

# JBER

Journal of Buddhist Education and Research

ISSN 2586-9434

Vol. 1 No. 2

(July-December 2015)



**MCUKK Language Institute**

Mahachulalongkomrajavidyalaya University KhonKaen Campus

## Identity of Buddhist Jurisprudence

**PhramahaThanarat Ratthamedho**

Mahachulalongkornrajavidyalaya University Surin Campus

### Abstract

This paper aimed to study an issue of the knowledge of the history, philosophy, and nature of Buddhist law as depicted in early Buddhist texts which were related to the *Patimokkha* in *Vinaya Pitaka*. The *Vinaya* Laws are similar in certain respects to other ecclesiastical law, but it differs fundamentally in its structure, jurisprudence and application from the latter. The laws of *Vinaya* are more distinct and better codified than any other the contemporary law-codes. The Buddhist *Vinaya* is based on celibacy, moral precepts and doctrinal ideals. The Buddha not only codified the ascetic principles but also improved them in changing its aim, scope and nature. So, the identity of Buddhist jurisprudence can be divided into eight vital characteristics, which are as follows:- 1) *Sammuti* (convention), 2) contribution of *Brahamacariya* (Celibacy), 3) the influence of the institution of *Yatis* (a pious ascetic), 4) *Uposatha* in Order Literature, 5) public opinion, 6) Suggestion of *Bhikkhu*, 7) *Atikkamo* (transgression) and *Itihasa* (tradition). It would be worthy to note here that the core of the Buddhist jurisprudence is *Parivasa* (Probation of Offender) which is the Buddhist solution to reform and rehabilitate the criminal leading him to the attainment of final blessing i.e. *Nibbana*.

**Keywords :** Early Buddhism, Vinaya, Patimokkha

### Introduction

Human being is a social animal and likes to stay together in a community. The fundamental nature of Human being is the most precious existences, but it is weakened by nature, and is prone to error to commit the crime because of the unwholesome roots which arise from immoral consciousness. When a criminal offence has been arisen, the society of human being needs to have regulation for controlling and preserving harmony which nothing other than jurisprudence. (Petegama Gnanarama, 1996 : 96)

Jurisprudence is the science of Law and the method adopted by society for controlling and punishing the criminal offender in the society. For the first time in human historical event, the nothing was conceived by none other than the Buddha. The *Vinaya Pitaka* is the earliest Buddhist canon that is concerned with the Buddhist jurisprudence. Our main focus will be on the identity of jurisprudence in early Buddhist tradition. It will be very helpful and beneficial for us to know and prevent the human society from the criminal problem.

## What is Jurisprudence?

The word 'Jurisprudence' in English term is based on the Latin word 'jurisprudential': *juris* is the genitive form of *jus* means 'law', and *prudential* means 'prudence'. The word was first attested in English in 1628, at a time when the word *prudence* had now been obsolete meaning of "knowledge of or skill in a matter". The word may have come via the French origin *jurisprudence*, which was attested earlier. *Jurisprudence* already had this meaning in Ancient Rome even if at its origins the discipline was a (*periti*) in the *jus* of *mos maiorum* (traditional law), a body of oral laws and customs verbally transmitted "by father to son". In the same line of thought, according to India Vedic society, the law or *Dharma*, as followed by Hindus was interpreted by using "Manu Smṛti"- a set of poems which denied sin and the remedies. It was said to be written between 200 BC – 200 AD. In fact, it was not codes of law but norms related to social obligations and ritual requirements of the era. So, *jurisprudence* is the knowledge of things divine and human, the science of the justice and the injustice, and is constructed as the science of knowledge of law or the scientific study of law. (A.P. Mahathera Buddhadatta, 1997 : 197)

## An Approach to the Buddhist Jurisprudence

In Buddhist Monastic Discipline, there are two kinds of offences; *Loka-vajja* (Commonly Accepted Offences) and *Pannatti-vajja* (Designated Offences). The former are the offences punishable by the law of a country. They have their bearings in this present lives as well as in the lives to come. The latter on the other hand, deals with the infringement of the rules of discipline governing the community of monks. Although these offences are not of retributive effect, they are considered necessary for the training of monks. Some of the Commonly Accepted Offences are also found in the Designated Offences of the monastic rules. (Petegama Gnanarama, 1996 : 112-113)

In this connection, we trace the equivalence of the word 'Jurisprudence' in Pali term as '*Nitisattha*', (A.P. Mahathera Buddhadatta, 1997 : 293) which literally means 'the study and theory of law'. scholars of jurisprudence, or legal theorists including legal philosophers and social theorists of law, hope to obtain a deeper understanding of the nature of law, of legal system and of legal institutions', and R.C. Childers has also translated it as 'the science of statecraft, art of governing.' (Robert Caesar Childers, 1993 : 292)

On the other hand, the Buddhist jurisprudence is the knowledge of Buddhist Law. It is the fountainhead of modern jurisprudence. It is a fact that human jurisprudence takes birth from the Buddhist jurisprudence. It is very relevant to note that the Buddhist jurisprudence is based on the democratic ideals, republican thoughts, compassion, friendliness, equanimity and pragmatic realism. (Ram Nandan Singh, 2017 : 137)

**1. Punishment in Buddhist Jurisprudence:** We can define the term 'Punishment' in Pali, such as '*DandaandNiggaha*', which stand for 'atonement, blame, censure, coercion, cruelty, degradation, punishment, penalty, violence, restraint, subduing, rebuke, and reproach'. The term *Danda* in the sense of punishment and specifically in the sense of punishment for crimes committed is often found in the *Nikaya*.

**2. History of Buddhist Jurisprudence:** It dated back to the sixth century BCE. As a matter of fact, the framing of laws in the form of rules and regulations were started during the lifetime of the Buddha. It was necessitated following the formation of the Buddhist *Sangha*. The first Buddhist *Sangha* sprang into existence with sixty-one *Bhikkhus* after the *DhammacakkappavattanaSutta* at the Migadaya in Isipatana. The Buddhist Order was established by the Buddha on the bed-rock of jurisprudence and democratic ideals. The most important organ and tool of democracy is the "Voting Right" which was introduced in the Buddhist *Sangha*. It was technically known as the "*Ubbahika*" in the Buddhist Tradition. All these facts vouch for the ideals of jurisprudence in Buddhism from the beginning itself.

**3. Philosophy of Buddhist Jurisprudence:** The Philosophy behind the Buddhist jurisprudence is based on consciousness. The consciousness is the hub of every action. Gotama Buddha exhorts: "*Monks, I say that intention is the Kamma.*" The consciousness is again related to ethics. The right consciousness leads to right actions and wrong consciousness paves the way for wrong actions. The Buddha further states in the *Dhammapada* as under: "*Avoidance of all evil, gathering of merit, purifying one's own mind- this is the teaching of the Buddhas.*" Buddhist jurisprudence is also based on the *Brahmavihara*. The *Brahmavihara* is the important teachings of Buddha. It is regarded as the sublime ideas. It is four-fold, viz, *Metta* : Friendliness; *Karuna*: Compassion; *Mudita* : Happiness; and *Upekkha* : Equanimity. (Dhammapada, 2009 : 227)

### ***Patimokkha: Buddhist Disciplinary Code***

According to the *Mahavagga*, *Patimokkha* means "the beginning, the head (or entrance-*Mukha*), the foremost (*Pamukkha*) or skill qualities. It is the collection of various rules and regulations contained in the *Vinaya*, beginning with the four *Parajikas* ending with the seventy-five *Sekhiyadhammas*. These monastic rules are solemnly read twice a month in every monastery, and individual monks are invited to make confessions if they had broken any of the rules read out. *Patimokkha* may be described as the criminal code of the monks.

The rules of discipline first were laid down by the Buddha in the *Vinaya* are called *Mulapannatti*(the root of regulation). Those which were added on later are known as *Sikkhapadas* (the rule of discipline). The monastic disciplines, according to the Pali Canon, were initially formulated by the

Buddha based on the following ten reasons:- “*For the good establishment of the Sangha, for the comfort of the Sangha, for the riddance of obstinate men, for the happy abiding of well-behaved Bhikkhus, for guarding against troubles (Asava) in this present life, for guarding against trouble which may be arise in a future life, for pleasing those not yet pleased, for the increase of those who are pleased, for the establishment of the true Dhamma, and for the benefit of Vinaya.*”

The act of transgressing these rules of discipline and thereby incurring a penalty is called *Apatti* (Reaching, committing). There are 227 rules for *Bhikkhu*, which is further divided into eight categories depending on the degree of transgression committed, namely:- (1) *Parajika*: 4 rules; (2) *Sanghadisesa*: 13 rules; (3) *Aniyata*: 2 rules; (4) *Nissaggiya-pacittiya*: 30 rules; (5) *Pacittiya*: 92 rules; (6) *Patidesaniya*: 4 rules; (7) *Sekhiya*: 75 rules; and (8) *Adhikaranasamatha* : 7 rules.

Therefore, the *Patimokkha* in particular and the *Vinaya* texts in general are the fountain-head of the Buddhist jurisprudence and compatible with the present existing laws. The application of the Buddhist jurisprudence to modern world in the spheres of social, political, philosophical and religious is fruitful and desirable.

### **Types of Punishment in Buddhist Jurisprudence**

The types of punishment in early Buddhism can be divided into three main types as follows;

**1. *Niggahakamma*:** The Buddhist discipline mentions additional punitive measures to be adopted in respect of certain behaviors of the *Sangha*. They are:- (1) *Tajjaneyakamma*: Act of censure; (2) *Nissayakamma*: Act of subordination; (3) *Pabbajaniyakamma*: Act of banishment; (4) *Patisaraniyakamma*: Act of reconciliation; (5) *Ukkhepaniyakamma*: Act of suspension; (6) *Pakasaniyakamma*: Act of proclamation of excommunication; and (7) *Brahmadanda*: Act of suspending communication.

**2. *Vutthanavidhi*: the method for getting out of *Sanghadisesa* offense. They are:** (1) *Parivasa*: Probation; (2) *Manatta*: Penance; (3) *Abbhana*: Calling back, Rehabilitation; and (4) *Patikassana*: The act of going back to the beginning of the *Apatti* (Offences).

**3. *Miscellaneous method of Buddhist Punishments*:** - (1) *Pattanikkujanakamma*: Overturning the Bowl; (2) *Nasanakamma*: Revocation of the privilege of *Samanera* (Novice); (3) *Dandakamma*: Punishment imposed on *Samanera* (Novice); and (4) *Panama*: Dismissal.

### **Specific Characteristics of Buddhist Jurisprudence**

The Buddhist Law is based on the Noble Eightfold Path (the Middle Path) and how every Buddhists, is welcomed to practice this Path in order to free themselves from the problem of suffering and the cycle of rebirth, i.e.

*Nibbana*. (Nandasena Ratnapala, 1993 : 37) Thus, the nature of Buddhist Law can be divided into eight vital characteristics. The details of which are as follow:-

**1. Sammuti (Convention);** (Skt.:*Sammati*). The grip of convention or custom upon the law is always firm. The laws based directly on custom, known as customary laws, and they are supposed to grow slowly out of public opinion, and are considered as valid as laws promulgated by legislators or formulated by professionally trained judges, their sanctification comes from long usages. The Buddha did not believe in the *Vedas* and *Smritis* of Hindu Tradition. So, the Custom or *Acara* was all the most important in the formation of the *Vinaya* laws, and that is one of the reasons why public censure and recommendations had so much effect on the origin and evolution of these laws.

**2. Contribution of Brahmachariya** (Celibacy); (Skt.:*Brahmacarya*). Out of the innumerable rules, which are drawn upon the code for the *Brahmachariya*, only a few important ones will be discussed here. According to the early years of the Order, a *Bhikkhu* was not allowed to wear any footwear following the custom of the pupil, but later on the use was sanctioned under some bindings.

**3. The influence of the institution of Yatis** (a pious ascetic): The regulations laid down by the Buddha, bearing upon the contemporaneous monastic practices are equally important, and to be met with in every nook and corner of the *Vinaya*. The *Mahavagga* tells us that the Buddha converted 1,000 *Jatilas* and 250 followers of Sanjaya to be the Buddhist. So, the second and third of the four *Nissayas* are chiefly based on customs observed by the *Paribbajakas*.

**4. Uposathain Older Literature:** The ascetics, as the *Mahavagga* reports, used to hold assemblies on the fourteen and fifteenth of each lunar month. So, on the suggestion of king Bimbisara, the Buddha also laid down the rule that the *Uposatha* meeting must be held once a month. Henceforth, the *Uposathameetings* became the main source of vitality on the Buddhist *Sangha*. It is to be born in mind that *Uposathameetings* were quite different in their nature and structure from the meetings of the *Titthiyas* or ascetics.

**5. Public Opinion:** The wagging together of the public is another source of the majority of the *Vinaya*-rules. In all countries and at all times, the public tongue is always an efficacious reformer; so was it in the time of the Buddha. The *Sangha* being solely depends on the people for ration and clothing. The Buddha and his disciples were always ready to consider reasonable complaints and suggestions of the public. The examples of public suggestions are, King Bimbisara, who suggested the *Uposatha* meeting; *Vassavasa* had been criticized by the people at Rajagha; Visakha Migaramata suggested the *Bhikkhuni* from bathing in the same place with courtesans, and provided the bathing suits for them, and for the *Bhikkhus* with rainy-season-ropes; as well as the Sanction of accepting land for the sake of the *Sangha* was due to Anathapindika's offering the Jetavanamahavihara to the Buddha, and so on.

**6. Suggestion of Bhikkhu:** Many rules again are an outcome of the suggestions of the *Bhikkhus* and *Bhikkhunis*. For example, it was through the

suggestion of Ananda that admission to the *Sangha* was granted to women. Because of Gotami's request to the Buddha to allow bathing for women that most of the rules about bathing in the *Bhikkhuni Pacittiya* came to be made, etc.

**7. Atikkamo: Transgression** (Skt.:*Atikram*). The *Vinaya* laws came to be declared on account of the lapses on the part of the inmates of *Sangha*. The long list of the *Patimokkha* for the *Bhikkhus* and *Bhikkhunis* are nothing but a record of the various occasions of lapses and under various circumstances. All such rules are negative in character. One of the reasons for this characteristic is that rules were not declared by the Buddha by predicament of the offences but after the actual result of the misdeeds. The most important rule like observing strict celibacy in the *Sangha* was declared, after Sudinnahad violated chastity through ignorance. The rest of the three *Parajikas* and the thirteen *Sanghadisesa* are all of the same nature. There are indeed very few laws, which came into being for their own sake, without any outward suggestion or lapse. The eight *Garudhammas* for the women can be included in the same way.

**8. Itihasa: Tradition.** The *Pacittiya* No.37,( Durga N. Bhagvat, 1939 : 48-62) forbade the *Bhikkhu* taking meals at odd hours since they used to dine anytime. This habit was due to the custom because of the carelessness on the part of the *Bhikkhus*. And the Buddha has also to make rules in compliance with the requirement of the state. Soldiers and convicts were not allowed to enter the *Sangha*. Elephants being of great use to the state, the monks were forbidden to eat their flesh; the violation of the rule caused a *Dukkata*.

Having studied the theory of Punishment in the Buddhist jurisprudence as found in the Buddhist Canonical literature with special reference to the jurisprudence in early Buddhism, It can be stated that Buddhist law as evident in the early literature also accepted the weakness of human being. Buddhism believes that human beings do lack adequate understanding of right and wrong. Yet at the same time, Buddhism believes in rehabilitation of convicts, whom the community is supposed to welcome back for a fresh start following their sentence.

Thus, malefactors must feel remorse, confess sorrow, repair the damage, and reform themselves; the offended on the other hand are obligated to forgive crimes and help sinner improve their destiny.( David Levison, 1947 : 135)

## Conclusion

Buddhism accepts that human by nature is full of weakness and is prone to make mistake, as evidences in the numerous rules of the *Patimokkha*. Being aware of this, the main objectives of *Patimokkha* are designed for controlling and punishing those shameless people as well as intended for the living comfort and welfare of well-behaved monk and so on.

Thus, the identity of Buddhist law depended on two important foundations, namely:

(1). The Buddhist philosophy of the Noble Eightfold Path.

(2). The Sociological needs and demands necessitated by the differences between the community of monks and laypersons and such other socio-cultural demands made from time to time. The moral aspect of the law rested on the first foundation while the legal and other socio-cultural aspects could be traced to the sociological needs and demands.

So, after having discussed the identity of the Buddhist jurisprudence as mentioned in early Buddhist scriptures, we can find that there are eight vital identities of the Buddhist jurisprudence are; 1) convention, 2) contribution to celibacy, 3) the influence of the institution of a pious ascetic, 4) *Uposatha* in older literature, 5) public opinion, 6) suggestion of monks, 7) transgression and 8) tradition.

It can be pertinence to say that the Buddhist stand is intended to prevent people from committing these crimes through training and educating of mankind to have the *Sammaditthi* (right view) with the help of social institutions. It would be worthy to note here that the Buddhist perspective and remedy to crime are not of recourse to the retributive or retaliatory courses but the bases on *Metta* (loving kindness) and *Karuna* (compassion). The heart of the Buddhist jurisprudence is *Parivasa* (Probation of Offender) which is the Buddhist solution to reform and rehabilitate the criminal leading him to the attainment of final blessing i.e. *Nibbana* which is of a higher tranquility, as the Buddha has said aptly in the *Dhammapada* that: “*There is no happiness higher than tranquility*”.

## References

- A.P.Mahathera Buddhadatta.(1997).*English Pali Dictionary*. Delhi: Motilal Banar sidass Publishers Private Limited.
- David Levison. (1947). *Encyclopaedia of Crime and Punishment*. USA: Sage Publication.
- Dhammapada. (2009). *The Dhamma pada: A translator's Guide*. New Delhi: Mushiram Manoharlal Publishers.
- Durga N. Bhagvat (1939). *Early Buddhist Jurisprudence Theravada Vinaya-Laws*. Delhi: Cosmo Publications..
- Nandasena Ratnapala (1993). *Crime and Punishment in the Buddhist Tradition*. New Delhi: Mattal Publications.
- Petegama Gnanarama. (1996). *An Approach to Buddhist Social Philosophy*. Singapore: Ti-Sarana Buddhist Association.
- Ram Nandan Singh (2007). *Buddhism: From Genesis to Decline*. Delhi: New Bharatiya Book Corporation.
- Robert Caesar Childers (1993). *Dictionary of the Pali Languages*. New Delhi: Asian educational Services.