

Law in the Buddhist Tradition in Ancient Indian Society

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I. Introduction

The Vinaya pitaka is the sacred literature of the Buddhists which contains the regulations for the outward life of the members of the Buddhist samgha - nearly the oldest, and probably the most influential, of all fraternities of monks. Unlike the primarily prescriptive Brahmanical law codes, the vinayas contain narrative portions, commentaries, and casuistries, albeit to different degree. ¹Law in the Vinaya texts highlighted as - 1) a body of rules considered binding on a particular political or social unit, and the principle of justice underlying in it. 2) A code or canons of such rules. 3) Institutions and practices for the creation and application of such rules and for of disputes. 4) laws also includes such other practices such as the social customs, practices and rules that constitute a form of social control for the maintenance of the groups. 5) Social manners, customary practices etiquette and general behaviors regulating silence, speech, interaction. The set of canonical law texts containing rules, descriptions, case studies, definitions, and punishments and some ancillary material that was used to regulate the samgha. ²

The Work On

How the laws were evolved, the process of making law, the need to make laws? How it regulated ?. The notion of society during the evolution of law?. And in the society how the Buddhist tradition different or similar to the other traditions which existed in during the period? What were the political and economic conditions? Internal relations within the samgha?. Law relates to Bhikkhus and law relates to Bhikkhunīs?. The relation between laity and renouncers ?.

Sources

Main source is the Vinaya pitaka of the Pāli canon, the monastic law codes that have served to regulate the religious life of Buddhist Monasteries. The source of secondary importance - Mūlasarvāstivāda Vinaya, other textual sources.

The Cause for a rule

Always due to the wrong behavior of certain person. If we see the importance of law - without Vinaya, there is no order. Rules are prescribed only after an offence has been committed. Thus rules are derived from experience and based on the practical need to avoid certain forms of behavior in future. Some rules pertaining to training are also mentioned in the Vinaya. Like for example the disciplinary rule in the Vinaya text - "I shall not put my hand into my mouth while I am eating".

Society during the time of Buddha

The laws related to Bhikkhu pātimokkha and Bhikkhunī Pātimokkha and to samgha's. If we see how it evolved? These laws evolved because of changes in the samgha and it mainly depends upon the society. "The particular laws are related to a particular society they can be regarded as a reflection of its value system. "³If we examine the broad framework for evolution of laws during the period. Law books are both a reflection of Indian society aswellas attempts to working out what was believed to be a perfect social system. Therefore the aspirations of the lawmakers also considered.

Why we need to study society during that period is most important because the monks or śramaṇas, " in their wanderings among the villages of India they were constantly in touch with ordinary peasants or farmers, begging food from them and holding private conversations and giving public lectures. ⁵when we see the notion of law evolved in the society based on geographical terms, and in this place we can identify the political, economic, social and cultural conditions during Buddha period. The present day Nepal (or certainly its sub Himalayan tracts), and parts of the present day Bihar and Uttar pradesh within India, formed the core area for the development of Buddhism in its earliest phase. It was probably this area that was regarded as the central land

the “*majjhimadesa*” in the Pāli textual tradition. The *majjhimadesa* was the emergence of as many as sixteen state-like, political formations, the “*mahājanapada*”, which ranged from Gandhāra in the north west of the subcontinent (present day Pakistan) to Aṅga in the eastern Ganga valley (Near the borders of present day Bihar and west Bengal). Buddhism and the notions of law within it, developed in the context of these incipient state structures⁶. During this period, Brahmanical society already prevailed and in domination. Many scholars confined that Dharma equal meaning is Law, Dharma, term mostly used in Dharmasūtras and law, term used in pāli canon. If we see the texts a comparison between Buddhism and Brahmanical “laws” - the rules prescribed for the student in the Dharmasūtras which can be compared with the provisions for initiation and probation within the early Buddhist tradition. and there are many regulations relating access to property and even the “rights” were defined in terms of the Varna hierarchy. These concerns would again find resonances within the Buddhist tradition, in terms of regulating both relations between the laity and renunciators, as well as internal relations within the saṅgha⁷.

And the textual sources Arthaśāstra, Dharmasūtras, Buddhist and Jain texts gives the evidence of political situations during the period. There were many conflicts in mahājanapada and early Buddhist narrative suggest that conflicts also arose because of contestations related to status.⁸ and Buddhist texts mentioned mainly about Gahapati and Setṭhi. these were rich in position during the period. We have seen these terms representing in inscriptions also, that they acted as a donors to the Buddhist Institutions.

The society during the origin of Buddhism that was when tribal society was changing into territorial loyalty and there was a sharper awareness of political organization. It was first mostly popularized among the commercial classes, who in a period of expanding trade. The heterodox tradition competing with Brahmanical tradition, which it different in dimensions. During the time in Brahmanical tradition before the law - all are not equal, means we can see the difference in punishments to Brahman and to Sudra. But Buddhist tradition protested against all these odds and it was in favor of the equality of all before the law. In this tradition, an offender brought before justice must be judged and punished according to his offence and without any concession to immunities or privileges relating to his caste. Law in Buddhist tradition is for the welfare of all mankind (for all created beings). It saw in Brahmanical law the conditioning of society according to the requirements of a powerful elite (for some people)⁹. During this period Buddhism and Jainism was in a good state or popularized. Both gave a importance to the homeless state society so major population turned towards them.

The early Buddhist attempts to generate laws can be contextualized in a variety of ways. There was a situation of increasing socio - economic differentiation, related to complex agrarian formation and a world within which towns and trade were acquiring significance.¹⁰ The religious communities, guilds, corporations and other groups had their own rules and all these were generally subordinate to the secular law. The king remained the highest level of jurisdiction. In the Vinaya we viewed that the orders of King, He said to the monks that avoid going out during rainy season. This, the monks went and said to the Buddha. He replied them that follow the King’s order.

Bhikkus in the sangha and the rules

The rules of the text called pātimokkha, it is one of the oldest and the first part of Vinaya, the Vibhanga. the pātimokkha, meaning of the name will be discussed later on - seems to have owed its existence to the ancient Indian custom of holding two sacred periods in each month, the time of full the moon and of the new moon. The Buddhists also adopted the custom of these periodical meetings, but confined themselves to meeting twice in each month.¹¹ These half monthly gatherings to confess to the assembled order the sins and faults which each of them had committed; and take upon himself or herself, the penance which the transgressor had there by incurred. As regards the order in which the various offenses are arranged in pātimokkha - there is Bhikkhu pātimokkha and Bhikkhunī pātimokkha¹². Part of the rules for monks are also valid for nuns as ‘common precepts’ and also a high number of precepts to be kept for Nuns also.

(The words) of the blessed one, handed down in the suttas, embraced in the suttas, comes into recitation every half month. It behoveth all to train themselves according thereto in concord, in pleasantness, without dispute.¹³ The basic principles of early Buddhist law has been laid down in the pātimokkha: The monk involved has to admit his intention to commit an offense.¹⁴ pātimokkha sutta contains the rules. These rules are arranged according to the gravity of the respective offense. pātimokkha - the words of Disburdenment, Nidāna ; during on

the sacred day, the fifteenth day of the half month. In the meeting the reverend brethren announce their purity. Calling them to attend that “we all gladly give ear and do attend”. This meeting is for “whosoever have incurred a fault let him declare it. If no fault have been incurred it is meet to keep silence”. The uttering of a deliberate lie has been declared by the blessed one to be a condition hurtful (to spiritual progress). Therefore a fault, if there be one, should be declared that by the Bhikkhu who remembers it, and desires to be cleansed there from. For a fault, when declared shall be light to him.¹⁵

Pârâjikâ Dhamma - The *Pârâjikâ* Rules are four, concerning those acts which bring about defeat; come into recitation. If he has fallen into defeat, he is no longer in communion or allowed to be in co-residence with the Bhikkhus¹⁶. This is the punishment.

SamghâdisesâDhamma -The thirteen rules which require, as well in their earlier as in their later stages, formal meetings of the order, come into recitation. These rules entailed or impose a temporary suspension or exclusion of the offending monks. In this, the first five rules connected with a monk towards women and the other rules connected to the construction of cottage or huts on sites approved by another monk. And comprise rules against the defamation of one monk by another and against the making of schism in order. The rules mentioned regarding the protection of their order means, they needs to long last their order and last rule regarding in the context of leading a life hurtful to the laity and devoted to evil. These rules have been recited. Here we can see in the last rule, it regulates certain misbehavior of monks towards laymen.

Aniyatâ Dhamma; Recitation of rules regarding undetermined matters. *Nissaggiyâ Pâcittiyâ Dhamma* - These rules involving forfeiture. These rules light on property of monk was allowed to hold. The three sections related to robe, silk and bowl.

Pâcittiyâ Dhamma - In recitation ninety two rules regarding matters requiring expiation - rules relating to falsehood; for example, there is *pâcittiya* in a deliberate lie. There is *pâcittiya* in a abusive language. There is a *pâcittiya* in slander of Bhikkhu. the second section, *Bhūtagâma* section; in this the rules like, there is *pâcittiya* in destroying any vegetable and another rule whatsoever Bhikkhu being angry or displeased with another Bhikkhu, shall drive him out or get him driven out of dwelling place common to a *samgha* - that is *pâcittiya*. In third section *Bhikkhunvâda*, it consisted of rules like whatsoever Bhikkhu shall give a robe to Bhikkhunî who is not

related to him, except in exchange - that is *pâcittiya* and another rule - whatsoever Bhikkhu by appointment shall go on board the same boat, whether going up stream or down stream, in company with Bhikkhunî, except for the purpose of crossing over to the other side - that is *pâcittiya*, in fourth - *Bhojanasection* - the rule like, whatsoever Bhikkhu shall take or eat any food, whether hard or soft at the wrong time - that is *Pâcittiya*. In fifth -*Acelaka* section, the rule like, whatsoever Bhikkhu shall force his way into a house where meal is going on, and take a seat there - that is *pâcittiya*. In sixth - *Surâpâna* section - it consisted the rules like, there is *pâcittiya* in the drinking of fermented liquors or strong drinks (51). There is *Pâcittiya* in sporting in the water (53). There is *pâcittiya* in disrespect (54). in seventh - *Sappânaka* section - the rules like whatsoever Bhikkhu shall knowingly, drink water with living things in it - that is *Pâcittiya* (62). In eight *Sahadhammika* section, the rules like whatsoever Bhikkhu being angry or displeased with another Bhikkhu, shall give a blow - that is *pâcittiya* (74). In the Ninth - *Ratana* section, the rule like, whatsoever Bhikkhu shall have a bedstead or a chair made, stuffed with cotton, the stuffing shall be torn out -and that is *Pâcittiya* (88)¹⁷. Speaking the truth (or) not telling the lie which is same as in Brahmanical tradition and also seen in this as *pâcittiya* offence. *Pâtidesaniyâ Dhammâ*- in this they mentioned four rules regarding matters -which ought to be confessed. *Sekhiyâ Dhammâ* - the rules regarding matters connected with discipline (or) relates to a appropriate behavior. There are seventy five rules in section wise, which should perform or continue in daily lives of monks. *Adhikarana- samatha Dhamma* - there are seven rules regarding the settlement of cases have been recited.

These all rules have been recited during their half monthly gatherings. These rules mainly prescribed and asking them pure herein or not. If they committed any mistakes they have to confess and according to the rule they get punishments. The punishments like temporarily removal of Bhikkhu from the communion.

In the *vinaya* text we can see the internal relations in the *samgha*. which have been recited in Regulations as to the duties of the Bhikkhus towards one another. rule of conduct for incoming Bhikkhus, according to which they ought to behave. if the resident Bhikkhu be senior, he ought to be saluted ; if junior he ought to be made to salute (the incomer)¹⁸ And the rule of conduct for resident Bhikkhus according to which they ought to behave. A resident Bhikkhu, on seeing an incoming Bhikkhu who is senior to him, provide matter and foot stool, and a towel for him to wash his feet, go to meet him, take charge of his robe and his bowl, ask him if he wants water to drink and if he can, he ought to wipe his sandals. If junior to him, then (the resident

Bhikkhu) keeping his seat, should tell him where he is to put his bowl and his robe away, and on which mat he is to sit down. ¹⁹In the *samgha* dwelling place of a senior Bhikkhu must be taken from him. In the *samgha* material gifts distributed among equal parts. Here all these laws tell the internal relations in the *samgha* like how the Bhikkhu treats the other Bhikkhu.

Whereas Buddhism preached non-attachment to worldly possessions and property as we have seen it was regarded as an evil, in actual practice the acquisition of property was regarded as a normal activity. ²⁰Through the Vinaya we can clearly know the "personal property" so to speak of Buddhist Aramas and Viharas mainly.

Monks, from an early period, necessarily had to develop guidelines-basic principles, rules, laws, - for ownership and use of such property. Some of the rules are very specific, stipulating exactly what sort of property a monk can, and cannot, possess. In the text Monks and even the Buddha himself at times seem very much like lawyers in the Vinayas, arguing minute details of property possession, acquisition, and inheritance. ²¹In the Vinaya text we have seen the rules related to robes, bowl and silk in sections. These all were the property's of a monk and after their death to whom it places, regarding that all laws have been recited. and the mainly Monks role as donors this is a fact not only associated to Vinaya texts but also in various inscriptions, such as those from Sāñcī and Bhārhut tells that the earliest donative inscriptions from this place that the donors actively involved with the stūpa cult and donative, merit making activity- were Monks and Nuns²².

We have in mind that the Buddhist monks as a lone ascetic, who has renounced all social ties and property to wander or live in the forest, preoccupied with the meditation and the heroic quest for nirvana or enlightenment. ²³Gregory Schopen - Indian Monastic Buddhism, giving the evidence which it is based on textual, Inscriptional, and archaeological sources. Through this we can see a varied version of monks in a monastery. Pāli Vinaya, the texts suggest and assume that Buddhist Monks were active donors to their own monastic community. ²⁴In the textual sources, it expresses that the lay brothers using the formula "I want to give a gift and to hear dhamma and to see the monks" here the reason for monks presence was essentially ritualistic. The Mūlasarvāstivāda Vinaya, like the Vinaya of the Theravāda, then assumes and requires the presence of monks or participation in a whole series of purely domestic or life cycle rituals. First they determine significantly whether the invitation is connected to the birth or connected with a marriage or connected with a death. They also determine the invitation whether comes from a visitor, a villager, a householder or a renunciant. These are the ritual obligations. exactly like a lay men - monks, nuns probationers and novices all had monasteries and monastic buildings regularly constructed both for the order and for themselves, and again like laymen all had on such occasions need for the ritual presence of fellow Monks. ²⁵

Gregory Schopen - Indian Monastic Buddhism explains about a Monks continuing right to inherit family property or they had and used private wealth in classical India - having property tells that monastic law meets the real world by using the textual sources mainly, Mūlasarvāstivāda Vinaya. It also supporting by Inscriptional records of all periods shows monks and nuns as active and substantial donors almost everywhere in India²⁶. Like in smritis, the head of the household right to proceed his property to his heirs while still living and this influence seen in Mūlasarvāstivāda Vinaya. The Vinaya supporting the continuing right of Buddhist monks to inherit family property and to have absolute possession of such property to be used "in whatever way one wishes".

And about the Monastic Funerals - which it not mentioned in Pāli Vinaya, but seen in Mūlasarvāstivāda Vinaya and other related texts mentioned about cremation, post funeral activities. These all activities influenced by the condition of the society.

Bhikkunis in the sangha and the rules

In Tenth khandhaka (on the duties of Bhikkhunīs) Admission of Nuns in the *samgha*, first did not allowed. Later it allowed and started with Mahā-pajāpatī. The eight chief rules recited for the women who renounce their homes and enter the homeless state. They are - 1) women should perform proper duties towards a Bhikkhu 2) A Bhikkhunīs not to spend the rainy season in a district in which there is no Bhikkhu 3) Every half month a Bhikkhunīs to wait from the Bhikkhu *samgha* two things, the asking as to (the date of) the uposatha ceremony and the (time when the Bhikkhu) will come to give the Exhortation. 4) After keeping the rainy season the Bhikkhunīs to hold pavāranā (to enquire whether any fault can be laid to her charge) before both *samghas* - as well that of Bhikkhus as that of Bhikkhunīs - with respect to three matters, namely what has been seen, what has been heard and what has been suspected. 5) A Bhikkhunī who has been guilty of a serious

offence is to undergo the Mânatta discipline towards both the samghas (Bhikkhus and Bhikkhunīs). 6) When a Bhikkhunī as novice, has been trained for two years in the six rules, she is to ask leave for the upasampadā initiation from both samghas (as well that of Bhikkhus as that of Bhikkhunīs). 7) A Bhikkhunī is on no pretext to revile or abuse a Bhikkhu. 8) from henceforth official admonition by Bhikkhunīs of Bhikkhus is forbidden, where as the official admonition of Bhikkhus by Bhikkhunīs is not forbidden. ²⁷if they ready to accept these rules then only he permit to allow join samgha. Along with these rules they are many disciplinary proceedings (kammās).

Offence and Punishment - The penalty for wrong, when the Bhikkhus threw the dirty water over Bhikkhunīs. They charged with penalty. Here the penalty is “that Bhikkhu is to be declared to be one who is not to be saluted by the Bhikkhunī samgha” ²⁸. If Bhikkhus does wrong? - Penalty - to prohibit from her (from entering a Vihara).

Rules on Bhikkhunīs Dress - allowed a girdle that will go around the body and the fringes are not to be arranged in it. ²⁹The rules also relating to how to behave with Bhikkhus and with senior Bhikkhunīs. the senior eight Bhikkhunīs shall take their seats all to seniority and rest as they happen to come in - this rule only related to occupy the places by them in dining hall. ³⁰The rules on duties holding pavāranā. and the Bhikkhunīs are not allowed to adopt the ³¹and they assigned certain places to live in to the individual members of the order. and rules on -the Bhikkhunī first abandoned the precepts and then threw off the robes - Afterwards she came back and asked the Bhikkhunīs to admit her into the order again. They said that one time gone over to the titthiyas, is not to be received again. ³²It means once they left they don't allow again in to the communion.

Gregory Schopen consider on the legal and economic activities of Buddhist Nuns and in this, taking the two examples from Early India. Nuns and Nunneries have again been overlooked as a legal person. and the Inscriptional evidence tells that the records up to until the Gupta period, shows that Nuns were as active as donors at Buddhist sites as were Monks and must therefore have had very considerable means and economic presence. ³³A textual source gives the evidence that nuns may have been hierarchically or ritually subservient to monks. The nuns had equal rights of ownership and economic independence. Mūlasarvāstivādin or closely related texts, moreover deals with nuns who engage in a wide range of business enterprises. Through the textual and epigraphical evidences, these two topics elaborated or focused. the use of negotiable promissory notes by Buddhist Nuns and their involvement in lending on interest funds that they held as permanent endowments and along with the texts, the junnar and kanheri inscriptions provide the evidence of nuns legal status and her role - there is an independent economic agent.

Samgha-

Buddhist texts provide insights in to the internal functioning of the saṅghas. There were to be frequent meetings, unanimity, an upholding of established traditions respect for elders and women and for religious traditions and institutions in the ideal saṅgha. ³⁴There are many important regulations contributing to the organization of the samgha and tightened its boarder. In the Khandhaka section of the Vinayapitaka we have the most detailed description of early stages of the Buddhist samgha available in Buddhist Literature.

“Lawful acts which are performed by complete congregations - such acts will we perform” ³⁵- this is a formal act of the samgha. In samgha, A Bhikkhu has committed an offence which he considers as no offense, while the other Bhikkhu consider it as an offence and pronounce expulsion against him, for his refusal to see that offence ³⁶. This situation gives the way to schism in samgha. about this Buddha answered and he gives rules on how disputes in the samgha should be handled and how schism and dimension should be avoided. It all tells that they have taken a precautions for their unity and the necessity of settling disputes among the monks and it also useful for, to survive a Buddhism for a long time.

Recommendations to the lay disciples

Besides the two branches of the monks and the nuns two other branches of the total Buddhist community were formerly established by the Buddha : the lay men and lay women (upāsakas and upāsikās) who had taken ‘refuge ‘ in the Buddha, the doctrine and the community just as a monk or nun had gone forth to follow the Buddha ³⁷. We found in the Buddha’s recommendation for society: not taking life or what was not given, abstention from misconduct in pleasures, truthfulness ³⁸. And also suggested a sixopenings – which causes a loss of property - first is the habit (‘practice’, anuyoga) of taking various kinds of intoxicating (alcoholic) drinks as circumstances for negligence (pramāda). The second is frequenting the street sat in appropriate time. The third

is addiction to festivals. The fourth is practice of gambling, as circumstance for negligence. The fifth is association with bad friends. And last opening to loss of property is the habit of laziness.³⁹ along with recommendations these good words related to concerning economic development and the consequent well being of the society and which totally reverse the imagination that the Buddhism concerned mainly for ascetics, and with that also all related to the way to renunciation. We can see the recommendations relating to the social behavior also in the society. a good friendship which said by Buddha to the monks for” best life “. Which also he stresses this in society of householders.

Lay law and Monks law, which the relation and difference is seen. Lay law doesn't apply to the Buddhist Monks and the monastic law doesn't apply to the laymen. the principle of the lay law, that was already noted - widely known in both the Vinaya and Dharmasastra, the estate of one who was sonless went to the king⁴⁰ and in monastic law, the property went to the other monks in monastery or it belongs to the *samgha*.

The intersection of vinayas and secular law

Secular law and monastic law intersected, particularly in the areas of property, inheritance, contracts, and the two capital crimes of theft and murder. Prātimokṣarule regarding prohibiting theft and related punishments mentioned like in Dharmasāstric law books - this early secular law had precise juridical definitions of theft, of characteristics of an object of theft, of who was called thief and of the corresponding penalties.⁴¹ The law of inheritance in the Mūlasarvāstivāda -Vinaya is closely connected with the proper attendance to the funerary rites, śarīrapūjā, for deceased monks, which is how paid regard to the ideas of purity in Brahmanical society.⁴²

Relation between laity and renouncers

There is thus a symbiotic relationship between the laity and the monks : the monks depend on the laity to donate various materials goods, dwellings, robes, food and so forth, whereas the laity, in turn both practices non attachment through such giving (dāna) and in process, generates positive Kamma, merit (puñña).⁴³ lay people acted as a donors to the monastery. Which it mainly inscribed in many inscriptions. Lay people gives salute to the venerable Bhikkhus and rise from their seats before them and raise their hands before them. They perform the proper duties towards them, give them food when they come on their walks for alms and they are honoured, esteemed, revered, supported, and hospitably received by the lay people. The monks also having the number of rules on general appearance when dealing with lay - people and about how to enter and how to sit in a layman's house.

II. Conclusion

Vinaya forms the first part of the Buddhist canon, the so - called Tripiṭaka - this is the authoritative Buddhist writing believed to be the “ Word of the Buddha “ there are many Vinayas inversion. here considering the Vinaya Pāli canon, described how the rules different for Bhikkhus and for Bhikkunīs. and also the discipline followed by the lay people. The rules mainly for social control and also to avoid dukata. and what the laity relations with the renouncers clearly described. The most importantly legal and economic activities of Monks and Nuns which it mentioned in Mūlasarvāstivāda Vinaya, and the Inscriptions also gives the evidence that they acted as a donors. Which it is different from the view that they always as a recipient of gifts. their activities tells and removes and changes, our view of one perception on monastic Buddhism.

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