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### ABSTRACT:

*Vinayarudes are the monastic discipline that though the proclamation of the 227 vows is designed to restrain physical and verbal action, the underlying purpose of the vows is to control the mind's motivating unethical action. Further, it briefly surveys the texts that record the process of the proclamation of training rules.*

*Legal monastic theory which has also attracted the attention of some eminent jurists, scholars of law, and trained lawyers, is an ideal field for serious research. Addressing our mind to the vinaya on the one hand and to Legal philosophy on the other, we embarked on this pioneering research study in the fervent hope that it would highlight some of the salient features of both systems. We wish with all humility that it would make an impact however small on the subject which is so full of potential for further research. In the discussion of the vinaya and the Legal philosophy I have arranged the item as follows:*

- (1) *Early Buddhist Monasticism and the promulgation of the vinaya Rules.*
- (2) *Law and its philosophy.*
- (3) *The Recital of the patimokkha and its objectives.*
- (4) *The vinaya in Relation to the Four Major Offences (The Parajikas)*

*This paper surveys the sources of ethics In Theravada Buddhism. The sources used for the paper are primarily the palivinaya and its commentary, with some reference to the Milindapanha, kathvatthu, and Abhidharma when I discuss vinaya related matters.*

**KEYWORDS:** *vinaya. Pātīmokkha, monastic, Buddhist Monasticism,*

### INTRODUCTION

The vinaya, the rules regulating the outward conduct of the *sangha* or the Buddhist monastic discipline, is an area where scholars like Max Muller, Monier Williams, H. Oldenberg,

Rhys Davids, Mrs Rhys Davids, N. Dutt, Miss Horner and Miss Bhagvat in the recent past, and more recently John Holt, G.S.P. Misara.

The Buddha's declaration of ethical rules was seen as one of his two fundamental responsibilities. He states in the *suttavibanga*: "the enlightened ones, the lords, question the

monks concerning two matters, either 'Shall we teach dhamma?' or 'shall we declare the course of training for the disciples?'"<sup>1</sup> In proclaiming training rules, the Buddha not only delineated the basic modes of behavior that facilitate the attainment of the transcendent state, but he also defined how the lay and ordained may interact ethically within

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society. This process is not simply the imposition of an ethical code by ecclesiastic edict; it evinces a twofold process that has as much to do with social action as religious innovation. As such the rules demonstrate the inductive tendency of society to intuitively reject various types of action.

In this study I shall focus on the record of ethical jurisprudence covering the proclamation of the 227 rules for monks within the Theravada tradition and the general trends that explain the structure and function of the vows. This process of ethical proclamation reflects the relationship between the laity and the ordained, and the social tension surrounding the idea of the sacred and how it should be represented. This process is revealed in the discourses on discipline (*vinaya-pitaka*), which present a diverse field of phenomenological data recorded in the centuries after the passing of the Buddha. They are accounts of religious jurisprudence that not only form the basis of a descriptive phenomenology but also bear the mark of different layers of interpretation. Because this material forms the basis of this in visitation, its historicity and the conditions surrounding its accumulation require some examination.

### EARLY BUDDHIST MONASTICISM AND THE PROMULGATION OF THE VINAYA RULES

The Indian soil, which was the cradle of many religious teachers of diverse faiths, became most famous and popular in the world, because of Gotama Buddha and His teachings. Under His guidance and stewardship, the Buddhist Monastic Order, popularly known as the "*Ariya Bhikkhu Sangha*" became a uniquely planned system of monastic organization. It was fully equipped a uniquely planned system of monastic organization. It was fully equipped with an elaborate and well defined code of law called the *Vinaya Pitaka*.

The early followers of this religious Order, on the instructions of their respected Leader, went forth into the country, with full of enthusiasm and determination, to spread the new teachings to the masses. These early monks were distinguished by their frugal life style of wearing a patch work robe, living at the foot of a tree, or a cave, and subsisting on food collected in their once a day alms-round.

These mendicants strove forth with a diligent and disciplined mind, treading a "middle path", avoiding extreme sensual pleasures and self-mortification. In order to achieve the said goal, the first step advocated by the Buddha was, the absolute renunciation of lay life and the adoption of a life of celibacy (*Brahmacarya*).

The impediments that characterize domestic life are often emphasized in the Buddhist scriptures and household life is described as full of obstacles (*sambadha'yamgharavaso....*) To overcome these impediments, the practice of celibacy in its full and pure form (*sankhalikhitambrahamacariyam*) was constantly encouraged in Buddhism, and served as the corner-stone of Buddhist Monasticism.

In discussing early Buddhist Monasticism, it would be pertinent to mention briefly the *brahmacarya* life. It is desirable to do so, as Buddha Himself recommended the life of a *brahmacariya* to His disciples. But the *brahmacariya* ideal preached by the Buddha differed much in content and purpose from the *Upanishadic* view of it.

Furthermore, the earliest monks of the Buddhist Order, who led the life of *brahmacariya* could be considered as the forerunners of early Buddhist Monasticism.

As we do not propose to deal with the life of *brahmacarya* under the *Upanishads* in detail, it would suffice to have a glimpse of such life.

*Brahmacarya* is equated to what people call 'sacrifice' (*yajna*), what has been sacrificed' (*istam*), what people call 'the protracted sacrifice' (*sattrayana*), what people call, 'silent asceticism' (*mauna*), what people call 'a course of fasting, (*anasakayana*) and what people call 'betaking oneself to hermit life in forest' (*aranyayana*'. The Buddha come into being at an age where men left the world society and adopted a distinct way of *Brahmacarya* life as aforesaid. He proclaimed a new method of religious life based on the concepts of dukkha, (suffering of life) samudaaya (the arising of dukkha), nirodha (cessation of dukkha), and magga (the way of dukkha. This life of *brahmacarya* shown by the Buddha, aimed at the extinction of dukkha, and the final attainment of nibbana.

Both in the samyuttaNikaya, and the pitaka of vinaya, we find the Buddha addressing the monks: “Ehi Bhikkhu ti bhagava avocas vakkha to dham mocara brahma cariyam sam maduddhassaan takitiyaya’ti”<sup>2</sup>

As the complete way to salvation it is also said to embrace all three phases of sikkha or self-culture, in Buddhism, namely sila, samadhi panna i.e. morality, tranquility of mind and wisdom respectively. In order to gain the life of full perfection one has to renounce the household life which is full of sensual pleasures.

He has to cultivate diligently the attitude of non-attachment to all other surrounding pleasures which form part and parcel of a householder’s life. A monk who becomes a brahmachari has to observe strictly the vow of celibacy, which otherwise falls into the category of abramacari (non-brahmacariya) which is more a concomitant of a sensual life of a householder.

Thus, a monk who enters brahmachariya’s life not only gives up all the belongings as a householder, but all his desires, pleasures, and emotions, which form the characteristic features of those who live in a household. His life is so spent, with no burdens to carry, it is said, that he leads a life with just enough food for his sustenance and a robe to cover himself, that he goes about like a bird which wherever it goes, carries only the weight of its feathers.

. As the Complete way to salvation it is also said to embrace all three phases of *sikkha* or self-culture, in Buddhism, namely *sila*, *Samadhi panna* i.e. morality, tranquility of mind and wisdom respectively.<sup>3</sup> (*Seyyatha pi namapakkhisakunoyenayenevadetisapattabharovadeti evameva bhikkhu samtutthohotikayapariharikenacivarenakucchipariharikenapindapatenayenayenevapakkamatisamaday evapakkamati*).<sup>4</sup>

The contemporary faiths or religions in India, at the time of the Buddha, also advocated both renunciation and celibacy for the aspirants of a *brahmachariya* life.

It appears that most of the aspirants renounced the household life only after the full enjoyment of household pleasures and when they become rather old. Those who become *brahmacharins* under these other religions had to practice austerities of the highest severity, in order to achieve the goal of liberation according to their beliefs. But in the Buddhist way of *brahmachariya* life as could be seen in Buddhist texts, the *brahmachariya* life began when the aspirants were rather young.

Also the Buddha never encouraged but totally denounced both extremes, austerity or self-mortification (*attakilamathamuyoga*), and extreme sensual pleasures (*kamasukhallikamuyoga*). One could thus have a bird’s eye view of the difference between the *brahmachariya* life spent by the adherents of other faiths and those who followed the Buddhist way of life.

The early Buddhist disciples who voluntarily decided to follow the life of *brahmachariya* under the Buddha came to be known as “*Bhikkhus*”, members of the early Buddhist Monastic Order (*Sangha*). All alike were bound by the vows of poverty. They who relinquished all personal or individual possession of worldly goods and sought in meditation and spiritual endeavor believed that deliverance from bonds of existence and misery.

## LAW AND ITS PHILOSOPHY

As the *vinaya* is examined in the light of modern legal philosophy, we propose to consider the philosophical side of law in this paper. Before we proceed further, it is advisable to elucidate the meaning of the term “legal” as given in the Shorter Oxford English Dictionary.

‘Legal’ means “pertaining to or falling within the province of law or pertaining to or concerned with the law” (at page 1125). Therefore one could see that the term “legal” is related to law. In other words, the term “legal” exists within the framework of the law. The same Dictionary gives the meaning

<sup>2</sup> Samyuttanikaya, 11, p 24

<sup>3</sup> Professor J.Dhirasekera, Buddhist Monastic Discipline, p

<sup>4</sup> Majjhimanikaya 1, pp 180,260

of the term “philosophy” as follows: “The knowledge or study of the principles of human action or conduct.”

Law could be considered as a particular branch of knowledge. As stated earlier, the term “legal” falls within the area or the province of law. A combination of these two terms, ‘legal’ and ‘philosophy’ would mean, a study of the general principles underneath of underlying the law. Before we analyze such general principles, it is desirable to know the answer to the same question, “what is law?”.

Professor H.L.A. Hart shows how difficult it is to be given an exact definition of law in the following manner:

“the same predicament was expressed by some famous words of st. Augustine about the notion of time. What then is time? If one asks me I know, if I wish to explain it to one that asks I know not. It is in this way that even skilled lawyers have felt that, though they know the law, there is much about law and its relations to other things that they cannot explain and do not fully understand”.<sup>5</sup>

What Professor Hart tried to explain was, that law has its connections with various other things in human society, that much could be said about it, but a straightforward definition of law could not be given so easily.

From time to time jurists and other men learned in the law embarked upon the task of defining and explaining the law as they understood and thought of it.

A student of law cannot refrain from mentioning John Austin’s definition of law, because it is such a popular and well-known definition. Austin’s definition of law or to be more precise, his theory of law did not go unchallenged.

It became subject to more criticism, than any other theory or definition of law. Several questions were raised, exposing his theory to criticism.

“Can, for example, the features of a Federal system like that of the United States be comfortably accommodated in Austin’s model? Is the power- dependant notion of a command adequate? Has Austin taken penal laws to be the prototype for all laws, thereby distorting the features of other kinds of laws and exaggerating the role of sanctions in their operations? Are the rules that govern the validity of laws to be taken as commands by the sovereign to himself, and, if so, does that account do justice to claims of invalidity that are advanced in modern legal systems? Does Austin’s account of sovereignty distinguish legitimate exercise of political power through legislation from effective legislative exercise of political power, presumably only the former qualifying as law?”<sup>6</sup>

Although such criticisms were leveled against Austin’s theory of law, yet he pointed out certain fundamental features that are present in the law. They are: (i) Command, (ii) sovereign, (iii) obedience, (iv) sanction, and (v) political society.

A command is primarily an appeal not to fear but to respect authority.<sup>7</sup>

The Legislature or Parliament may pass a certain statute, whereby a certain course of conduct by persons engaged in the field of trade is prohibited. For example, a statute may be passed that a particular item of goods should not be sold for more than the controlled price published in the Government Gazette issued every month. After the Statute or the Act becomes law, it is expected by the Legislature that those who come within the purview of the Act, respect the command or the authority of the Legislature by conforming to the provisions of the relevant Act. It could be said that an appeal is made, through the statute, to respect the Legislature’s authority, or its command, by obeying the provisions of the statute.

A command could also be described as an order. Order may be either to do or to refrain from doing a particular thing as stated in the law. The order or the command is generally addressed to persons to whom the particular law applies.

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<sup>5</sup>H.L.A. HART, The Concept of law, p 13

<sup>6</sup>Joel Feinberg, Hyman Gross, Philosophy of law, p 5

<sup>7</sup>H.L.A. Hart, Legal philosophy, p 212

The aforesaid section is in the form of an address to persons who may fall into the category of the members of an unlawful assembly. It also shows how a member of such assembly could be found guilty in respect of an offence committed in furtherance of the common object of that assembly. As a command it says, "If you come within the ingredients of this section or come within the purview of this section you are treated as a member of such assembly and you are found guilty." It indirectly orders that one should not contravene this section, if one is not to be found guilty.

Laws are promulgated with the hope that they are obeyed by the persons to whom they are applicable. Laws that are common to all sections of the people in a country require the obedience of all of them. For example, the Penal laws of a country are applicable to all its citizens, and those who are responsible for the promulgation of such laws expect every person to obey such laws. On the other hand, there are laws applicable to specific areas, such as Municipalities.

Such laws are not common to all the people living in a country, but they only apply to persons living within the area that comes under the particular Municipal Council.

The Recital of the *patimokkha* and its objectives

In the canon of the *vinaya*, one cannot refrain from mentioning the recital of the *patimokkha* which is in fact the recital of the body of *sikkhapadas* during the observance on the *Uposathad* days. There exists a close relationship between the *sikkhapadas* and the recital of *patimokkha*.

At the *patimokkha* recital meetings of the *Bhikkhus*, what was recited was not the *Dhamma*, but the *sikkhapadas*; and for the *sikkhapada* to be recited, they should have been promulgated earlier. This shows, that the recital of the *patimokkha* began, after the promulgation of the *sikkhapadas*. But considering the importance of both the *sikkhapadas* and the recital of the *patimokkha*, we may say that they are indispensable for arresting the decline of monastic discipline.

Miss Horner in her introduction to the Book of the Discipline, Volume 1 states:

"The *patimokkha* rules are the core of the *suttavibhanga*. This *vinaya* rules training was recited twice a month on the *Uposatha* (observance) days, held on the nights of the new and full moon. According to pali tradition, *paribbajakas* or wanderers belonging to other sects, also held sacred two, if not three, days in each month for the recitation of their *dhamma*. It was in imitation of this popular custom that *sakyan bhikkhus* assembled on these same three days. Later, apparently, these were reduced to two, and were devoted to the recitation of the *patimokkha* rules."<sup>8</sup>

The above passage reveals in a nutshell the origin of the recital of the *patimokkha* rules. The *vinaya Mahavagga* records that one day king *Bimbisara* of Magadha informed the Buddha that the *paribbajakas* of other sects met regularly on the fourteenth, fifteenth and eighth days of the half month and preached their *Dhamma*, and people went to hear such *Dhamma*. As a result they gained fame, popularity and had many followers. So he requested the disciples of the Buddha to follow suit.<sup>9</sup>

According to the request made by king *Bimbisara*, the Buddha allowed the monks to assemble on the aforesaid three days of the half month. The monks thereafter assembled on such days, but they did not preach any *Dhamma*. The people who came to listen to the *Dhamma* noticed the monks' silence and criticized them for being silent. When this matter was brought to the notice of the Noble One He instructed the monks to preach the *Dhamma* when they met.<sup>3</sup>

The *vinayapitaka* reveals that the Buddha had admonished his disciples (monks) to recite the *patimokkha* on the day of the *Uposatha*.<sup>4</sup> This admonition was made after He had instructed them to preach the *Dhamma* when they meet on the fourteenth, fifteenth, and eighth days of the half-month.

Thus the meeting of monks on the aforesaid days to preach to *Dhamma*, became converted to an assembly of monks, for the recital of the *patimokkha*, or the *sikkhapadas*, which had by then laid down by the Master for the guidance of his disciples. Nowhere in the *Vinaya pitaka* is it stated, that laymen

<sup>8</sup>Miss Honer, The Book of the Discipline vol:1,px1.

<sup>9</sup>Mahavaggapali, part 1, Buddha Janathi Series, Vol:3, P 248

were allowed to be present when the recital of *patimokkha* was carried out. Such recital was done in the absence of laymen. Hence it is an exclusive act of the order.

### The vinaya in Relation to the Four Major Offences (The Parajikas)

As already mentioned the promulgation of the rules of *vinaya* in the form of *sikkhapadas* became necessary to restrain the acts of misconduct on the part of the errant *Bhikkhus*. *Sikkhapadas* so prescribed began to appear as a comprehensive Code of discipline for the *Bhikkhus*, and their violation made the offender liable to penalties which are also decreed in the *vinaya*.

An examination of the *vinayapitaka* reveals that out of the *vinaya* rules which are two hundred and twenty in number, four are called the *parajikas*, and they are placed at the very top of the list of the *sikkhapadas*. With regard to the total number of them it is said: "the *anguttaraNikaya* specifies the total of *sikkhapadas* which were thus regularly recited to be over a hundred and fifty. This is evidently an early reckoning, for the extant code of the *patimokkha* has a total of 220 *sikkhapadas*."<sup>10</sup>

The fact that the *parajikas* take the foremost place among the *sikkhapadas* strongly indicates that they are the major rules of the *vinaya*, and that their violation undoubtedly constitutes a major offence.

The four *parajika* offences are:

- (i) Indulgence in sexual intercourse. [*methunamdhammampatiseveyyaparajikahoti*]<sup>11</sup>
- (ii) Taking by means of theft what has not been given to him. [*Adinamtheyyasamkhatamadiyeeayatharupeadinnadane*]
- (iii) Intentional killing of a human being. [*Manussaviggahamjivitavoropeyya*]
- (iv) Lying (false proclamation) about one's spiritual attainments or super human attainments. [*yopana bhikkhu anabhijanamuttarimanussadhammamattupanayikam*]

It is fitting at this stage to compare the classification of these four *parajika* rules, with that of the five *pancasila* or five precepts. The *pancasila* which could be described as the minimum *sila* that a laymen should observe has as its first three precepts the abstention from (i) killing, (ii) stealing, and (iii) adulterous sexual indulgence.

It is very conspicuous that according to the order of priority of the four *parajika* offences, indulgence in sexual intercourse comes first, whereas indulgence in illicit sexual intimacy takes the third place in the five precepts. In the group of *parajika* offences the killing of a human being stands as the third item, but in the *pancasila* the killing of the being stands as the third item, but in the *pancasila* the killing of the beings whether human or animals, takes the first place.

With regard to stealing or theft, both the *parajika* offences and the *pancasila* are identical in the position given to it in the classified list. These *parajika* offences form the gravest offences under the *vinaya*. This is very similar to the aforesaid acts of *Bhikkhus* who spent their vassa on the banks of the river *vaggumuda*.

Why cheating is treated as an offence is explained thus: "Law considers cheating as a criminal offence because it is a breach and violation of public rights and duties which affect the whole community of a country and such a crime is considered as a wrong whose sanction is punitive."<sup>12</sup>

From the foregoing description of the four *parajika* rules we may conclude without any hesitation that they serve as buffers against misconduct on the part of a monk. Once such a rule is violated the whole saintly life of a *bhikkhu* breaks down like a dilapidated old house and thereby he forfeits all the claims to be designated as a true son of the Noble One (*Sakyaputta*). Both the inward and outward conduct of a *Bhikkhu* should be strenuously directed towards achieving the purity of his holy life. For this purpose his sense faculties must be well guarded. The observance of the four *parajika* rules makes a monk a symbol of purity and leads him to the achievement of discipline enunciated in the *vinaya*.

<sup>10</sup>Prof.J.Dhirasekara,BMD,p.77

<sup>11</sup>Vin:vol:III,p.21

<sup>12</sup>P.G. Osborn, Jurisprudence,p.74

A well disciplined life with a proper understanding of the doctrine enhances the well being of not only the monk in question but the entire Order and the society in general.

## CONCLUSION

The Buddha established the monastic Order with his disciples, the *Bhikkhus*, as members of it. At the earliest stages of the Order the *Bhikkhus* who were really dedicated to the monastic life earnestly trod the path of the *Dhamma* and the necessity to have rules of discipline did not arise. Any lapse in the conduct of a *bhikkhu* was *retified* at a mere suggestion by the Buddha to resort to the path of *Dhamma* shown by him.

The Buddha interested in the well- being of the *sangha* did not like to see the deterioration of the discipline of his disciples, and decided to promulgate rules of *Vinaya*. As and when the necessity arose, he promulgated these rules with a view to rectifying the conduct of miscreants and to safeguard the purity of the *Sasana*.

As time went on the *bhikkhus* inherited 220 rules of *vinaya*, or *sikkhapadas*, described in the *vinayapitaka*. The modern theory of punishment, namely, the "justice Model" which advocates the theory, that punishment should depend on the seriousness of the offence committed, is discussed with the Buddha's principle of punishment, based upon the seriousness of the offence along with the mental attitude of the offender and the attendant circumstances of the case.

The *vinaya* and the modern Legal System highlights some of the *Vinaya* rules that could be made use of to make salutary amendments to the existing laws under the prevailing Legal System in Sri Lanka.

Although the *vinaya* rules have been promulgated more than 2500 years ago in order to regulate the outward conduct of the *Bhikkhus* and thereby to discipline their lives, some of them can be a source of inspiration of effecting appropriate and suitable changes especially in the field of criminal law and to make such laws more reasonable and humane, in contemporary times.

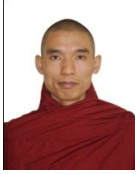
We have endeavoured in this paper to show the fairness, reasonableness, and the preciseness with which the Buddha had promulgated the rules of the *Vinaya* to last till the Order of the *Sangha* exists.

We are of the view that much inspiration could be drawn from some of the *vinaya* rules in order to overcome certain drawbacks found in our legal system. A few of such rules have been pointed out with ways and means to remedy the defects in certain areas of the legal system discussed in this paper.

In this paper, I made an attempt to spotlight the rules of *vinaya* which are directed towards maintaining discipline and well being of the monks and safeguarding the continuance and the stability of the monastic Order. These rules are viewed in the light of modern Legal philosophy which too is intended to contribute to the weal and welfare of mankind.

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