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# PARIVASA (PROBATION) : THE ESSENCE OF BUDDHIST JURISPRUDENCE

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## 1. Introduction

According to the Buddhist principle, human being is most precious creative activity of nature. However at the same time, the nature of human being is weak and is prone to error and commits crimes because of three fundamental attitudes, such as Lobha (greed), Dosa (hatred) and Moha (delusion) or Avijja (ignorance), which arise from ego-consciousness. Following this, human societies have created laws for preventing and controlling crime whenever they arise. The Buddhist tradition also accepts human weakness, as evident in the form of Patimokkha (the Buddhist criminal law). It is the collection of the various rules and regulations contained in the Vinaya, beginning with the four Parajikas and ending with the seventy-five Sekhiyadhammas. In this connection, the reformatory theory of punishment seeks to bring about a change in the attitude of offender so as to rehabilitate him to a law abiding member of the society. Thus, punishment is used as a measure to reclaim the offender and not to torture or harass him. Reformatory theory condemns all kinds of corporal punishment. It is pertinent to note here that this notion is directly concerned with the notion of the probation. The principle of probation in Buddhist traditions is present as the Vutthanavidhi (Getting up), and is expeditiously dealt with as part of Buddhist Jurisprudence.

Parivasa (Probation), therefore, highlights the essences of those features in the Buddhist jurisprudence that is valuable and relevant to modern criminology and penology.

## 2. What is Probation?

We will begin by defining the word 'Probation', the key-term of our discussion. Etymologically, probation is derived from the Latin word 'probare' which means 'to test or 'to prove' thus probation means 'I prove my worth'. Homer S. Cunnings observed that 'probation'

is a matter of discipline and treatment. If probations are carefully chosen and supervision works is performed with care and caution it can work miracles in the field of rehabilitation. The origin of probation can be traced back to the traditions of the English common law where during the middle, ages, judges wishing to spare deserving offenders from the pains of the then commonly used punishments of torture, mutilation and death used their power to grant clemency and stays of execution. The philosophy underlying probation is based on the assumption that most men who become criminals do so because of their environment and prevailing circumstances and that in those cases it is possible to change the conditions which led to a man's fall from proper standards and reclaim him as a sound normal citizen. Thus it can be said that probation is a treatment reaction to law-breaking and an attempt to mitigate the rigours of the offender rather than making him suffer incarceration in the prison institution. For the Buddhist philosophy is essentially humanistic and supremely responsible for the moral behaviour. The fundamentals of Buddhist philosophy lies in the moral concept properly laid out in the Dhamma and the Vinaya, and the scriptures enshrining the Buddha's teachings in the canonical literature. The principle of probation in Buddhist traditions is dealt with in the Vutthanavidhi (latterly the course for getting up), and was expeditiously dealt with as part of Buddhist Jurisprudence.

### 3. What is the Jurisprudence?

The word 'Jurisprudence' in English term is based on the Latin word 'jurisprudential': juris is the genitive from of jus meaning "law", and prudential meaning "prudence" The word is first attested in English in 1628, at a time when the word prudence had the now obsolete meaning of "Knowledge of or skill in a matter". The word may have come via the French origin jurisprudence, which is attested earlier. Jurisprudence already had this meaning in Ancient Rome even if at it 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 use of "Manu Smrti"- a set of poems which denied sin and the remedies. They were said to be written between 200 BC – 200 AD. In fact, these were 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 just and the unjust, and is constructed as the science of knowledge of law or the scientific study of law.

#### 4. An approach to 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 life 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 a monk. Some of the Commonly Accepted Offences are also found in the Designated Offences of the monastic rules.

In this connection, we trace the equivalence of the word 'Jurisprudence' in Pali term is 'Nitisattha', 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.'

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.

**Punishment in Buddhist Jurisprudence:** We can define term the 'Punishment' in Pali, such as 'Danda and Niggaha', which stand for 'atonement, blame, censure, coercion, cruelty, degradation, punishment, penalty, violence, restraint, subduing, rebuke, 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.

**History of Buddhist Jurisprudence:** It dates 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 Dhammacakkappavattana Sutta 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.

**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 most 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.

#### **5. Patimokkha: Monastic Criminal 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 the 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 have broken any of the rules read out. Patimokkha may be described as the criminal code of the monks.

The rules of discipline first 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. It is 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.

Our main focus will be on the Parivasa and the procedures of getting up from Sanghadisesa which are called Vutthanavidhi.

### **6. Observance the Parivasa (Probation) in Buddhist Jurisprudence**

Sanghadisesas are classified as Garukapatti (heavy offenses), both because of the seriousness of the offenses themselves and because the procedures of penance, probation, and rehabilitation are burdensome by design, not only for the offender but also for the Community of Bhikkhu in which he lives. It is a rule intended to act as an added deterrence to anyone who feels tempted to transgress. The procedures for settling an offense are called Vutthanavidhi-literally, the course for getting up. The term "getting up" plays on the literal meaning of the Pali word for offense, Apatti, or "falling down" The purpose of the Vutthanavidhi is to enable a Bhikkhu who has stumbled in his practice to get up and continue on his way. The Vutthanavidhi for a Sanghasesa offense is as follows:-

(1) Parivasa (Probation): Literally means "Living apart", being put under restraint; of the ecclesiastical punishment; living under probation. In this case., if a Bhikkhu commits a heavy offence (Sanghadisesa) and conceals his offence, he has to observe the procedure for as many days as he has concealed it and is named 'Parivasa' (undergoing probation), which means living out that many days be forehand, after which he may then practice Manatta.

(1.1) Paticchannaparivasa: When a monk happens to commit a Sahghadisesa offense, he is required to approach another monk immediately with a view to apprising him of the offence he has committed in order to 'expiate' himself. In case he does not do so and conceals it for some time, in such case he is required to undergo a Parivasa during this period he will live alone, having no direct communion with the go-way-farer for the period he has concealed his

offence. For the 'expiation', he should approach the Sangha and request three times to 'pronounce' upon him the Parivasa. The Sangha then holds a Natticatutthakamma of this effect.

The monk who has been sent to observe the Parivasa by the Sangha has to observe as many as ninety-four restrictions of which three being most important viz.:- (1) Sahavasa: or not dwelling with other monks under the same roof; (2) Anarocana: or not failing to announce his Parivasa to the incoming monks to his own residence or to other monks while he is visiting their residence; and (3) Vippavasa: or not going to any residence where there is no monk living. Failing to follow these restrictions during this period thus is regarded as unspent; therefore he has to start again.

(1.2) Sudhantaparivasa: This is another kind of Parivasa, but it is observed by the monk who commits Sanghadisesa offences and has forgotten either the number of the offences committed or the number of the days he has concealed them. In this case he is required to recollect the approximate number of the offences and days, and he should then observe the Parivasa accordingly. However, Buddhaghosa has also made the classification of the Suddhataparivasa into two, namely: (1) Culasuddhantaparivasa; and (2) Mahasuddhantaparivasa.

(1.3) Samodhanaparivasa: This is a kind of a Parivasa to be observed by the monk who commits more than one Sanghadisesa offences and also conceals them. The period of his Parivasa would be in accordance with that which is concealed for the longest period; but the punishment of all the offences would go concurrently. Again, Buddhaghosa has made further classification of Samodhanaparivasa into three, namely: (1) Odhanasamodhanaparivasa; (2) Agghassamodhanaparivasa; and (3) Missaka-samodhanaparivasa.

However, occasion may arise where there are too many monks visiting his residence and it is very difficult for him to observe the Parivasa with all its restrictions. The Buddha has, therefore, in this case allowed him to drop off the Parivasa for the time being as long as such circumstances remain. But he must pick it up again as soon as he finds the appropriate time to observe it and for this purpose the monk is to approach another monk and inform him of his "dropping off" and "taking up" of the Parivasa.

(2) Manatta (Penance): It is a technical term used for the punishment given to the monk who commits Sanghadisesa and immediately informs about his offence to another monk, he is



then required to undergo a kind of ecclesiastical penance for six nights (Charattis)- period of penance. It is further divided into two categories, namely:-

(2.1) Apaticchannamanatta: It is the punishment given to the monk who after committing Sanghadisesa, does not conceal his offence. There is no Parivasa for him in this case, he has to spend, only six nights of observation. In this case, the monk who commits the Sanghadisesa offence is required to approach the Sangha and request for the pronouncement of Manatta on him for the period of six nights. The Sangha then holds a Natticatutthakamma for this purpose.

(2.2) Paticchannamanatta: It is the punishment given to the monk who conceals the Sanghadisesa offence committed. This kind of Manatta is given to him after he has completed his Parivasa. The period of observing Manatta is the same, six nights. However, in case of Bhikkhuni there is no Parivasa whether she conceals or not, after committing any Sanghadisesa she is required for Manatta as long period as a fortnight. The restriction imposes upon the monk during the Manatta period. In this case, the monk conceals his Sanghadisesa offence, he is required to undergo a penance known as Parivasa, and for the days it is concealed. But the 'expiation' of the offence is not complete unless a Manatta of six nights is observed after the Parivasa.

There are four such occasions when the Manatta is interrupted and the nights so spent are not taken into account (Ratticcheda). There are: (1) Sahavaso: When he dwells with another monk under the same roof; (2) Vippavaso: When he lives at a place where there is no monk; (3) When he fails to inform daily to the Sangha about his Manatta; and (4) When he observes the Manatta amidst a Sangha of less than four monk. In case a monk happens to commit another Sanghadisesa offense during his Manatta and informs about it immediately to another monk, his days already spent as Manatta become null and void and he has to take up the Manatta anew; but if he conceals the Sanghadisesa offense, the Manatta is transformed into a Parivasa. Manatta then only comes after the Parivasa period is spent. This is called Manattamulayapatikassana. After the observance of Manatta of Six nights, the monk becomes eligible to be declared as 'clean' and to be 'called back' to the Sangha. This is known as Abbhana.

(3) Mulayapatikassana (Bring back to the same): It refers to a kind of punishment given to the monk who is observing Parivasa or Manatta and commits another Sanghadisesa in between. The period he has spent thus is technically regarded as unspent. If a monk happens to



commit an offence of Sanghadisesa during the period of Parivasa or Manatta (as the case may be; before the Abhana is held), he is required to take up the Parivasa anew and the period of Parivasa already observed by him is not taken into account; and a fresh Parivasa is to be taken up combining all the Sanghadisesa offences (Samodhana-parivasa). This is known as Mulayapatikassana; i.e. 'throwing back to the beginning' of the penance. The monk, who has to observe the Mulayapatikassana, approaches the Sangha and requests for pronouncing the Mulayapatikassana. He repeats this request for three times and then the Sangha holds a Natticatutthakamma for the purpose. The monk condemned of Mulayapatikassana has to observe the same restrictions as in the case of Parivasa, such as, Sahavaso (not dwelling with another monk under the same roof), Vipavaso (not going to a residence where there is no monk), Anarocana (informing about his Mulayapatikassana to the monks coming in his Vihara) and the like.

(4) Abbhana (Rehabilitation): It is a formal 'calling back or rehabilitation' of a monk who has scrupulously observed the Manatta for six nights, either in continuation with the Parivasa or without Parivasa, it is known as Paticchanna-abbhana because in this case the Parivasa presupposes the concealing of the Sanghadisesa for some time. The other is the Apaticchanna-abbhana related to the Manatta only (without a Parivasa), which had been pronounced by the Sangha for committing a Sanghadisesa not concealed by any time. The monk, who has completed the Manatta, approaches the Sangha with the request Abbhana, to 'calling back or rehabilitation'. The Sangha then holds a Natticatutthakamma for the purpose. In the Abbhanakamma the minimum number of monks in the Sangha should be not less than twenty 'clean' monks. If it is performed with less than twenty 'clean' monks, the Sangha commits the offence of Dukkata. Those monks who have been condemned of Parivasa or Manatta or not yet have been 'called back' are still 'unclean' monks and hence they cannot be included in this number.

## 7. The Value and Essence of Parivasa

(1) Parivasa leads to reform and rehabilitate the Criminal: Buddhism holds the view that a person is good as soon as he refrains from doing evil. The Buddhist attitude towards criminals is focused in a way so that they may be reformed and rehabilitated to become good citizens. As the Buddha says in the Dhammapada that "And who having been negligent in the past, afterwards does not neglect, he illuminates this world like the moon freed from a cloud."



So, the probation in the Buddhist principle concerns not with punishment but with reformation. Once the probation is successfully finished, the Bhikkhu returned to his previous position and status, so that the social image of the offender was not harmed. After the penalty, he is received back and he enjoys the identical position he has earlier without any stigma or contempt. Human dignity thus was always regarded as important in the court and in the society, while under a penalty or after rehabilitation.

(2) Parivasa leads to enact the Vinaya Rule: The Vinaya is fundamental and comprises rules for the Buddhist monks to follow, in order to eliminate passion from their minds. However, the enactment of the Vinaya rules did not occur from the Buddha's will without any history, but it was based on incandescence where a mistake was committed. The Buddha said, 'I did not enact or establish the Vinaya until after monks have made mistakes in the Sangha and Society'. So, the Parivasa and all procedures of getting up from Sanghadisesa which are called Vutthanavidhi are with enacted within the Vinaya Rule.

(3) Parivasa leads to purity of the Buddhist Sangha: It is said that the rules were framed for the smooth living and rightly following the words of the Buddha by the righteous monks. There were framed for monks who abandoned the domestic life and took up the life of recluse with a clear and pious determination of spiritual gains. The Buddha thus states the path of purification and gave clear instruction on how to follow them properly. These instructions serve as the guiding principles for the monks. Had there been no such instructions the monks would have face difficulty in achieving gradual purification.

(4) Parivasa leads to harmony in the Buddhist Sangha: The Buddha established the monastic Order and wished that all the members should live in complete harmony. They should live their life in such a way that there is no tension or the thing as such in their day to day functioning. Keying this in mind, he thought that if the life is regulated at every step harmony will flow naturally. It is for this reason he prescribed the rules that befits a worthy life. This type of leading a life is the smooth way for a way-farer which may be understood as the prevalence of harmony in the Buddhist Sangha. On this reason, this Sanghakamma needs at least twenty Bhikkhus for Abbhana (Rehabilitation). The competent and experienced Bhikkhus had to move motion that the offender had successful complete the Parivasa. This was all done in a grand legal and ritual style with all members agreeing as to the motion of rehabilitation.

The association of the ritual process with the legal problem obviously connected the legal dimension of law with the spiritual dimension, blending them effectively and harmoniously.

### 8. Summary

The above discussion enables us to understand that Parivasa (Probation) as forming one of the and essences of those feature in the Buddhist jurisprudence is valuable and relevant to modern criminology and penology. Furthermore, the objective of presenting, Parivasa leads to the development of inner peace of those Bhikkhu who have committed Sanghadisesa, and for improvement and rehabilitation of the offender Aparadha (Criminals) to turning into Arahanta (the worthy one), it leads to purity of the Sangha community as well as brings the harmony for the Buddhist Sangha.

So, it would be worthy to note here that the Buddhist perspective and response to Crime is not one of the retributive or retaliatory courses but one that is bases on Metta (loving kindness) and Karuna (compassion). Parivasa (Probation) is the prescribed Buddhist method for rehabilitation of Criminal and purifying of Sanghadisesa Offence. The Buddhist stand is, especially in the case of the Sangha Community and social institutions, to prevent people from committing these crimes through training and educating of mankind in order to develop the Sammaditthi (Right View) as a major factor, which is a noble way for prevention and reformation of criminal offence.

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