

Chapter I

I N T R O D U C T I O N

Buddhism is a universal philosophy of love, compassion and brotherhood. As a rationalist humanist force, it deeply affected the religious, moral and social ideas in its period. There are many factors responsible for the emergence of Buddhism. Hinduism, of course, not all the sects of Hinduism, allowed animal sacrifice. But Buddhism relentlessly campaigned against the practice of animal sacrifice. The system of animal sacrifice, flourished under the active assistance of Brahmanas, and in this way, Brahmanas occupied an important position in the society. The cruelty involved in the animal sacrifice and the caste-system prevailing among the Hindus, formed public opinion against the system of animal sacrifice and caste-system. They regarded Ahimsa as the highest principle. Apart from that, they denounced all claims of superiority on the ground of birth only. On the other hand, Hinduism is an unorganised religion: but Buddhism is the first organised religion in the world. So, the organised force of Buddhism was in a far advanced position in comparison with Hinduism. Apart from the Ahimsa principle and the notorious caste-system, it was one of the main reasons of emergence of Buddhism in India. Buddha's method of organization was also unique; he never allowed two monks to

go in the same direction for preaching the dharma. The monks were allowed to teach the dharma throughout the year, excepting the rainy season.

Buddha's His method of approach to the mass people was also unique. He never tried to deliver ^{his} lecture in an uncommon ^{in familiar} language. He always used the local [^] language of the people, so that people easily understood his message. His method of formation of the Sangha shows his unique ability as an organiser. The working of the Sangha shows the democratic methods applied by the Buddha. Every member had his own voting right, and the decision of the majority was regarded as the final decision of the Sangha.

Spelling should be uniform.

Even after the death of the Buddha, he left the Dharma and Vinaya as the guide of the Sangha. He did not appoint any successor for the guidance of the Dharma. Another reason of the emergence of Buddhism is that the Buddha himself did not feel that he was establishing a new religion, and also the people of the time did not feel that Buddhism was a new religion. Contrary to that, they regarded that Buddhism was an off-shoot of Hindu religion. ^{The} Hindus believed that Buddha is the ninth avatara or incarnation of Vishnu. ^{The} Buddha did not condemn Hinduism, but he condemned ^{some of} the dirty systems of Hinduism, like caste system, [^] animal sacrifice etc. His ^{It is a practice with a good} humanism, crossed all racial and national barriers, ^{as} Dr. S.

Radhakrishnan observes, "History has become universal in spirit. Its subject matter is neither Europe nor Asia, neither East nor West, but humanity in all lands and ages."¹

Apart from his organizing capacity, his opposition of animal sacrifices etc., the main strength of the Buddha's religion is the philosophy of religion. According to him, every thing is subject to destruction, every thing is full of suffering and everything is substanceless. His theory of causation or dependent origination is one of the most valuable theories of Indian philosophy. According to this theory, the life itself is like a wheel of cause and effect. Avidya is the main reason of all of our sufferings. From Avidya or ignorance arises ^{in Sanskrit?} the action, and from action arises the consciousness, and in this way phenomena, contact, feeling, craving, grasping, birth suffering etc. arise one after the other depending on the previous link of the chain of causation. Hence, we have to destroy the ignorance or Avidya which is the main reason of human existence and suffering.

The theory of dependent origination as outlined above is a part of the Second of the Four Noble Truths which comprise of the essence of the Buddha's teachings. The Four Noble Truths that have become a universal celebrity are : (a) There is suffering, (b) There is a cause of suffering, (c) There is a cessation of suffering and (d) There is a way leading to the

cessation of suffering.

The Buddha like a good physician gave the way, how someone can remove his sufferings. According to Buddha, the only way of salvation is Nirvana. It is the highest goal, according to Buddhism. According to the Buddha, the way that leads to the Nirvana is the eight-fold noble path. The eight noble path means one has to avoid the two extremes and should only follow the middle path. The first step of middle path is the right view. The second one is right mental resolve. The third one is right speech. The fourth one is right action. The fifth one is right livelihood. The sixth one is right effort. The seventh one is right mindfulness. The last one is right concentration.

Apart from the Four Noble Truths Buddha recognised the theory of Karma in his own way. The reason of inequality prevailing everywhere, according to Buddha is Karma-phala, or the fruit of action. Hindu philosophy believes in Karma and atman or soul, but Buddhist philosophy believes in Karma without any reference to atman or soul. In Hinduism, unconscious acts are also regarded as Karma in some cases, but in Buddhism unconscious acts are not treated as Karma. Though the concept of Karma is of pre-Buddhist origin, the theory of Karma had been developed by the Buddha in his own way. He suggested that the best way is freedom from the Karma.

Ultimately it leads to the Arhatship and the attainment of the Nirvana. The main difference lies here between Buddhist and Hindu philosophy of Karma. According to Hinduism, Karma is the source of life and the ultimate result of the Karma is, in the hands of the God, and according to Buddhism freedom of Karma means, the way to attain the highest Buddhist goal Nirvana.

His concept, or philosophy of Nirvana, requires constant spiritual exercise and determination. The aspirant of Nirvan has to cultivate his own mind by various ways for example the Brahma-viharas, it will give a taste of life in the Brahma world. Mewa or universal love, compassion etc. Upekha, mudita etc.

According to Buddha, Dharma is ancient and it is re-adjusted by the religious men from time to time, from age to age, and in Hinduism also Vishnu, the creator of this universe comes from time to time for "Dharma sangsthapamarthaya" or to establish the Dharma. So realising, this fact, the monks should follow, the silas and rules of conduct, given in the Vinaya pitaka. Morality takes an important part of Buddhist Vinaya. In fact, Buddhist law is a kind of moral sanction and injunction. According to them the Vinaya Pitaka laid down the cultural rights to be observed, and it helps the people to transform a person from lower level to the higher level of

conduct.

"There is a blending of ethico-religious obligations with legal obligations and, at times, they lay more emphasis on the former than on the latter."²

Apart from the ethico-religious obligation, Buddha's legal philosophy was based on secular and democratic values. He never believed in capital punishment.

In Dhammapada some reference of murder and punishment of murderer is found; but it is not in this world; it is only in the other world. On the other hand the Dhammapada maintains that people can overcome anger by love, falsehood by truth etc.³ In this way unlike other religion, Buddhism never believed that its laws are of divine origin. On the contrary, Hinduism believed that its laws are of divine origin and in this way these are revealed laws. The later development of law, though it developed through human agencies, e.g., smritis, digest and commentaries etc. the origin of it are Vedas, the revealed laws, and in this way the law is sacrosanct and the validity of it cannot be questioned. But the validity of a Buddhist law can be questioned in a democratic process, because the Buddhist law is based on democratic values and ideas. In both the Hindu and Buddhist legal systems they do not give any clear cut distinction between rule of law and rule of religion. They do not mention even how it is enforceable

and according to them, the people will get reward according to their own actions, may be in the present life, or it may be in the next life, because both the Hindu and Buddhist philosophy believe in Karmaphala or the fruit of action and the continuity of life from past to future through the present.

The Vinaya pitaka is veritable store-house of legal philosophy. Vinaya leads a person to purification, because Buddhist law is a kind of moral sanction and injunction. There is a marked difference between Buddhist concept of crime and punishment and other concepts of crime and punishment. The Buddha did not mention of a particular person, or particular monk to supervise his teaching, contrary to that he instructed his followers, to follow the principles of Vinaya Pitaka.

The Vinaya Pitaka is divided into five parts -

(a) Khandhaka as (i) Mahavagga, (ii) Cullavagga; (b) Suttavibhanga as (iii) Parajika to Nissaggiya (iv) Pacittiya to Sekhiya and Bhikkhuvibhanga and (c) (v) Parivara.

The main book of the Vinaya Pitaka and one of the most important works of Buddhist religion is Patimokkha. It was written like the present days' codified laws. It consists of two parts - (i) Bhikkhu Patimokkha and (ii) Bhikkhunipatimokkha.

Bhikkhu patimokkha is related to the rules and regulations of the monks or Bhikkhus and Bhikkhunipatimokkha

is related to the rules and regulations of the nuns or Bhikkhunis. The various offences are nicely codified in both the Bhikkhu and Bhikkhuni patimokkha, according to the seriousness of the crimes. The offences which are more serious are known as parajika offence and the punishments of the parajika offences are expulsion from the Sangha. Though the Patimokkha suttras are like the present days codified laws, but various doctrines of non-Buddhist origin influenced the Patimokkha laws. For example, the development of Tantrayana, had a deep influence upon the monks and the entire Buddhist society. According to Tantrayana, the Buddha is full of love and compassion. So, he will surely forgive any monk, even if he enjoys women, wine etc. Hence, Tantrayana had a tremendous impact on the Buddhist society.

There are various sects of Buddhism as a religion and schools as a philosophy. All these grew in the course of several hundred years of the development of Buddhism. The Theravadins, the Sarvastivadins, the Mahisidakas, the Haimavatas, the Vatsiputriyas, the Dharmaguphikas, the Kasyapiyas, the Santrantikas, the Mahasanghikas, the Madhyamikas and the Yogacarins are the principal schools and sects of Buddhism. Though essentially based on the teachings of the Buddha, they differ in the details of their philosophy of life, religion and the world. These sects give us some valuable informations regarding the changing conditions of the society and the

consequent changes in law. The two most important and influential Buddhist schools are the Madhyamika school and the Yogacara school and both the schools have tremendous influence upon the Buddhist law also. Both the schools belong to Mahayana Buddhism. Nagarjun was the main exponent of the Madhyamika school. According to Madhyamika school, Sunyata is absolute, and like the middle path of Buddha, it avoids the two basic ideas existence and non-existence. According to Dr. Radhakrishnan : "By Sunyata, therefore, the Madhyamika does not mean absolute non-being, but relative being."⁴

The Madhyamika school was one of the most important schools of Buddhism and had a tremendous influence upon Buddhist legal thoughts. The other important school is Yogachara. Yoga or the meditation is the only way of achieving the highest Buddhist truth, the 'Bodhi'.

Apart from the doctrinal teaching on legal thought, special training was also given to the monks, so that they can follow real path to attain the highest Buddhist goal, the Nirvana. So, the monks, who joined the Sangha, were given some special training and it was known as Nissaya, which means dependence upon the teacher and the teachers were respectively known as Upajjhaya and Acarya. The teachers' discourses were generally on the Vinaya Pitaka. However, besides the monkish learning on the Vinaya Pitaka, many philosophical discussions

also took place in the debates or in the teachings, which were later on collected in one book and the book in the later period is known as Abhidhamma Pitaka. Of course, it was mainly the discourses of the Buddha himself.

"These Kathas or Debates on doctrines seem to have been an important and significant feature of monastic education in those early days. Out of these debates a methodology seems to have evolved, it is known as Abhidhamma which is explained as the doctrinal implication of the special meaning of the texts. The substance of these Kathas was collected in the Abhidhamma pitaka of the canon."⁵

Unrestricted freedom was given to the monks to debate on the disputed matter in their learning period. The aim of unrestricted freedom given to the monks was that the monks should strictly follow the principle of Vinaya and intellectually they must be capable of defeating the counter claims. In the early period of Brahmanical culture and religion, sages like Gautam, Apastamba, Brihaspati etc. prescribed some rules of conduct for the three privileged classes of Hinduism and they secretly guarded the knowledge only for these privileged classes. Buddha raised his voice against this view. According to him the ultimate truth should be open to all.

Buddhism treats crime and punishment in a humanistic and optimistic manner. Vinaya Pitaka and specially the patimokkha Suttas are the best example of it. Though, Buddhist

legal norms or the ancient Indian legal norms have a vast difference from the Western concept of legal norms, undoubtedly, we can say that it is only in India where idealist theory of law had developed which was based on spiritual and material idealism. This is reflected in the concept of purusarthas or the aims of life - as dharma, artha, kama and moksha which gives equal stress on the material as well as spiritual needs of men. However some misunderstanding was created by some Western jurists regarding Indian Jurisprudence. According to them the contribution of India towards legal development is nil. The concept of rule of law, prerogative writs, independence of Judiciary etc., though are of western origin, but we cannot deny the contribution of India towards rule of law, independence of Judiciary etc. because in some cases the instances of king being punished were also available.

"Generally ignorance and sometimes prejudices made us to ignore and even condemn our rich composite legal heritage, customs, traditions and ideas in the moonshine of English legal philosophy. The present tensions in Indian legal theory are also due to conflicts in western Jurisprudence which stem from the controversy on the fundamental question of nature of law and social system. Such conflicts are basically the product of diverse philosophies of life, political ideologies and political organizational systems which largely determined the ultimate values and purposes of life in such societies."⁷

Of course in India, unlike in the Western concept of law, the distinction between rule of law, rule of religion, rule of morality etc. were not clear. During the Muslim period, they either applied the Koranic law, or the old concept of natural laws of the Hindus. A conflict arose during this period regarding the applicability of personal laws, and finally with the advent of the British, the English law was applied everywhere in the country. However the English people were also ignorant regarding the native laws, and in some cases they discriminated against the Indians and resorted to arbitrary acts of suppression and repression. In post-independence period, Indian Constitution guaranteed the rule of laws with the Supreme Court as the highest Seat of law which upholds human dignity, natural justice and other rights and privileges enshrined in the Constitution. One of the great Juristic developments after independence of India, is the establishment of both the Parliament and the Courts for the good of the poor and backward classes. Both the legislator and the Judges are trying to achieve a desired goal, i.e., welfare of the country, distribution of land among the landless people, preferential treatment towards Scheduled Caste and Scheduled Tribes, trying to remove the backwardness of the people, protection to oppressed women, protection to the bonded and child labour etc.

Though, we have some rich heritage of ancient Indian Jurisprudence, we cannot ignore the influence of Western

Jurisprudence in Indian society. The concept of Jurisprudence in the modern society comes from Roman concept of law, and the concluding remark of the Roman twelve table was "Salus populi suprema lex" that means, law should be for the welfare of all. Though, the Jurisprudence of law is an old concept, but the term legal theory is of recent development. However, the influence of legal theory in framing of laws in a particular society is tremendous. Friedmann explains the legal theory in this way.

"Legal theory is linked at one end with philosophy and at the other end with political theory. Sometimes the starting point is philosophy, and political ideology plays a secondary part as in the theories of the German classical metaphysics or the Neo-Kantians. Sometimes the starting point is political in legal theories of socialism and Fascism. But all legal theory ideology, as must contain elements of philosophy - man's reflection on his position in the universe . . . the ideas entertained on the best form of society. For all thinking about the end of law is based on conceptions of man both as a thinking individual and as a political being."⁸

The new era of legal philosophy or legal theory arise when the professional lawyers confronted the problems of society and social justice. Before the nineteenth century, law was an inseparable part of religion and philosophy of

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nature etc. and it was understood and judged accordingly. In this way, the concept of Jurisprudence originated in the Western countries as a method of controlling the human behaviours with the help of ideal and abstract laws. Later on, after the Greek legal philosophers, it was developed by the Roman jurists and philosophers. Of course, it was only the development of natural law theory. For the first time Jeremy Bentham, and later on John Austin, rejected the idea of natural law theory and provided a scientific theory, which was known as positive law theory. The basic idea of this theory was "Law is command" or "Law is a set of norms enforced by the State" etc. Another theory of Western Jurisprudence is historical school and the main exponents of this school were Savigny, a teacher of Berlin University and Sir Henry Maine an European legal philosopher. According to Savigny : "Law is a product of the people's life. It is manifestation of its spirit. Law has its source in the general consciousness.(Volk & Geist) of the people. Law is pre-historic. In all societies it is found already established like their language, manners, and political organisation."⁹

Apart from the Positive and Historical schools, some other schools of law had also developed like sociological school, Realism etc. Both the schools claim that law is the synthesis of philosophy, science, sociology, etc. But the only difference with the Realist school is that realists believe in the practical idea of law. They are more interested in the

use of law than in its theory. They are pragmatic.

The impact of Western Jurisprudence on the Indian legal thought is tremendous. After the advent of British, they imposed the English law in India. Thereafter, the British law has a tremendous influence upon the Indian people. The court system and the criminal justice is also based on the English idea of law. Though the pure criminal law originated with Hinduism, and the Dandaniti and the Artha Shastra are the best example of it; but mainly it depends upon the English law of criminal justice. Buddhism occupied a small place in secular criminal justice, though "mens rea" or the guilty mind originated in the Buddhist concept of law. Buddha was mainly concerned with the personal law or the religious law. There is every possibility that Hindu system of criminal and civil justice was in force during Buddha's period also. Though he had many royal friends, there is no direct evidence that he interfered in the secular administration of justice. We can only analyse the Buddhist concept of law from the religious point of view, and not from the secular point of view and it is nicely described in the Patimokkha sutta of Buddhism. In Hinduism, sages like Manu, Yajnavalkya, Narada, Brihaspati etc. were concerned with both the secular administration of justice and the personal or religious laws. But Buddhism was concerned only with the Buddhist personal laws.

Both in Hinduism and Buddhism, absurd punishments were totally avoided, for example punishment of animals, trees etc. But it was very common in the Western countries. Tripathi says, "In ancient Greek law, animals and trees were tried in courts for their wrongful acts. In Roman law also, in some cases, inanimate objects were considered as having rights and subject to duties."¹⁰

In Hinduism and also in Buddhism, the retributive and deterrent punishments did not find favour, that is why punishment of animals, trees etc. was an absurd idea to them. They believed in prayascitta or cittasudhi or the purification of mind. Our ancestors were guided by the higher idea of Dharma, for the welfare of the entire mankind. Their logical consistency is one of the most important factors in the development of the Dharma law or the secular law. Apart from the logical consistency, for the Hindu, the law is directly coming from God, and for the Buddhist it is directly coming from the Buddha. So for both the communities it is directly coming from God or from the Supreme source, it may be the God or Buddha. According to Austin, law means "A rule laid down for the guidance of an intelligent being by an intelligent being having power over him."¹¹

Here, there is no question of morality. The only question involved here is command, command from the superior authority to the subordinate authority. But in both the

Hindu and the Buddhist law maximum importance was given to morality. Indian law was a moral law, not positive, or imperative law in the Austinian sense. Indian law acquired religious character to fight against injustice, oppression etc. The importance of moral law, in the later period supported by Nyāya (equity) and Yukti (reason) and in both the Hindu and the Buddhist religions it was an established practice that if there arises any conflict between dharma shastras then reason will prevail.

Buddhism believes that only the moral code of conduct cannot solve the problems and the spiritual realization is the only way to solve the problems of human miseries. The Buddha was the outstanding spokesman in this regard. During his life time two types of government prevailed in the Indian society; one was monarchical form of government and the other was the republican form of government. But he did not show any interest to any form of the government, and contrary to that he expressed his opinion, in the Digha-nikāya, in the following way -

"Assemble repeatedly and in large numbers, just so long their prosperity might be looked for and not their decay."¹²

However, in one point, Buddha was clear that the Government, whatever might be its form, must uphold the concept of Dharma and moral laws. But in accordance with his teaching,

it is clear that he wanted a government which should be democratic in its form and aristocratic in its nature, so that bestand intelligent people might come to form the government. Buddhism regarded that it is the duty of state to help in building temples, and financed the similar institutions for the welfare of the people.

Monks who violated the criminal law of the land were dealt with very severely. "Monks suspected of committing offences against the civil and criminal law should, in a Buddhist state, first of all be tried by an ecclesiastical tribunal. If found guilty they should be disrobed and handed over to the civil Court for further trial and punishment."¹³ ✓

Apart from the legal and moral development, the influence of Buddhism upon the Indian social, political and cultural life is tremendous. At the centre of the Indian national flag, and other important Governmental establishments shows the historic symbol of Ashoka and the victory of Righteousness. In the foreign policy of our country also, we followed the principles of Pancha Sila, or the five rules of conduct, for peaceful co-existence among various people and countries despite our political and geographical differences.

The emergence of Buddhism on Indian soil was a great phenomenon of universal importance. It gave India its first and coherent rational outlook on life. Though subsequently

Buddhism almost became extinct in its birth place, the legacy of the Buddha continues in various spheres of India's body-politic, in Indian Constitution, in modern India's secular and humanistic attitude and above all in the Panchashila which is the foundation of India's foreign policy. But the Buddhist concept of law and concepts of crime, punishment etc. are equally captivating. We shall make a survey of them in the chapters to follow.

Notes and References

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averena ca sammanti esadhammo sanantano."
(Dhammapada, I.5)
4. Radhakrishnan, S., Indian Philosophy, vol. I, p. 661
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