

Chapter VII

CONCLUSIONS

In the foregoing chapters we have made a detailed study of the Buddhist view of penal justice with special reference to the Vinaya Pitaka. In order to facilitate understanding, we have compared and contrasted it with the relevant Hindu and modern Western views also. It was unavoidable. Now we shall bring together our conclusions.

(1) Buddhist law is not as perfect a law as one could desire, but at the same time we cannot ignore the influence of Buddhist law in Indian society and in some parts of the world also. Buddhist law is not a lawyer's law, and in the Austinian sense, we cannot say that it is a positive law. The high sense of duty prescribed in Buddhism had a tremendous impact upon the morality of the people. In a sense Buddhist laws are some moral codes of conduct. The same thing is applicable in the case of Hindu law also. Both in Buddhism and Hinduism, the concept of law and morality has an integral outlook for the welfare of the people. In case of punishments also, Buddhism never believed in deterrence or retributive idea of punishments, and the importance was placed on mens rea or guilty mind of the wrongdoers. Like the ancient and medieval Western legal

philosophers, they were against the idea of absurd punishments, for example, punishments towards animals, trees etc., because animals, trees etc. were devoid of guilty minds. The idea of mens rea or guilty mind is one of the most important factors of criminology. But it is surprising to note that, such a rich legal idea or doctrine did not get the closest attention from the modern legal scholars.

(2) Logical consistency is one of the most important aspects of ancient Indian legal philosophy. Mimāṃsā Shastras of Hinduism and Patimokkha suttas of Buddhism are the best example of it. Nobody can complain about the logical inconsistency of Buddhism and Hinduism. Specially in the Hindu Shastras, it is clearly mentioned that if there arises any conflict between Dharma Shastras then reason will prevail. They had paid special attention to the fact that the rules or the moral codes laid down by them might not be arbitrary or unreasonable.

(3) Western Jurists and some modern Indian Jurists also have criticised both the Hindu and the Buddhist laws that these are static and incapable of growth. But in our analysis it is revealed that it is not true, because in both the Hindu law and the Buddhist law, the same personal law is applicable. The Hindu Marriage Act, 1955, The Hindu Succession Act 1956, The Hindu Minority and Guardianship

Act 1956, The Hindu Adoption and Maintenance Act 1956, etc. are the best examples of it. The legislator from time to time legislates various provisions for the Hindu people, and the term Hindu includes Jain, Sikh or Buddhist people. According to Section 2 of the Hindu Marriage Act 1955 -

- (a) Any person who is a Hindu, Jain, Sikh or Buddhist by religion, i.e., Hindu by religion,
- (b) Any person who is born of Hindu parents (viz., when both the parents or one of the parents is a Hindu, Jain or Buddhist by religion), i.e., Hindu by birth, and
- (c) Any person who is not a Muslim, Christian, Parsi or Jew.

In this way we can say that Hindu law or the Indian laws are not static. They have the ability to progress.

(4) The personal laws of ancient Indians or the moral codes of conduct had a tremendous impact upon the Indian people. Prāyascitta rules and regulations are still very much popular among most of the Hindu people. In this way, the Patimokkha rules have a vast influence on the Buddhist people. Apart from that, in most of the civilized societies, it is recognized that the expiatory theory of ancient Indians is one of the best theories to reform the dreaded criminals.

Of course, we cannot say that it is a fool-proof theory.

(5) An important aspect of ancient Indian law is that law and morality overlapped each other. Specially the Buddhists have dealt with the moral codes more systematically in comparison with other systems of religions. The concept of "Sila" in Buddhism had a vast influence in ancient Buddhist society, and also in the present society, the application of Pancha Sila in the international politics is the best example of it. Sila is the determining factor as to whether an action is moral or immoral. Perhaps, no religious system had developed such a pure idea of morality as it was developed by Buddhism. In Western countries also, they have treated the moral laws in different ways in the name of the natural laws. However, Austin and his followers in the later period have totally avoided this concept of law. But still, law and justice are based upon morality. So, in the last analysis, we can say that law and morality are co-related. In one word we can say that morality perfects law.

(6) In the ancient times, the jurists were more concerned with the religious laws. They used to treat the secular laws differently and the religious laws in different ways. If any delinquent monk violated the civil or criminal laws of the state, then the punishments were given according to the

procedure established by law. The delinquent monk was first tried by a religious tribunal to decide whether the monk was really guilty or not. If the monk was found guilty by the religious tribunal, then the next procedure was to disrobe the delinquent monk and handover the monk to the secular administration or the state administration for further trial and punishment. In case of a lay follower of Buddhism, he was directly related to the state administration, so the Sangha rules were not applicable to him and the secular laws were applicable to him. If any monk committed any offence he was treated as a general offender, and the punishments awarded by the state administration were more severe in comparison with punishments awarded by the ecclesiastical tribunal, or the assembly of monks.

(7) The storehouse of the Buddhist law, Vinaya piṭaka provides very little of lawyer's law or the positive law. The highest punishment in Buddhist law for the delinquent monk is the expulsion from the Sangha, and for some other offences, confession before the assembly is the only punishment. In our analysis, these types of punishments may have some effect in the religious assembly, but it has no effect in the society, because it has no deterrent and retributive effect. Some portion of deterrent and retributive effect is necessary for our society, and without it, society will not

survive. In the analysis it is seen that Buddha was concerned with the Sangha rules and regulations and he was dependent on the king in the administration of justice, and secular laws. Buddha had a friendly relation with many kings of his times, and he upheld the ideal policy of a government for the administration of the state.

(8) As for the origin and growth of Buddhist codes of conduct, they are the most civilizing forces not only for the Buddhist community, but to the entire human civilization. Buddha not only prescribed the legal codes for the monks, he also prescribed the ethical and religious codes also. He had taught the society for forty five years and he had left many instructions and guidance for the Sangha and the origin of the Sangha rules also came from the Buddha. In our analysis, the aim of the Buddhist codes of conduct are repentance and Confessions by the wrongdoer, so that they may attain the highest spirituality. Another aspect of the Buddhist code of conduct was the removal of the caste system in the society, and from the Brahmana down to a Sudra, were treated equally by the Buddhist code of conduct. But in Hinduism the Brahmanas were treated differently and the Sudras were also treated differently. Buddhism tried to abolish the caste system in Indian society, and a person of any caste might join in the Buddhist Sangha. The code of conduct in Buddhism

was applied to regulate the life of a monk or to regulate the Sangha discipline. Buddhist code of conduct is an influence of Buddhist ethics. The Buddhist code of conduct enumerated in the Patimokkha Sutta can be divided into two divisions : (1) Bhikkhu patimokkha, (2) Bhikkhuni patimokkha. The offence and the punishments for the offence are systematically arranged. The worst offences are the pārājika offences and the punishment for the pārājika offences is expulsion from the Sangha. Of course the state administration would punish him separately for the offence. In this way for the sanghadisesa offence the punishment is temporary suspension from the Sangha etc. The other group of offences are Aniyata, Nissaggiya-pacittiya, Pacittiya, Sekhiya, Adhikama Samatha etc. In our analysis all these divisions of offences are, one kind of ethical influence upon the Buddhist norms. It has no legal value in the context of the present day society. Of course it has a great influence upon the Buddhist community. Because today also the Buddhist community is following the same path, which were guided by the Buddha himself. They had taken the mental elements, as one of the main reason for crime-causation. That is why, they have treated abetment and instigation as one of the most heinous crimes like murder, theft etc.

(9) Another aspect of these ethical codes is to remove the ego problem from the people. They regarded the ego problem as the main reason of moral degradation and a hindrance in achieving the Nirvana, the highest Buddhist goal. This comes out of purity of thought. The Buddha, during his life time, framed some rules accordingly. For example, the story of Sudina, a monk, granted the wish of his wife for a child and it became a parajika offence. Buddha framed the rule accordingly. Here, the main aspect of the patimokkha sutta is the purification of mind, because only the pure mind can concentrate in the Dhamma. Enlightenment is possible, if the mind is pure. The enlightened person broke all the bonds. That is why, maximum importance was given in the purity of mind, and repeatedly three opportunities were given to confess the sin, to a particular monk who had committed any wrongful act. If after three times repetition also the monk did not confess, his wrongful act, then he would be regarded as a sinner, and in this way it would be a hindrance in achieving the highest Buddhist goal, the Nirvana. The repeated recitation of the Patimokkha sutta also enabled the monks to keep their mind free from all evils. It helps in the control of the brutal instincts of a monk to purify his body and mind. Because, according to Buddhism, man is the composition of body and mind. Abhidhamma pitaka, the most philosophical work of Buddhism is concerned only with the purification of

the mind of a person. Only a pure mind can attain the Nirvana.

(10) In the Buddhist code of conduct also, maximum importance was given to the guilty mind or mens rea. So, instead of the main punishments, abetment or instigation were regarded as the most heinous crimes in Buddhism. Buddhism regarded abetment as one of the parajika offences, the highest offence of the Buddhist criminal jurisprudence. But, it was not so serious offence in Hinduism, because maximum importance was given in the law and order situation of the state. In Buddhism, though they regarded the life as substanceless, still if some one praised the death, with the intention to kill him, then it would be a parajika offence. A pure mind, which is free from all the evils, may attain the highest Buddhist goal, the Nirvana. One can achieve the purity of mind, through performance of Sila and by avoiding the abetment, instigation etc.

(11) The 'Ego-problem' has something more to it. "Ego" is one of the main enemies of the human beings. In early societies, claiming superiority was common among the religious minded people. Instead of achieving the religious objects or purity of mind, they tried to achieve a special image among the common people that they were something superior to others. It was the main problem in Hinduism; but in Buddhism also,

many Bhikkhus tried to show that, they knew the past, present and future of this Universe, but in fact, they were ignorant about all these things. It is also a parajika offence, because ego problem is one of the main problems in achieving the Buddhist goal Nirvana.

(12) Buddha was very much conscious that sex offences or sex scandals should not take place among the fellow monks and nuns and also with other persons. All sex offences have their origin in the lusty nature of human beings. Sex offences were regarded as heinous crimes. With reference to sex offences, various other related things were also mentioned by the Master himself. Various ways of sexual indulgences by various persons, and also other related subjects in this regard are covered by the Patimokkha. The delinquent monk could be temporarily suspended from the Sangha.

(13) Theft is also regarded one of the most serious offences and comes under the rules of parajika offences. In ancient India for the general people also, theft meant one of the most serious offences. But for a monk, it was not just a heinous crime, but some abnormality also. In patimokkha detailed discussion is there regarding what is theft, how one can commit theft. Under what circumstances a person is regarded as a thief. Definition and Article of theft : Various forms of theft etc. were discussed in details. According to

Buddha, greed is the root of all evils. If someone cannot control his greediness, definitely he may commit theft and other kinds of serious offences. Not only the Buddhist personal law, other secular laws also condemned theft. So the king should punish the thieves severely, and by doing so his fame grows and his kingdom prospers. Specially in the ancient Indian Hindu laws, a clear distinction was made between robbery and theft. If the offence committed before the owner, then it was regarded as robbery, but if the offence is committed in the absence of the owner, then it was regarded as a theft. So a clear distinction was made between theft or dacoity.

The idea of justice regarding theft is something different from the present day concept of theft and ancient Indian concept of theft. In ancient India, if the theft or the stolen property was not detected by the security or detective officers, then the king had to pay the compensation to the owner of the property.

(14) False statements given by the monks were also regarded as very serious offence by the Buddha. A person may give any type of false statement to fulfil his claim, but it may destroy the interest of other persons. The false statement made by some Bhikkhu led the Buddha to lay down some

rules, which are known as pacittiya rules.

(15) Buddha had nothing left unexplained whatever he thought proper for the welfare of the monks. He had explained everything from murder to falsehood. Buddha's aim was to purge the society of crime, violence etc. Only the pure mind can concentrate in the Dharma. People with ego could not attain the highest Buddhist goal, the Nirvana. Ego is regarded one of the most serious offence, and in this way it comes in the list of parajika.

(16) All the rules and regulations enumerated in the patimokkha sutta are systematically written like the present day cases. Serious offences were classified as parajika offences, but surprisingly the punishments for the serious offences are expulsion from the Sangha. These type of punishments have no relevance in the present day society, and also we cannot say that it had any relevance in the ancient Indian society. Because in every ancient society, capital punishments, mutilation of limbs etc. were very common. In Hindu prayascitta system also, though no physical punishments were prescribed, higher rate of fine were imposed upon the wrongdoer. But in Buddhism, no such type of fines were prescribed for the wrongdoer. The methods of punishments, where there are no physical punishments, no fine etc. seems very mild in approach. It seems very clear that, Buddhism

is more concerned about the next world rather than this world. So, punishments for the lay-devotees and the monks were not the same. Because the monks may attain liberation or Nirvana in Buddhism in this life, whereas the lay-devotees may attain the liberation in the subsequent or the next life. As it is aptly described by Ninian Smart in the article "Buddhism" in the Encyclopaedia of Philosophy (vol. I & II, p. 417) -

"Buddhism clearly involved a marked separation of monks (and nuns) and laity. The monastic life was conceived as necessary to the attainment of Nirvana, the laity would have to wait their turn in some future existence."

Though Buddha did not ignore the interest of the lay-devotees, he was mainly concerned with the interest of the monks. So, punishments were also divided accordingly. For example, exaggeration of one's power to perform miracles may not be an offence for a lay-devotee, but it is a serious offence for the monks, and accordingly, it is classified under the heading of parajika offence. In this way insecticide may not be an offence for general people, but it is a serious offence for the monks, and the punishments for insecticide has no relevance in the present day society.

(17) The various offences mentioned in the Patimokkha Sutta are grouped according to the gravity of the offences

in the religious sense, not in accordance with the seriousness of the offence. For example, for the Sanghadisesa offence, the punishments are temporary suspension of the offending monks from the Sangha. Sanghadisesa includes the sex offences also, and in Buddhism it is treated very lightly, whereas in the present day society or in the present system of law, the punishments for the sex offences are much severe in comparison with the Buddhist Patimokkha laws, in this way the Hindu personal law or the prayascitta system also treated the law very severely and apart from the religious sanction, like fast, repentance, Danda etc. heavy fines were also imposed upon the wrongdoer. The other offences like Aniyata, which means uncertain, Nissaggiya-pacittiya or the use of certain articles which are not appropriate to use by a monk etc. In this way pacittiya section, patidasaniya section and the last sections Sekhiya and Adhikarma samatha section are regarding some minor offences which have no relevance in the present day society. Though, still it is regarded as a sacred personal law of Buddhism.

(18) The Hindu laws are varna-based laws, but the Buddhist laws are universally applicable, from Brahmana down to a Scheduled Caste person enrolled as a monk in the Buddhist Sangha. For example, Mahakashyapa came from an orthodox Brahmin family, whereas Upali the master of Vinaya nitaka was

a barbar in caste. In Buddhism, the same law was applicable in the Sangha whether a monk came from a Buddhist or non-Buddhist family or he was an Indian or a foreigner.

(19) The social and cultural aspects of Buddhism have a close relation with the Buddhist law. In fact, during the life time of Buddha, he was regarded as an incarnation of God by his disciples and after his death also, he is regarded as the avatara of Vishnu, the creator of this Universe.

In the social field, Buddha was friendly with many kings of his time, and after his death also a number of kings were supporters of Buddhist religion. So, we cannot deny the direct influence of Buddhism in the administration of Justice and also in the general administration. Buddhist culture not only influenced the Indian society, but it has spread to most of the Asian countries. Buddhist moral ideas are still regarded in most of the countries of the world. Buddhist practice of Sila are well-known in most of the Asian countries, where Buddhism is still prevailing as a religion. The Buddhist concept of Sila has an universal appeal. For example, the Pancha sila of Buddhism is followed in the Indian foreign policy. Apart from that the various silas, for example, Attha-silas are both for the monks and the householders, Mangala Silas are those which are morally sound for the society. In

Disapujana Silas duties towards each others are enumerated. In Indria Sambara Sila, it is nicely described that if a person put restrain over his sense organs, then suffering never comes to him. Ajivaparisuddhi Sila means earning livelihood in a noble way. Dasa Sila, Patimokkha Sambara Sila etc. are the code of conduct for monks and nuns to lead a noble life. In this way, the Buddhist morality has an universal appeal as also a guiding principle of Indian foreign policy.

(20) The concept of peace in Buddhism has also an universal appeal. Buddha's concept of peace, kindness, forgiveness etc. are common in most of his discourses. In Dhammapada, it is said that a person can overcome anger by love, falsehood by truth etc.

"Na hi verena vereni assantidha kudachāṇam,
sverena ca assamanti asadhāṇa sanātano."

(Dhammapada, 5)

The principle guided by the Buddha are followed by the Indian people since the period of Buddha. That is why, the mode of punishment was entirely different in Indian society in comparison with other societies. Prayascitta in Hindu society, confession before the assembly of the monks in Buddhist society are the best example of it. It is the way of purification and the wrongdoer realised the past

misdeeds. Violence has no place in the Indian system of laws. Every dispute was settled peacefully.

Concluding remarks:

We have discussed in various chapters the uselessness of some ideas of punishments prevalent in the ancient Indian system of laws. Self-purification has no sanctional value in the present Indian society. It might have had some effect in earlier societies because of the religious bent of mind of the Indian people. Now, it is established that scientific punishments are the greatest civilizing force for the entire mankind. In our view, punishments should be proportionate. The seriousness of crime and the amount of punishments should be proportionate. Public utility should be the aim of punishments. Punishments vary from time to time. So, Buddhist personal laws or the Hindu system of 'Prayascitta' may have some appeal in ancient systems, but the same appeal is not continuing in the present day society. Various modern concepts, Human rights, political rights, increase of modern sciences and technology, refined way of modern life etc. changed the entire concept of punishment system among the human being, not only in India but among other countries also. Today we regard that mere confession before a religious assembly has no practical value, and it is a useless system of punishment,

but it had a tremendous appeal in ancient Indian society. In this way, pillory or the slavery system of punishments are the worst type of punishments, but instead of killing the wrongdoer he was kept as a slave, and it was regarded one of the most refined way of punishments in ancient society. The modern way of punishments like parole, probation, open jail etc. are regarded as the treatment method of punishments. But we do not regard the punishments prescribed by the Buddha, confession, bond of good behaviour etc. and the Hindu system of 'Prayascitta' as a treatment method of prayascitta. 'But it is a kind of a good treatment method of punishments for the human beings.

An attempt has also been made regarding the establishments of human rights through Buddhism. Of course, the human rights were regarded as the basic philosophy from the Vedic period. The Rgveda (V.60.5) says :

"No one is superior or inferior. All are brothers. All should strive for the interest of all and should progress collectively."

Like spokes of the wheel, no one is superior or inferior in a society. No person is the best or the worst in this world. Of course, the Varna system and lately the caste system badly effected the Vedic idea of human rights,

but the birth of Buddhism again reasserted the idea of human rights. Caste system has no place in Buddhism and the low caste people also occupied important places in Buddhist Sangha

In fine we can say that the importance of Buddhism lies mainly in the concept of love, compassion and brotherhood, and the five rules of conduct, the Panca Sila is still today a guiding principle of Indian Foreign policy. Buddhism embodies the best principles of a rational moral living, not succumbing to superstition and blind faiths. Though it produced an excellently codified legal system, Buddhism never put jurisprudence above morality. Everything was subservient to the attainment of the highest achievable thing in life - namely Nirvāna.