsibility of society to provide the necessary means to promote appropriate behaviours. Less frequent use of imprisonment, waiving short sentences, greater employment of probation, parole and suspended sentences and, using prison as an opportunity for training rather than for pure punishment are all evidence of this reformative trend.<sup>144</sup> The theory holds that this approach helps in making a criminal a good citizen and an upright straight man.<sup>145</sup>

In this western reformative line of thought, Buddhist teaching touts the case of Angulimala, who was a serial killer who attained sainthood after renouncing wickedness. Referring to his memorable conversion by the Buddha, he says:

*'Some creatures are subdued by force,*

*'Some by the hook, and some by whips,*

*'But I by such a One was tamed,*

*'Who needed neither staff nor sword? '<sup>146</sup>*

The legal analogy stressed in secular Buddhist society is indeed, that providing wrongdoers the means and opportunity to make good, is a critical part of Buddhist philosophy.

The Buddha's advocacy of reformative, restorative and corrective justice is even more strongly noted in the *Patimokkha*.

*'Since this Bhikkhu, O Bhikkhus, having committed an offence, and having been sentenced to expulsion, has seen*

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144 Salmond, Fitzgerald, P.J. (ed.), Jurisprudence, (12<sup>th</sup> Edition), p.95.

145 Common Law Admission Test (CLAT) for National Law Universities of India. Course on, Legal Aptitude, Theories and Kinds of Punishment.

146 Ven. Narada Thera, The Buddha and His Teaching, p.186.



*(his offence) and has been restored, let the Sangha, O Bhikkhus, declare the re-establishment of concord in order to bring that matter to an end.*

*'And this declaration is to be performed in this way: Let all brethren assemble together, both the sick and the healthy; no one is allowed to send his declaration of khanda (and to stay away). When you have assembled, let a learned, competent Bhikkhu proclaim the following natti before the Sangha: "Let the Sangha, reverend Sirs, hear me. As regards that matter which gave origin to altercations among the Sangha, to contentions, discord, quarrels, divisions among the Sangha, to disunion among the Sangha, to separations among the Sangha, to schisms among the Sangha,-that Bhikkhu (concerned in that matter), having committed an offence, and having been sentenced to expulsion, has seen (his offence) and has been restored. If the Sangha is ready, let the Sangha declare the re-establishment of concord in order to bring that matter to an end. This is the natti. Let the Sangha, reverend Sirs, hear me, the re-establishment of concord, in order to bring that matter to an end, has been declared by the Sangha; the division that existed among the Sangha has been settled; the disunion that existed among the Sangha has been settled. The Sangha is in favour (of this declaration); therefore you are silent; thus I understand.' Then let the Sangha hold Uposatha and proclaim the Patimokkha.'*<sup>147</sup>

### **Corrective and Distributive Justice**

The theory of Corrective Justice enumerates three sentencing principles.

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147 F. Max Muller (ed.), Sacred Books of the East, Vinaya Texts, Volume 17 Part II, Mahavagga, p. 321 (X,5,14) & 322 (X,6,1).



*'First, punishment must, in fact, deter crime and, must be the most efficient means of doing so. Second, however efficient it may be, punishment must not harm an offender more than is required to account for the criminal action. Third, even if it is both efficient and reparative, punishment must not harm an offender to a degree that is entirely out of proportion to the harm prevented by doing so.'*<sup>148</sup>

Generally, distributive Justice ensures fair division of social benefits and burden. The distributive theory of criminal law holds that an offender ought to be punished, not because the offender is culpable or because punishment increases net security, but because punishment appropriately distributes pleasure and pain between the offender and victim.

Criminal laws are accordingly distributive when they mete out punishment for the purpose of ensuring victim welfare.<sup>149</sup> It ultimately proposes a principle for distributing criminal liability and punishment that will most likely do justice and control crime.

Distribution involves fashioning legal rules to achieve a desirable equilibrium between specific individuals or between individuals and society.<sup>150</sup> In the context of tort law, scholarly literature and case law rely on clear rules and precedents that impose liability as a means to secure a fair distribution between parties. The strict liability doctrine is a case in point.<sup>151</sup>

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148 Jacob Bronsther, *Virginia Law Review*: Volume 107, Issue N.2, p. 228.

149 Aya Gruber, *A Distributive Theory of Criminal Law*, *William and Mary Law Review*, Vol. 52, Issue 1, 2010.

150 Richard O. Brooks, "The Refurbishing": Reflections upon Law and Justice Among the Stages of Life, Vol. 54, No. 3, Article 5, (observing that distributive justice requires "various goods [be] distributed according to some criterion"); *infra* Part IV, p.666.

151 David Rosenberg, *Individual Justice and Collectivizing Risk-Based Claims in Mass-Exposure Cases*, Vol. 71, REV. 210, 228, n.43 (describing modern tort law as a "struggle" between the relatively limited liability of negligence and the redistributive power of strict liability" (quoting Stephen R. Perry, *The Moral Foundations of Tort Law*, 77 *IOWA L. REV.* 449, 467 (1992))); Kenneth W. Simons, *The Crime/Tort Distinction: Legal Doctrine and Normative Perspectives*, 17 *WIDENER L.J.* 719, 727-28 (2008) (describing distributive justice as a predominant justification of tort law).



Analogous to tort's distribution of fault and compensation, criminal law can be used to distribute punishment to defendants in order to secure compensation, satisfaction, or closure for victims.<sup>152</sup> Today, the distributive aspects of criminal law is quite visible. Legal discourse and sentencing language regarding closure and making victims whole normatively implies that criminal law should ensure a fair outcome by distributing pain to offenders and afford satisfaction to victims or their families.<sup>153</sup>

Analogous to concerns stressed within the theory of Distributive justice, the Buddha said that the Ruler of a State should ensure a system of impartial justice and equality in treatment and consideration:

*'The Law is that which leads to welfare and salvation. It forms conduct and character distinguished by the sense of equality among all beings.'*<sup>154</sup>

This quote of the Buddha, establishes the sense of distributive justice which permeates Buddhist philosophy. With regard to law, it implies not just equal justice under law, but also, fair consideration to both victim and perpetrator and a resulting just allocation of punishment.

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152 Distribution does not have to involve wealth. See Julian Larmont & Christi Favor, Distributive Justice, in STANFORD ENCYCLOPEDIA OF JUSTICE (Edward N. Zalta ed., 2008), <http://plato.stanford.edu/entries/justice-distributive> (noting that distributive principles "can vary in what is subject to distribution").

153 Susan Bandes, When Victims Seek Closure: Forgiveness, Vengeance, and the Role of Government, Volume 27, No. 5, Article 13, FORDHAM URB. L.J. 1599, 1605 (2000) (noting the argument that failure to impose death is an "infliction of pain upon the victim's family"); Guyora Binder, Victims and the Significance of Causing Harm, 28 PACE L. REV. 713, 735-36 (2008) [hereinafter Significance of Causing Harm] (reciting the argument that "humiliation of the offender" vindicates victims); infra notes 262-64, 267 and accompanying text. Because pain and pleasure do not appear scarce, the distributive function of punishment is not obvious. See Scheffler, supra note 6, at 986 (asserting that punishment is unrelated to "conditions of scarcity"); Christopher D. Stone, Comment, Sentencing the Corporation, 71 B.U. L. REV. 383, 392 (1991) (calling crime victims' losses "undistributable").

154 Allen McKiel, Beyond Tolerance; Religion and Global Community p.108.



## Restorative Justice

As in the West, the Buddhist approach to punishment is deeply intertwined with its philosophical perspective of human psychology, morality and spirituality. This includes the Buddhist view of the relationship between the individual and society and its vision of human possibility.

The best Western parallel to the Buddhist approach is perhaps found in contemporary restorative justice. James Blumenthal wrote:

*'An emerging response to retributivist forms of justice, both in philosophical circles and actual implementation in select cases, is a growing movement with nuanced variations that is referred to with the over-arching label of "restorative justice". I think that a Buddhist approach might resonate well with many of the ideas and approaches circulating in restorative justice discourse and that Buddhists might have important contributions to make to this discourse as well. Restorative justice aims to restore well-being and heal the wounds inflicted by the crime through a variety of means.'*<sup>155</sup>

The system of punishment used within the *Sangha* and Buddhist secular society shows the above principle in practice. The emphasis was always on creating a situation that would help one reflect upon the offence in order to overcome the mental tendencies that provoked it. In Buddhism:

*'What was necessary was to establish restraint because the volitional activity of the offender, undesirable in nature, has resulted in the commission of this serious offence.'*<sup>156</sup>

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155 James Blumenthal, *Toward A Buddhist Theory of Justice*, Volume 10, p.334.

156 Y. David Loy, *The Great Awakening, A Buddhist Social Theory*, p, 134.



## Alternatives to Punishment

Given the overall focus of the Buddhist legal system, it is no surprise that seeking concord within a community and helping the growth of the offender are paramount considerations. This helps explain the prevalent use of the concept of Atonement. In this regard, the Buddha said:

*'In case, O Bhikkhus, there be no offence which a Bhikkhu should see, and there is no offence which he should atone for, and if the Sangha, or a number of Bhikkhus, or a single person reprove him and say: "You have committed an offence, friend; do you see that offence? Atone for that offence," and he replies: "There is no offence, friends, which I should see; there is no offence, friends, which I should atone for", and the Sangha pronounces expulsion against him for his refusal to see that offence, for refusal to atone for that offence, this is an unlawful act.* <sup>157</sup>

*'In case, O Bhikkhus, there is an offence which a Bhikkhus should see, and if the Sangha, or a number of Bhikkhus, or a single person reprove him (and say): 'You have committed an offence, friend; do you see that offence?' – and he replies: "Yes, friends, I see it," and the Sangha announces expulsion against him for his (pretended) refusal to see that offence, - this is an unlawful act.'* <sup>158</sup>

With regard to 'Forgiveness', the Buddha said:

*'I prescribe, O Bhikkhus, forgiving.*

*'Let him who is asked for his pardon, not withhold it. He who does not forgive, is guilty of a dukkata offence.'* <sup>159</sup>

157 F. Max Muller (ed.), The Sacred Books of the East, Vinaya Texts, Volume 17 Part II, Mahavagga, p. 274 -275 (X,5,14) & 322 (X,6,1).

158 F. Max Muller (ed.), Sacred Books of the East, Vinaya Texts, Volume 17 Part II, Mahavagga, p.275 (IX,5,9).

159 F. Max Muller (ed.), The Sacred Books of the East, Vinaya Texts Volume 13, p.167.



*'The Patisaraniya-kamma has been carried out the Bhikkhu Sudhamma with words, "You are to ask and obtain pardon of Kitta the householder."'*<sup>160</sup>

The Buddha prescribed the process of forgiveness and revocation of an Act of Rebuke (*Tagganiya-kamma*) in the following example:

*'Now, thus, O Bhikkhus, should the revocation be carried out. Those Bhikkhus who are followers of Panduka should go before the Sangha, with their upper robe arrange over one shoulder; and should bow down at the feet of the elder Bhikku and squatting down, and raising their hands with the palms joined together; should speak as follows: "We, Sirs, have been subjected by the Samgha to the Tagganiya-kamma, and are conducting ourselves aright in accordance thereto; and we have become subdued, and we seek for release, and beg for a revocation of the Tagganiya-kamma." And a second time they should beg (in the same words). And a third time they should beg (in the same words). Then a discreet and able Bhikkhus should lay the matter before the Sangha.'*<sup>161</sup>

According to D.N. Bhagvat, a specific process was also established to enable forgiveness in a monastic-secular context:

*'The Patisaraniya – kamma originated through offending the laity and the absolution from it could be obtained by requesting and obtaining forgiveness of the lay-man whose feelings the Bhikkhu had hurt.'*<sup>162</sup>

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160 F. Max Muller (ed.), *The Sacred Books of the East, Vinaya Texts, Volume 17 Part II, Kullavagga*, p. 365 (I,20,1).

161 F. Max Muller (ed.), *The Sacred Book of the East, Vinaya Texts, Volume 17 Part II, Kullavagga* p. 341 (I,8,1).

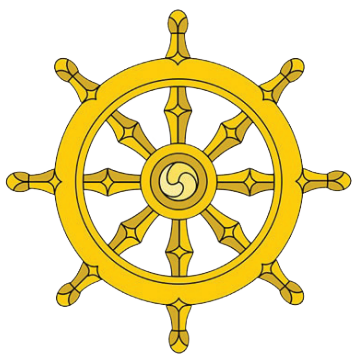
162 D.N. Bhagvat, *Early Buddhist Jurisprudence* p.109.





*If there is any religion, that would cope with modern scientific needs, it would be Buddhism.'*

*-Albert Einstein*



## CHAPTER 11

### Buddhist Criminal Jurisprudence

Criminal law is the body of law that prescribes conduct perceived as threatening, harmful, or otherwise an endangerment to the property, health, safety, and moral welfare of persons, including oneself.

The main differentiator between Western and Buddhist Criminal Law is eminently philosophical. Buddhist law *per se* emanates from a spiritually driven philosophy and an associated code of conduct designed to promote enlightenment. As such the spiritual virtues one attempts to live by and the failures which may occur are two sides of the same coin.

The Buddhist criminal and disciplinary laws are crystalized around the Ten Virtues expounded by the Buddha. Therefore criminal, or otherwise socially unacceptable behaviour, implies the failure to act virtuously. The Ten Virtuous Acts are:

- 1) Refraining from taking life (*pranatighatad virati*);
- 2) Refraining from taking that which is not given (*adattadanad virati*);
- 3) Refraining from engaging in sexual misconduct (*kamamithyacarad virati*);
- 4) Refraining from lying (*mrsavadatprati virati*);
- 5) Refraining from speaking harshly (*parusatprati virati*);
- 6) Refraining from slandering (*paishunayatprati virati*);



- 7) Refraining from engaging in worthless chatter (*sambhinnapralapat prativirati*);
- 8) Refraining from being covetous (*abhidhyayahprati virati*);
- 9) Refraining from being malicious (*vyapadatprati virati*; and
- 10) Refraining from holding wrong views (*mithyadrstiprati virati*).

Offences thus reflect a failure to live in accordance with these virtues. The Ten Non-Virtuous Actions are divided into three categories:

- 1) The three non-virtuous actions of body (*truni kayaduscaritani*):
  - a) Taking life, *Pranatighatad viratih*;
  - b) Taking what is not given, *Adattadanad viratih*; and
  - c) Sexual misconduct, *Kamamithyacarad viratih*.
- 2) The four non-virtuous actions of speech (*catva vagduscaritani*):
  - a) Telling falsehoods *Mrsavadat prativiratih*;
  - b) Using abusive language, *Parusyat prativiratih*;
  - c) Slandering others *Paisunyat prativiratih*; and
  - d) Indulging in irrelevant talk, *Sambhinnapralapat prativiratih*.



- 3) The three non-virtuous actions of mind (*trini manoduscaritani*):
- a) Being covetous, *Abhidhyayah prativiratih*;
  - b) Being malicious, *Vyapadat prativiratih*; and
  - c) Holding destructive beliefs, *Mithyadrsteh prativiratih*.

In summary, the Buddha held that one should refrain from:

*'Maiming, killing, imprisoning, highway robbery, plundering villages, or obtaining money by threats of violence.'*<sup>163</sup>

The Trial of the *Raksha Mangcham* or the Dance of the Judgement of the Dead, is used as an educational theatrical event and is performed in almost every local Bhutanese 'Tse-chu' (Annual Festival). It provides a popular means to teach the ten non-virtues as well as demonstrating the format of Buddhist law and procedure.

In the Trial of the *Raksha Mangcham*, the accused is charged with all ten offences: the three non-virtuous actions of body, the four non-virtuous actions of speech and the three non-virtuous actions of mind. The complete set of charges were:

- (1) Committing patricide and matricide, killing innocent animals indiscriminately, snaring and catching defenceless fish in water, desecration and arson of the sacred temples and monasteries, beating and harassing the vulnerable people, poisoning and polluting the oceans

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163 F. Max Muller (ed.), Sacred Books of the East, Buddhist Suttas, Teviggā Sutta, Volume 11, p.191.



and seas, degradation and destruction of environment through forest fires; and

- (2) Lying, promoting divisiveness or discord, schism, mocking speech and speaking harsh words, slandering the saints, defaming wise people.<sup>164</sup>

### **Secular Application of Buddhist Criminal Codes**

It was from this philosophical and spiritual basis, that secularly applicable crimes were further defined by generations of Buddhist influenced, secular rulers. Guru Padmasambhava laid the foundations for the secular (and monastic) application of the Buddhist Rule of Law in 8<sup>th</sup> century Tibet and Bhutan. Addressing secular elites he clarified:

*The person who has been remaining at the back has to be pulled up.*

*Choesid and Ngagsid, Lyonsid has to be protected.*

*The helpless people have to be pulled up through unity.*

*The bad deeds have to be repeatedly put to an end.*

*If this can be done, the robbery and the evils in the village will disappear.*

*If you avoid 10 non-virtuous acts, the 10 virtuous acts will prevail by itself.<sup>165</sup>*

In the early 1600's, the Charter (*bKa'-hhrims,*) or legal code of the first theocratic ruler of Bhutan, the Zhabs-drung Ngag-dbangr Nam-rgyal stated:

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<sup>164</sup> Bar do thosgrol, Forlio, 511-512 & ChhamYig, p.100 & 103.

<sup>165</sup> Kathang Sertreng or Golden Garland Chronicles by Drodül Sangye Lingpa (1340-1396), p.701.



*'Now, foremost in the legal code of the great Dharmarāja the law of not taking life, manslaughter-fines for the dead and the living; the law of not taking without being given — the hundred fold restitution for stealing religious goods, the eightyfold restitution for the king's goods, with the eightfold restitution for the goods of subjects; the law of not charge committing adultery with married women, with fines for fornication and penalties for adultery or rape; the law of abstaining from falsehood, the law of calling the guardian deities to witness when swearing oaths etc., and in general, in addition to abstaining from the Ten Unvirtuous Actions, showing filial respect for one's father and mother and due respect to sramanas and brahmins, honouring the elders of the family, returning kindness done to oneself by others, abstaining from false cheating with regard to weights and measures he performed this enactment by law of the Sixteen Pure Rules of Human Conduct.'*<sup>166</sup>

The *Mani bka''bum* of 7<sup>th</sup> century, which is attributed to King Songsten Gampo, the fore father of Buddhism in Tibet closely follows the lines of the Dharmapada, which was applied to both secular and monastic societies. It is remarkable for its level of detail which speaks to the level of thought behind its formation and application. An example of this is the description of the four non virtues of speech: lying, slander, harsh words and pointless talk:

*'First, within lying are three parts. Within gross lies are saying the higher perceptions exist when they do not, those who are not siddhas proclaiming that they are. Little lies are told needlessly again and again. As for lies of deprecation, having told the faults of others one scolds and disparages them...*

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166 Michael Aris (translated), *The Legal Decree of the Glorious 'Brug-pa Rin-po-che, the Mighty Ngag-gidBang-po*, p.129.



*'Second, with slander are three parts. Gossip is saying many things that were not said. Secret slander is committed secretly and privately. Private slander is two people telling disparaging stories one after another...*

*'Third, within speaking harsh words are three parts. Natural harshness is being naturally disputatious. Responsive harshness is verbal quarrels and conducting lawsuits. Harsh words from hostility are black magic, sorcery and so forth out of inner evil.*

*'Fourth, within idle meaningless talk are three parts, worldly idle talk is that of women chattering and so forth. World transcending idle talk is arguing with each other after having verbally grasped the Dhrama.'*<sup>167</sup>

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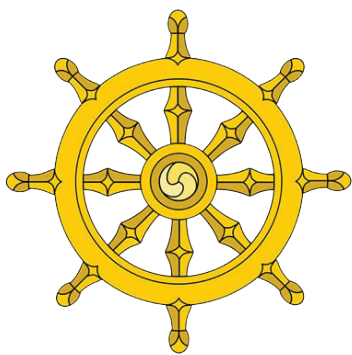
167 His Eminence Trizin Tsering Rinpoche, *Mani KaBum*, Volume II, Prophesies & Teachings of Great Compassion, pp. 224-225.





*Tsogyal, all noble beings denounce these ten non-virtues. They are renounced by all learned people. They are not to be committed even by those who seek to attain the special splendour and wealth of gods and humans, so give them up.'*

*-Guru Padmasambhava*



## CHAPTER 12

### Gradation of Criminal Offences

Under contemporary Western criminal law, crimes are classified into categories of felony, misdemeanour, petty misdemeanour and violation. Buddhist interpretations of crimes and violations are derived from Buddha's teachings of the Ten Virtuous Acts.

The crimes and violations delineated in the Ten Non-virtuous Acts, also carry sanctions at different levels of severity. These are defined in the *Patimokkha*, the basic code of monastic discipline, and, are also graded by the level of offence. *Parajika*, the most grave offence followed by, in descending order of gravity, *Sanghadisesa*, *Thullaccaya*, *Nissaggiya-Pacittiya*, *Paccittiya*, *Dukkata*, etc.

There are four *Parajikas* offences. *Parajika* literally translates as 'defeats'. They signal that the person who has committed them has defeated his spiritual and religious practices and now is subject to rebuke and banishment from the Sangha for life (perhaps somewhat akin to excommunication in western medieval society). The four *Parajika* offences are:

Intentionally bringing about the death of a human being, stealing, sexual intercourse or deliberately lying by stating that one has attained a superior human state when one knows they have not.

All four *Parajikas* require intent of the accused to be proven.

Less serious level of offences are violation of one or more of the remaining offences in and within the *Patimoka*. The violation of 13 specific rules equated a Sanghadisesa offence. The violation



of 30 specific rules equated a *Nissaggiya-Pacittiya* offence. The violation of 92 specific rules equated a *Pacittiya* offence.

The remaining violations resulted in lesser offences. Violation of one or more of the *Sanghadisesa* rules could lead to probation or disciplinary action. *Nissaggiya-Pacittiya* and *Pacittiya* offences were subject to discipline. The remaining offences would be the equivalent of misdemeanour or violation level offences and be punished accordingly.

According to D.N. Bhagvat:

*'The Vinaya laws are most extensive as well as intricate and reveal the legal aptitude as also the common sense on the part of the Buddhists. They are obviously vivid and run into minutest details, so that even a partial knowledge of them gives us a fair idea of the monastic life of the early Buddhists. They are systematically and scientifically arranged, though their classification may fall short of the modern methods. The principle underlying the classification is the motive and magnitude of the offence.'*<sup>168</sup>

*'The law code - The 227 offences are classified under seven categories in a descending order viz. Parajika, Sanghadisesa, Aniyata, Nissaggiya-Pacittiya, Pacittiya, Patidesaniya, and Sekhiya. From the legal point of view, Parajika is the gravest offence, Sekhiya the lightest one. There are also two kinds of offences which come under Thullaccaya and Dukkata which were a later addition. I have included them in the Patimokkha-laws for their peculiar legal position. Thullaccaya as the analysis will show, is weaker in jurisdiction than Sanghadisesa and Dukkata even less than Pacittiya.'*<sup>169</sup>

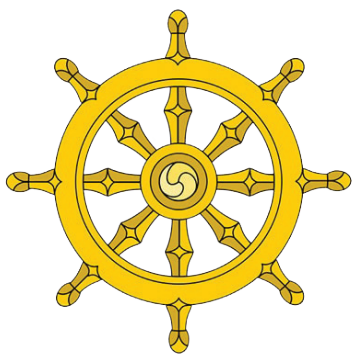
168 D.N. Bhagvat, Early Buddhist Jurisprudence, p 18.

169 D.N. Bhagvat, Early Buddhist Jurisprudence, pp. 19 & 20.



In Buddhist influenced secular society, the gradation of offence was also a critical element of judicial proceedings. In the case of culpable homicide, for example, the level of charges depended on the primary and secondary intentions.





## CHAPTER 13

### Delineation of Crimes and Infractions

The crimes and violations delineated in the Ten Non-virtuous Acts, the physical offences (taking life, taking what is not given and sexual misconduct) are the most comparable crimes in the Western context. In contemporary Western Criminal Law, these would be defined as Homicide, Larceny, Robbery, Theft, Commercial crime, and Sexual offences.

From a secular perspective, the Tibetan King Songsten Gampo proclaimed in the *Mani bka' 'bum*, that there were five inexpiable deeds, the five closely connected to them, the four offences and the eight wrongs. Of these, the five inexpiable deeds were most similar to Western felony crimes.<sup>170</sup>

Alexander Csoma de Koros refers to, *Pancanantaryasi-the five boundless crimes or wicked actions*) as:

- 1) The murdering of a mother or matricide (*Matr-ghatah*);
- 2) The murdering of a saint or holy man (*Arhad-ghatah*);
- 3) The murdering of a father (*Pitr-ghatah*);
- 4) Showing (causing) dissension among the priests (*Samgha-bhedah*); or
- 5) To hurt a Tathagata with ill-intention so as to make him bleed (*Tathagatasyantike dusta-citta-rudhirotpadanam*).<sup>171</sup>

The four verbal and three mental offences of the Ten Non-virtuous Acts, however, would only under particular circumstances, fall

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<sup>170</sup> His Eminence TrizinTsering Rinpoche, Manikabum, Volume II, p. 228.

<sup>171</sup> J. Terjek (ed.), Collected Works of Alexander Csoma de Koros, p.p. 312 & 313.



into a western definition of a crime or a component thereof. They are, however, within Buddhist jurisprudence considered non-virtuous failings, whether or not they are punishable as a crime in secular context. Similarly, the remaining violations under the *Mani bka'bum*, i.e., the five closely connected to them, the four offences and the eight wrongs, would not by nature likely rise to the level of a criminal offence.

### **Three Physical Non-Virtuous Actions of the Ten Non-Virtuous Acts**

#### **Taking of Life**

*Pranatipata-viratih* is abstinence from taking life.<sup>172</sup> The Buddha said:

*'Let him not kill, nor cause to be killed any living being, nor let him approve of others killing, after having refrained from hurting all creatures, both those that are strong and those that tremble in the world.'*<sup>173</sup>

The Buddha also said:

*'Bhikkhus! No one shall cause a living thing to be deprived of life. Whosoever does so shall be dealt with according to the Laws.'*<sup>174</sup>

According to Patrul Rinpoche:

*'Taking life means doing anything intentionally to end the life of another being, whether human, animal or any other living creature.'*

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172 J. Terjek (ed.), *Collected Works of Alexander Csoma de Koros*, p.236.

173 David L. Sills (ed.), *International Encyclopedia of Social Science*, pp. 84-86.

174 F. Max Muller, *The Sacred Books of the East, Vinaya Texts, Part II, the Mahavagga, V-X*, vol. 17, p.30.



*'A warrior killing an enemy in battle is an example of killing out of hatred. Killing a wild animal to eat its flesh or wear its skin is killing out of desire. Killing without knowing the consequences of right and wrong-or, like certain tirthikas, in the belief that it is a virtuous thing to do-is killing out of ignorance.'*<sup>175</sup>

Guru Padmasambhava said to his Tibetan consort, Yeshey Tsogyal:

*'The essence of killing is to interrupt the continuation of life. The comprehensive nature of his interpretation included:*

- 1) *'Killing out of desire means to slaughter animals due to desire for their meat, skin, and, so forth;*
- 2) *'Killing out of anger means, for example, to murder another with a vicious intention;*
- 3) *'Killing out of delusion means to kill without intention, for example, when a child kills a bird or an ant dies by being trodden on.'*<sup>176</sup>

### **Homicide and Murder - *Pranatighatad viratih***

In Western legal parlance, homicide means a conduct that causes the death of a person. The definition applies to murder, voluntary manslaughter, involuntary manslaughter and negligent homicide.

A person would be guilty of murder, if they commit homicide, knowingly and deliberately with premeditated malice or while in the commission or attempted commission of another felony crime.

<sup>175</sup> Patrul Rimpoche, Words of My Perfect Teacher, p.102.

<sup>176</sup> Erik Pema Kunzang translated Dakini Teachings, Padmasambhava's Oral Instructions to Lady Tsogyal, p.37.



In terms of grading punishment, murder is a *Parajika* level offence. As we have seen, *Parajika* level offences are the most severe in the *Patimokkha*. It implies that the person has surrendered to their own mental defilements to such a degree that they are lost or defeated in their spiritual intent and hence are expelled from the Sangha. When defining *Parajika* offences as direct murder, examples included in the texts are:

- 1) *'To give a person poison;*
- 2) *'To break a person with a stick;*
- 3) *'To stone a person to death.'*<sup>177</sup>

Lesser offences also existed for acts of indirect murder. Indirect ways to deprive a person of life include:

- 1) *'To create disgust for life in a person by describing how unbearable, awful and vain it is, with the intention that the person should become desperate and commit suicide;*
- 2) *'Inciting another person to injure or kill a person;*
- 3) *'To tempt a person saying that if he dies in a particular way he would get wealth, fame and heaven; and*
- 4) *'To dig a ditch on the way, so that the victim may fall in it and die.'*<sup>178</sup>

Additional murder related crimes in most modern Western Penal Codes include murder by commission, attempted murder, and causing grievous injury in the course of an attempted murder. The Buddhist Code had similar strictures as D.N. Bhagvat wrote:

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177 D.N. Bhagvat, *Early Buddhist Jurisprudence*, p.28.

178 D.N. Bhagvat, *Early Buddhist Jurisprudence*, pp. 28 & 29.



*'Thullaccaya. - Grievous hurt: (1) To order a Bhikkhu to kill or injure a person, so that he consents and the person is vitally wounded. (2) To tell a person that if he dies in a particular way he will get money, he will acquire fame etc., so that it causes the party an acute mental pain owing to the consciousness of the approach of death or that the person inflicts a serious injury on himself. (3) Figuring oneself as something terrible, with the intention of scaring a person. (4) To make an attempt on a person's life with such means as thrashing him, or administering poison etc., so that the person suffers but does not die.'*<sup>179</sup>

### **Abortion**

A person was guilty of the offence of abortion, if the person unlawfully aborted or otherwise induced the expulsion of an embryo or foetus or prevented a child from being born alive within a jurisdiction prohibiting such actions or in means or time periods (such as the third trimester) not permitted or sanctioned within the associated jurisdiction. The offence of attempted abortion could also apply when both the mother and child live or, when the mother dies and the child lives.

Abortion under Buddhist law, falls within the Non-virtue of Taking of Life. When speaking in terms of monastic and secular implication, the Buddha said:

*'A Bhikkhu who intentionally kills a human being, down to promoting abortion, is no Samana.'*<sup>180</sup>

D.N. Bhagvat wrote:

*'To give medicines and suggest a woman some methods such as rubbing the abdomen or fomenting it etc., to bring about abortion or attempting to abort.'*<sup>181</sup>

<sup>179</sup> D.N. Bhagvat, Early Buddhist Jurisprudence, p.29.

<sup>180</sup> F. Max Muller, Sacred Books of the East, Vinaya Texts, Mahavagga, Volume 13 Part I, p.235 (1,78,5).

<sup>181</sup> D.N. Bhagvat, Early Buddhist Jurisprudence, p.29 (Vinayana III, p.78).



Buddhist strictures were equally clear on attempted abortion:

*'Offences against a woman: Abortion- (1) To bring about abortion of a woman when both the mother and child live, (2) when the mother dies and the child lives.'*<sup>182</sup>

### **Assault and Battery**

In criminal law, a person is commonly guilty of assault, if the person purposely, knowingly, recklessly, or negligently causes apprehension of bodily injury to another person. Similarly, a person is guilty of battery, if the person purposely uses physical force of an adverse nature on another person.

Buddhist codes considered such actions in a similar view and within the context of monastic life it could in the worst of instances, lead to expulsion. There were certain acts which were recognized as crimes in secular Buddhist society, immaterial to whether they were related to other crimes like attempted murder or theft.

### **Offences against Property - *Adattadanad viratih***

Offences against property encompasses the range of common crimes relating to theft, arson, burglary, larceny, robbery, illegal transfer of immovable property, theft of services, misappropriation of property, etc.

In Buddhism, theft is taking that which is not given or *adattadanad-virati*. The Buddha said:

*'Let the man (sāvaka) abstain from (taking) anything in any place that has not been given (to him), knowing (it to belong to another), let him not cause any one to take, nor approve of those that take, let him avoid all (sort of) theft.'*<sup>183</sup>

182 D.N. Bhagvat, Early Buddhist Jurisprudence, p.29 (Vinayana III, p.83-84).

183 Anagarika Dharmapala, The Mahabodhi – Volume 61, p. 196.



Following the virtue of abstinence from stealing, leads to greater social stability and harmony. In this context, theft consists of taking away any article without the permission of the owner. It may be something as valuable as a precious stone or as insignificant as a handful of rice. The different categories of the stolen property are defined in great detail in the Vinaya as are the gradation of associated offences. The different categories included:

- 1) *'A treasure deposited in the earth;*
- 2) *'An article lying on the ground, on bed, on a seat etc.*
- 3) *'A treasure lying under water or placed in a boat;*
- 4) *'An article placed in conveyance;*
- 5) *'An article in the Vihara (monastery);*
- 6) *'Anything from a field, such as corn, etc. or, from a garden such as fruit, flowers, etc.*
- 7) *'Property from a village or forest, etc. or*
- 8) *'Men, birds and animals, etc.'*<sup>184</sup>

According to D.N Bhagvat, the highest order of offences in the Vinaya which led to Rebuke, the *Parajika* level offences ('defeats') included:

- 1) *'To remove a treasure from its place;*
- 2) *'To take another's treasure for oneself by breaking the seal;*

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184 D.N. Bhagvat, Early Buddhist Jurisprudence, pp.31 & 32.



- 3) *'To open the mouth of a jar containing either oil or honey and to drink off the contents;*
- 4) *'To order another Bikkhu to steal a particular article and see it is done;*
- 5) *'To hide a stolen article; or*
- 6) *'To deny and refuse and not to give back a deposit to its owner.'*<sup>185</sup>

Within a broader societal context, Guru Padmasambhava further classified taking what is not given, as robbing in open daylight, taking by sneaking, such as stealing unnoticed, or taking by deceit, for example dishonesty with weights and scales.

Patrul Rimpoche, defined the points provided centuries earlier by Guru Padmasambhava:

- 1) *'Taking what is not given is of three kinds; taking by force, taking by stealth and taking by trickery.*
- 2) *'Taking by force: Also called as taking by overpowering, this means the forceful seizure of possessions or property by a powerful individual having no legal right to them. It also includes by force of numbers, as by an army;*
- 3) *'Taking by stealth: This means to take possession of things secretly, like a burglar, without being seen by the owner; and*
- 4) *'Taking by trickery: This is to take others' goods, in a business deal for example, by lying to the other*

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<sup>185</sup> D.N. Bhagvat, Early Buddhist Jurisprudence, p.32.



*party, using false weights and measures or other such subterfuges.*<sup>186</sup>

Patrul Rimpoche added:

*'Nowadays, the idea in business or in other contexts there is anything wrong with cheating or trickery to get things from others does not occur to us, as long as we are not overtly stealing. But in fact any profit we may make by deceiving other people is no different from outright theft.'*<sup>187</sup>

Thich Nhat Hanh wrote:

*'The second precept is do not steal. No one has the right to take away the possessions that another has earned by his own labour. Attempting to seize another's goods violates this precept. Do not cheat others or use your influence and power to encroach on other's goods. Making profits from the sweat and labour of others violates this precept, as well. If the citizens observe this precept, social equality will flower and robbing and killing will quickly cease.'*<sup>188</sup>

### **Sexual Offences and Sexual Misconduct *Kamamithyacarad-viratih***

In the Buddhist law, sexual offences are defined and graded separately for the religious community and secular society.

#### **Sexual Offences within the Sangha**

According to the Vinaya, monks and nuns, were expected to avoid sexual acts in any form. It states:

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186 Patrul Rimpoche, Words of My Perfect Teacher (kunbzangblama'izhal lung), p.105.

187 Patrul Rimpoche, Words of My Perfect Teacher (kunbzangblama'izhal lung), p.105.

188 Thich Nhat Hanh, Old Path White Clouds, Walking in the footsteps of the Buddha, p.196.



*'A Bhikkhu who has received the upasampada ordination, ought to abstain from all sexual intercourse even with an animal.'*<sup>189</sup>

Even so sexual offences were still codified in detail. These included offences against women, bestiality, self-abuse, offences against the dead, offences against the public, etc. Sexual crimes were also graded by level of offence.

*Parajika* level offences included:

- 1) *'Complete or incomplete intercourse with a woman by putting the organ either in the mouth or vagina or rectum of a woman who may be awake, sleeping, unconscious, mad, or in a fit, and whether she be a former wife, sister or mother;*
- 2) *'Consent to have a complete or incomplete sex-act when a woman is brought to a Bhikkhu and he is forced to have an intercourse with her by joining and pressing the organs of the two together; or*
- 3) *'Sexual intercourse practiced when there is temporary impotency, thinking that it might not lead to disastrous consequences as it would in the usual course.'*<sup>190</sup>

*Sanghadisesa* level offences against a women included:

- 1) *'Coming in a close physical contact with a woman, such as embracing her, holding her hand, or plait of hair etc.;*
- 2) *'Allowing a woman to touch oneself in lust or tolerate a woman's touch who is in lust;*

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189 F. Max Muller, Sacred Books of the East, Vinaya Texts, Volume 13 Part I, Mahavagga, p. 235 (I,78,5).  
190 D.N. Bhagvat, Early Buddhist Jurisprudence, p.21.



- 3) *'Addressing a woman in a coarse and indecent language;*
- 4) *'Praising or censuring her sexual organs;*
- 5) *'Discussing sexual matters with her;*
- 6) *'Putting impertinent and inquisitive questions to a woman about her sexual life;*
- 7) *'Giving a woman hints or tips on sexual matters;*
- 8) *'Being moved with passion thrusting a thumb into the vagina of a sleeping woman;*
- 9) *'Begging a woman for sexual intercourse, saying that the union with a religious, learned man like a Bhikkhu would yield great merit; or*
- 10) *'Recommending sexual union with a Bhikkhu as a remedy for sterility, or as a means to procure a son or to gain the husband's love to women if they approach for an advice in such matters.'*<sup>191</sup>

*Pacittiya* level offences against a woman included:

- 1) *'Lying down to sleep in the same place with a woman;*
- 2) *'To go on board the same boat by appointment with a Bhikkhuni;*
- 3) *'To travel along a high road in company of a Bhikkhuni by special appointment; or*
- 4) *'To take seat in a secret place with a woman.'*<sup>192</sup>

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191 D.N. Bhagvat, *Early Buddhist Jurisprudence*, pp 22 & 23.

192 D.N. Bhagvat, *Early Buddhist Jurisprudence*, p.26.



*Dukkata* level Offences against a woman included:

- 1) *'Climbing a tree with a woman or having a pleasure trip with her in a boat; or*
- 2) *'Passing remarks about a woman's dress.'*<sup>193</sup>

### **Conduct promoting the Breaking of Vows**

D.N. Bhagvat wrote:

*'Offences regarding a Bhikkhu's relation with a Bhikkhunis under Pacittiya:*

- 1) *'To exhort Bhikkhunis when one is not deputed for it;*
- 2) *'To exhort Bhikkhunis after sunset;*
- 3) *'To visit the dwelling place of a Bhikkhuni unless she be ill; or*
- 4) *'To eat food procured by the intervention of a Bhikkhuni.'*<sup>194</sup>

*Nissaggiya-Pacittiya*. Heterosexual offences: Offences against a woman:

- 1) *'Getting one's underwear washed by a Bhikkhuni who is not related to oneself.*
- 2) *'Receiving a robe from the hand of a Bhikkhuni not related.'*<sup>195</sup>

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193 D.N. Bhagvat, *Early Buddhist Jurisprudence*, pp. 26 & 27.

194 D.N. Bhagvat, *Early Buddhist Jurisprudence*, p.39.

195 D.N. Bhagvat, *Early Buddhist Jurisprudence*, p.26.



## **Offences against Oneself**

*Sanghadisesa*, 'Offences against Self' included:

- 1) *Masturbation: Emission of semen with a desire to remove nervous tension by using the hand or other methods as having hot baths;*<sup>196</sup> or
- 2) *Castrating oneself.*<sup>197</sup>

*Dukkata* offence against self, included:

- 1) *'Putting the organ into one's mouth having a flexible back or having a long and hanging organ putting it into rectum etc.'*<sup>198</sup> or
- 2) *'Making a wooden stamp (a figure either of a woman or a man) and rub it against the sexual parts or to ejaculate in sleep when the organ is squeezed accidentally by another person.'*<sup>199</sup>

## **Offences against the Dead**

It was a *Sanghadisesa*, 'Offence against the dead' to touch a corpse in sexual parts.<sup>200</sup>

It was *Thullaccaya* offence to:

- 1) *'Try to have a complete or incomplete sexual intercourse with the dead and decomposed body of a male, female, either human or a beast; or*
- 2) *'Touch a dead body with lust but not in the sexual zone.'*<sup>201</sup>

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196 D.N. Bhagvat, Early Buddhist Jurisprudence, p.23.

197 D.N. Bhagvat, Early Buddhist Jurisprudence, p.25.

198 D.N. Bhagvat, Early Buddhist Jurisprudence, p. 22.

199 D.N. Bhagvat, Early Buddhist Jurisprudence, p. 27.

200 D.N. Bhagvat, Early Buddhist Jurisprudence, p. 24.

201 D.N. Bhagvat, Early Buddhist Jurisprudence, p. 25.



A lesser, *Dukata* level offence is to try to put the sexual organ into the mouth of a decomposed body which however makes penetration impossible.

### **Offences against the Public**

*Sanghadisesa*, offences against the public included:

- 1) *‘Matchmaking; or*
- 2) *‘To be a go-between including receiving messages from a husband or a paramour and carrying it to the wife or a lady-love, and bringing a reply back, all the time taking interest in such affairs.’<sup>202</sup>*

### **Offences against a Beast - Bestiality**

- 1) It was a *Pacittiya* offence *‘to take sexual liberties with fairies and animals such as female monkeys, etc.’<sup>203</sup>*
- 2) It was a *Pacittiya* level offence *‘to touch a female beast with a lustful mind’<sup>204</sup>; or*
- 3) It was a *Thullaccaya* offence *Against a Beast ‘to touch with hand a female from the lower creation, such as a cow, etc.’<sup>205</sup>*

### **Offence against a Eunuch**

It was a *Thullaccaya* offence to touch a eunuch with one’s hand.

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202 D.N. Bhagvat, Early Buddhist Jurisprudence, p. 24.

203 D.N. Bhagvat, Early Buddhist Jurisprudence, p. 22.

204 D.N. Bhagvat, Early Buddhist Jurisprudence, p. 27.

205 D.N. Bhagvat, Early Buddhist Jurisprudence, p.24.



## Homosexual Offences

It was *Parajika* offence to have sexual-intercourse with a person of the same sex. It was a *Thullaccaya* offence:

- 1) *'Climbing on the back of another man so that the sexual organs of the two come into close contact; or*
- 2) *'Kissing a man with lust'.<sup>206</sup>*

## Sexual Conduct

In Tibet, during the 7<sup>th</sup> century reign of the Dharma King *Songtsen Gampo*, secular laws based on the Ten Virtuous Acts were established including sexual conduct and sexual offences for the lay community. These laws were modelled in part after those in place for the monastic community.

Lay persons were expected to follow an appropriate ethic. Sexual misconduct included an enumerated list of activities, associated with particular persons, in particular times, places and circumstances. These rules were retained for centuries. According to Patrul Rinpoche:

*'The gravest sexual misconduct is that of leading other people to break their vows. Sexual misconduct also includes acts associated with particular persons, places and circumstances: masturbation; sexual relations with a person who is married, or committed to someone else; or with a person who is free, but in broad daylight, during observation of a one-day vow, during illness, distress, pregnancy, bereavement, menstruation, or recovery from child-birth; in a place where the physical representations of the Three Jewels are present; with one's parents, other*

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206 D.N. Bhagvat, Early Buddhist Jurisprudence, p.24.



*prohibited family members, or with a prepubescent child; in the mouth or anus, and so on.* <sup>207</sup>

In terms of particular persons, according to King Songtsen Gampo's *Mani bka'bum*, wrongful sexual activity comprises of three parts:

*'One's own women, the women of the others and women protected by the dharma. In general, among women those protected by place are those close to the Three Jewels. Do not have recourse to them. Those who are protected by time are pregnant women and those who have taken the one day precepts. Do not have recourse to them. Those who are protected by bodies are the sick. Do not have recourse to them. Do not recourse with women of others protected by their masters. Those protected by the dharma are those who possess the vows of getsuls and genyens or gelongmas. Do not have recourse to them.'* <sup>208</sup>

Along these line, the 8<sup>th</sup> century teacher, Guru Padmasambhava held that sexual misconduct included the act of engaging in intercourse with an object of desire with whom, one has no authority to do so:

- 1) *'It is unsuitable for a commoner to have intercourse with someone under the guardianship of a King, such as his Queen;*
- 2) *'It is unsuitable to have intercourse with someone prohibited by the law;*

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207 Patrul Rinpoche, Words of My Perfect Teacher, p.107.

208 His Eminence TrizinTsering Rinpoche, *Mani bka'bum* by Tibetan King Songtsen Gampo (604-650) Volume II, Prophesies & Teachings of Great Compassion, p. 223.



- 3) *'In India, it is unsuitable to have usual intercourse with someone under the guardianship of parents, since men and women not in their own household are protected by their parents;*
- 4) *'It is unsuitable to have intercourse with someone protected by "civilized principles," which means someone with whom it is shameful, such as a mother or a sister; or*
- 5) *'It is unsuitable to have intercourse with someone under the guardianship of the sacred Dharma, such as the guru's consort, an ordained person, etc.'*<sup>209</sup>

Guru Padmadambhava also enumerated unsuitable occasions to have intercourse even with your rightful spouse as:

- 1) *'It is unsuitable to have intercourse at an inappropriate time such as on the full moon, new moon, and the eighth day;*
- 2) *'It is unsuitable to have intercourse in an inappropriate location, such as in the presence of a shrine for the Three Jewels; or*
- 3) *'It is unsuitable to have intercourse in an inappropriate orifice, such as engaging in the manner of animals.'*<sup>210</sup>

### **The Four Verbal Non-Virtuous Acts - *Vaksucaritam***

As was noted prior, the four verbal Non-Virtuous Acts are lying, sowing discord, harsh word and worthless chatter. According to Dr. Phramahachanya Khongchinda & Sambuddhassa:

<sup>209</sup> Erik Pema Kunzang translated Dakini Teachings, p.39.

<sup>210</sup> Erik Pema Kunzang translated Dakini Teachings, p.39.



*'Buddha proclaimed right speech, right conduct and right livelihood that covers the moral side of human life. Right speech means timely, truthful, and useful speech. It also means abstaining from telling lies, from back-biting, slander and all malicious speech which might harm others. Equally it avoids harsh, rude, and abusive words which are useless and foolish gossip.'*<sup>211</sup>

### **Lying**

Lying is evil, as the Buddha said:

*'There is no evil that cannot be done by a lying person, who has transgressed the one law, who is indifferent to a world beyond.'*<sup>212</sup>

*'People praise earnestness; thoughtlessness is always blamed.'*<sup>213</sup>

According to Guru Padmasambhava: ‘

*The essence of the first, telling lies, is to verbally state that something untrue is true. When divided, there are the following kinds.*

- 1) *'There are lies that neither benefit nor harm, such as the lies of an old, senile man.*
- 2) *'There are lies that do benefit or harm, such as benefiting one person while harming another.*

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211 Khongchinda & Sambuddhassa, *The Buddha's Socio Political Ideas*, p.241pm.

212 Ven. Narada Maha Thera, p. 94.

213 F. Max Muller (ed.), *The Sacred Books of the East, Vinaya Texts, Volume 10 Part I, Dhammapada*, p.10.



- 3) *‘The “lie of having supreme human qualities” means that you claim to possess qualities in your stream of being such as higher perceptions, when you do not. Tsogyal, do not utter a lot of thoughtless words.’<sup>214</sup>*

This descriptor is more substantially defined within Patrul Rimpoche’s Book as ordinary lies, major lies and lies about superhuman powers.

*‘Ordinary lies: These are any untrue statements, made with the intention of deceiving other people.*

*‘Major lies: These are statements such as, for example, that there is no benefit in positive actions and no harm in negative ones; that there is no happiness in the Buddha fields and no suffering in the lower realms or, that the Buddhas have no good qualities. They are called major lies because no other lies could have more devastatingly misleading consequences.*

*‘Phoney lamas lying these are all untrue claims to possess such qualities and abilities as, for example, to have attained the Bodhisattva levels, or to have powers of clairvoyance. Imposters nowadays have more success than true masters, and everyone’s thoughts and actions are easy to influence. So, some people declare themselves masters or siddhas in an effort to deceive others. They have had a vision of a certain deity and made thanksgiving offerings to him, they claim, or they have seen a spirit and chastised it. For the most part these are just phonies’ lamas’ lies, so be careful not to believe such cheats and charlatans blindly. Affecting as it does both this life and the next, it is important to place your trust in a*

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<sup>214</sup> Erik Pema Kunzang translated Dakini Teachings, p.40.



*dharma practitioner whom you know well, who is humble and whose inner nature and outer behaviour correspond.*

*'Generally speaking, there are ordinary people who have some degree of concept-bound clairvoyance, but it is intermittent and only valid some of the time. Pure clairvoyance comes only to those who have reached the sublime levels, and is therefore extremely hard to attain.'*<sup>215</sup>

Falsely claiming to have achieved super human powers and/or a level of attainment one had not achieved is the only form of lying, which is considered a *Parajika* level offence subject to rebuke and expulsion. The Buddha said:

*'Whatsoever Bhikkhu, without being clearly conscious of extraordinary qualities, shall give out regarding himself that insight into the knowledge of the noble ones has been accomplished, saying, 'Thus do I know,' 'Thus do I perceive'. And, at some subsequent time whether on being pressed, or without being pressed, he, feeling guilty, shall be desirous of being cleansed from his fault, and shall say, "Brethren" when I knew not, I said that I knew. "When I saw not, I said that I saw-telling fruitless falsehood;" then, unless he so spoke through undue confidence he, too, has fallen into defeat, he is no longer in communion.'*<sup>216</sup>

### **Lying within the context of a trial**

As we have seen, confession of wrong-doing was a critical component in Buddhist procedure. Failure to confess a wrong-doing would thus place one in violation of this precept. The Buddha said one commits an intentional falsehood (*Mrsavada-viratih*):

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215 Patrul Rimpoche, *Words of My Perfect Teacher* (kunbzangblama'izhal lung), pp. 107 & 108.  
216 F. Max Muller, *The Sacred Books of the East, Vinaya Texts*, Vol. 13, Patimokkha p.5.



*'If a Bhikkhu, after a three-fold proclamation, does not confess an existing offence which he remembers, he commits an intentional falsehood. 'Now, reverend brethren, an intentional falsehood has been declared an impediment by the Blessed One. Therefore, by a Bhikkhu who has committed (an offence) and remembers it, and desires to become pure, an existing offence should be confessed; for if it has been confessed, it is treated duly.'*<sup>217</sup>

### **Defamation**

In contemporary jurisprudence, defamation is a tort offence wherein the victim can sue for damages in a civil court. A person shall be guilty of the offence of defamation, if the person intentionally causes damage to the reputation of another person or a legal entity. The Buddhist definition of lying also incorporated more contemporary elements of slander and libel. In Buddhism, non-virtuous speech is classified as:

Telling falsehoods	<i>Mrsavadat prativiratiḥ</i>
Using abusive language	<i>Parusyat prativiratiḥ</i>
Slandering others	<i>Paisunyat prativiratiḥ</i>
Indulging in irrelevant talk	<i>Sambhinnapralapat prativiratiḥ</i>

According to D.N. Bhagvat, offences involving defamation, and slander were graded by the same system which applied to all offences in the Buddhist canons.

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<sup>217</sup> F. Max Muller, The Sacred Books of the East, Vinaya Texts, Vol. 13, Part 1, Mahavagga, p.243. (11,3,4).



*'Sanghadisesa: (1) To accuse a Bhikkhu falsely of a Parajika offence (i.e. misbehaviour, theft, murder etc.), when the offence is really a minor one or there is no offence at all. (2) To plead that a Bhikkhu is guilty of a Thullaccaya or Pacittiya only when he has in reality committed a Sanghadisesa offence.*

*'Pacittiya – (1) To slander a Bhikkhu. (2) To abuse a Bhikkhu. (3) To speak disrespectfully of a Bhikkhu deputed to any official duty. (4) To accuse a Bhikkhu falsely of a Sanghadisesa offence without ground.'*<sup>218</sup>

*'The Bhikkus bringing a false charge against an innocent Bhikkhu would be punished. If the charge they brought against him was Parajika, they were liable to the Sanghadisesa offence.'*<sup>219</sup>

In the broader societal construct, we find that King Songtsen Gampo's *Mani bka'bum*, held:

*'Second, within slander are three parts. Gossip is saying many things that were not said. Secret slander is committed secretly and privately. Private slander is two people telling disparaging stories one after another.'*<sup>220</sup>

Whilst slander is a listed offence, Rigdzin Jigme Lingpa, an 18<sup>th</sup> century Tibetan *terton* (treasure finder) of the Nyingma lineage and the promulgator of the heart Essence teaching of Longchenpa, stated that the victim of slander should work to spin slander and defamation towards the positive in one's own personal growth.

218 D.N. Bhagvat, *Early Buddhist Jurisprudence*, p.31.

219 D.N. Bhagvat, *Early Buddhist Jurisprudence* p.99.

220 His Eminence Trizin Tsering Rinpoche, *Manikabum*, Volume II, p.224.



*'An enemy repaying your good with bad makes you progress in your practice.*

*'His unjust accusations are a whip that steers you toward virtue.*

*'He's the teacher who destroys all your attachment and desires.*

*'Look at his great kindness that you never can repay!'<sup>221</sup>*

### **Sowing Discord**

It was recognized that, sowing discord could promote disruption or even schism within the religious community potentially equating a breach of public order. Legally speaking a Breach of Public Order occurs when a person purposely fails to abide by the orders of the authority issued in the interest of public safety and tranquillity. Western and Buddhist laws both sanction this offence.

The Buddha said:

*'Do not speak words that can create division and hatred. Your words should be in accord with the truth. Yes means yes. No means no. Words have the power to create trust and happiness, or they can create misunderstanding and hatred and even lead to murder and war. Please use words with the greatest care.'<sup>222</sup>*

*'Whatsoever Bhikkhus shall go about to cause division in a community that is at union, or shall persist in calling attention to some matter calculated to cause division, that*

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221 Patrul Rimpoche, Words of My Perfect Teacher, pp.114 & 115.

222 Thich Nhat Hanh, Old Path White Clouds, Walking in the footsteps of the Buddha, p.196.



*Bhikkhu should thus be addressed by the Bhikkhus: “Sir, go. Not about to cause division in a community that is at union; or Persist not calling attention to a matter calculated to cause division. Be, Sir at one with the community, for the community, being at unity, in harmony, without dispute, dwells pleasantly under one authority. If that Bhikkhu, when he has thus been spoken, then let that Bhikkhu be (formally) admonished about it by the Bhikkhus as a body, even to the third time, to the intent that he abandon that course. If, while being so admonished up to the third time, he abandon that course, it is well: if he abandon it not – that is a Samghadisesa.”*<sup>223</sup>

The concept of sowing discord also included defamation, that is to say the publishing or uttering malicious or injurious falsehoods. Patrul Rimpoche wrote that the worst instance of sowing discord is to cause conflict between members of the *Sangha*. It is particularly serious to cause a rift between a teacher of the Secret Mantrayana and his disciples, or among the circle of spiritual brothers and sisters.<sup>224</sup>

Guru Padmasambhava said to his consort Yeshey Tsogyal:

*‘People who cannot keep their lips tight will have no happiness.’*<sup>225</sup>

According to Guru Padmasambhava:

*‘The essence of the second verbal non-virtue, divisive talk is the act of separating people who was good friends. When divided, there are the following types.*

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223 F. Max Muller, Sacred Books of the East, Vinaya Texts, Volume 13 Part I, Patimokkha, pp.10 &11.

224 Patrul Rimpoche, Words of My Perfect Teacher.

225 Erik Pema Kunzang, Dakini Teachings, p.42.



- 1) *'Public divisive talk by talking directly to someone's face;*
- 2) *'Indirect divisive talk by talking in a roundabout way; or*
- 3) *'Private divisive talk by talking to others individually.'*<sup>226</sup>

Sowing discord is considered a *Sanghadisesa* level offence, when it occurs:

- 1) *'In spite of a three precise warning from the Sangha to not cause a split in the Sangha on the pretext of calling attention to a particular point which was sure to lead to hot discussion and consequently to schism, and thus, put the unity and peace of the Sangha at stake.*
- 2) *'To support a Bhikkhu who deliberately causes a split in the Sangha, and not to give up his following even after three formal warnings from the Sangha; or*
- 3) *'Not to acknowledge one's fault and if others bring it to one's notice, not to listen to them and to make impudent replies (even after three warnings from the Sangha.)'*<sup>227</sup>

It is a *Dukkata* level offence if it is done:

- 1) *'To try to split the Sangha until a warning comes from the Sangha;*

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<sup>226</sup> Erik Pema Kunzang, *Dakini Teachings*, pp. 40 & 41.

<sup>227</sup> D.N. Bhagvat, *Early Buddhist Jurisprudence*, pp. 35 & 36.



- 2) *'To support a Bhikkhu who causes a split in the Sangha until the Sangha warns; or*
- 3) *'Not to admit one's fault until the Sangha warns.'*<sup>228</sup>

### **Inappropriate Speech/Harsh Words (*Parusat prativirati*)**

It is particular to the core philosophical root of Buddhism and its focuses on spiritual practice and conduct within the religious order that great attention was given to elements of speech and conduct. Thus, the two remaining verbal offences, harsh words and worthless chatter received noted attention. As these matters do not amount to crimes *per se*, they are managed in the West through custom and culture or not at all. In Buddhism, given how damaging the mis-spoken word could be within religious communities, very strict rules of conduct were enumerated and practiced over the ages.

The Buddha said that words have the power to create trust and happiness, or they can create misunderstanding and hatred and even lead to murder and war.

*'Do not speak harshly to anybody; those who are spoken to will answer thee in the same way. Angry speech is painful: blows for blows will touch thee.'*<sup>229</sup>

The Buddha enumerated the four principles of speech as:

*'Well spoken language the just call the principal (thing); let one speak what is right (Dharma), not what is unrighteous (Adhamma), that is the second; let one speak*

<sup>228</sup> D.N. Bhagvat, *Early Buddhist Jurisprudence*, pp. 36 & 37.

<sup>229</sup> F. Max Muller (ed.), *The Sacred Books of the East, Vinaya Texts, Volume 10 Part I, Dhammapada, Punishment*, p. 37.



*what is pleasing, not what is unpleasing, that is the third, let one speak what is true, not what is false, that is the fourth.*'<sup>230</sup>

The Venerable Vangisa, standing before Buddha, and in homage to him, said:

*'Let one say such words by which he does not pain himself, nor hurt others; such words are truly well-spoken. Let one speak pleasing words which are received joyfully (by all), and which (saying) he, without committing sins, speaks what is pleasing to others. True verily is immortal speech, this is a true saying; in what is true, in what is good, and in what is right, the just stand firm, so they say. The words which the Buddha speaks, which are sure to bring about extinction and put an end to pain, such (words) are truly the best.'*<sup>231</sup>

Guru Padmasambhava, defined harsh words to include exposing someone's faults in public, hurting someone indirectly or uttering in private something that will hurt another person.

Patrul Rinpoche said:

*'Harsh speech is, for instance, to make rude remarks about other people's unsightly physical flaws, openly calling them one-eyed, deaf, blind and so on. It includes revealing others' hidden shortcomings, offensive talk of all kinds and, in fact, any words that make other people unhappy or uncomfortable, even if spoken sweetly rather than harshly.*

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230 F. Max Muller (ed.), *The Sacred Books of the East, Vinaya Texts, Volume 10 Part II, Dhammapada, Sutta-Nipata, Subhasita-Sutta*, p. 73.

231 Khongchinda & Sambuddhassa, *The Buddha's Socio Political Ideas*, p.42.



*'In particular, to speak offensively in front of one's teacher, a spiritual friend or a holy being is a very grave error.'*<sup>232</sup>

*'Harsh language is the worst of the four negative actions of speech. As the proverb puts it: Words have no arrows nor swords, yet they tear men's minds to pieces.'*<sup>233</sup>

**Worthless or Senseless Chatter (*Sambhinnapralapat-prativirati*)**

Senseless Chatter, sometimes translated as 'Idle Talk', is the seventh of the ten non-virtues and the fourth amongst the non-virtues relating to speech. Worthless chatter means:

*'Words spoken at the wrong time (kalavadi);*

- 1) *'Words that contain untruth or exaggeration (bhutavadi);*
- 2) *'Words that bring no benefit (atthavadi);*
- 3) *'Words that lead the listener to unwholesome thoughts and conduct (dhammavadi);*
- 4) *'Words that threaten the listener's self-discipline (vinayavadi); and*
- 5) *'Words that express trite and shallow ideas (nidhanavati vaca).'*<sup>234</sup>

Patrul Rinpoche provides an interesting descriptor replete with anecdotal historical context. He said:

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232 Patrul Rinpoche, *The Words of My Perfect Teacher*, p.108.

233 Patrul Rinpoche, *The Words of My Perfect Teacher*, p.115.

234 Basngoda Rahula, *The Buddha's Teachings on Prosperity; At Home, At Work, In the World*, pp. 164, 165, 166 & 166.



*'Worthless chatter means talking a lot without any purpose: for example, reciting what one imagines to be Dharma but is not - such as the rites of brahmins; or talking aimlessly about subjects that stir up attachment and hatred, like telling tales of prostitutes, singing libidinous songs, or discussing robbery and war. In particular, to disturb people's prayers or recitation by distracting them with a flood of useless word is especially harmful, since it prevents them from accumulating merit.*

*'Pieces of gossip that seem to have come up quite naturally and spontaneously are for the most part, when you look more closely, motivated by desire or hatred, and the gravity of the fault will be in proportion to the amount of attachment or hatred created in your own or others' minds.*

*'While you are saying prayers or reciting mantras, mixing them with irrelevant talk will stop them bearing any fruit, no matter how many you say. This applies especially to the different kinds of gossip that circulate along the rows of the gathered Sangha. One single gossip-monger can cause the merit of a whole congregation to be spoiled and the meritorious action of its benefactors and patrons to be wasted.*

*'In the noble land of India, as a rule, only those who had the highest attainments and were free from all harmful defects, had the right to use funds donated to the Sangha, and, the Buddha permitted no-one else to do so. But nowadays, people learn one or two tantric rituals and, as soon as they can recite them, they start to use whatever dangerous offerings they can get. Without having received the empowerments, without having maintained*



*all the samayas, without having mastered the generation and perfection phases and without having completed the requirements of the mantra recitation, to obtain offerings by performing tantric rituals-just chanting the secret mantras perfunctorily like bonpo sorcerers-is a serious transgression. To use these dangerous offerings is comparable to eating pills of burning iron: if ordinary people partake of them without having the cast-iron jaws of the union of the generation and perfection phases, they will burn themselves up and be destroyed. As it is said:*

*'Dangerous offerings are lethally sharp razors.*

*Consume them and they'll cut the life-artery of liberation.*

*'Far from having any mastery of the two phases of the meditation, such people, who may at least know the words of the ritual, do not even bother to recite those properly. Worse still, the moment they get to the mantra recitation-the most important part-they start chatting, and let loose an endless stream of irrelevant gossip full of desire and aggression for the whole of the allocated time. This is disastrous for themselves and others. It is most important that monks and lamas should give up this kind of chatter and concentrate on reciting their mantras without talking.'*<sup>235</sup>

*'The effect similar to the cause of worthlessness, is not only that what we say will carry no weight, but also that we will lack any resolution or self-confidence. Nobody will believe us even when we speak the truth, and we will have no self-assurance when speaking in front of a crowd.'*<sup>236</sup>

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235 Patrul Rimpoche, Words of My Perfect Teacher, pp.108 &109.

236 Patrul Rimpoche, Words of My Perfect Teacher, pp.116.



### **Three Mental Offences: Covetousness, Wishing Harm and Holding Wrong Views**

None of the three Mental Offences, has a direct criminal parallel in the West. They may, however, speak to *mens rea* (*intention or knowledge of wrong-doing*). ‘Covetousness’ for example can speak to motive and intent in any underlying offence against property. Wishing harm on others could be circumstantially considered as an element of motive and intent as an underlying offence against the person. Holding wrong views, in certain extreme circumstances could also provide intent with regard to offence against the state, public order or public welfare.

In Buddhism, these acts are considered separately and stand alone because these mental non-virtues are causes of suffering in life of the victim and the perpetrator. The elimination of this root intent and the wrongful conduct that emanates from it, will lead to an elimination or reduction in the associated crime.

#### **Covetousness**

With regard to Covetousness, Patrul Rinpoche clarified:

*‘Covetousness includes all the desirous or acquisitive thoughts even the slightest ones, we might have about other people’s property. Contemplating how agreeable it would be if those wonderful belongings of theirs were ours, we imagine possessing them over and over, invent schemes to get hold of them, and so on.’<sup>237</sup>*

Guru Padmasambhava said that within covetousness, there are three mental non-virtues which are:

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<sup>237</sup> Patrul Rinpoche, Words of My Perfect Teacher, p.110.



- 1) *'Refraining from giving away your own possessions;*
- 2) *'Desiring to make others' possessions belong to yourself;  
and*
- 3) *'Attachment to something excellent that belongs neither  
to oneself nor to others.'*<sup>238</sup>

In the context of this teaching, he said to his consort Yeshey Tsogyal:

*'Tsogyal, do not hold onto ownership of material things. Dharma practitioners with no understanding of impermanence, have no happiness.'*<sup>239</sup>

#### **Wishing harm on others (*Vyapadat prativirati*)**

Wishing harm on others relates to malicious intention. It is the intent to commit a wrongful act to harm a person. Guru Padmasambhava said that the essence of wishing harm on others is:

- 1) *'I will resulting from anger;*
- 2) *'I will resulting from resentment; and*
- 3) *'I will resulting from jealousy.'*<sup>240</sup>

Patrul Rinpoche explains the concept of wishing harm on others:

*'This refers to all the malicious thoughts we might have about other people. For example, brooding with hatred or anger about how we might harm them; feeling disappointed when they prosper or succeed; wishing they were less*

<sup>238</sup> Erik Pema Kunsang, *Dakini Teachings*, p.42.

<sup>239</sup> Erik Pema Kunsang, *Dakini Teachings*, p. 42.

<sup>240</sup> Erik Pema Kunsang, *Dakini Teachings*, p. 43.



*comfortable, less happy or less talented; or feeling glad when unpleasant things happen to them.*<sup>241</sup>

**Holding wrong views (*mithyadrsti prativirati*).**

This offence eminently relates to an individual's belief in Buddhist teachings and philosophy. Its importance is clear, as the Ten Virtues were initially designed for the Buddhist monastic community. In this context, right views are those in line with Buddhist teachings while wrong views are contrary to the teachings. According to King Songsten's *Mani bka'bum*, and as thus extended into the Buddhist-influenced secular world, within wrong views are three parts:

- 1) *'As for worldly wrong views, one does not know about karmic cause and effect.*
- 2) *'As for world-transcending wrong views, one does not hold the egolessness of individuals and is attached to that.*
- 3) *'As for wrong views about true words, one grasps the intention of the Buddha's teaching literally and considers karmic cause and effect as untrue.*<sup>242</sup>

Patrul Rinpoche provides further contextual detail as:

*'Wrong views include the view that actions cause no karmic effect, and the views of eternalism and nihilism.*

*'According to the view that actions cause no karmic effect, positive actions bring no benefit and negative actions no harm. The views of eternalism and nihilism include all the different views of the tirthikas, which, although they can be divided into three hundred and sixty false views*

241 Patrul Rinpoche, *Words of My Perfect Teacher*, p. 110.

242 His Eminence Trizin Tsering Rinpoche, *Manikabum*, Volume II, p. 227.



*or sixty-two wrong views, can be summed up into the two categories of eternalism and nihilism.*

*'Eternalists believe in a permanent self and an eternally existing creator of the universe, such as Ishvara or Vishnu. Nihilists believe that all things just arise by themselves and that there are no past and future lives, no karma, and no liberation.*

*'As it says in the doctrine of Black Ishavara:*

*'The rising of the sun, the downhill flow of water,*

*'The roundness of peas, the length and sharpness of thorns,*

*'The beauty of the iridescent eyes of peacocks' tails:*

*'No-one created them, they all just naturally came to be.*

*'They argue that when the sun rises in the east, no-one is there to make it rise. When a river flows downhill, nobody is driving it downwards. No-one rolled out peas to make them all so round, or sharpened the long points of thorns. The beautiful multi-coloured eyes on a peacock's tail were not painted by anyone. All these things just are so by their own nature, and so it is with everything in this world whether pleasant or unpleasant, good or bad—all phenomena just arise spontaneously. There is no past karma, there are no previous lives, no future lives.*

*'To consider the texts of such doctrines true and to follow them, or even without doing so, to think that the Buddha's words, your teacher's instructions or the texts of the learned*



*commentators are in error and to doubt and criticize them, are all included in what is meant by wrong views.*

*'The worst of the ten negative actions are taking life and wrong views. As it is said:*

*'There is no worse action than taking another's life;*

*'Of the ten unvirtuous acts, wrong view is the heaviest.'*

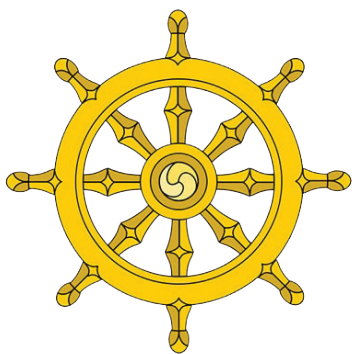
*'It is equally wrong, mistakenly thinking you are doing something meritorious, to slaughter animals and offer their flesh and blood to lamas invited to your house or to an assembly of monks. The negative karmic effect of the killing comes to both givers and receivers. The donor, although he invited the guests, is making an impure offering those who receive it are accepting unsuitable sustenance. Any positive effect is outweighed by the negative one. Indeed, unless you have the miraculous power to resuscitate your victims on the spot, there is no situation in which the act of killing does not bring defilement. You can also be sure that it will harm the lives and activities of the teachers. If you are not capable of transferring beings' consciousness to the state of great bliss, you should make every effort to avoid taking their lives.*

*'To have wrong views, even for an instant, is to break all your vows and to cut yourself off from the Buddhist community. It also negates the freedom in this human existence to practise the Dharma. From the moment your mind is defiled by false views, even the good you do no longer leads to liberation and the harm you do can no longer be confessed.'*<sup>243</sup>

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243 Patrul Rimpoche, Words of My Perfect Teacher, pp.110 & 111 & 112.

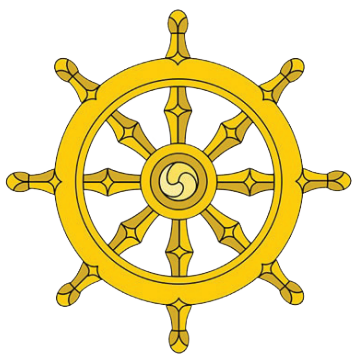






*'The Bodhi-tree (thenceforward in all years  
'Never to fade, and ever to be kept  
'In homage of the world), beneath whose leaves  
'It was ordained that Truth should come to Buddh:  
'Which now the Master knew; wherefore he went  
'With measured pace, steadfast, majestically,  
'Unto the Tree of Wisdom. Oh, ye Worlds!  
'Rejoice! our Lord wended unto the tree!*

*-Sir Edwin Arnold (Light of Asia)*



## CHAPTER 14

### Selected Codes, Laws and Edicts Related to Public Health and Welfare

The health and welfare of the religious community, the surrounding civil society and of the environment and all sentient beings within it were fundamental considerations in Buddhist stricture. Reference to related concerns are found in many Buddhist texts and edicts, both monastic and secular.

#### **Drinking, Smoking and Gambling**

With regard to the use of alcohol or other intoxicants, the Buddha said:

*‘The fifth precept is do not drink alcohol or use other intoxicants. Alcohol and intoxicants rob the mind of clarity. When someone is intoxicated he can cause untold suffering to himself, his family, and others. Observing this precept is to preserve health for the body and mind. This precepts should be observed at all times.’<sup>244</sup>*

The consumption of tobacco was considered a health hazard in both East and West. Not long after tobacco was first imported into England in the end of the 1500’s, King James VI of Scotland and England denounced Tobacco in a 1604 as:

*‘[a] custom loathsome to the eye, hateful to the Nose, harmful to the brain, dangerous to the Lungs, and in the black stinking fume thereof, nearest resembling the horrible Stigian smoke of the pit that bottomless.’*

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<sup>244</sup> Thich Nhat Hanh, *Old Path White Clouds, Walking in the footsteps of the Buddha*, pp. 196 & 197.



Tobacco use in Buddhist countries were also considered a health hazard and against religious precepts. The Charter of the Zhabs-drung Ngag-dbangr Nam-rgyal, the unifier of Bhutan as a nation state in the 1600's, referenced the 8<sup>th</sup> century Guru Padmasambhava stating:

*'... this evil sustenance called tha-ma-kha (tobacco) which is a cunning trick prepared by demons, is now being used continuously by all the people and the peasants, including the bodyguards and menials; not only does this pollute the body, speech and mind-supports but, also it causes the gods above to decline, it disturbs the spirits of intermediate space and injures the nagas of the underworld. From this cause there continuously arises in the world the fate of diseases, wars and famines and so it conforms with many prophecies given by the great teacher Padmasambhava.*

*'If people in any of the district should be found to be indulging in the trading and smoking of tobacco, this ruinous sustenance, and if this practice is not forcibly eliminated by the government representatives and officials, the village counsellors and messengers (rdzong-[dpon], mgron-[gnyer], then things will definitely fall on their own heads. The officials on the Indian frontier must prohibit [the import of tobacco] at the duars themselves. Control through these measures is important.'*<sup>245</sup>

Gambling was also a matter of concern as it was considered to hinder social welfare and right living. According to Dr. Wamoruwe Piyaratna, the six dangers of gambling are explained in the Sutta as follows:

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245 Dr. Michael Aris translated "The Legal Decree of the Glorious 'Brug-pa Rin-po-che, the Mighty Ngag-gidBang-po', p.141.



- 1) *'The winner makes enemies.*
- 2) *'The looser bewails his losses.*
- 3) *'One waste one's present wealth.*
- 4) *'One's word is not trusted in the assembly.*
- 5) *'One is despised by one's friends & companions.*
- 6) *'One is not in demand for marriage, because a gambler cannot afford to maintain a wife.'*<sup>246</sup>

Guru Padmasambhava said:

*'The following are the ten supports that cause the virtues to remain in your stream of being: to have faith in the true teachings, to keep self-respect and pure conscience, to refrain from gambling and quarrelling, to refrain from watching market gatherings, to always act conscientiously, to cast away laziness, to not associate with immoral friends, to train in the pliancy of body, speech, and mind, to cultivate the four-fold spheres of perception, and in particular to focus your mind on the path of noble beings.'*<sup>247</sup>

### **The Environment**

Concerns for public and social welfare were paramount in Buddhist thought. Under Buddhist philosophy, the planet earth is the abode for all sentient beings. Conservation and protection are thus the basis of survival for all sentient beings, the refuge for posterity and the means to avoid any imminent hazard to public safety. According to Guru Padmasambhava:

<sup>246</sup> Dr. Wamoruwe Piyaratna, Sigalovadasutta: How to Strike a Perfect Balance In Society, p.98.

<sup>247</sup> Erik Pema Kunzang, Dakini Teachings, p. 47.



*The four laws of fire, wind, water and iron, together with the laws of wood, earth, and space make the seven laws.*<sup>248</sup>

In this frame, it is the fundamental duty of every citizen to contribute to the protection of the natural environment and the prevention of ecological degradation. The Buddha said that it is wrong:

- 1) *'To destroy plants, etc;*
- 2) *'To destroy vegetables;*
- 3) *'To dig ground or have it dug;*
- 4) *'To drink water with living germs in it; or*
- 5) *'To deprive any living being (animal etc.) of life.'*<sup>249</sup>

Mr. Uditha Egalahewa said:

*'Whatever Bhikhuni should throw out or should cause another to throw out, excrement or urine or rubbish or remains of food over a wall or over a fence, she is guilty of Pacittiya category;*

*'Whatever Bhikhuni should throw out or causes another to throw out excrement or urine or rubbish or remains of food on to crops, she is of a fault of Pacittiya category.'*<sup>250</sup>

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248 Kathang Sertreng or Golden Garland Chronicles by Drodül Sangye Lingpa (1340-1396), p.700.

249 D.N. Bhagvat, Early Buddhist Jurisprudence, p.30.

250 Uditha Egalahewa, President's Counsel, Buddhist Jurisprudence on Environment, p 5.



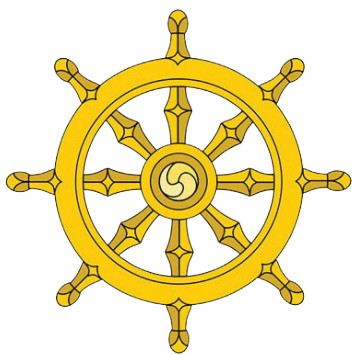
A dialogue between the Buddhist sage Nagasena and the King Menander I, the Indo-Greek King of Northern India captures the religious basis of conservation:

*'Doing injury to trees and shrubs is no offence in the eyes of the world, but it is wrong in the (eyes of) religion. The habit of sporting in the water is no offence to a layman, but it is wrong in the region. And many other things of a similar kind, O King, are right in the World, but wrong in the religion of the Conquerors.'*<sup>251</sup>

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251 F. Max Muller (ed.), Sacred Books of the East, Buddhist Suttas, The Questions of King Milinda, Volume 36, p.100 (IV,7,10).





## CHAPTER 15

# Alignment between Contemporary Constitutional Thoughts and Buddhist Pre-Constitutional Principles and Elements

### Purpose and Origin of Constitution

By nature, the Constitution is the Supreme Law of the Land. It defines the relationship between different entities within a State and articulates and delineates their powers and responsibilities. It is intended to respond and evolve with changing unforeseen circumstances. It is the foundational law within an ever-expanding family of laws that keeps a nation and its peoples' diverse behaviour within the bounds of the nation's legally enshrined philosophy.

Constitutional core values differ across jurisdictions, but the basic concept of human dignity is pervasive. For example, within Buddhist-influenced Constitutions, the notions of 'Precious life' and 'Human dignity' are broadly reflected. The Buddha said:

*'Every living being deserves to enjoy a sense of security and well-being. We should protect life and bring happiness to others. All living beings, whether large or small, whether two-legged or four-legged, whether swimmers or fliers, have a right to live. We should not harm or kill other living beings. We should protect life.'*<sup>252</sup>

Etymologically the term *constitution* comes from the Latin word *constitutio*, referring to regulations and orders. The world's first Constitution was written by Solon, an Athenian lawmaker and reformer, as a reaction to Draco's harsh laws of 621 BC. Since then, the history of Constitutional proliferation

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<sup>252</sup> Thich Nhat Hanh, *Old Path White Clouds*, p.335.



has been relatively slow. Of the approximately 190 countries today with constitutions, only 20 of those pre-date 1950.

### **Constitutional Core Foundational Principles**

The foundational elements of the most highly referenced Constitutions include:

- 1) The Rule of Law which requires both the people and the government to obey all laws;
- 2) The Separation of Powers which requires the powers of every branch of government are clearly articulated and delineated as a check upon tyranny and threats to liberty (as advocated by Montesquieu, Burke, Engels, Locke and John Mill);
- 3) A Representative Government which promotes and confirms the participation of people in the functioning of the government;
- 4) An Establishment clause with a clear separation between Religion and State; and
- 5) Fundamental individual rights and obligations of the citizenry including freedom, liberty, equality, and the pursuit of happiness.

### **The Rule of law**

The concept of the 'rule of law' originates within German Jurisprudence. It refers to a 'legal state', 'state of law', 'state of justice', 'state of rights' or 'state based on justice and integrity'. From this perspective, the Rule of Law sustains the edifice of society by upholding and protecting the



citizenry and their freedoms. It encompasses the concept that right shall be done to all manner of people according to law.

The 19<sup>th</sup> century British Jurist, Albert Venn Dicey held that the Rule of Law encompasses both the material rule of law and the formal rule of law. The material rule of law requires the realization of a just legal order, and the formal rule of law requires that state activities be based upon laws that are consistent with the Constitution. In his treatise, '*Law of the Constitution*', he identified three principles, which together establish the Rule of Law:

- 1) The absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power;
- 2) Equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts; and
- 3) The law of the Constitution as a consequence of the rights of individuals as defined and enforced by the courts.

The Buddha asked his followers to treat the Dharma (doctrine of righteousness) and Vinaya (the Code of Laws) as their guide when he would not be there. The Buddha said:

*'Do not weep, do not be despair, Ananda. From all that he loves man must part. How could it be that what is born, what is subject to instability should not pass? Maybe, you are thinking, "We have no longer a master." That must not be, O Ananda. The doctrine I have preached to you is your master.'*<sup>253</sup>

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253 S.Radha Krishnan, Indian Religion, p.163.



These codes and teachings, as we have seen throughout this work encompass a complete systemology of ethics, action and jurisprudence, which can be considered constitutionally precedential. The notion of the Rule of Law, for example, aligns with the Buddhist philosophy of impartiality and equanimity or *'Upekkha'*. This concept often translated in English as equanimity, implies freedom from all points of self-reference, thus enabling more attention to the well-being of one's fellow human beings. The impartiality and fairness, understanding that all beings experience good and evil in accordance with the kamma.

In the Buddhist vision, the Rule of Law is the recognition of the supremacy of law, the elimination of discrimination, equal access to due process of law, and the judicial review of administrative action. In accord with this principle, when addressing the ruling class, Guru Padmasambhava proclaimed:

*'The powerful must know the limit of their power.'*<sup>254</sup>

### **Separation of Powers**

The most exemplary constitutions contain in-built checks and balances to protect the rights, liberties, and freedoms of citizens and the integrity of the Rule of Law. The Buddha said:

*'Power abused is not all gain, Power is often folly's bane'*.<sup>255</sup>

Checks and Balances often appear simultaneously in various forms, such as:

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254 Drodül Sangye Lingpa, Kathang Sertreng or Golden Garland Chronicles, p. 697.

255 E.B. Cowell, The Jataka, Volume V-VI, (p. 116, No.357).



- 1) Through the creation of an Executive, Legislative and Judiciary branch of government;
- 2) Through territorial demarcation of authority between State and local authorities;
- 3) Through a demarcation between ‘political’ and core ‘professional’ officers within the State Administrative structure; and
- 4) Through the establishment of independent constitutional bodies with oversight powers to ensure good governance and compliance with the Rule of Law.

As we have seen, a similar approach of demarcated authority was embedded within the Vinaya (the Code of Laws) and other doctrines. For example, with reference to the need for an independent judiciary to assure the Rule of Law and right governance, the Buddha said:

*‘The wheel of power turns in dependence on the wheel of justice’ (bala-cakram hi nisraya dharma-cakram pravartate)’.<sup>256</sup>*

As an example of non-interference with judicial independence, Dr. Khongchinda & Sambuddhassa wrote:

*‘The administrators and politicians of the republic of Vesālī did not take over the administration of law and justice. The judges themselves were the administrators of law and justice. No evidence is found of politicians and local administrators putting any undue pressure on the*

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<sup>256</sup> K. N. Jayatilleke, *Dhamma Man and Law*, p. 28.



*law courts or influencing the process of justice. It may, thus, be surmised that the process of justice was free from interference.*<sup>257</sup>

### **Representative Government**

The word ‘*democracy*’ is derived from the Greek words *dêmos* which mean ‘people’ and *krátos* a ‘force’ or ‘power’. Cleisthenes, an ancient Athenian law giver, is credited with reforming the constitution of ancient Athens and setting it on a democratic footing in 508 BC. For this accomplishment he is often referred to as the ‘father of Athenian democracy’. As noted by Aristotle, however, democracy is the most complex and difficult form of government. It is never a finished product and is always evolving as humanity and society advances.

The Buddha stated that if any institution or country wished to maintain its independence, it should strengthen its democratic form of governance. Even before democracy flourished in ancient Greece, the concept took root in the then Independent Republic of Vesali, the ancient Buddhist community in current Bihar, India referred to above by Dr. Phramahachanya Khongchinda. In Vesali the brotherhood of monks was established upon democratic foundations governing their conduct under Buddhist philosophical precepts.

Dr. Bhimrao Ramji Ambedkar, the Indian jurist, politician and social reformer, while reflecting on the historical origins of Indian parliamentary procedure, declared at the 1949 Indian Constituent Assembly Debates:

*‘It is not that India did not know parliaments or parliamentary procedure. A study of the Buddhist bhikkhu*

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257 Khongchinda & Sambuddhassa, *The Buddha’s Socio Political Ideas*, p.118.



*sanghas discloses that not only were there parliaments, for the sanghas were nothing but parliaments but the sanghas knew and observed all the rules of parliamentary procedure known to modern times. They had rules regarding seating arrangements, rules regarding motions, resolutions, quorum, whip, counting of votes, voting by ballot, censure motions, regularization, adjudication, etc. Although these rules of parliamentary procedure were applied by Buddha to the meetings of the bhikkhu sanghas, the essence of Buddhism lies in working practically for one's freedom economic, social and political. Buddha was the torchbearer of democracy and an ardent exponent of liberty, equality and fraternity.*<sup>258</sup>

### **Deliberative Democracy**

The Buddha also held that the truth needs to be discovered by a process of rational inquiry untrammelled by faith or tradition. Thus, within the monastic community, a practice of debating and discussion 'amongst equals' was established. The Buddha asked the disputants to adopt a dispassionate and critical attitude, employing logic and reason in resolving religious and philosophical disputes.

The result was a logical and rational form of governance, a 'deliberative democracy' which was participatory and accommodated differences of opinion and even dissent without imposing majoritarian decision-making principles.

The principles and practices governing the organization of the monastic community (the *sangha*) have directly impacted the social philosophy and political governance of Buddhist countries. Professor Laksiri Jayasuriya noted:

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258 The Constituent Assembly Debates, Vol. 11 Speech on 26/11/1949.



*'In many respects Buddhist ideals of statecraft embodying principles and practices such as the rule of law, deliberative democracy, procedures of governance and the social policies of the Asokan welfare state bear a striking similarity to Enlightenment values in Europe. This remarkable consequence of East-West dichotomies, the paper concludes, may create the space for a civilizational dialogue, not a 'clash of civilizations.'*<sup>259</sup>

Perhaps, this symmetry relates to the Buddha's directives that followers should remain critical (i.e., through deliberative democracy). In this manner one can ensure that laws remain relevant and of use to the broader society. The Buddha said:

*'When you, Kalamas, realize for yourself that these doctrines are evil and unjustified, that they are condemned by the wise and that when they are accepted and lived by, they conduce to ill and sorrow, then you should reject them.'*<sup>260</sup>

### **Establishment Clause**

Independence and the separation of religion from politics protects both the secular and the spiritual and religious heritage of a country. An Establishment Clause prohibits a government from making laws respecting the establishment of religion. Under the U.S.A. Constitution, for example, the Establishment Clause not only forbids the government from establishing an official religion, it also prohibits government actions that unduly favour one religion over another.

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259 Laksiri Jayasuriya, "Buddhism, Politics, and Statecraft", in International Journal of Buddhist Thought & Culture, September 2008, Vol.11, p.1.

260 K.N. Jayatilleke, Dhamma Man and Law, p.12.



Fareed Zakaria wrote that the first use of an Establishment Clause was:

*'In A.D. 324 (when) the leader of the greatest empire in the world went east, shifting his capital from Rome to Byzantium, the old Greek colony, at the mouth of the Black Sea, which he promptly renamed Constantinople.... But although he took most of his court, Constantine left one person behind: the bishop of Rome. This historic separation between church and state was to have fateful, and beneficial, consequences for humankind.'*<sup>261</sup>

Arguably, however, the first volitionally enacted separation of Religion and State occurred when, the Buddha renounced his royal heritage to fully embrace his spiritual pursuits. Thich Nhat Hanh wrote of a dialogue between the Buddha and his father, King Suddhodana of Sakya:

*'If you love and respect the people, they will love and respect you in return. Rule by virtue differs from rule by law and order. Rule by virtue does not depend on punishment. According to the Way of Awakening, true happiness can only be attained by the path of virtue.'*

*'King Suddhodana and all those present listened intently to the Buddha. Prince Dronodanaraja, the Buddha's uncle and the father of Devadatta and Ananda, said, "Rule by virtue, as you have described it, is truly beautiful. But I believe that you alone possess the character and virtue needed to realize such a path. Why don't you stay in Kapilavatthu and help create a new form of government right here in Sakya kingdom which will bring peace, joy, and happiness to all the people?'*

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<sup>261</sup> Fareed Zakaria, *The Future of Freedom*, pp. 29 & 30.



*'King Suddhodana added, "I am old. If you agree to remain, I will gladly abdicate the throne in your favor. With your virtue, integrity, and intelligence, I am sure all the people will stand behind you. Before long our country would prosper as it never has before.'*

*'The Buddha smiled and did not speak right away. Looking kindly at his father, he said, "Father, I am no longer the son of one family, one clan, or even one country. My family is now all beings, my home is the Earth, and my position is that of a monk who depends on the generosity of others. I have chosen this path, not the path of politics. I believe I can best serve all beings in this way.'*<sup>262</sup>

Separately, the Buddha entreated his followers stating:

*'Bhikkhus do not engage in partisan politics but they contribute to building peace, joy, and virtue in society. The fruits of his spiritual practice are not for the bhikkhu's sole enjoyment and benefit. They are the people's and country's inheritance.'*<sup>263</sup>

In line with the teachings of the Buddha, secular Buddhist leaders historically did not discriminate against other religions. The Buddhist King Bimbisara, a principal patron of the Buddha, who reigned over Magadha from 544 BC to 492 BC, did not interfere with or prevent any religion from carrying on their affairs in his Kingdom. The Dhammapada referring to the allowance of diverse creeds states 'there were six religious teachers in Rajagaha at that time'. King Asoka stated:

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262 Thich Nhat Hanh, *Old Path White Clouds, Walking in the footsteps of the Buddha*, pp. 247 & 248.

263 Thich Nhat Hanh, *Old Path White Clouds, Walking in the footsteps of the Buddha*, p.530.



*'The Beloved of the Gods, the King Piyadassi, wishes that all sects may dwell in all places, for all seek self-control and purity of mind.'*<sup>264</sup>

Robert Thurman noted that several texts provide the foundation for a Buddhist social philosophy, including a distance between church and state. He wrote:

*'The stone-carved edicts of Emperor Ashoka (third century B.C.E.) set forth five basic principles of Buddhist politics:*

*'(1) Individualistic transcendentalism, (2) non-violent pacifism, (3) religious pluralism with an educational emphasis, (4) compassionate welfare paternalism, and (5) reliance on a powerful central authority to affirm the rights of individuals over claims rights; of intermediate groups.'*<sup>265</sup>

### **Fundamental Constitutional Rights**

The rights enshrined in most Constitutions can be broadly classified as civil, political, substantive, social, economic, etc. There are also rights *in rem*, *in personam* and proprietary rights. These rights, where they are enumerated, are enforced by law under the long established principle of '*ubi jus ibi remedium*', a well known Latin maxim meaning 'where there is right, there is remedy'.

The right to a remedy is one of the Fundamental Rights historically recognized in most legal systems. Indeed, this and all other Fundamental Rights, protect the dignity of the individual and assure a just and tolerant society. Fundamental rights limit the power of the state, secure individual

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264 The Rock Edict Nb7.

265 Robert Thurman, Faith in Human Rights; Support in Religious Traditions for a Global Struggle, p.138.



liberty, act as a barricade against the tyranny of the majority and provide security against arbitrary action.

The concept of rights, freedoms and dignity is also deeply ingrained in Buddhism. Buddhism holds human life and dignity in the highest regard under the notion of reverence for life. As the Buddha said:

*'One should not injure, subjugate, enslave, torture, or kill any animal, living being, organism, or sentient beings. This doctrine of non-violence is immaculate, immutable, and eternal. Just as suffering is painful to you, in the same way it is painful, disquieting, and terrifying to all animals, living beings, organisms, and sentient beings.'*<sup>266</sup>

As K.N. Jayatilleke noted:

*'The ideal state is a democracy working for the material and spiritual welfare of the people, guaranteeing political, religious and personal freedoms as well as economic security with full employment.'*

*'While Western classical liberal thought held that the maintenance of law and order was the only legitimate function of the state, Friedmann analyses the functions of the modern state as that of (i) Protector, (ii) Dispenser of Social Services, (iii) Industrial Manager, (iv) Economic Controller and (v) Arbitrator. Buddhism has stressed the first, second and fourth of these functions, the other two being in fact corollaries of the first and the fourth. But in addition to them Buddhism considers it a duty of the state to promote righteousness. This it should do by education*

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<sup>266</sup> Eleanor Stoneham, *Why Religions Work; God's Place in the World Today*, p.23.



*(without indoctrination), by basing its policies on the principles of righteousness or Dhamma and by affording opportunities for the moral and spiritual life, which will add new dimensions to human personality and help base human relations on the foundations of selfless service, love and understanding rather than that of the fear of the sanctions of the law...*

*'Buddhism contends that it is only such a political philosophy or ideology which will provide a firm basis for a rule of law, which reflects the rule of righteousness or Dhamma, within the state. "The sovereignty of the state derives from the will and consent of the people in whose interests it shall govern but sovereignty is subject to the rule of righteousness for the wheel of power has to turn in dependence on the wheel of righteousness" (balacakram hi nisraya Dharmacakram pravartate)'<sup>267</sup>*

Fundamental Rights are woven into the tapestry of Buddhist societies. Dr. Bhimrao Ramji Ambedkar who was a social reformer who inspired the Dalit Buddhist movement and campaigned against social discrimination towards the untouchables in his last book, wrote that the Buddha's philosophy was:

*'Three words: liberty, equality, and fraternity. Let no one however say that I have borrowed my philosophy from the French Revolution. I have not. My philosophy has roots in religion and not in political science. I have derived them from the teachings of my master, the Buddha.'*<sup>268</sup>

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267 K.N. Jayatilleke, *Dhamma Man and Law*, p.87.

268 B.R. fAmbedkar, *The Buddha and His Dhamma*.



In contrast to Western perspectives, and keeping with Buddhist precepts, rights are not the monopoly of homo sapiens. Rather rights, premised upon compassionate views, are extended to all sentient beings and, to the protection of the five elements. As King Asoka's Rock Edict VI says:

*'There is no higher duty than the welfare of the whole world. And that little effort I make is in order that I may be free from debt to the creatures, that I may render them happy here and they may gain heaven in the next world'.*

## **The Fundamental Rights**

### **Freedom**

The concept of freedom is a critical constitutional pillar. Since its practical inception in 490 B.C. in Athens, the concept of freedom has evolved to encompass many dimensions. These include:

- 1) Personal Freedom: the right to think and act without government control;
- 2) Political Freedom: the right to participate in the political process;
- 3) Economic Freedom: the right to buy, sell and trade private property and the right to employment without government interference;
- 4) Freedom of Religion: the right to practice any or no religion without persecution by the government;
- 5) Intellectual Freedom: the right to free thought and expression free from state interference as articulated by the 17<sup>th</sup> century Dutch Philosopher, Baruch Spinoza;



- 6) Freedom of Choice: the right to choose in one's best interest; and
- 7) Negative freedom the absence of coercion and interference from others as postulated by Immanuel Kant.

In Buddhism and Buddhist-influenced societies, the concept of freedom has deep historical roots. According to the Nobel Laureate, Amartya Sen, in his book:

*'In Buddhist tradition, great importance is attached to freedom, and the part of the earlier Indian theorizing to which Buddhist thoughts relate has much room for volition and free choice. Nobility of conduct has to be achieved in freedom, and even the ideas of liberation (such as moksha) have this feature.'*<sup>269</sup>

Within the context of Buddhist philosophy and spiritual practice, freedom has a deeply philosophical added meaning. As the Buddha said on the path to enlightenment, we move from bondage to freedom (*vimuta*).

To achieve this level of freedom, the Buddha provided the Noble Eightfold Path each of which required volitional self-discipline to acquire. The Eightfold Path are:

- 1) Right vision (*Samyagdrsti*);
- 2) Right conception (*Samyaksamkalpa*);
- 3) Right speech (*Samyagvac*);
- 4) Right conduct (*Samyakkarmanta*);

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<sup>269</sup> Amartya Sen, *Development as Freedom*, p.234.



- 5) Right livelihood (*Samyagajiva*);
- 6) Right effort (*Samyagvyayama*);
- 7) Right mindfulness (*samyaksmrti*); and
- 8) Right one-pointed contemplation (*Samyaksamadhi*).

The Buddha also spoke of the Eight Freedoms and the Ten Advantages or Endowments, to which we are able in this life to pursue the spiritual freedom he had found. The Eight freedoms are:

- 1) Free from being born into a hell realm;
- 2) Free from being born into the hungry ghost realm;
- 3) Free from being born into the animal realm;
- 4) Free from being born a barbarian;
- 5) Free from being born as a long-lived god;
- 6) Free from being born with wrong views;
- 7) Free from being born in a time without enlightened beings; and
- 8) Free from being born deaf or mute.

The Ten Endowments or Advantages are:

- 1) Having been born a human being;
- 2) Having been born in a central region;
- 3) Having been born with all ones' faculties;



- 4) Being engaged with a proper lifestyle that does not conflict with spiritual practice;
- 5) Having faith in the sacred teachings;
- 6) An Enlightened Being has appeared;
- 7) The Enlightened Being has shared the teachings;
- 8) The teachings still exist;
- 9) The teachings are practiced; and
- 10) There are those who are kind-hearted towards others and share the teachings.

### **Liberty**

The evolution of the concept of liberty, is part of the inexorable progress of humanity and society that began with Greek democracy and the philosophical works of the vaunted classical Greek thinkers including Aristotle, Demosthenes, Cicero and Tacitus. Jointly, they classified the notion of liberty into positive, negative, individual and collective iterations.

The concept of liberty as reflected in the French ‘Declaration of the Rights of Man and of the Citizen’ in 1789 is considered a noted advance in the concepts of human and civil rights:

*‘Liberty consists of the power to do whatever is not injurious to others; thus the enjoyment of the natural rights of every man has for its limits only those that assure other members of society the enjoyment of those same rights; such limits may be determined only by law.’*



Liberty as a concept has civil and political components. The right to liberty includes the physical liberty of the person through a cluster of interrelated rights such as, the right against arbitrary arrest or detention. It also includes the right to be secure from unreasonable search and seizure, the right to information and access to legal advice, the right to be brought promptly before a judge, and the right to be treated with humanity and respect.

Within the Buddhist teachings, human freedoms, dignity and rights are sacrosanct. Liberation in Buddhism, however, is not an inherited virtue or right. It is an acquired power. The rule of righteousness recognizes liberty in three dimensions, liberty of thought, liberty of speech and liberty of body. Liberty of thought depends on the freedom of the mind, liberty of speech on what we can express in words, and liberty of body, on all external actions. D.N. Bhagvat wrote:

*'The laws of the Sangha were the social contract by which individuals lost their natural liberty and unlimited right to anything which tempted them and which they were able to attain. On the other hand, what they gained was 'social liberty' which they utilized in minimizing the grievances of the majority and controlling the unruly characters by means of legal coercion and maintaining a balance in the associated life of the Sangha.'*<sup>270</sup>

### **Equality**

Equality is also a fundamental constitutional precept. After the 1848 French Revolution, the doctrine of individual liberty advanced significantly. These advances were criticized by the likes of Friedrich Engels, Karl Marx, Friedrich Nietzsche and even Sigmund Freud. From their varied perspectives, all

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270 D.N. Bhagvat, Early Buddhist Jurisprudence page (ii).



four considered that liberty needed to be tied to equality. In some form, they agreed that liberty without equality is only the freedom of the powerful to exploit the weak.

For Jean-Jacques Rousseau, freedom implied being able to realize certain higher social values (such as free and equal participation in political activities, freedom from alienation, etc.). In order for people to have the ability and opportunity to attain these high social values, the society had to create certain conditions, including of course, the right to equality.

Equality of all living beings is an essential element of the Dharma. The Buddhist system of justice begins with the premise that everyone is equal before the law. The Buddha had said, *'I preach the Law equally'*.

One day, the Buddha and his bhikkhus were begging in a village, he spotted a man carrying human excreta. The man was an untouchable named Sunita. He tried to run away but the Buddha asked him to come closer to him so they could talk. Sunita protested:

*'Lord, I don't dare ... I am an untouchable. I don't want to pollute you and your monks.'*

The Buddha said:

*'On my path, all are considered equal. Everyone, no matter how poor he is, can attain liberation and enlightenment. Begging does not demean my own dignity. It recognizes the inherent dignity of all persons'*<sup>271</sup>

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271 Thich Nhat Hanh, *Old Path White Clouds, Walking in the footsteps of the Buddha*, p.224.



*'On our path, we no longer distinguish between castes. You are a human being like the rest of us. We are not afraid we will be polluted. Only greed, hatred, and delusion can pollute us. A person as pleasant as yourself brings us nothing but happiness.'*<sup>272</sup>

Sunita was later invited by the Buddha to join the Sangha.

In a separate occasion, the Buddha said:

*'It is wrong to divide people into castes and create division and prejudice among them. This has become very clear to me during my meditation.'*<sup>273</sup>

*'Majesty, in the Way of Liberation, there is no caste. To the eyes of an enlightened person, all people are equal. Every person's blood is red. Every person's tears are salty. We are all human beings. We must find a way for all people to be able to realize their full dignity and potential.'*<sup>274</sup>

### **Happiness and Constitutional references to the Pursuit of Happiness**

Historically, the concept of happiness echoes Antisthenes' philosophy of the ideal life. Spinoza stated, *'Happiness is a virtue, not its reward'*.

John Stuart Mill held that, to concentrate on individual happiness would be a disastrous public policy and that the measure of happiness should not be that of the individual but of the total community. Similarly, Bentham held to the Aristotelian concept of *Eudaimonia*. *Eudaimonia* is unlike happiness *per se*, which is individual and subjective. Rather, it refers to an objective

<sup>272</sup> Thich Nhat Hanh, *Old Path White Clouds, Walking in the footsteps of the Buddha*, p.279.

<sup>273</sup> Thich Nhat Hanh, *Old Path White Clouds, Walking in the footsteps of the Buddha*, p. 31.

<sup>274</sup> Thich Nhat Hanh, *Old Path White Clouds, Walking in the footsteps of the Buddha*, p. 284.



standard of what it means to live a human life well. This is well reflected in Bentham's utilitarian view, '*The greatest happiness of the greatest number*'. Similarly, the Buddha said:

*'In order that it may continue to be for the good and happiness of the great multitudes.'*<sup>275</sup>

From a constitutional perspective, Dr. Nima Dorji, a senior lecturer at the Jigme Singye Wangchuck School of Law in Thimphu, Bhutan in his Article titled 'Constitutional Value of Happiness – a Comparative Perspective' classified happiness as:

*Happiness Has No Meaning or Value (rhetoric), Happiness as Synonym of Property, Happiness and Presumption of Liberty or Individualized Natural Rights, Happiness and Presumption of Common Good, and the Gross National Happiness of Bhutan.*

*'The scholars and historians have found that the founders of the western constitutions, particularly the founders of the USA intended happiness as the core of the constitutions and governance.'*<sup>276</sup>

Centuries before the Western coinage of the phrase 'the pursuit of happiness', the Buddha had said:

*'May all humans be happy ('Sarve Bhavantu Sukhinah').*

*'Every living being deserves to enjoy a sense of security and well-being. We should protect life and bring happiness to others.'*<sup>277</sup>

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275 F.Max Muller (ed.), The Sacred Books of the East, Buddhist-Suttas, Vol.11, p.60.

276 DR. NIMA DORJI, BHUTAN LAW REVIEW VOLUME XIII, BHUTAN NATIONAL INSTITUTE THIMPHU, BHUTAN, P. 69 - 98.

277 Thich Nhat Hanh, Old Path White Clouds, Walking in the footsteps of the Buddha, p. 335.



While not similar wordings, it is clear that the Buddha's intention was philosophically aligned to this Western thought of the pursuit of happiness.

An insightful editorial published in The New York Times on 6<sup>th</sup> October 2005 wrote:

*'Does the United States strike you as a happy country? July 1776, when Thomas Jefferson claimed the pursuit of happiness as a basic human right, might have been the last time that happiness was officially proposed as a national objective. But in Bhutan - as reported in the Science Times on Tuesday - the question of national happiness is still up for discussion, thanks to a monarch who insisted, nearly a generation ago, that gross national happiness is more important than gross national product.'*

The phrase '*Gross National Happiness*' was first coined by the Fourth King of Bhutan, King Jigme Singye Wangchuck in 1979 when he declared that *Gross National Happiness* is more important than the *Gross Domestic Product*. Bhutan's *Gross National Happiness* has been elaborated into four pillars. The four pillars of GNH philosophy are:

- 1) Sustainable development;
- 2) Conservation of the environment;
- 3) Preservation and promotion of culture; and
- 4) Good governance.

These four pillars align to the meaning of development (*bhāvanā* in Pali) as defined in Theravada Buddhism.



- 1) Physical development (*Kayā-bhāvanā*): the development of bodily aspect of life such as the domains of bodily health, living standards and natural environment.
- 2) Social development (*Sīla-bhāvanā*): the development of a peaceful society in the domains of community vitality and cultural diversity.
- 3) Mental development (*Citta-bhāvanā*): the development for psychological well-being.
- 4) Intellectual development (*Paññā-bhāvanā*): the development of wisdom including education and time used for spiritual well-being.

Noting this, Yuval Noah Harari wrote:

*‘Buddhism shares the basic insight of the biological approach to happiness, namely that happiness results from processing occurring within one’s body, and not from events in the outside world. However, starting from the same insight, Buddhism reaches very different conclusions.’<sup>278</sup>*

*‘This Buddhist view of happiness has a lot in common with the biochemical view. Both agree that pleasant sensations disappear as fast as their arise, and that as long as people crave pleasant sensations without actually experiencing them, they remain dissatisfied. However, this problem has two very different solutions. The biochemical solution is to develop products and treatments that will provide humans with an unending stream of pleasant sensations, so we will never be without them. The Buddha’s suggestion was to reduce our craving for pleasant sensations, and not allow them to control*

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<sup>278</sup> Yuval Noah Harari, *Sapiens: A brief History of Human Kind*, p.394.



*our lives. According to Buddha, we can train our minds to observe carefully how all sensations constantly arise and pass. When the mind learns to see our sensations for what they are – ephemeral and meaningless vibrations – we lose interest in pursuing them. For what is the point of running after something that disappears as fast as it arises?’<sup>279</sup>*

Buddhism holds that to over-emphasise material well-being over other concerns leaves one vulnerable to the negative influences of sensual pleasure (*Kâmasukhallika*). Likewise, to give too much importance to mental pursuits and asceticism can lead to extreme form of self-mortification (*attakilamatha*).

Buddhism teaches us to avoid the two extremes and follow a middle path (*majjhimapatpada*) for balanced development.

### **Constitutional Duties and Obligations**

There is a general consensus among Western philosophers and jurists that rights are accompanied by duties as an element of a ‘social contract’. According to Rousseau, a social contract occurs when individuals part with certain of their liberties and rights in order to create the common authority of the state.<sup>280</sup> John Locke noted that even in the state of nature, there is freedom and reciprocity.<sup>281</sup> More than a century later in the early 1900’s, Edward Jenks, an English jurist and noted writer on law with its place in history, held that there were universal, general and particular duties binding on some or all members of a community.<sup>282</sup>

John Austin, the noted English legal theorist who influenced both British and American law with his analytical approach

279 Yuval Noah Harari, *Homo Deus: A brief History of Tomorrow*, p.42.

280 Rousseau, *Social Contract*, pp.129-130.

281 John Locke on “Perfect Freedom” in the state of Nature, *A Second Treatise of Government*; 1689.

282 Edward Jenks, *The State and the Nation*.



to jurisprudence and his legal theory of positivism, spoke of utilitarian duties, relative and absolute duties and civil and legal obligation ('*vinculum juris*'). Sir William David Ross' list of *prima facie* duties, emanated from his pluralist, deontological form of ethics. It included fidelity, reparation, gratitude, non-injury beneficence, self-improvement and justice.

Many of the iterated Western duties are well aligned with the duties and responsibilities espoused in Buddhism and in secular Buddhist society. They often included the payment of taxes and respect for law and order. In some instances, they required citizens to render assistance in times of emergency and to otherwise support the effective functioning of the state. Some also required that citizens foster tolerance and mutual respect transcending religious, linguistic, regional or sectional diversities.

The Buddha said:

*'One who is an observant of moral vows, blessed with vision, virtuous, truthful and fulfils his own duties is held dear by the masses.'*<sup>283</sup>

*'There is the tendency for people to disrespect the rights of others, to exaggerate their own importance at the expense of others, to set bad examples of behavior and, being unjust in the speech, to deceive, slander and abuse others.'*<sup>284</sup>

According to Kancha Ilaiah:

*'The duties the sangha laid down both for institutions and individual within it were in substance the reasoning of Buddha himself, who at different stages of the sangha's*

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283 Silananda Brahmachari, *The Eternal Message Of Lord Buddha*, p.69.

284 Bukkyo Dendo Kyokai, *The teachings of Buddha*, p.192.



*development formulated almost every major duty it advocated. These can be divided into three categories: i) political duties, ii) economic duties and iii) social duties.*

*'Politically the sangha had to follow the principle of democracy and render justice to every individual involved in any conflict. Buddha said, "so long as the brethren meet together in full and frequent assemblies; meet together in concord, and rise in concord and carry out in concord the duties of order... so long may the brethren be expected, not to decline, but to prosper." Even more significantly Buddha prescribed an elaborate political etiquette to the bhikkhus. Every member was obliged to bring to the sangha's notice any violation of law by any member. Any quarrel, strife, contention, difference of opinion, contradiction, opposition, instance of cantankerousness, in fact any issue which involved legal questions needed to be debated.'*<sup>285</sup>

*'To avoid such misappropriation of sangha property a law was passed to the effect that "sangha property is not apportionable and is not to be divided either by the sangha or by the gana or by individuals". Then it was made the duty of every citizen to protect sangha property and see that it was not divided among members for their personal possession.*

*'Though we do not have much information as to what social duties Buddha sought to impose on the state and general society we have an elaborate discussion on the social rules he prescribed to the sangha.'*<sup>286</sup>

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285 Kancha Illaih, God as Political Philosopher, p.143.

286 Kancha Illaih, God as Political Philosopher, p.145.



## Secular social duties

According to Dr. Wamoruwe Piyaratna:

*'The Sigalovadasutta describes the social status of a person and responsibilities of that person towards the society. It describes the status given to each section of society and their responsibilities, in the following categories: parents and children, teachers and students, husbands and wives, friends, employees, and devotees and brahmans. The responsibilities of each group are given in the Sutta. These responsibilities are mentioned paccupatthana (to help or assist) and anukampatti (sympathy)'*<sup>287</sup>

As the Buddha said:

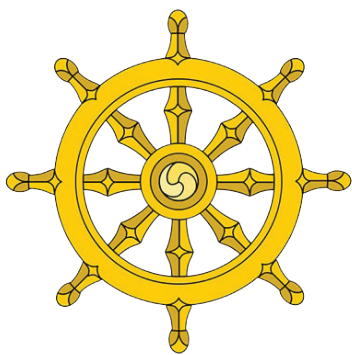
*'Let no one forget his own duty for the sake of another's, however great; let a man, after he has discerned his own duty, be always attentive to his duty.'*<sup>288</sup>

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287 Dr. Wamoruwe Piyaratna, Sigalovadasutta: How to Strike a Perfect Balance In Society, p.8.

288 F. Max Muller, Sacred Books of the East, Wisdom of the Buddha, The Unabridged Dhammapada, p.20.





## CHAPTER 16

### Government and Just Society

#### Historical Governmental Structures East and West

In the 5<sup>th</sup> century B.C., Greek scholars began to classify governments by their structure. Herodotus classified them as monarchies (government by one), aristocracies (government by the few) or democracies (government by the many). A century later, Plato revised this typology by adding that each of these forms had a degenerated version, namely autocracy, oligarchy and mob rule respectively. Aristotle provided a revised version of Plato's interpretation, classifying governments into the five categories of Monarchy, aristocracy, tyranny, oligarchy and democracy.

As we have seen, there were monarchies and republics during the life and times of the Buddha as well. These included the Kingdoms of Magadha, Kosala, Avanti and Vamsa and, the Republics of Lucchavis and Vajji.

In terms of monastic governmental structure, it was perhaps most similar to Western federalism. As the Buddhist Sangha did not have a central authority to administer, direct, and control the majority of monks, each group performed Sangha affairs according to the rules provided by the Vinaya without depending on any particular central person or agency.

#### The Concept and Application of a Just Society

Good governance and the legal means to ensure its continuation, is the principal gift a state can bestow upon its people. The Buddhist concept of a 'just society' is one that promotes the welfare of all so that they may pursue the common good as James Blumenthal wrote:



*'A Buddhist application of equanimity to issues of the creation of a just society would seem to begin on religious grounds, but in social-political application would not want to neglect the more secular needs and aspirations of both non-religious and religious members of society or, the particular aspirations of those of other faiths.*

*'Any Buddhist vision for a just society must both be guided by compassion in its formation and nurture its further cultivation in its application. Thus, perhaps one modification of Rawls' theory for Buddhists might be that those free and rational beings be explicitly required to consider compassionately the potential suffering in various scenarios in working from behind the veil of ignorance so as to explicitly consider ways that social structures do or do not contribute to such suffering.'*<sup>289</sup>

K. N. Jayatilleka wrote:

*'A wise person does not think of hindering one's self-development, or of others' or of both oneself and others' self-development but he would always think of the welfare of oneself, of others, of both oneself and others and in fact of the welfare of the whole world (sabba-loka-hitameva). Thus any act which obstructs the quest for freedom, happiness, perfection, knowledge, security, peace, etc., is a wrong act and one which promotes or helps the quest for freedom, etc., is a right act.'*<sup>290</sup>

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289 Blumenthal, James, *Toward A Buddhist Theory of Justice*, Journal of Global Buddhism, Number 10, pp. 331-333.

290 K. N. Jayatilleke, *The Origins of Buddhism and the Relevance of Buddhist Epistemology for Law*, pp. 51 & 52.



The Buddha believed that a just government could be achieved by having moral rulers who cared for the welfare of the people rather than for themselves. Thich Nhat Hanh, summarized the Buddha's discussion with King Bimbisara on this matter:

*'The Buddha encouraged the king to reform the system of justice and economics in the country. He said corporal punishment, torture, imprisonment, and execution were not effective means for stopping crime. Crime and violence were the natural result of hunger and poverty. The best way to assist the people and provide for their security was to concentrate on building a healthy economy. It was essential to provide food, seeds, and fertilizer to poor farmers until they could become self-sufficient and productive. Loans should be provided to small merchants, retirement funds should be set up for those no longer able to work, and the poor should be exempted from taxes. All manner of coercion and oppression against manual labourers must cease. People should be free to select their own jobs. Ample opportunities for training should be made available to help people master the trades they chose. The Buddha said that a correct economic policy should be based on voluntary participation.'*<sup>291</sup>

As we have noted prior, from a Buddhist perspective, a secular leader (*Dhammaraja*), who had the 'ten royal virtues' (*dasarajadhamma*) was ideal. When discussing the application of the Buddhist path to secular politics and governance, the Buddha went further. According to Thich Nhat Hanh:

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<sup>291</sup> Thich Nhat Hanh, *Old Path White Clouds, Walking in the footsteps of the Buddha*, pp.522 & 523.



*'The Buddha used this occasion to speak about applying the Way to political life. He said the Way could illuminate the realm of politics, assisting those involved in governing the kingdom to bring about social equality and justice. He said, if you practice the Way, you will increase your understanding and compassion and better serve the people. You will find ways to bring about peace and happiness without depending on violence at all. You do not need to kill, torture, or imprison people, or confiscate property. This is not an impossible ideal, but something which can be actually realized.*

*'When a politician possesses enough understanding and love, he sees the truth about poverty, misery, and oppression. Such a person can find the means to reform the government in order to reduce the gap between rich and poor and cease the use of force against others.'*<sup>292</sup>

*'If you want the people to-be united, you must first obtain their faith and trust. If political leaders practice the five precepts, the people's faith and trust will grow. With that faith and trust, there is nothing the country can't accomplish. Peace, happiness, and social equality will be assured. Create a life based on awareness. The dogmas of the past do not build faith and trust nor do they encourage equality among the people. Let the Way of Awakening offers a new path and a new faith.'*<sup>293</sup>

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292 Thich Nhat Hanh, *Old Path White Clouds, Walking in the footsteps of the Buddha*, pp. 246-247.

293 Thich Nhat Hanh, *Old Path White Clouds, Walking in the footsteps of the Buddha*, p.248.



Guru Padmasambhava, in his time, also decreed:

*Be compassionate to those who are disabled and powerless;*

*Protect and provide refuge to the disadvantaged;*

*And remain indifferent to all the hollow talks and criticisms.*<sup>294</sup>

### **The Protection of Public Welfare**

According to Benjamin Disraeli, the former Prime Minister of the United Kingdom, ‘*power has only one duty - to secure the social welfare of the People.*’<sup>295</sup> Negligence of that duty can cause a breakdown of law and order and rupture the social fabric.

The ethical principles of the Ten Virtues (*dasa-kusala-kammapatha-dhamma*) includes the responsibilities of a state as K. N. Jayatilleke stated:

*‘... The state to work for the good of the people with selflessness, love and understanding imparting impartial justice and promoting both material and spiritual welfare on the principle of the equality of man.*

*‘The essence of the duties and functions of such a state are summed up in the form of four requirements. First, the necessity to provide “righteous care, ward and protection to all citizens, including the people of all professional classes, religious teachers and the army”. This care and protection are to be extended to “birds and beasts” (miga-pakkisu) as well. Here “care” (rakkha) is explained as treating all subjects “with forgiveness, tolerance, friendliness and*

294 Drodül Sangye Lingpa (1340-1396), Kathang Sertreng or Golden Garland Chronicles, p.698.

295 Pamela K. Gilbert, *The Citizen's Body; Desire, Health, And the Social in Victorian England*, p.118.



*kindness” on the principle that the state which “cares for its subjects would safeguard its own interests”; “word” (avarana) is defined as the insurance of property such as housing, clothing, etc., and “protection” (gutti) as protection against loss and other calamities (upaddava). It comes to mean not only the safeguarding of persons, property and human rights but the institution of welfare services such as the care of the aged, the sick, etc. ’<sup>296</sup>*

Within the broader framework of government responsibility, the Buddha spoke of poverty in the following manner:

*‘The sixth realization is the awareness that poverty creates hatred and anger, which in turn create a vicious cycle of negative thoughts and actions. Followers of the Way, when practicing generosity, should consider everyone, friends and enemies alike, as equal, not condemning anyone’s past wrongdoings or hating those who are presently causing harm. ’<sup>297</sup>*

The *Suttanta Pilaka*, the second of the three divisions of the Tripitaka, provides an example of the process of social degeneration as a result of failing to abide by the Buddha’s guidance:

*‘Thus, brethren, from goods not being bestowed on the destitute, poverty grew rife; from poverty growing rife, stealing increased, from the spread of stealing, violence grew apace, from the growth of violence, the destruction of life became common, from the frequency of murder, both span of life in those beings and their comeliness also wasted away. ’<sup>298</sup>*

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296 K. N. Jayatilleke, *Dhamma Man and Law*, p.96.

297 Thich Nhat Hanh, *Old Path White Clouds, Walking in the footsteps of the Buddha*, p.430.

298 Khongchinda & Sambuddhassa, *The Buddha’s Socio Political Ideas*, p.163.



Guru Padmasambhava decreed, ‘Grant alms to those who are poor and poverty-ridden’.<sup>299</sup>

Importantly and in keeping with the view of the Ten Virtues, social programmes and the provision of education are embedded into the notion of Buddhist governance. As captured by Laksiri Jayasuriya:

*‘The Buddhist philosopher Nagarjuna (circa 150 - 250 CE) in his advice to the Satavahana dynasty enjoins the monarch to actively support the work of doctors, set up hostels and rest houses, eliminate high taxes, care for victims of natural disasters and keep profits low (Mishra 2005).’<sup>300</sup>*

Moreover, as the Buddha stated in the Vinaya, ‘he who serves the sick serves me.’ And, in a similar frame, King Asoka’s fifth Edict states:

*‘Bestow gift on all poor people;*

*‘Treat weakened patients with Clothing, food and medicines,*

*‘With mercy save the life of*

*‘Animals about to die and*

*‘Guilty men deserving execution.’*

With regard to education, Aristotle said that, ‘Education is an ornament in prosperity and a refuge in adversity’. Guru Padmasambhava decreed:

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299 Drodül Sangye Lingpa (1340-1396), Kathang Sertreng or Golden Garland Chronicles, p.698.

300 Laksiri Jayasuriya, Buddhism, Politics, and Statecraft, p.18.



*Teach every layman a letter and astrology to write, read,  
learn and teach;*

*Educate every child to learn grammar, writing and reading  
and acquire knowledge.<sup>301</sup>*

### **The Role of the State in Guiding the Economy**

Any economic development contributes to progress and the well-being of a nation. As the Buddha articulated:

*'The happiness of the average man as depending on his economic security (atthi-sukkhā), and the enjoyment of ones' wealth (bhoga-sukkhā), freedom debt (anana-sukhā) and the blameless moral and spiritual life (anavajja-sukhā) Here the happiness of economic security is said to derive partly from the feeling that his wealth was earned by just means and by the sweat of his brow. While the happiness of enjoying one's wealth is said to be partly that of doing good to others with it. We see here that welfare is conceived in terms of both material and spiritual welfare, an idea which is of importance in connection with the Buddhist concept of human rights.<sup>302</sup>*

Even economic security is necessary for the survival and dignity of people. A fundamental Buddhist principle encourages private economic interests and public interests to be balanced. As an element of good governance, a government must be vigilant in the oversight of private sector's economic activities. Free and fair competition can support economic growth and enhance public confidence in the government. Monopolies restrict free economic competition and can result in unfair pricing

301 Drodül Sangye Lingpa (1340-1396), Kathang Sertreng or Golden Garland Chronicles, p, 695-696.  
302 K. N. Jayatilleke, Dhamma Man and Law, p. 50.



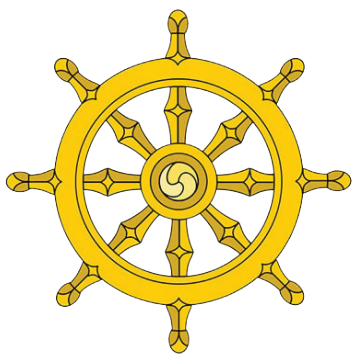
and restrictive trade practices to the detriment of the populace and ultimately, the State. According to Prof. Oliver Abeynayake:

*'The economic policy of the state should be based on the development of the private enterprise. The aim of this policy is the poverty alleviation. Buddhism declares that the origin of all social vices is poverty. It can be eliminated by creating a society where job opportunities are available for those who are at the employable age (sakammapasuta). Therefore, the state should be vigilant to wipe out the problem of unemployment by developing the spheres of agriculture, trade and government service. It is the duty of the state to take all measures to generate wealth among the poor. The possibility for a rich few to accumulate wealth does not exist in a state where Buddhist economic policies are practised.'*<sup>303</sup>

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303 Prof. Oliver Abeynayake, PhD, *The Buddhist Principles of Good Governance*, p.3& 4.

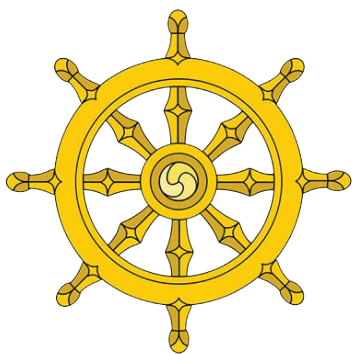






*"Thou giver of immortal gifts  
Give us the power of renunciation  
And claim from us our pride.  
In the splendour of a new sunrise of wisdom  
Let the blind gain their sight  
And let life come to the souls that are dead  
O Serene, O Free,  
In thine immeasurable mercy and goodness  
Wipe away all dark stains from the heart of this earth"*

*-Rabindranath Tagore's invocation to the Buddha*



## CONCLUSION

Humanity continues to harness science, innovation and technology to overcome the challenges we face as a fast-growing society and population, including hunger, disease and other forms of insecurity. Yet, each step we take to enable further economic growth, is causally and thus, inextricably linked to new and greater challenges. We refer to the oft unspoken contradiction between human desires and spirituality as well as environmental need for sustainable balance and equilibrium.

Prevailing growth models whether private or state-centric, that promote unbridled consumption and development as the lynch pins of success, can distance and desensitize us from our fundamental moral, humane and environmental ethos. The result throughout history has often been greater inequality, injustice, environmental degradation and ultimately global imbalance.

The philosophical purpose of law at its root, is not just to promote justice but to prevent injustice. To watch over our advances without losing the sight of where we come from. Law, at its best, can ensure we continue to pursue and uphold a safe and peaceful society where individuals' rights are respected and the fundamental principles underlying our societies and cultures are girded. Well-intentioned, well-crafted and well-implemented laws can safeguard our best human intentions and protect us from our lesser human characteristics.

Throughout time, sages, saints and philosophers have enshrined human values including honesty, integrity, generosity, freedom, equality, liberty and happiness in their words and actions. Law, in the best of case has been the means by which these virtues have been cemented into our lives.



In today's world of proliferating challenges and crises, the underlying philosophical premises for their resolution remain the same. In both Western and Buddhist influenced societies, the universal principles of equality, liberty, fraternity, and human rights remain our guardians for the preservation of peace, order and harmony. The Buddhist laws enshrine perpetuating the good and reforming the perpetrators.

The Buddha's singular focus on improving human existence through his revelations and teachings provided simple, but powerful tenets, to guide the individual to right-minded living. These same teachings also provided a basis for promoting a consistent, impartial, value driven governance model for civil society and nation-states alike. The Buddha said:

*'A generous heart, kind speech and a life of service and compassion are the things that renew humanity.'*<sup>304</sup>

The Buddha offered the following guidance to his followers to sustain Buddhist philosophy and Buddhist institutions. Much of this guidance can be extrapolated to a broader contemporary context at the local, national and global level to promote a more just society today irrespective of its fundamental philosophical foundation. The Buddha said:

*'Bhikkhus and Bhikkhunis, the tathagata will teach you the Seven Methods to prevent the teachings and sangha from falling into decline. Listen!*

*'First, meet frequently in groups to study and discuss the Dharma. Second, always gather and disperse in a spirit of cooperation and unity. Third, respect and follow the precepts which had been enacted. Fourth, respect and*

<sup>304</sup> [PassItOn.com](http://PassItOn.com). The Foundation for a Better Life.



*follow the guidance of elders in the sangha who possess virtue and experience. Fifth, live a pure and simple life, unswayed by desire and greed. Sixth, cherish a calm and peaceful life. Seventh, dwell in mindfulness in order to realize peace, joy, and liberation and to become a refuge and support to friends along the path.*

*'Bhikkhus and Bhikkhunis, if you live by these seven practices, the Dharma will flourish and the sangha cannot fall into decline. Nothing outside will be able to disturb the sangha.*

*'Only division and discord from within can cause the sangha to break. Bhikkhus and Bhikkhunis, when an animal dies in the mountain forest, no animals dare eat its flesh. Only the worms in its own body devour it from within. Protect the Dharma by living according to these seven practices. Never become as worms which devours a lion's corpse from within.'<sup>305</sup>*

As this tome has begun to demonstrate, Buddhism is not only a philosophy and religion. It also includes laws and codes which are culturally and historically transcendent in nature. They are by their essential nature progressive and modern. They are not constrained by age, geography, egoism, race, ethnicity or culture.

The Buddha's world view fostered social justice, compassion, peace and freedom. It falls on all of us to discern the value of the Buddha's approach in our own societies.

While our hopes here expressed are expansive, we recognize that our research is yet a modest start for the work which needs to

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<sup>305</sup> Thich Nhat Hanh, *Old Path White Clouds, Walking in the footsteps of the Buddha*, pp. 541 & 542.



be done. We are hopeful, however, that our efforts will inspire others to further refine the world's understanding of the historical and potential future role of Buddhism in supporting the further evolution of globally relevant philosophies, laws and codes of right conduct.

We also hope this book will trigger the exploration of new avenues in legal education. The time has come to rely on divergent experiences and find how they converge at the most fundamental level of principle, each with an eye to improve the human condition and our passage on this earth.

The Buddha, stated:

*'I never see what has been done; I only see what remains to be done.'*



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