

**THE PHILOSOPHY OF BUDDHIST LAW - AS SEEN BY  
CRIMINOLOGIST'S POINT OF VIEW**

by

**NANDASENA RATNAPALA**

*Department of Sociology and Anthropology  
Sri Jayawardenepura University, Nugegoda, Sri Lanka.*

**Abstract**

It can be argued that the Buddhist Laws are based on the five principles or Pañca Sīla as they are commonly known. The laws whether intended for the monks or laymen had the Pañca Sīla as its foundation which in its supreme form encompassed the Eightfold Path leading to the final Buddhist Objective of reaching the Nirvana. The Authority for the Buddhist Laws emanated from four Great Sources. The Acid Test for the validity of any law is to compare it with the Buddha's Discourses in short-the Sutta and the Vinaya. If it agrees with the words of the Buddha as found in the Sutta and the Vinaya the validity of the Law is established. In addition to the material or this worldly dimension the Buddhist laws had the non-material or spiritual dimension too. The Buddhist Law also need to be viewed as both an individual and collective legal system. Sociologically this is interesting because the law violated collectively could affect those who violated it in a collective manner. In the same sense collective purity and rituals associated with such purity are emphasised. Punishment as understood by Buddhist Law is devoid of meaning unless it contains compassion for the "punished" and the desire to remould and convert "them" into new human beings. Consequently death penalty and such forms of physical cruelty are not appreciated by the Buddhist Law. Education should form the basis of "punishment" which the person under "punishment" should understand and assimilate the education into his pattern of life in order to make the entire process meaningful to him.

## **THE PHILOSOPHY OF BUDDHIST LAW**

### **Resume of the Article**

In this article the Philosophy of Buddhist Law is analysed in the background of Criminological knowledge and experience. Buddhist Law or to be more precise, Buddhist Monastic Law as some scholars prefer to call it, although originally intended for the monks has in it a solid basis which could serve as the foundation for a modern system of Criminal Law valid for all. (vide forthcoming publication : Nandasena Ratnapala, Crime and Punishment in the Buddhist Tradition).

The four authorities of Buddhist Law are cited here and mention is made of the principle of collective purity leading to collective responsibility. The Buddhist Law while recognising the legal and the sociological dimensions deals with the spiritual dimensions too. This Dimension is associated with the Buddhist Law of Karma and Rebirth. The article points out the rationale on which the Buddhist Philosophy of Law rested and attempts to make a comparison of Buddhist Law with modern legal systems and Criminological concepts.

The author argues that it is possible to develop a corpus of Criminal Law following the basis laid down by the Buddhist Law. Such an endeavour would result in a corpus of Criminal Law in which the hiatus between the legal and sociological values, expectations and needs are reduced to the minimum.

**Prof. Nandasena Ratnapala,**  
Dept. of Sociology and Anthropology,  
University of Sri Jayawardanapura.

## THE PHILOSOPHY OF BUDDHIST LAW

Nandasena Ratnapala.

"The idea of moral justice, or reward or punishment, arises out of the conception of a supreme being, a God, who sits in judgement, who is a law-giver and who decides what is right and wrong" (Rahula, 1972, 32). Buddhism does not postulate a creator God as a first cause. Therefore the idea of law or justice as something promulgated by God directly or indirectly does not arise in the case of Buddhism.

Buddhist Law, on the other hand, cannot be called positive law in the sense Austen meant it. Buddha was by no means a King or a law giver whose commands were issued to the members of a sovereign state over which he governed (Austen, 1965, Reprint). Such laws are obeyed and considered legitimate because their source cannot be called into question.

According to Buddha any matter whether law or otherwise is open to question. "Be ye not misled by report or tradition or hearsay" he says (GS, I 173). "Be not misled by proficiency in the collection, nor by mere logic or inference, nor after considering reasons, nor after reflection and approval of some theory, nor because it fits becoming, nor out of respect for a recluse (who holds it). But Kalamas, when you know yourselves. These things are profitable, these things are censured by the intelligent, these things when performed and undertaken conduce to loss and sorrow – then indeed do ye reject them" (also cf. advice to Bhaddiya, GS 11, 200).

Buddha is credited with the authorship of all Buddhist Laws. Although it cannot be conceived that the Buddha was behind all major and minor laws, the necessity to regard all such laws as being promulgated by him could be readily understood. The followers needed to add a sanctity and authority to the laws. What greater authority could they think of than the Buddha himself, considering that all laws are Buddha Vacana or "spoken from the mouth of the Buddha himself."

According to the Buddha there are four great authorities or sources for the law. These authorities or sources could be considered as the material sources of law (S. Dutt, 1929, 27; Salmond, 1902). They are : 1) direct promulgation by the Buddha ; 2) promulgation by a group of monks in a monastery : "In such and such a dwelling-place there is a company of brethren with their elders and leaders. From the mouth of that company have I heard, face to face have I received it" ; 3) promulgation of a rule by an Assembly of Monks containing elders and leading men versed in the canonical laws. "In such and such a dwelling-place there are dwelling many elders of the Order, deeply read, holding the faith as handed down by tradition

versed in the truth, versed in the regulations of the Order, versed in the summaries and doctrines and the law" ; 4) promulgation by one monk versed in the law : "In such and such a dwelling-place there is there living a brother, deeply read, holding the faith as handed down by tradition, versed in the tradition, versed in the regulations of the Order, versed in the summaries of the doctrine and the law" (SBB 111 : 135).

1) In this case, a monk might say : "Face to face with the Excellent One, . . . did I hear it ; face to face with him did I receive it. This is Dhamma, this is Vinaya, this is the Master's teaching." 2) Here again a monk might say : "In such and such a dwelling-place resides an Order (of Monks) together with an elder monk, a leader. Face to face with that Order I heard it ; face to face I received it . . ." 3) : . . . In such and such a dwelling-house resides a great number of elder monks, widely learned, versed in the doctrines . . . Face to face . . ." 4) "In such and such a dwelling-place resides a single elder monk, of wide learning, versed in the doctrines. . . Face to face . . ." (S 11 : 175-176).

The Buddhist Laws as they stand today could be ascribed to all these four authorities or sources, although in our present stage of knowledge it is difficult to sort out the different threads of the complex web as it is found today, identifying those for which the Buddha was directly responsible and those with which the other three sources are to be credited. The overall tendency, as mentioned earlier, was to ascribe all laws to Buddha and this traditional attitude pervaded the entire atmosphere of Buddhist Law.

"The rules were either drawn up in their entirety in Gotama's lifetime ; or they were drawn up in their entirety after his Parinibbāna ; or some were drawn up during his lifetime and others afterwards" (BD I : xiv). The laws themselves were repeatedly modified or revised and the Buddha declared that the Order of Monks could, if they so desired, dispense with minor laws. The role of the three other authorities (i.e. apart from the Buddha) in becoming the formal source of law is thus understood by the very nature of the origin of particular laws themselves. It was the modest monks who on many occasions were the immediate social force that was instrumental in bringing about the particular laws.

The criteria for all laws irrespective of the fact that they originate from this or that formal source is their ability to harmonize with the Doctrine and Discipline (i.e. Rules of the Order). The harmonization should convince a person to accept that "Verily, this is the word of the Exalted One (Buddha), and has been well grasped by the elders." In this process the basis of proof was the empirical experience that such laws when "performed and undertaken" do not lead to "loss and sorrow."

From whichever source or authority a rule or law is added or incorporated into the Tradition, the real test is to "scrutinize it closely, words and

syllables," laid beside Sutta (Discourse) and compared with Vinaya (Discipline). "If, when thus laid beside Sutta and Vinaya, they lie not along with Sutta and agree not with Vinaya, to this conclusion must ye come : Surely this is not the word of the Excellent One. . . and it was wrongly taken by the monk. So reject it . . ." (GS 11 : 175).

Undoubtedly the traditional laws were functioning at the time that customs and beliefs found their way into Buddhist Law. The framework of some Buddhist Laws rests on the tradition of the time while the details and legal methods adopted are the invention of the Buddhists (cf. Bhagavat, 1939 : 149). Even here what has been borrowed from the Tradition and given the garb of Buddhist Law receives its authority not from the individuality of its material source (tradition or custom) but from the formal source (the harmonization with the Doctrine and the Discipline).

Buddha's position in Buddhist Jurisprudence is more on the lines of a law-enforcer than a law-giver. In this respect one could compare him with the Universal Monarch.\* The comparison of the Buddha with Universal Monarchs takes place often in the Buddhist Tradition. When young Siddharta (future Buddha) was born, the prophecy made by the astrologers of the royal court (except one) was that one day he will either become an Universal Monarch or an Enlightened One (Buddha). In one of his discourses the Buddha implicitly compares himself with such a monarch. When he was asked by his disciple as to how his remains after his death should be treated, The Buddha states : "as men treat the remains of Universal Monarchs, so should they treat the remains of the Tathagata (i.e. the Buddha)" (SBB III : 155). "The parallelism between the King and the Buddha is evident in a wide variety of the early Buddhist texts where the authority of the Buddha is expressed through the medium of royal images" (Holt, 1983 : 51).

In other discourses we observe how the Universal Monarch enforces the Dhamma or Law during his reign. The celestial wheel appearing in the sky symbolizes the law of the world. As long as the King maintains it, the celestial wheel remains in the sky. When the King deviates from it, the wheel slips down, to disappear completely when the Law is completely violated (SBB IV, 60).

The Celestial King is not a person who receives his Kingship as a form of heritage. ("For no paternal heritage of these, dear son, is the celestial wheel" ; SBB IV : 61). The Law is the Ariyan duty. It is symbolised in "Ye should slay no living thing. Ye shall not take that which has not been given. Ye shall not act wrongly touching bodily desire. Ye shall speak no lie. Ye shall drink no maddening drink." (SBB IV, 63-64).

In another discourse we find how the King was elected by the people to enforce order in their society : "Then . . . those beings went to the being

\* For information on Universal Monarchs, the wheels of whose chariot roll unhindered through the land, see SBB III : 155, note 2.

among them who was the handsomest, the best favoured, the most attractive, the most capable, and said to him : Come now, good being, be indignant at the whereat one should rightly be indignant, censure that which should rightly be censured, banish him who deserves to be banished. And we will contribute to thee a proportion of rice" (SBB, IV : 88).

As long as the Buddha lived he was to his followers the obvious formal source of law. As a King enforces law in his Kingdom, the Buddha enforced it. But if one examines further, one would not fail to notice how the life the Buddha envisages, as depicted by his Doctrine and the Discipline, gradually assumed in importance as the formal source of Buddhist Law. Towards the end of his life, when he was questioned as to what was to happen to his Order after his death, he replied that the Buddha does not think that the Order is dependent upon him or that it is he who should lead the Order. He advised : ". . . Be ye lamps unto yourselves. Be ye a refuge to yourselves. Betake yourself to the external refuges. Hold fast to the Truth as a lamp. Hold fast as a refuge to the Truth. . ." (SBB III, 108).

The Truth here referred to is nothing but the Four Noble Truths. It is the Doctrine and Discipline (Dhamma and Vinaya) which contain the path leading to the understanding of this Truth. Buddha has experienced this Truth and re-discovered (Buddhas before him had similarly re-discovered the Truth earlier) it. The life he prescribed is thus the formal source of law here against which we have to weigh the importance or significance of the Buddhist Laws. Buddha's position, even as a formal source of law, is due to his realization of the Truth and the discovery of the way of life (or Path) that leads to this Truth.

Buddhist Law pre-supposes two dimensions. First of all there is the legal dimension. A law has been promulgated with a definite penalty or punishment attached, if it is violated. Beyond this there was the theory of Karma according to which one's volition decided the consequences that came after it. The nature of the Consequences according to this dimension is observed in the following examples :

- (1) ". . . As I was coming down from the summit of the Vulture's Peak, I saw a lump of flesh going through the air, and vultures, crows and hawks, following hard, were tearing at it and pulling it to pieces while it uttered a cry of distress." "Monks this being was a cattle-butcher in this very Rajagaha" (BD, I : 183).
- (2) ". . . As I was coming down from the summit of the Vulture's Peak, I saw a man who had swords for hair going through the air. These swords of his, constantly flying up into the air, fell down on his body while he uttered a cry of distress." "Monks this being was a butcher of pigs in this very Rajagaha" (BD I : 184).

- (3) "I saw a man having hair like needles going through the air. These needles of his piercing his head came out through his mouth, entering his mouth they came out through his breast, entering his breast they came out through his stomach, entering his stomach they came out through his thighs, entering his thighs they came out through his leg. . . ." ". . . was a slanderer in this very 'Rajagaha'" (BD, I : 185).
- (4) "I saw a demon-man going through the air. When he moves he goes having put his secret organs on to his shoulder, when he sits among these secret organs, so that vultures, crows and hawks following hard, were tearing at him and pulling him to pieces, while he uttered a cry of distress. . ." ". . . was a village fraud. . ." (BD, I : 185).

The Buddha, on a number of occasions when monks transgressed the Law, while imposing the legal penalty has also spoken of the spiritual penalty. To the monk who, having undertaken the vow of celibacy, broke it forthwith, the Buddha says : "For that reason you would go to death, or to suffering like death, but not on that account would you pass at the breaking up of the body after death to the waste, the bad bourn, the abyss, the hell . . ." (BD, I : 36). The identical suffering in this life, at death and thereafter is told about those who violate the fourth Pārājikā (BD, I : 37).

The spiritual dimension involved in the commission of crimes was to a great extent a factor that had its desired effect on societal control. Very often the untold miseries and sufferings that one is entitled to encounter both in this life and there after as a result of one's volitional activities (Kammās) which are considered undesirable are colourfully painted in the Tradition. We have seen in the above examples how the suffering is graphically portrayed (GS III, 93).

Activities when engaged in volitionally either in thought, word or by means of the body, are liable to bring the corresponding result (DHP : 15). "I am the result of my own deed, heir to deed ; deeds are matrix, deeds are kin, deeds are foundation ; whatever deed I do, whether good or bad, I shall become heir to it" (GS III, 59).

The Kārmic effects of crimes were explained in the socialization process. When somebody kills another he could suffer in an unpleasant state for a long time sometimes in this very life itself. If born again he could be ugly, deformed or disabled, cowardly, divested of compassion, subject to disease, dejected and mournful, separated from the company of loved ones, meet death unexpectedly while in the prime of life etc. This sort of education explaining in detail the negative effects of crimes or offences acted as a wet-blanket on the enthusiasm generated in favour of crime, if it ever presented itself to the mind of an individual.

The Buddhist teachings listed five bad consequences arising out of the commission of crime. They are : (1) falling into poverty ; (2) acquiring an evil reputation ; (3) lack of confidence with which such a person approaches a company ; (4) fear at death and (5) rebirth in a state of suffering (SBB III : 90-91 ; also cf. Dhp : 43).

Such action would bear fruit immediately thereafter in this life, in the very next life or in any other future life. There are instances when, due to good volitional activities, an individual hastens his journey to the end of the cycle of birth arriving at Nirvāna or Final Enlightenment before the bad Kamma or volitional activity could bear its fruit. In this instance it is possible to delay or soften or completely escape the effect of bad or undesirable volitional activities by engaging in desirable volitional activities. There is no such person as a 'cursed' or "an eternally condemned man" for whom there is no salvation or freedom.

Volitional activity or Kamma does not mean that every action and its result is pre-ordained. This is observed by the following statements : "Exactly according as this man does a deed, in such manner will he experience (the result of) it" — that being so there is no holy living, there is no opportunity afforded for the perfect ending of Ill. But monks if one should say 'Exactly according as a man does a deed that can be experienced (hereafter) exactly in such manner does he experience the fruits as thereof' — that being so there is living of the holy life ; there is the opportunity afforded for the utter ending of Ill" (GSI : 230).

The Buddha speaks against three kinds of erroneous ideas present at the time which gives an understanding about the autonomous nature of the Buddhist theory of Karma. The first is the belief that some people do entertain that all the pleasure and pain that a person feels are the results of the acts in his previous births. Then there are those who believe that all are due to the results of creation by the lord of the universe. Both these are erroneous because they leave no room for freedom of will which is the basis of Karma. The third belief is that all that happens has neither reason nor cause. According to this everything happens by chance and therefore no effort is needed (Tachibana, 1926 : 91-2).

Kamma or volitional activity works in two directions : individual volitional activity and collective volitional activity. Sociologically it appears that the Buddhist Rituals do possess these two aspects of volitional activity (Varma, 1963). When a group of monks engage in a ritual, all of them being free from undesirable volitional activity, the cohesion of the group, its power enhances. This could be the underlying principle of the Observance and Invitation rituals in which all monks were expected to be pure so as to make the entire group pure (i.e. collective purity).

These two aspects of the result of Kamma or volitional activity have been referred to as the net result of a chain of consequences accruing to the doer and environmental consequences.



Evidence from two Jatakas show the broad operation of the collective impact. In one Jataka (JAT, III : 39-43) the King of the country tortures an innocent hermit. The Gods, being angered by the King's ruthless behaviour, punish the people as well as the King. Of course a warning was given to those who did not approve of the King's heartless torture to escape beforehand. Then there is the case of the other story (JAT, IV : 50-52) according to which no one in a family for generations happened to die before they became really old in age. The reason for this was that the family observed the Five Basic Principles of moral behaviour : (non-slaughter of living beings, non-stealing, abstention from wrongful sexual intercourse, abstention from lying and abstention from the taking of intoxicants).

The emphasis on collective impact of volitional activities may very well have a sociological foundation. The monks as everyone else live in society. The individual action influences or affects others and then the very environment in which one lives. If a monk does some act considered as not legal, the society would disapprove of his act and an attitude based on that disapproval would come into being. As a result of this the respect, reputation, good name etc. of the entire group would suffer. In the case of an individual committing a crime, his family would immediately suffer. The group very often dissociated itself from individuals who violated the law because, by doing so, the collective purity of the group could be maintained.

The collective purity was the basis of the identity of the group and in this case it involves also the spiritual identity of the community of monks, "The disciplinary code not only seeks to inspire Bhikkhus to control volition, but also seeks to sustain the collective identity of the community by controlling, to a limited extent, the environmental consequences which follow. By expelling Bhikkhus for committing actions such as killing, the Bhikku Sangha (the community of monks) purifies its own environment, much in the same way that a King maintains societal order. Discipline, therefore, seeks to regulate the conditions of the mind preceding an action and the consequences which follow if that mind persists in an undisciplined manner" (Holt, 1983 : 78). The collective purity is maintained by the dissociation of the community from the Kammic consequences that follow from the undesirable volitional actions of an individual. ". . . The disciplinary code acts as a preventive force by attempting to control the environment of a Bhikkhu as well as the nature of his actions in relation to the environment" (Holt : 77).

The analysis of the disciplinary code or Buddhist Laws cannot be done in isolation from the Buddhist Doctrine. The term Dhamma-Vinaya, the Doctrine and the Disciplinary Code, occur always together. In the two volumes which contain the section known as Vibhanga one finds the disciplinary laws presented with the Doctrine providing the background. The relevance of the Disciplinary Code and its meaning becomes clear when taken together with the Doctrine. It is only then one notices the real significance of the Buddhist Laws or Code of Discipline to the laymen.

The Five Precepts of the Buddhist laymen have been referred to as the foundation of the Buddhist Disciplinary Code or Laws (Pachow, 1955 : 37). The attempt made here is to show a fundamental relationship between the moral precepts (Sīla) and the Buddhist Laws. Although one could point out and establish this relationship in a number of Laws, it is not valid for all the major and minor laws or disciplinary injunctions. It has been shown that by this relationship only 139 rules out of 227 could be shown to be based on moral precepts (Holt, 1983 : 63).

Moral Precepts undoubtedly are the basis of a Buddhist Discipline. "Virtue underlies the entire Buddhist Path, for virtue is the post to which one ties the refractory elephant of the mind ; and the Buddha himself is traditionally taken as the exemplar of virtue in all of its forms" (Beyer, 1974 : 1). The Noble Eight-fold Path or the Middle Path comprises eight steps divided into three sections, i.e. Moral Precept, Concentration and Wisdom (Sīla, Samādhi and Prajna). If the Middle Path is entirely based on the Panca Sīla or Five Precepts, which were pre-Buddhistic in origin, there is nothing new in the Buddha's experience presented to us.

As lust, malice and delusion (Lobha, Dosa and Moha) are the basis of all undesirable volitional activity done by means of thoughts, word and body, the disciplinary code or Buddhist Laws are regarded as a means established for the rise of detached actions which finally result in pure expressions of body, speech and thought (Holt, 1983 : 89). This analysis is carried out by Holt in minute detail.

There is no doubt that, of all plausible explanations as to the philosophy behind the Buddhist Disciplinary Rules, the one given by Holt is the most logical. The Middle Path or the Noble Eight-fold Path has to be followed in order to realize the Four Noble Truths. If one puts an end to the undesirable volitional activities based on lust, delusion and confusion, the end of the cycle of births and deaths is finally reached. The Buddhist Laws are meant for the purpose of the eradication of lust, delusion and confusion in one's gamut of physical, mental and vocal acts.

The Buddhist Laws lay down penalties or punishments for each specific type of offences. The philosophy behind these penalties was nothing but compassion. A wrong-doer is a person who is misdirected either by himself or because of others. Even although he sometimes does a wrong which is very serious in nature, he is potentially capable of developing himself to the highest point. This we observe in the case of Angulimāla who was "a hunter, bloody-handed, bent on death and destruction, merciless to living creatures. Through him villages were depopulated and market towns were depopulated and country districts were depopulated. From his constant killing of people he wore a garland of fingers" (MS II , 284).

It was possible for a person such as Angulimāla to enter the Order and become a monk of highest virtue. "He who formerly was slothful but afterwards is diligent illumines the world like the moon freed from a cloud. He whose evil done Kamma is closed by what is skilled illumines the world" (MS II : 296).

Since compassion is the motive behind any sort of penalty, the idea of torture never found a place in Buddhist penology. Even when such torture is mentioned as existing at the day a sort of revulsion and sorrow are often exhibited (MS I , 114-5) in referring to them : "They lash (a thief) with whips, canes, rods ; cut off his head, foot, ear, nose ; they give him the 'gruel pot' (i.e. they take off the skull and taking a red-hot iron ball with pincers, drop it in so that the brains boiled over.) "

The Buddhist teachings discourage the harming of anyone because all tremble at punishment (Dhp : 43). Crimes or wrong acts or deeds are committed by fools or people who do not realize the evil nature of their own actions.

A person who commits an offence is regarded as a man with a blemish which he should himself try to get rid of (GS I : 33). Others can only help him. One should be a lamp unto oneself. The Buddha's teachings provide guidance and by following these one should oneself strive hard to get rid of blemishes.

The attitude to offences in monks or laymen was based on this philosophy. The most serious punishment in monastic law was expulsion. In Buddhist terms the monk who commits one or more of the serious offences (Pārājikā) makes himself unsuitable for the life of a monk. As soon as a man becomes a monk, the four serious offences are explained to him. As the offences involve intimate details such as those pertaining to his sex life, the explanation is done by a companion (a peer) rather than by the teacher or the preceptor (DB, I : 96), "having ordained a monk, . . . give him a companion. . . . to explain the four things which are not to be done" (BD, I : 124).

We are not sure as to what precisely Pārājikā or expulsion meant during the Buddha's day. It is quite probable that it had a particular tradition behind it and the Buddhists perhaps modified it and incorporated it into their penology. It could mean one's inherent incapability to live in the community. In such an instance one has to be made to live separately away from others or in a place where one's freedom of movement is curtailed.

What would the penalty of expulsion mean in Buddhistic terms if it is applied to laymen when serious offences are committed (e.g. killing with violence, rape etc., robbery etc). There is no doubt such an offender by the very nature of his offence makes himself unsuitable for living in the community where he has lived so far. Capital punishment, banishment, torture in various forms were the penalties current at the time (GS I : 42-3 ; MS I : 114-5).

Buddhist Law never prescribed capital punishment or torture. Both were contradictory to Buddhist Principles. Curtailment of liberty or the freedom of the person by confining him in a place suitable for such a purpose was visualised. Here, subject to the minimum basic needs of the offender being looked after, he should be subjected to a discipline which would make him a changed man and a man useful to society when he returns from his temporary incarceration.

In all serious offences the philosophy was not to inflict punishment with a retributive base. The word in Pali used for punishment is *Danda*, which is in addition to the meaning of penalty, had another meaning (i.e. restraint). What was necessary was to establish restraint because the volitional activity of the offender, undesirable in nature, had resulted in the commission of this serious offence.

The theory of collective purity made it incumbent on the community to see that the individual offence was somehow expurgated from their collective action. If this was not done, the entire community became morally and legally responsible.

Other than for serious offences, the penalties often utilised were the imposition of a particular kind of discipline and probation under a well-organised system of supervision and guarantors, the payment of compensation as evident in the law dealing with Forfeiture and Expiation. The law as it is refers only to monks who do not have any personal belongings of their own other than what is held by the community of monks as common property. The Expiation laws allow the forfeiture to be made in the Court (Order) itself (BD, III : 91). What is in excess is here "cut down" and in another what is against the rules had to be "broken up" (BD, III : 88).

Forfeiture when analysed allows the offence to be dealt with by necessary material recompenses. In the case of monks who cannot accept money, (when money was involved), special officials were appointed to deal with such money in a way not inimical to their principles. This shows that money as a means of paying compensation to the injured party or as a method of payment of a fine in the modern sense was not unknown to the Buddhist Law Makers.

Probation was used as a very useful technique in the system of penology. (Ratnapala, Probation, 1987) But it was always associated with a very effective system of supervision based on the network of relationships that existed in the family and the community. The success of probation was solely due to the system of close supervision which was always enforced under **Buddhist** Law.

Punishment often consisted of the imposition of certain disabilities and the suspension of privileges usually enjoyed. This was done while the social image of the offender was not harmed. After the penalty, he was received

back and he enjoyed the identical position he had earlier without 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.

Although the Buddhist attitude towards punishment was guided and moulded by human considerations and compassion, the idea of isolating a wrong-doer (for e.g. in a penitentiary) when the result of his living in the community was harmful to others was appreciated in Buddhist legal thinking : "Monks, just as when a great heap of corn is winnowed, the grain which is sound and has substance is piled in one place, but that of poor quality, mere chaff, the wind carries to one side. At once the husbandmen with brooms sweep it still further away, and why? They say 'Let it not corrupt the corn of worth'" (GS IV , 109). The isolation of the wrong-doer should not result in subjecting him to unnecessary mental and physical torture. The isolation should serve the purpose of educating him, disciplining him to become a new man and for protecting others as far as possible from his misdeeds. Punishment in Buddhist Penology has no retributive or sadistic objective at all.

---

#### REFERENCES

(Cited in order of appearance in the Article)

Rahula, Walpola — *What the Buddha Taught*, London, 1972.

Austen, *The Province of Jurisprudence Determined*, Introduction by H. L. A. Hart, reprint, London, 1965.

GS, *Gradual Sayings PTS*, 5 Vols 1932-36

Dutt, Sukumar, *Early Buddhist Monarchism*, London 1924.

Salmond, *Jurisprudence of the Study of Law*, London, 1902.

SBB, *Sacred Books of the Buddhists PTS*, 4 Vols 1890 - 1921

BD, *The Books of the Discipline*, trs. by I. B. Horner, 5 Volumes, 1936-52, London.

Bhagavat, Durga N, *Early Buddhist Jurisprudence*, Poona, 1939.

Holt, John Clifford, *Discipline : The Canonical Buddhism of the Vinaya Pitaka*, Delhi 1983.

Dhp : *The Dhammapada*, ed. by Narada Maha Thera, London 1954.

Tacibana, S, *The Ethics of Buddhism*, Oxford, 1926.

Varma. V.P., "The Origin of the Sociology of the Early Buddhist Philosophy of Moral Determinism," *Philosophy East and West*, 13 (April, 1963) : 25-48.

The Jātakas Vol I-vI, ed. by V. Fausboll, London 1887-96 Pachow, W., "A Comparative Study of the Pātimoksa Sutra," Santiniketan, 1955.

Beyer, Stephen, *The Buddhist Experience, Sources and Interpretation*, California, 1974.

MS, Middle Length Sayings, (Majjhima Nikāya) Vols 1 -111, trs. by I. B. Horner, London 1954-59.

The Translations are cited here for the convenience of the reader who is not familiar with Pali Language. If necessary the reader could always refer to the Pali Originals :

Anguttara Nikāya Vol I-V, ed. by R. Morris and E. Hardy, London (PTS) 1885-1900.

Dīgha Nikāya, ed by T. W. Rhys Davids and J. E. Carpenter Vol 1-111, Cambridge (PTS) 1890-1911.

Majjhima Nikāya, See Note 16 above.

Samyutta Nikāya, ed. by M. Leon Feer, Vol. 1-V, London (PTS) 1884-98.

Vinaya Pitaka, ed. by H. Olenberg, Vol. 1-V, London (PTS) 1897-1883.

Ratnapala, Nandasena, "Probation : The Heart of Buddhist Disciplinary Law," *Vidyodaya Journal of Social Science*, July, 1987. Pp. 19-27.

---

#### BIBLIOGRAPHY

- |                               |   |  |
|-------------------------------|---|--|
| Aubert, Wilhelm, (ed)         | — | <i>Sociology of Law</i> , Middlesex, 1969.               |
| Barnes, H. E. & Teeters, N.K. | — | <i>New Horizons in Criminology</i> .<br>New Jersey 1943. |
| Bean, Phillips                | — | <i>Punishment</i> , Oxford 1981.                         |
| Bloch, Adeline & Ruth Geis    | — | <i>Man, Crime and Society</i> , New York<br>1962.        |
| Boies, W.M.                   | — | <i>The Science of Penology</i> , London,<br>1931.        |
| Cohen Morris, R.              | — | <i>Reason and Law</i> , New York, 1950.                  |

- De, Gokuldas, — Democracy in Early Buddhist Sangha, Calcutta, 1910.
- Feinberg, Joel & Heyman Gross — Philosophy of Law, California, 1972.
- Friedrich, Carl Joachim — The Philosophy of law in Historical Perspective, Chicago, 1958.
- Golding, Martin P. — Philosophy of Law, New Jersey, 1975.
- Hacker, P.M.S. & Raz. C.J. (eds) — Law, Morality and Society, Oxford 1979.
- Hall, Jerome — Foundations of Jurisprudence, Indianapolis 1973.
- Hart, H.L.A. — Punishment and Responsibility, Oxford 1978.
- Hart, H.L.A. — The Concept of Law, Oxford, 1970.
- Hood, Roger & Shark R.F. — Key Issues in Criminology, London, 1970.
- Pospisil, Leopold — Anthropology of Law, A Comparative Study, London, 1970.
- Quenney Richard — The Problem of Crime, New York, 1971.
- Ratnapala, Nandasena — Buddhist Sociology, New Delhi, 1983.
- Rawls, John — A Theory of Justice, Cambridge, 1971.
- Sykes, Grasham M. — Crime and Society, New York, 1967.
- Timasheff, Nicholas — An Introduction to the Study of Law, 1939.