CHAPTER IV
THE PRINCIPLE AND JUDICIAL PROCESS
OF PUNISHMENT IN EARLY BUDDHISM

Preview

The Vinaya Piṭaka is the earliest Buddhist Canon concerned with the Buddhist jurisprudence. The Buddhist jurisprudence directly deals with the Adhikaraṇasamatha.

Thus, before proceeding to study the nature, significance, formation, history, development, evolution and philosophy of the Buddhist jurisprudence, as depicted in early Canonicial literatures, it is pertinent to translated the menting of the punishment from the Pāli term and discuss the role played by it from the Buddhist perspective, which will be valuable besides giving more information on the basic matter of this theme.

4.1 An approach to Punishment in Buddhism

4.1.1. Definition of Punishment in the Pāli Terms

To clearly understand the essence of Buddhist teaching, it is essential to study the Pāli language inscription, which is recorded and included the Piṭaka Canon of the Theravāda Buddhism. The Pāli Piṭaka Canon refers to the set of scriptures in which the Buddha’s teaching, the Dhamma (Doctrine) and Vinaya (Discipline) are enshrined. The Buddha gave the Dhamma and Vinaya to be a Teacher of the disciples as per the message recorded in Mahāparinibbāṇa Sutta. It follows that the Pāli Piṭaka Canon is in fact where Buddhist can still have an audience with their earcher and learn His teaching, even though he passed away over 2,500 years ago.¹

Buddhism, according to the word of the Buddha in the Pāli Canon, is unique. It teaches an ethical system of self-development for human beings related with all sorts of problem to become truly independent by not relying upon any forces from without.² The meaning and definition of punishment in Pāli term has been translated and interpreted by various scholars of Buddhism, some of which are as follow;

The English-Pāli Dictionary has been compiled by the most Ven. Aggamahāpañḍita A.P. Buddhadatta Mahāthera has translated the term “Punishment” into Pāli as “Daṇḍa,

² Ibid., p.29.
T.W.Rhys Davids and William Stede have translated the meaning of both Pāli vocabularies into English namely; [1] Daṇḍa means Punishment by beating, Penalty, Penance, Atonement; [2] Niggaha means Restraint, Control, Rebuке, Censure, Blame, respectively. And His Royal Highness Prince Kitiyārakara Krommaphra Chandaburinarunath, also had translated the meaning of both the Pāli terms into English as; [1] Daṇḍa means Punishment, Penalty, Violence, and Cruelty; and [2] Niggaha means Restraint, Coercion, Subduing, Rebuке, Censure, Punishment, Degradation respectively.

The Encyclopedia of Buddhism states that the contextual evidence indicates that the first category specifically refers to legally punishable crimes. The term ‘Daṇḍa’ in the sense of punishment, and specifically in the sense of punishment for crimes committed is often found in the Nikāya. All this evidences point to the fact that according to Buddhism legally punishable act is one of the factors that turned any ethically bad act into a crime.

The term ‘Daṇḍa’, in its general use in Pāli texts, refers to penalty or punishment meted out to one who is guilty of Aparāda (a crime) or Vajja (offence) in terms of common law or penal code.

So, the appropriate word of ‘Punishment’ in the Pāli words are ‘Daṇḍ and Niggaha’, which are mean ‘atonement, blame, censure, coercion, cruelty, degradation, punishment, penalty, violence, restraint, subduing, rebuке, and reproach’ respectively.

4.1.2. Buddhist View on Punishment

Buddhist view on punishment, like any other approach, cannot really be separated for its understanding of human psychology and its vision of human possibility. This suggests that criminal justice is not solely a secular issue, for questions of fairness and justice cannot be completely separated from the religious perspectives they historically derive from; for the vast majority of humankind, crime, punishment and reform are still inextricably bound up with religious view about sin, judgment and forgiveness.

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5 Ibid., p.354.
7 Ibid., p.402.
8 M.II, p.88
10 Ibid., p.310.
The Buddhist Philosophy is entirely based on nature. If actions under the control of thought and those could be organized in line with nature, the good results derived from thought that go against nature are well manifested in Buddhism. Social recognition is created according to nature. This is the basis of all fundamental theories of law, which is based on the natural justice. Hence, the relationship that exists between law and Buddhist Philosophy is one based on nature. Meritorious deeds indicated in Buddhism are in harmony with nature while matters shown in Buddhism as evil deeds are inconsistent with nature. The right of all beings to life is accepted both in Buddhist philosophy and nature. The evil act of taking one’s life and its effect as thought in Buddhism confirms the right to life. As expressed in the Dhammapada that “All tremble at punishment; all fear death. Having made the comparison with oneself, one should not kill or cause to kill.” Therefore, one should refrain from taking another’s life. Other’s life should also be treated by one and all as one own’s life in the teaching of the Buddhism.

All the disciplinary rules framed for the conduct and guidance of the Buddhist monks and nuns are collected in the Vinaya Piṭaka. The Buddhist Order of monks was organized wholly on a democratic basis. The Buddha nominated no successor and wanted his followers to perform all ecclesiastical acts and duties according to his instructions. It was, of course, not possible for the Buddha to lay down all the rules in anticipation of what the unrighteous monk might do to evade or misinterpret them. Hence, the Vinaya Piṭaka, as it stands today, is a growth of centuries of the basic rules formulated by the Teacher himself.

In the Buddhist Disciplinary Code, all Āpattis (offences) are not of equal gravity. Their gravity varies in relation to how these impacts on the conducts of Bhikkhu and how these hinder the achievement of the goal. Their gravity is seen also from the punishments prescribed for the offences. Besides, offences, the defeats being the gravest monastic crime, the punishment meted out for these four offences are expulsions from the order. Therefore, it requires no elaborate legal procedure. But for the other offences, penalties and punishment are imposed on the offenders whose correct and good behaviour absolves them from the offences concerned on admission of the guilt and the expression of earnestness in future restraint.

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4.2. Formation of Buddhist Jurisprudence

4.2.1. Definition of Jurisprudence

Etymologically, the term ‘Jurisprudence’, is the key-term of priority in our discussion. In this connection, to trace the equivalent of the word of ‘jurisprudence’ in the Pāli term is ‘Nītisattha’ (Skt.: Nītīsastra), which literally means ‘the study and theory of law, scholars of jurisprudence, or legal theorists including legal philosophers and social theorists of law, hope to obtain a deeper understanding of the nature of law, of legal reasoning, legal systems and of legal institutions.’ R.C. Childers has translated it’s as “The science of statecraft, art of governing.”

The Buddhist canonical literature had mentioned in Jātaka Āṭṭhagathā of Mahāsuttasoma Jātaka (No.537), that “Khattiyadhammasākhāte nītisatthe,” which means ‘law’, in other word ‘Khattiyadhamma of Rājadhanna,’ which means ‘Virtues of duties of the king; royal virutes; virtues of a ruler.’ In some texts it is called Daṇḍanīti, Lokanīti, Dhammanīti, Rājanīti and Rājasattha (Skt.: Rājaśastra). In the Dīgha Nikāya is belongs to Tiracchāna Vijjā (the groups of law arts) and is called Micchājīva (a wrongful occupation). Ven. Phra Brahmaguṇābhorn (P.A.Payutto) have also translated the meaning of ‘Nītisattha’ that is ‘the science of the leaders or handling operation, which may be extended as the science of a personal leadership or the science of statecraft.’

In English term, it is based on the Latin word jurisprudential: juris is the genitive from of jus meaning ‘law’, and prudential means ‘prudence’ (also: discretion, foresight, forethought, circumspection; refers to the exercise of good judgement, common sense, and even caution, especially in the conduct of practical matters). The word was first attested in English in 1628, at a time when the word prudence had become the obsolete meaning of “knowledge of or skill in a matter”. The word may have come via the French origin jurisprudence, which is attested earlier. Jurisprudence already had this meaning in Ancient Rome even if at its origins the discipline was a (periti) in the jus of mos maiorum (traditional

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18 J.V.378: There are ten of Rājadhannas are:- (1) Dāna (Charity); (2) Sila ( Morality); (3) Pariccāga (Self-sacrifice); (4) Ājīva (Honesty; integrity) (5) Maddava (Kindness and gentleness); (6) Tapa (Austerity); (7) Akkodha (Non-anger); (8) Avihīṁsā (Non-violence); (9) Khanti (Patience) and (10) Avirodha (Non-opposition).: Quoted in Phra Debved (P.A Payutto), Dictionary of Buddhism, Bangkok: Mahaclulalongkornrajavidyalaya University Press, 1992, pp.285-287.
law), a body of oral laws and customs verbally transmitted “by father to son”. In the same line of thought, according to India Vedic society, the law or Dharma, as followed by Hindus was interpreted by the use of “Manu Smriti” - a set of poems, which denied sin and the remedies. They were said to be written between 200 BCE – 200 CE. In fact, these were not codes of law but norms related to social obligations and ritual requirements of the era.21

Thus, jurisprudence is the knowledge of things divine and human, the science of the just and the unjust,22 and is constructed as the science of knowledge of law 23 or the scientific study of law.24

4.2.2. History of Buddhist Jurisprudence

It dates back to the sixth century BCE. The framing of laws in the form of rules and regulations were started during the lifetime of the Buddha. It was necessitated following the formation of the Buddhist Saṅgha. The first Buddhist Saṅgha sprang into existence with sixty-one Bhikkhus after the Dhammacakkappavattana Sutta25 at the Migadāya in Isipatana. Also with the emergence of Buddhism laws had to be framed in order to regulate the lives of Buddhist monks and nuns, which were codified under the Pātimokkha. According to the Mahāvagga,26 Pātimokkha is the collection of the various rules and regulations contained in the Vinaya, beginning with the four Pārājikas ending with the seventy-five Sekhiyadhammas. These monastic rules are solemnly read twice a month in every monastery, and individual monks are invited to make confessions if they have broken any of the rules read out. Pātimokkha may be described as the Penal Code of the monks.

The Buddhist Order was established by the Buddha on the bed-rock of Jurisprudence and democratic ideals. The most important organ and tool of democracy is the “Voting Right” which was introduced to the Buddhist Saṅgha. It was technically known as the “Ubbāhika” in the Buddhist Tradition. All these facts vouch for the ideals of jurisprudence in Buddhism from the beginning itself.27 Modern jurisprudence with regard to the criminal act has also got a clue from the Buddhist Jurisprudence.28

25 Vin.I.7 f; (See Mv.I.6.1 et seq.)
26 Vin.I.104; (See Mv. II. 3.4.)
28 Ibid., pp.140-141.
4.2.3. Nature of Buddhist Jurisprudence

The Vinaya Laws are similar in certain respects to other ecclesiastical law, but they differ fundamentally in their structure, jurisprudence and application from the latter. The laws of Vinaya are more distinct and better codified than any of the contemporary law-codes. The Buddhist Vinaya is based on celibacy, moral precept and doctrinal ideals. The Buddha not only codified the ascetic principles but also improve them changing their aim, scope and nature. The fourfold holy-life (Caturaṅga Brahmacarya) is said to be perfect (Kevalaparipuṇṇam), and pure (Parisuddham) and beneficial in the beginning, middle and the end. The fourfold Brahmacariya is significant and noble. It aims at Nibbāna, and reaches its fulfillment at Nibbāna. The Nikāya hold that Brahmacariya is very auspicious and it is the chief means to make an end of suffering. Another important feature of Vinaya laws is that each rule is linked up with an episode supposed to have actually taken place. Even in a minor Vinaya rule the historical episode is indispensable. This peculiarly is absent in the ethical rules of other religions. The Buddhist Law is based on the Noble Eightfold Path (the Middle Path) and how every Buddhists, whether male or female, monk or layperson, is welcome to follow this Path in order to free himself or herself from the problem of suffering and the cycle of rebirth, i.e. Nibbāna.

Thus, the nature of Buddhist Law can be divided into eight vital characteristics. The details of which are as follow:-

[1]. Sammuti (Convention); (Skt.:Sammati). The grip of convention or custom upon the law is always firm. The laws based directly on custom, are known as customary laws, and they are supposed to grow slowly out of public opinion, and are considered as valid as laws promulgated by legislators or formulated by professionally trained judges, their sanctification comes from long usages. The Buddha did not believe in the Vedas and Smritis of Hindu Tradition. So, the Custom or Ācāra was all the more important in the formation of the Vinaya laws, and that is one of the reasons why public censure and recommendations had so much effect on the origin and evolution of these laws.

[2]. Contribution of Brahmacariya (Celibacy); (Skt.:Brahmacarya). Out of the innumerable rules, which are drawn upon the code for the Brahmacariya, only a few important ones will be discussed here. According to the early years of the Order, a Bhikkhu

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was not allowed to wear any footwear following the custom of the pupil, but later on the use was sanctioned under some bindings.

[3]. The influence of the institution of Yatīs (a pious ascetic): The regulations made by the Buddha, bearing upon the contemporaneous monastic practices are equally important, and to be met with in every nook and corner of the Vinaya. The Mahāvagga tells us that the Buddha converted 1,000 Jaṭilas and 250 followers of Saṇjaya. So, the second and third of the four Nissayas are chiefly based on customs observed by the Paribbājakas.

[4]. Uposatha in Older Literature: The ascetics, as the Mahāvagga reports, used to hold assemblies on the fourteen and fifteenth of the month. So, on the suggestion of king Bimbisāra, the Buddha also made the rule that the Uposatha meeting must be held once a month. Henceforth, the Uposatha meetings became the main source of vitality on the Buddhist Saṅgha. It is to be born in mind that Uposatha meetings were quite different in their nature and structure from the meetings of the Titthiyas or ascetics.

[5]. Public Opinion: The wagging together of the public is another source of the majority of the Vinaya-rules. In all countries and at all times, the public tongue is always an efficacious reformer; so was it in the time of the Buddha. The Saṅgha being solely dependent on the people for ration and clothing. The Buddha and his disciples were always ready to consider reasonable complaints and suggestions of the public. The public suggestions such as, King Bimbisāra, who suggested the Uposatha meeting; Vassaṁśa had been criticized by the people at Rājagaha; Visākhā Migāramātā suggested the Bhikkunī from bathing in the same place with courtesans, and provided the bathing suits for them, and for the Bhikkhus with rainy-season-robcs; as well as the Sanction of accepting land for the sake of the Saṅgha was due to Anāthapiṇḍika’s offering the Jetavanamahāvihāra to the Buddha, and so on.

[6]. Suggestion of Bhikkhu: Many rules again are an outcome of the suggestions made by the Bhikkhus and Bhikkunīs. As for example, it was through the suggestion of Ānanda that admission to the Saṅgha was granted to women. Because of Gotami’s request to the Buddha to allow bathing for to women that most of the rules about bathing in the Bhikkuni Pācittiya came to be made, etc.

[7]. Atikkamo: Transgression (Skt.:Atikram). The Vinaya laws, which came to be declared on account of the lapses on the part of the inmates of Saṅgha. The long list of the Pātimokkha for the Bhikkhus and Bhikkunīs are nothing but a record of the various

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31 Vin.I.101; (See Mv.1.3)
32 Summary of Ādikammika (A Beginner of Transgressions) in Bhikkhu and Bhikkhunī Pātimokkhas see Appendix No.7a, 7b, at Pages No.419-424.
occasions of lapses and under various circumstances. All such rules are negative in character. One of the reasons for this characteristic is that rules were not declared by the Buddha by predicament of the offences but after the actual result of the misdeeds. Even the most important rule like observing strict celibacy in the Saṅgha was declared, after Sudinna had violated chastity through ignorance. The rest of the three Pārājikas and the thirteen Saṅghādisesa are all of the same nature. There are indeed very few laws, which came into being for their own sake, without any outward suggestion or lapse. The eight Garudhammas for the women too can be included in the same.

[8]. *Itihāsa: Tradition*. The *Pācittiya* No.37, forbade the Bhikkhu taking meals at odd hours since they used to dine any time. This habit was due to the custom then because of the carelessness on the part of the Bhikkhus. And the Buddha has also to make rules in compliance with the requirement of the state. Soldiers and convicts were not allowed to enter the Saṅgha. Elephants being of great use to the state the monks were forbidden to eat their flesh; the violation of the rule caused a Dukkāta.

Thus, the nature of Buddhist law depended on two important foundations, namely:

1. The Buddhist philosophy of the Noble Eightfold Path.
2. The Sociological needs and demands necessitated by the differences between the community of monks and laypersons and such other socio-cultural demands made from time to time. The moral aspect of the law rested on the first foundation while the legal and other socio-cultural aspects could be traced to the sociological needs and demands.

4.2.4. Importance of Buddhist Jurisprudence

Human being is the most precious creation of nature. The sanctity of this unique creation is maintained and preserved by jurisprudence. Man without jurisprudence is uncivilized. This very sacred fact, first time in the human history, was visualized by none than Sakayamunī Gotma Buddha. The *Vinaya Piṭaka* is a sacred law of the Buddhist jurisprudence. It deals with the rules and regulations for the monks, nuns and the Buddhist Order. Buddhaghosa, calls ‘the Vinaya the very essence of the teachings of the Buddha and adds that all Buddhist doctrines and precepts are an outcome of the Vinaya alone. The *Samantapāsādikā*, *Vinaya Aṭṭhagathā* and the Aṭṭhasāliṇī, a commentary of the

33 Vin.IV.85-86.
Dhammasaṅgaṇī, states about the Vinaya Piṭaka as: “Because it contains manifold distinctive modes of practices and restrains both bodily and verbal acts, the Vinaya is called so by those who are adept in the purport of the Discipline.”

And hence “the Vinaya is known as a compilation of rules, which clearly state what is wrong and what is right, what is offence and what is non-offence together with principle of restraint.”

The innate Vinaya can be seen in men of pure character, firm will, and full or religious zeal like the great Sāriputta, Moggallana, Mahākassapa, Rāhula, Upāli etc; and hence, there is no necessity of regulating their conduct by external bindings. All men however, cannot come up to that mark; and it is a tendency of common people not to do anything seriously unless they are compelled to do so. In case there is will to do a thing, it happens that the methods adopted to accomplish it are inadequate and misjudged, and so, either the state or some person in whom authority has been vested, has to interfere and bring an external coercion on men, and make them do the right thing according to a regulated plan and impeach them if they fail to keep up by it. This is the external Vinaya. The Vinaya Piṭaka contains this Vinaya chiefly. The necessity of a distinct code must have been felt quite early and there are passages in the Vinaya which clearly shows that Buddha promulgated so many rules in order to bring a mark of distinction among his own disciples. It had also become indispensable in view of the establishment of a well-organized monastic Order with a notion of corporate life where, in order to avoid conflicts and misunderstandings, the duties and transgressions ought to be well defined and explained.

Hence, when we examine the teaching of the Buddha, we see that the discipline advocated by the Vinaya represents a very significant application of the Buddha’s Dhamma. Indeed, throughout the Pāli Nikāya, we often find the phrase “this Dhamma and this Vinaya” referring to the fact that the discipline advocated by the Buddha is part and parcel of His teachings. As a matter of fact, the analysis of the disciplinary code or Buddhist laws cannot be done in isolation from the Buddhist doctrine. The term Dhamma and Vinaya, the Doctrine and Disciplinary Code, occur always together.

According to the five books of Vinaya Piṭaka, the couple of books, such as Bhikkhu Vibhaṅga and Bhikkhuṇī Vibhaṅga are, in fact, treatise of human jurisprudence and it is

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rightly regarded as the fountainhead of human jurisprudence. The Vibhaṅgha is viewed as the magnum opus of the Buddhist jurisprudence. In this way, the Gotama Buddha accorded utmost importance to jurisprudence, which was later on known as the Buddhist jurisprudence.  

4.2.5. Evolution of Buddhist Jurisprudence

The evolution of the Buddhist law or Buddhist jurisprudence was effected with the passage of time. It has been rightly said that necessity is the mother of invention. The rules and regulations were framed as and when the necessity was felt in the Buddhist Order. The rules and regulations were framed on the basis of individuals as well as spatial-temporal dispensation. When the number of the Buddhist Saṅgha was increased rapidly, the Buddha introduced rule and regulation to the Buddhist Saṅgha at the request of the King Bimbisāra.  

Gotama Buddha was requested by the king Bimbisāra to enact a statue that the Buddhist monks should assemble on the 8th, 14th, and 15th day of each month to hold Uposatha ceremony (Religious Assembly).  

There is a huge corpus of the Buddhist jurisprudence from the stand-point of different schools and sects of Buddhism, such as the Pātimokkha of Theravāda, Pratimoksa of the Lokuttaravāda School, and so on. It further noted that the Buddhist jurisprudence flowered in different countries with indigenous tone and tenor, namely, Chinese Vinaya, Myanmarese Vinaya, Thai Vinaya, and so on. Thus, the evolution of Buddhist jurisprudence is still on in a new situation.

4.2.6. Development of Buddhist Jurisprudence

The history of development of Buddhism has witnessed several schools and sects over the year. The first great division of the Saṅgha was effected at Vaisālī about one hundred years after the Mahāparinibbāna of the Buddha. Buddhism was bifurcated into the Theravāda or Sthaviravāda and the Mahāsaṅghika. As the time rolled by the Buddhist schools and sects proliferated. According to the Abhidhamma text, Kathāvatthu, there were eighteen sects of Buddhism during the time of Emperor Askoka. It has been observed that each sect of Buddhism has its own laws to govern. For instance, the Theravāda or Sthaviravāda sect of Buddhism has two hundred and twenty-seven rules for monks and three

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45 Vin.I. 101; (See Mv.II.1.2.): “Arho kho rāja Magadha Seniyo Bimbisāro yena bhagavā ten’ upasamkami… sādhu bhante ayyāpi cātuṭḍasate paṭṭarase aṭṭhamitāya ca pakkhassa sannipateyyunti.”  
46 Vin.I.104; (See Mv.II.4.2.): “Aṣṭuṣṭāmiṣṭi Bhikkhave sukam pakkhassa cātuṭḍase vā paṭṭarase vā pātimokkham adhisthun ti.”  
47 Ram Nandan Singh, Loc.Cit., pp.138-139
hundred and eleven rules for nuns, etc.\textsuperscript{48} For Comparative Number of the \textit{Bhikkhu} and \textit{Bhikkhuni Pātimokkhas} in total in each School see Appendix No.6, at Page No.418.

As mentioned earlier, the \textit{Vinaya Piṭaka} is the fountain-head of the Buddhist jurisprudence. The development of the knowledge of Buddhist law was regulated by the progress and development of Buddhism. Hence, for understanding the development of Buddhist law, it can be divided into four stages. The details of which are as follows:-

\textbf{(1) First Stage: During the life of the Buddha:}

Majority of the scholars on Buddhism seems to hold the opinion that “\textit{All the major rules of Vinaya were promulgated by the Buddha himself during his long journey of discourses}”. The general view is “\textit{the Buddha prescribed all the necessary guidance to maintain the holy order in every aspect of life. When the Buddha passed away, these rules were collected so that the Order could be organized around them}.”\textsuperscript{49} The detailed account of the \textit{Mahāvagga} and \textit{Cullavagga} also suggest that a good number of minor rules were laid down by the Buddha himself as and when occasion arose. There are some important facts that made the Buddha proclaim rules of discipline to keep the Order pure and intact. In this process most of the major rules of \textit{Pātimokha} and regulations enshrined in \textit{Mahāvagga} and \textit{Cullavagga} of \textit{Vinaya Piṭaka} were proclaimed during the recitation of the \textit{Vinaya} and the \textit{Dhamma} in the interest of the Order.\textsuperscript{50}

\textbf{(2) Second Stage: During the First Great Buddhist Council:}

Shortly after the Buddha’s \textit{Mahāparinibbāna}, when some voices such as those of the rebellious Subhadda were heard expressing relief at the death of the Buddha, who had insisted on observing hundreds of regulations, some of the older and more disciplined monks under the leadership of Mahākassapa agreed to convene a meeting of five hundred monks in order to recite and rehearse the Buddha’s teaching and preserve it, in its purity for posterity. They were supported in this effort by King Ajātasattu of Magadha, who offered facilities in his capital Rājagaha. Mahākassapa began the proceedings by asking questions about the \textit{Vinaya} from Upāli, a highly respected senior \textit{Bhikkhu}. His information concerning discipline was considered correct and was accepted by the council. Next, Mahākassapa asked Ānanda, who has been closest to the Buddha for many years, about the \textit{Sutta}, Ānanda was to supply information about the occasion of a sermon, the location and the person addressed.

\textsuperscript{48} \textit{Ibid.}, pp.139-140.
\textsuperscript{50} Quoted in Ahipal Singh, \textit{A Comparative Study of The Rule of Law in Buddhist Vinaya and Indian Legal System}, Delhi: Ph.D. Thesis, Department of Buddhist Studies, University of Delhi, 2001, , pp.60-63.
His account too, was accepted as the true teaching of the Buddha. In a nutshell, the proceedings of First Buddhist Council achieved for important results, such as: (1) The compilation of the *Vinaya Piṭaka* under the leadership of Ven.Upāli; (2) the compilation of the *Sutta Piṭaka* under the leadership of Ven.Ānanda; (3) the trial of Ven.Ānanda; and (4) the penalty the *Brahmadaṇḍa* (Harshest Punishment) on Ven.Chana. Finally, the stepping-stone of the Primitive Buddhism was laid in the First Buddhist Council.

(3). Third Stage: During the Second Buddhist Council:

According to the last chapter of *Cullavagga*, XII: *Sattasatkkhandha* and the Ceylonese chronicle, *Mahāvaṃsa*, Chapter IV, the second Buddhist Council called ‘*Sattasatasāṅgīti* or *Dutiyasaṅgīti*, according to Buddhist tradition, was held at Vaisālī a century after the passing of the Master. The time recorded should be taken as a round number. It is recorded in the *Cullavagga* that the monks of the Vajjī Country were in the habit of practicing the *Dasa Vattūni* (Ten Points), which were regarded as unorthodox by Yasa, the son of Kakaṇḍaka. Thus, their meeting is called a council on *Vinaya* (Vinayasaṅgīti). No mentioned is made in the Pāli *Vinaya* of the compilation of the *Sutta* or *Vinaya Piṭaka* after the investigation of the ten points was concluded. Yasa declared these practices to be illegal and immoral in the extreme. The Vajjī monks, however, pronounced the penalty of *Paṭisāraṇiyaṃkamma* upon him. This necessitated the offender’s apologizing to the laity who has been forbidden by Yasa to carry out the precepts of the Vajjī monks. Yasa defended his own view before the laity and by his eloquent advocacy won them over to his side. This increased the fury of the offending monks who pronounced the punishment of *Ukkhepaniyaṃkamma* upon him, which meant his virtual expulsion from the Brotherhood.

There is no agreement in regard to the President of the Second Buddhist Council. Bhikkhu Jinānanda says that that Ven.Sabbakāmī was elected the President of the council, while the Pāli tradition mentioned the Ven.Revata was the President. However, it may be surmised that there was no president of this council, and the democratic method was applied to tackle the dispute. For this a Committee of eight monks was constituted. It is relevant to

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53 Vin.294-307; (See Cv.XII.1.1.-2.9)
54 VinA.I.33; (MBU: 2548 B.E./2005 C.E.): “*Satehi sattahi katā tena sattasatāti ca pubbe kataṃ upādāya dutiyaṃ ca vuccati*”
55 Vin.II.294; (See Cv.XII.1.1).: “… bhikkhū Vesālīyam dasa vatthūni, dipenti: kappati saṅgīnakappo, kappati dvāṅgulakappo, k. gāmantarakappo, k. āvāsakappo, k. anumatiyakappo, k. ācīṇnakappo, k. amatthakappo, k. jalogi patum. adasakam nisidanaṃ, k. jātarparajatān ti.”
note that the committee was given regional representation. This is why four monks each were taken from the eastern regions and western regions respectively. The most important point is that the Committee was founded on the basis of *Ubbāhikā*, which is the voting process as described in the *Pātimokkha Sutta*. The Committee members were Sabbakāmi, Salha, Khujjasobhita and Vasabhaggmika of the eastern regions, and Revata, Sambhuta Sānavāsī, Yasa, and Suman of the Western ones. The immediate important result of the Second Buddhist Council was the first schism in the Buddhist *Saṅgha*. The Buddhist Order was divided into a couple of schools, such as the *Sthaviravāda* and the *Mahāsaṅghika*. The former is also known as the *Theravāda*. A.C. Banerjee opines that it was a division between the conservative and the liberal, the hierarchic and the democratic.\(^{60}\)

(4). The last Stage: During the Third Buddhist Council of Asoka period: Once again a state of confusion and disorder shadowed the monastic life of the *Bhikkhu* and Buddhism in the time of Emperor Asoka. Within a couple of hundred years of the *Mahāparinibbāna* of Gotama Buddha, Buddhism witnessed the rise of different sects and their preachings as well as practices. As a result, there were fierce wranglings in the Buddhist Order. This situation eventually prepared the way for convening the Third Buddhist Council. Secondly, with the conversion of Emperor Asoka to Buddhism, the material prosperity of the *Saṅgha* grew to a very large extent. The comfort and ease-loving people became monk, and joined the Buddhist Order. Gradually, the false monks and heretics outnumbered the true believes. As a consequence, there was no *Uposatha* or *Pavāraṇa* ceremony in the *Saṅgha* for seven years.\(^{61}\) This made the king worried, as he wanted to see the holy Order in its true form. He, therefore, decided to purify the Order by expelling those who were not sincere in maintaining holy life or was infiltrators with the sole purpose of defiling the Order. Before this exercise, he ordered for construction of a big splendid *Vihāra* in Pātaliputta. The *Vihāra*, completed in 258 BC., and named Asokāram was made venue of the Third Great Council.\(^{62}\) Ven. Moggaliputta Tissa Thera was the President of the Council. He elected one thousand monks of the Buddhist Order, who eventually participated in the Assembly. This Council lasted for nine months.\(^{63}\) The results of the Third Buddhist Council were far-reaching and epoch-making. The *Abhidhamma* treatise, the *Kathāvatthu*, was completed wherein the heretical doctrines were refuted. Secondly, Asoka purified the Buddhist *Saṅgha* from the corrupt practices than had

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crept into the Brotherhood. The *Uposatha, Pavāraṇā* and other ceremonies were restored. Emperor Asoka wanted to keep the Buddhist *Saṅgha* united at all costs. The Great results of the third Council was the expansion and popularization of Buddhism in India and abroad, as depicted in *Samantapāsādikā, Vinaya Aṭṭhakathā*, and the *Dipavamsa* version (Ch.VIII), *Mahāvamsa* version (Ch.XII) and version also says that on the conclusion of the Third Buddhist Council, King Asoka, sent groups of nine Buddhist missionaries to nine different counties to propagate the religion of the Buddha. For the name of nine groups of Buddhist missionaries in nine counties see Appendix No.5a, 5b, 5c at Pages No.416-417.

It can be observed that the nature of the development of Buddhist law depends on sociological needs and demands necessitates by the differences between the community of monks and lay persons and socio-cultural demands made from time to time. The, Nobel Eightfold Path was the core of the foundation of Buddhist law, a reason similar to the general preventive tendency found in most of the law, i.e., the tendency to prevent an individual from committing crime.

4.2.7. Philosophy of Buddhist Jurisprudence

Rahula mentioned that “*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.*” In Buddhism the belief about an almighty or Divine revelation or such inspiration is totally absent. Therefore, the idea of law of justice as something promulgated by God directly or indirectly doesn’t arise in the case of Buddhism. The laws prescribed for the Buddhist Order came into being with the gradual expansion of the community founded by the Buddha. So, the Buddhist Laws are the ‘Buddha Vacana’ or ‘spoken from the mouth of the Buddha himself.’

On this regarded, the legal philosophy is the vital part of the Buddhist teachings as that behind its jurisprudence i.e., (1) *Aṭṭhaṅgikamagga* (the Noble Eightfold Path); (2) *Cetanā* (intention, consciousness); (3) *Brahmavihāra* (Sublime State of Mind); and (4) *Parivāsa* (probation). The details of which are as follow:-

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64 *Ibid.*, pp.53-56
70 D.II.196; D.III.220; Dhs.262; Vism.320.
The rules of discipline for the Buddhist monks and the laws prescribed for the laymen emanates from one single philosophy, i.e. the realization of the Four Noble Truths by following the Middle Path (the Noble Eightfold Path) prescribed by the Buddha. Although the basic philosophy basis and the spirit of all laws finally rest on the realization of ultimate Truth, the laws that apply to the individual and the community varies in their form and content because of variation of gradation in the moral capacities of the individuals and the socio-economic or cultural considerations of the time.\textsuperscript{72}

The \textit{Ariyasacca} \textsuperscript{73} (Four Noble Truth) is the fundamental teaching of the Buddhism. The first Noble Truth is \textit{Dukkha} (the suffering). Life is full of suffering and, although periods of what one may call happiness exists, the end result is suffering. According to the Buddha this suffering could be viewed from three points of views; (1) ordinary suffering; (2) suffering as produced by change; and (3) suffering as a conditioned state.

The second Noble Truth is of \textit{Dukkhasamadaya} (the arising or origin of suffering). Suffering is caused by \textit{Taṇhā} (craving or thirst), which is divided into three categories: (1) craving or thirst for sensual pleasures; (2) craving or thirst for existence; and (3) craving or thirst for non-existence. According to the Buddha all sufferings in this world, whether they are small or big, are caused by this selfish thirst. The thirst or craving also creates endless births in the world.

The Third Noble Truth is \textit{Dukkhanirodha}, (the cessation of suffering), is possible and it is known as \textit{Nibbāna} - the elimination of craving or thirst. It is the realization of the final or the absolute Truth, which is the ultimate aim of the Buddha’s teaching and practice.

The Fourth Noble Truth is \textit{Dukkhaniruddha} (the path leading to the cessation of suffering), the path that one has to adopt in order to reach the ultimate truth. It is known as the Middle Path because, as already mentioned, this path avoids the two extreme of self-indulgence and self-mortification. The path consists of eight steps divided into three categories under ethical conduct, mental discipline and wisdom. The Eightfold Paths are:-

(1) \textit{Sammādiṭṭhi} (Right Understanding); (2) \textit{Sammāsāṅkappa} (Right Though); (3) \textit{Sammāvācā} (Right Speech); (4) \textit{Sammākāmānta} (Right Action); (5) \textit{Sammā-ājīva} (Right Livelihood); (6) \textit{Sammāvāyāma} (Right Effort); (7) \textit{Sammāsati} (Right Mindfulness) and (8) \textit{Sammāsambhī} (Right Concentration).\textsuperscript{74}

\textsuperscript{71} D.II.312; M.I.61; M.III.251; Vbh.235.
\textsuperscript{73} Vin.I.9; V.421; Vbh.99.
Thus, the Buddhist Laws flow directly or indirectly from the Buddhist Philosophy of the Middle Path. In fact, the Middle Path or Noble Eightfold Path has to be followed in order to realize the Four Noble Truths. If one puts and ends to undesirable volitional activities based on lust, delusion, and confusion, the end of the cycle of birth 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.

[2]. Cetanā: Intention; Consciousness. The ethical significance of volitional activity stressed in Buddhism. One has to take the responsibility for his own actions. The other words Kamma (volitional acts), Vipāka (retribution), and Punabhāva (rebirth) are part and parcel of Buddhist ethics; where volition plays an important role as a deciding factor. It is pertinent, thus, to note here that the Second Philosophy behind the Buddhist Jurisprudence is based on consciousness. The consciousness is the hub of every action. Gotama Buddha exhorts: “Monks, I say that intention is the Kamma”. The consciousness is again related to ethics. The right consciousness leads to right actions and wrong consciousness paves the way for wrong actions. The ‘Kamma’ literally means action, but according to the Buddhist Philosophy, not all action are designated Kamma; only those actions that are intentionally motivated are called ‘Kamma’, as Ven.P.A Payutto analyzed from different perspective the meaning of Kamma or deed flowing from the intention of the agent. The Buddha further states in the Dhammapada as under: “Avoidance of all evil, gathering of merit, purifying one’s own mind- this is the teaching of the Buddhas.”

According to Buddhist literature, Cetanā means ‘Intention, Will, Volition.’ In the Abhidhamma Piṭaka, there are fifty-two Cetasikas (Mental Factors), it is divided into three main factors are: - (1) Thirteen Cetasikas in Aññasamāna Cetasikas (General Mental Concomitations); (2) Fourteen Cetasikas in Akusala Cetasikas (Immoral Mental Concomitants); and (3) Twenty-five Cetasikas in Sobhana Cetasikas (Beautiful Mental Concomitants). Thirteen Cetasikas in Aññasamāna Cetasikas (General Mental Concomitations) are again divided into two sub-factors are:- (1) Sabbacittasādhāraṇa Cetasikas (Essentials of Primary Ones – seven Cetasikas); and (2) Pakiṇṇaka (Particulars -

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78 A.III.415 : “Cetanāham, bhikkhave, kammaṃ vadāmi”
81 Dhp.Ve. No. 183: “Sabba paṇṇassa akaranam, kusalassasampadā, sacittaparīyodapanam, etam buddhāna sāsanān”:
six *Cetasikas*). *Cetanā* is the one among in the seven factors of *Sabbacittasādhāraṇa Cetasikas* (Essentials which associates with all *Cittas*).\(^83\)

According to *Aṭṭhasālinī* and *Vibhāvinī Ṭīkā*, *Cetanā* is that which co-ordinates the mental states associated with itself on the object of consciousness. Life a chief disciple, or like a carpenter who fulfils his duties and regulates the work on other as well as, so does *Cetanā* fulfils its own function and regulate the function of other concomitants associated with itself.\(^85\) *Cetanā* plays an important role in all action. Because *Cetanā* acts on its concomitants, acts in getting the object, and acts on accomplishing the task; thus it determines actions. As the Buddha remarked in *Aṅguttara Nikāya* that:

> “Volition is action (*Kamma*), that I say, O monks; for as soon as Volition arises, one does the action, be it body, speech or mind.”\(^86\)

Whatever action we do, there arises in our minds a type of consciousness, either wholesome or unwholesome, and that type of consciousness is accompanied by volition, by *Cetanā*, and the *Cetanā* is what we calls *Kamma*. So *Kamma* is the volition in our minds, the volition associated with wholesome and unwholesome *Cittas*.\(^87\)

According to penology, a branch of criminology dealing with the study of matter concerned with the punishment of criminals and the operation of prison, homicide without justification or excuse is distinguished from murder by the absence of malice or premeditation, which is again divided into voluntary manslaughter and involuntary manslaughter. An intentional killing committed in the heat of passion provoked by the victim is called voluntary manslaughter while an unintentional killing resulting from a minor crime such as rioting or reckless driving is called involuntary manslaughter where no mental element is involved.

Buddhism is concerned with the moral significance of the act in its totality, penology also considers the motive and other constituents of committing an act of homicide in levying the penalty. In other words, the degree of gravity of the offence is determined by considering the total factors contributing to the particular act of killing. The Buddhist stance is aptly illustrated in monastic discipline by quoting the incidents which occurred during the time of the Buddha. The place ascribed to intention in monastic discipline in Buddhist tradition is

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\(^83\) Seven factors of *Sabbacittasādhāraṇacetasikas* are: - (1) *Phassa*: contact or mental impression; (2) *Vedanā*: feeling; (3) *Saññā*: perception; (4) *Cetanā*: Volition or intention; (5) *Ekaggatā*: one-pointedness, concentration (*Samādhi*); (6) *Jivitindriya*: vitality or psychic life; and (7) *Manasikāra*: attention or advertence. Quoted in Mehm Tin Mon, *The Essence of Buddha Abhidhamma*, Yangon: Mya Mon Yadanar Publication, 1995, p.67.


\(^86\) A.VI.13.

stressed by stating that there is no offence with regard to homicide, “if it is unintentional, if he does not know; if he does not mean death, if he is not a sane mind.” The rule concerned defines the intention of committing the offence as “knowingly, consciously and deliberately.”

[3]. *Brahmavihāra* (Sublime State of Mind)

The Buddhist Jurisprudence is also based on the *Brahmavihāra*. The *Brahmavihāra* is the most important teachings of Buddha. It is regarded as the sublime ideal. It is four fold, viz, *Mettā*: Friendliness; *Karuṇā*: Compassion; *Muditā*: Happiness; and *Upekkhā*: Equanimity. The first of *Brahmavihāras* is *Mettā* (Friendliness). It does not discriminate any being on the basis of caste, creed, sex and religion. This has been eloquently rendered in the *Mettā Sutta* of the *Sutta Nipāta* by the following couplet:

“Mātā yathā niyatam puttam, ayusāekaputtamanurakkhe. Evampi sabbahutesu mānasam, bhāvaye aparimānam.”

The Buddhist Laws lays down penalties or punishments for each specific type of offences. The philosophy behind these penalties was nothing but *Karuṇā* (compassion).

According to the Buddhist notion of *Karuṇā*, a wrongdoer is a person who is misdirected either by himself or because of others. Even though he sometimes does a wrong, which is very serious in nature, he is potentially capable of developing himself to the highest point. The Story of Aṅgulimāḷa is the best example in the Buddhist literature.

Since *Karuṇā* (Compassion) is the motive behind any sort of penalty, the idea of torture never finds 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 in refering to them. And the Buddhist teaching discourages the harming of anyone because all tremble at punishment for any crimes or wrong acts 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. Other can only help him. One should take the blame oneself. The Buddha’s teaching provides guidance and by following these one should oneself strive hard to get rid of blemishes. The attitude towards offence by monks or lay man was based on this philosophy. The most serious punishment in monastic Law was

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89 D.II.196; D.III.220; Dhs.262; Vism.320.
92 Dhp.Vs.129.: “...attānaṁ upamaṁ katvā na haneyya na ghātaye”
93 Dhp.Vs.276; A.IV.203.: “Tumhehi kicca tabba akkhātāro tahāgata; paṭipannā pamokkhanti jhānīyo mārabhandhanā.”
expulsion. The 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 visualized. 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.94

[4]. Parivāsa (Probation): This notion was used as a very useful technique in the system of penology. But it was always associated with a very effective system of supervision based on the network of relationship 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 legal philosophy. 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 isolation a wrong-doer, (e.g. in a penitentiary) when the result of his living in the community was harmful to others was appreciated in the 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 ‘Lit it not corrupts the corn of worth.”95

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, discipline him to become anew and for protecting other as far as possible from his misdeeds. Punishment in Buddhist Penology has no retributive or sadistic objective at all.96

4.2.8. Mahāpadesa: Promulgation of the Buddhist Law

While the individual’s welfare remained a major concern of the Community, the Community itself functioned with its own unity or identity, not simply as a group of unrelated individuals. The legislative, judiciary, and executive power thus came to be vested in the Community. The Mahāpadesa (great indication) explain the manner in which the laws

95 A.IV.109.
come to be formulated. The Buddha as the founder of Buddhism and had stated that the Dhamma and Vinaya (i.e. the doctrine and the discipline) should serve as the measure to determine whether a particular teaching attributed to his is correct or not. All statement claiming to be the authentic teachings of the Buddha should thus be “compared with and found compatible with this Sutta and Vinaya.” 

The appeal to authority here is in the case of statement claiming to be genuine teachings of the Buddha. Even in such instance the comparison with Dhamma (or Sutta) and Vinaya include translating the teaching into practice, testing it and determining its veracity by comparison with one’s own experience.

4.2.8.1. Significance of Mahāpadesa: It is of special importance to the student of Buddhist religious thought. Presumably, it takes one to a period when the compilers of the canon were very ardently canvassing for ‘safety measures, to be adopted for the smooth function of the order. In order to safeguard and perpetuate the words of the Master, an effective methodology had to be evolved, which would ensure the unity of the teaching as well as the concord among fellow monks. Disruptive and dissenting elements have to be kept at bay for the maintenance of peace and solidarity among the community of monks. The Buddha is said to have expounded these four great authorities at the end of His last journey and are found in the fifth recital or chapter (Bhāṇavāra) of the Mahāparinibbāna Sutta.

When critically examined this particular teaching, it can easily be recognized as a some what later stratum of the discourse, which evidently has been introduced in a subsequent state of the evolution of the Sutta to guarantee the authoritativeness of the scriptures rehearsed at the first council. They are found in the Bhesajakkhandhaka of the Mahāvagga Pāli and are beyond the field of our discussion.

Sukumar Dutt in his “Early Buddhist Monarchism,” takes the Mahāpadesa to means ‘Standard of Judgments’. Later in “the Buddha and the Five After-Centuries,” he remarks: “Four tests for the authenticity of a rule or a doctrine are laid down, and they are called the Four Great Authorities. It is to be noted however that they are neither ‘standards of judgments nor test for authenticity’. The authentic standards or criteria are the Suttas and Vinaya themselves.

Obviously, the Four Great References found in the Mahāparinibbāna Sutta could be regarded as a later development ascribing authoritativeness to the doctrine and the discipline

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98 D.II.124, 125.
100 D.II.123.
101 Vin.I.199-252; (See Mv.1.1-40.3)
103 Ibid., p.98.
as rehearsed at the first council. It is to be noted that a person who lived during the time of the Buddha can only profess that he heard it from the Buddha Himself. Hence if we presume that a person of twenty-five years of age during the time of the Buddha survived the Buddha for another seventy-five years having a maximum lifespan of a hundred years he only can say that, he heard from the Buddha Himself. Accordingly, the evolution of the concept of these references could be ascribed easily to the first century after the demise of the Buddha. The forced recognition of the entire canon of the Suttas and the Vinaya is the least addition to the tradition.

4.2.8.2. Mahāpadesa in the Vinaya Piṭaka

Mahāpadesa in the Vinaya Piṭaka is referred to the great authorities and principle references. What was actually meant by the word Mahāpadesa? Buddhaghosa tells us that there are four Mahāpadesas each in the Sutta as well as in Vinaya. The Mahāpadesas found in the Vinaya embrace only the discipline while those, which were in the Mahaparinibbāna Sutta cover both the fields of Dhamma-Vinaya (Doctrine and Discipline).

There are some articles, which are found at different places are varied according to the degree of development of the various arts among human beings. It is the same with the ways in which things are done. Because of this, the belongings of people in one place will differ from those elsewhere, besides which there is change in the course of time according to what is popular and fashionable. The persons of different countries come into contact with one another and seeing one anothers’ articles and the ways of doing things, this comes to increase. A Bhikkhu born after the Buddha-time is sure to see many things and methods differing from those mentioned in the scriptures. Now the Master was possessed of Wisdom whereby he had far-sightedness and so laid down the principles for deciding what agrees with Dhamma and what agree with Vinaya.

Here, however, only the principles are called the Mahāpadesa, being translated as “the Great Standard”. The Vinaya Mahāpadesa are four in number, which are as follows:

[1]. Akappiya: Improper. “Whatever has not been objected to as not allowable, if it fits in with what is not allowable and goes against what is allowable, that is not allowable”.

[2]. Akappiyānulomiya: Accordance with the Improper. “Whatever has not been objected to as not allowable, if it fits in with what is allowable and goes against what is not allowable, that is allowable”.

104 Vin.I.250; (See Mv.VI.37.5)
[3]. **Kappiya: Proper.** “Whatever has not been permitted as allowable, if it fits in with is not allowable and goes against what is allowable, that is not allowable”.

[4]. **Kappiyānulomiya: Accordance with the Proper.** “Whatever has not been permitted as allowable, if is fits in with what is allowable and goes against what is not allowable, that is allowable”.

Mahāpadesas in the Vinaya Piṭaka were laws, which were based on purely legal sources. The episodes relating to these rules may be interpreted in different ways. These laws were generally based on ancient customs and judicial precedents. There was another type of rules, which could not be placed on the tradition divisions of the Pātimokkha code. These rules cannot be said belong to a legal code in the true sense because they were not judicially binding. The rules of decorum fall under this category. There is no definite punishment for breaking these rules. These are legal directions regulating the manner and deportment of newly ordained monks and nuns. Most of the rules were based on Āryan tradition.

There are also some technical laws relating to sanitation, health and civilized behaviour. Although these rules cannot be said to belong to the legal code, still they aim at the attainment of a definite end. So they may be termed at technical laws, their importance lies in the fact that they intend to direct the moral conduct for the Bhikkhus and Bhikkhunīs and thus help to increase the standard and dignity of the Buddhist Saṅgha. The rules regarding food, drink, dress although they may be seen to be insignificant to us attracted the attention of the public very much. They are considered very much important even in the public. These were considered important even in the Pre-Buddhist Saṅgha. The Buddha knew that these rules were very important. So we find him always laying stress in his sermons on the Kappiya (right) and Akappiya (wrong) conduct of the Buddhist monks and the nuns. The Buddhist Commentator Buddhaghosa truly remarks, “The right and the wrong are the soul (sic) of the Vinaya.”

4.2.8.3. **Mahāpadesa in the Sutta Piṭaka**

A flood of light is thrown on the solution of the question raised above by a passage in the Mahāparinibbāna Sutta where mention may be made of four Mahāpadesas. They are taken as the probable sources of Dhamma and Vinaya, and it is said in the following sections that any doctrine or rule (Dhamma or Vinaya) emanating from any of these four Mahāpadesa should be carefully checked by comparison with the Sutta and the Vinaya. These standards of reference can signify only the Sutta Piṭaka and Vinaya Piṭaka, which

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106 D.II.123; A.II.167.
superseded, in the middle of the 4th century BCE, all the material sources of monastic laws, which are called in the Mahāparinibbāna Sutta. In Buddhist Jurisprudence, the authorities for the promulgation of laws as given in the Mahāparinibbāna Sutta are as follows:

[1]. Buddhāpadesa: The Appeal to the Enlightened One as Authority

A monk might say: ‘Face to face with the Blessed One did I have this? Face to face with him did I receive this? This is the Doctrine, this is the Discipline, this is the Master’ teaching.’ Thus, the direct promulgation by the Buddha, when the Bhikkhu proposing the rule is able to say- “Sammukhā me tam āvuso Bhagavato sutaḥ”, etc. that this source of law was a recognized one is attested by a curious instance. After the Council of Rājagaha where, according to tradition, the canon was settled, the Thera Bhikkhu approached Purāṇa and asked him to accept the Saṅgīti settled by them. Purāṇa refused them politely saying:

“Friend, the Dhamma and the Vinaya, rehearsed by the Elders, have been well rehearsed. But I shall hold that [viz, Dhamma and Vinaya] which has been heard by me from the Blessed One personally and received directly from him.”

This saying of Purāṇa, by the way, is one of a few indications to show that the canon was not finally settled at the Council of Rājagaha. It will be observed that the words of Purāṇa are almost the same as are used in defining the first Mahāpadesa in the Mahāparinibbāna Sutta.

[2]. Saṅghāpadesa: The Appeal to a Community of Monks or an Order as Authority

A monk might say: “In such and such a monastery resides an Order together with an elder monk, together with a leader. Face to face with that Order did I hear this.” Thus, this promulgation of a rule by a Saṅgha containing elderly and leader met at an Āvāsa, that is to say by a unitary community. Thus, for instance we hear of a rule being promulgated by the Sāvatthiya Saṅgha that Pabbajā should not be conferred during the period of Vassa.

[3]. Sambhulattherāpadesa: The Appeal to a Number of Elders as Authority

A monk might say: “In such and such a monastery reside a great number of elder monks, widely learned, versed in the Collections, experts on the Doctrine, experts on the Discipline, experts on the Summaries, In the presence of those monks did I hear this.” Thus, this promulgation of a rule by a number of elderly and learned Bhikkhu versed in canonical

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108 D.II.123; A.II.167.
109 D.II.124.
110 Vin.II.290; (See Cv. XI.1.11).: ‘Susaṅgīti āvuso therehi dhammo ca vinayo ca, api ca yath’s eva mayā bhagavato sammukhā sutaṃ sammukhā pariggaḥitam that evaham dhāressāmi’.
111 Vin.I.137; (See Mv.III.13.1)
lore at an Āvāsa, that is to say, by a body of learned monks proficient in the laws (Vinayadharā). It was in this way, it will be observed, that five hundred Bhikkhus promulgated the complete body of Vinaya rules at the Council of Rājagaha. Their legislative authority had evidently no other basis than the third Mahāpadesa.

[4]. *Ekatherāpadesa: The Appeal to a Single Elder as Authority*

A monk might say: “In such and such a monastery resides an elder monk of wide learning...” Thus, this promulgation of a rule by some learned scholars of the canon at an Āvāsa, that is to say, this promulgation by a learned monk proficient in the laws.

All these sources of monastic laws, called by the technical name Mahāpadesas or Great Authorities, were superseded later by the settled texts of the *Piṭakas*; the textual compilation was necessitated by the fact that these material sources of law had become gradually obsolete. It is easy to understand how they fell into obsolescence when we look into Saṅgha history.\(^{112}\)

Even here, whatever the authority or source from which the teaching or discipline is traced, it is necessary to compare it with the totality of Buddhist doctrine: “If, when thus laid beside Sutta and Vinaya, they lie not alone 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.”\(^{113}\) If teachings or discipline when “performed or undertaken as a practice, do not lead to ‘loss and sorrow’ certainly they are to be accepted as the Buddha’s teachings.”\(^{114}\)

The first Mahāpadesa, for instance, could not be a living source of law after the decease of the Buddha and His immediate disciples. The second one became more or less inoperative with the growth of the idea of the distinctness of each Āvāsa. Each Saṅgha was regarded later on as separate and self-contained community, and each Āvāsa a self-governing colony of Bhikkhus. The rules promulgated at one Āvāsa for the Saṅgha resident therein could therefore have no comprehensive operation. As regard the third, it will be readily seen that with diffusion of Buddhist monasteries over larger and larger parts of the country, separated by long distances, with none of the modern facilities which annihilate time and space for us, the calling of such paramount assemblies of monks, as had been called once at Rājagaha, became a matter of extreme practical difficulty. A Council of Rājagaha was possible only in a short time after the death of the Buddha when Buddhist Bhikkhus were spread over a comparatively small area. Lastly, the fourth could have only a precarious


\(^{113}\) A.II.175.

existence in conjunction with the idea of the equality of all resident Bhikkhus at an Āvāsa, which, was one of the most dominant notes of Buddhist monastic organization. It was mainly by way of a Saṅghakammas, following on a Vivādādhikaraṇa, that a rule of law could be made binding on a Saṅgha, unless a Vinayadhara propounded a rule and the Saṅgha accepted it implicitly.\footnote{Sukumar Dutt, \textit{Early Buddhist Monaschism, Op.Cit.}, pp.19-20.}

Nevertheless, on an occasion, correcting the wrong view held by Sati, the Buddha stated that in case he could not understand the meaning of what the Buddha had said, he could question the Buddha about it or else those who were experienced monks (Viyattā bhikkhu).\footnote{M.I.134.} The laws in the Vinaya are traditionally traced to the Buddha as a source: although one could presume that some of the minor laws came into existence with any of the other three sources as their authority. Whatever the source of law, the ‘practical test’ is to examine whether it is in agreement with the Buddha’s doctrine and the discipline as laid down by him. Once this test is made, any law which goes against the spirit of Dhamma and Vinaya had to be discarded.\footnote{Nandasena Ratanapala, \textit{Buddhist Sociology, Op.Cit.}, p.139.} Consequently, yet their validity had to be tested out by comparing them with an finding conformity in the existing body of doctrine and discipline (Dhamma-vinaya).\footnote{David J.Kalupahana, \textit{Op.Cit.}, p. 132.}

\subsection*{4.2.9. \textit{Pātimokkha}: Buddhist Disciplinary Code}

The fundamental rules of the \textit{Pātimokkha} are sometimes called the basic/primary disciplined of the Ādhibrahmacārīya (Holy life). Besides these fundamental rules, there are still other rules of the discipline outside called the Abhisamācārika (Advanced/secondary discipline).\footnote{Vin.I.65f; 68f; 102f; 112; 175-176; (See Mv.I.36.14 et seq.; 37.13 et seq.; II. 3 et seq.; 15.1; IV.17.4); also Vin.II.95-96; 248-249; 259; (See Cv.IV.14.19; IX.5.1; X.6.1)} The Buddhist Saṅgha gave rise to a body of laws, which were codified under the \textit{Pātimokkha}.\footnote{Bhikkhu P.A. Payutto, \textit{Vision of the Dhamma: A Collection of Buddhist Writings in English}, Thailand: Wat Nyanavesakavan, 2008, p.77.} The \textit{Patimokkha} (Skt.: \textit{Pratimokṣa})\footnote{Durga N. Bhagvat, \textit{Early Buddhist Jurisprudence (Theravāda Vinaya-Laws)}, Delhi: Cosmo Publications, 1939, p.(IV).} is the name given to the collection of the various Sikkhāpadas or precepts contained in the Vinaya. \textit{Pātimokkha} also called Mātikā that contains 277 rules for Bhikkhus and 311 rules for Bhikkhunīs. Every single Bhikkhu has to know them by heart so to join in their recitation every fortnight on the Uposatha-day.\footnote{Damien Keown, \textit{Op.Cit.}, p.220.} These precepts are earnestly read twice a month in every monastery, and individual Bhikkhus are invited to make confessions if they have broken any of the precepts
read out. *Pātimokkha* may be described as the criminal code of the Bhikkhus and Bhikkunis.\textsuperscript{124}

**What is *Pātimokkha***? There are several translations of the term ‘*Pātimokkha*’, which is as follows; Sukumar Dutt is of the opinion that *Pātimokkha* means ‘bond’; he suggest that it refers to the external bond of union devised to convert the sect of the *Sakyaputtiys Samanas* into the Order.\textsuperscript{125} Ven. Phra Dhammapi\textsuperscript{aka} (P.A.Payutto), the *Theravāda* Buddhist scholar monk, says that it means the fundamental precepts, the fundamental rules of the Order; the 227 disciplinary rules binding on Bhikkhus, a collection of the fundamental precepts of the Order recited every fortnight, fortnightly recitation of the fundamental precepts: disciplinary code.\textsuperscript{126} Dr. Pachow noted that in the Chinese and Tibetan translation, this is tempered as; deliverance, liberation or emancipation for each and every one and at all occasions, that is ‘prati’ stands for ‘each every’ and ‘moksa’ for ‘deliverance.’\textsuperscript{127}

The meanings of *Pātimokkha* as referred and quoted below are from the Pāli Canon sources:\textsuperscript{128} (1) It is the beginning, it is the face (*Mukha*), it is the principle (*Pamukka*), of good qualities; therefore, it is called ‘*Pātimokkha*’; \textsuperscript{129} (2) whosoever observed (the rules of *Pātimokkha*), it releases, delivers him from sufferings such as of the inferior state, and so it is called *Pātimokkha*.\textsuperscript{130} However, *Pātimokkha* in this thesis is seen simply as a collection of the rules which are laid down by the Buddha to maintain order in the Buddhist communities by making the monks and nuns unite through their regulations and then proclaim their unity every fortnight.

The *Pātimokkha* was first mentioned in the *Mahāpadāna Sutta* and then in the commentary of *Dhammapada*\textsuperscript{131} In the *Sutta*, after six years the monks gathered together at *Baddhumati* to recite the essence of the *Pātimokkha*:

\begin{quote}
“Sabbapāpassa akaraṇaṁ kusalassūpasampadā
sacittapaṭiyodapanam etam buddhāna sāsaṁ.
Khanti paramaṁ tapo tutikkhā
nibbānaṁ paramaṁ vadanti buddhā
na hi pabbajito parupaghāti
samaṇo hoti pariṁ viheṭhayanto.”
\end{quote}

\begin{itemize}
\item[\textsuperscript{125}] Sukumar Dutt, *Early Buddhist Monarchism*. Delhi: Munshiram Manoharla Publishers, 1984, p. 73.
\item[\textsuperscript{128}] W.Pachow, *Ibid.*, pp.4-5.
\item[\textsuperscript{129}] Vin.I.103; (See Mv.II.3.4): “*Pātimokkhan ti ādīn etam, mukhaṁ etam, pamukhaṁ etam kusalānaṁ dharmānaṁ, tena vuccati pātimokkhan iti.*”
\item[\textsuperscript{130}] Vism.I.43. : “*Yo tām pāṭirakkhantī tām mokkhetī noceti apāyikādiddhāhehi tassmā pātimokkan ti vuccati.*”
\item[\textsuperscript{131}] D.II.p.49.
\end{itemize}
Anūpavādo anūpaghāto  
mattanṇūtā ca bhattasmiṃ  
adhicitte ca āyogo  
pātimokkhe ca saṁvaro  
pantaḥ ca sayanāsanasam  
etam buddhāna sāsanam”.

“Avoiding the doing of all evil, the accomplishing of good, purifying one’s own mind: that is the teaching of the Buddhas. Patient endurance is the extreme austerity; the Buddhas declare Nibbāna to be the highest. One who injures is not a recluse; the recluse does not harm others. Not blaming, not injuring, restraint according to the Pātimokkha rules, moderation in food, walking, sleeping, sitting, and exertion in the concentration of the mind; that is the teaching of the Buddha.”132

The content of the earliest Pātimokkha found in the Pāli text
The Pātimokkha contains the characteristic behavior for ideal monks. It depicts the constant spirit of all Buddha’s teachings. The Pātimokkha can be summed up into the following ways: (a) In the first stanza, it shows the true characters of Buddhism, distinguishes how Buddhism differs from other faiths, and that the highest goal of Buddha is Nibbāna; (b) in the second stanza, it shows how to practice, the process of practice, i.e. not to do evil, to do good and to purify the mind; and (c) in the third or last stanza, it shows the rules which the person doing missionary job must follow. And one of these suggestions is Pātimokkhe ca saṁvaro (restraint according to the Pātimokkha), that is to say to be well-disciplined, which, in Buddhist terms, applies to the two hundred twenty-seven rules for monks. The aforesaid Pātimokkha was inaugurated, not by Gotama Buddha but by Vipassī, the first of his mythical predecessors, who lived many eons before Gotama Buddha. It is said that the Vipassī Buddha has sent his disciples in batches on preaching missions, enjoining them to return to and reassemble at Bandhumati every six years to hold a Pātimokkha.133

4.2.9.1. Significance of Pātimokkha
The Pātimokkha defines the essence of Buddhist monastic life, i.e. of Buddhism as a profession.134 It is the monastic rules which are solemnly read twice a month in every monastery, and individual monks are invited to make confessions if they have broken any of the rules read out. Pātimokkha may be described as the criminal code of the monks.135 The Pātimokkha in particular and the Vinaya texts in general are the fountainhead of the Buddhist Jurisprudence. It is compatible to the modern age. The application of the Buddhist Jurisprudence to modern world in the spheres of social, political philosophical and religious is fruitful and desirable.136 Visuddhimagga, has been described the Pātimokkha-saṁvarasīla,

132 D.II.p.49; M.II, 38-39; Dhp.Ve. 183; 184; 185.
133 Sukumar Dutt, Buddhist Monks and Monasteries of India, Delhi: Motilal Banarsidass, 1984, p. 693.
as the attitude full of moral qualities. It is also the attitude of fearfulness of even the smallest evil or sin. It has been said about Pātimokkha that just as the bird (Titahari) depends only on its egg, the cow (Cāmari) takes care of its tail, the mother looks after her only son, and a man with one eye takes care of his only eye, one should always try to defend by all means Śīla and should always have love and respect for his one Śīla.  

Prof. Mahesh Tiwary has described that the Pātimokkha is regarded as the back-bone of the monastic life. Both the monks and nuns strictly follow them. They, on the days of Uposatha, both on the fourteenth and full-moon-days, makes a confession of their transgressions before the congregation of monks and nuns and gladly receive punishment or make explication of their faults. Following it, the rules are recited in the purely orthodoxical way and accepted with un-wavering faith by them. A monk or a nun, while leading the monastic life is always mindful in following these rules. He avoids even the slightest transgression, and maintains the strictness with true spirit. The Pātimokkha is considered as the first constitution of the world. The Buddha inherited the democratic and republican legacy from His paternal as well as maternal ambience as He was born and brought up under the influence of His paternal Sākya republic and His maternal Koliya republic. As a result, the Buddhist Order was established by the Buddha in line with the democratic and republican ideals and thoughts. In the modern world, democracy is viewed as the best form of government and democracy is solely working and thriving on the basis of a written and unwritten constitution.  

Thus, the Pātimokkha in particular and the Vinaya texts in general are the back-bone of the monastic life and as fountainhead of the Buddhist Jurisprudence. It is necessary for Bhikkhus and Bhikkhunīs who want to purify themselves and to attain Nibbāna, which is the extinction of all defilements and sufferings. It is compatible to the modern age. The application of the Buddhist Jurisprudence to modern world in the spheres of social, political philosophical and religious is fruitful and desirable.  

4.2.9.2. The Reasons for Promulgating Pātimokkha  

According to the Buddhist canonical literature, the reason for promulgation of the Buddhist law resulted only when as the Buddha says “Wait, Sāriputta, wait! The Tathāgata will know the right time. The teacher will not prescribe any rule (Sikkhāpattapaññāpeti) to his pupils; he will not recite the Pātimokkha as long as factors leading to defilement  

137 Vism.97.  
(Āsavaṭṭhāniyā dhammā) appear in the Order.”

This is the answer of the Buddha to Sāriputta’s worries that harm may be done to the Order, if no rules of conduct are prescribed in time. And Sāriputta further points out that some of the Buddhas of the past neglected this very duty with disastrous results. Their teaching suffered a quick decay and an early disappearance.

From this passage, Oskar Von Hinuber has observed that there are three important points: first, the significance of Buddhist ecclesiastical law. For without Vinaya there is no Saṅgha (Buddhist Order), and without the community of Saṅgha there is no Buddhism. Secondly, the rules of conduct must be promulgated by the Buddha himself. He is the only law giver, and thus all rules, to which every single monk has to obey, are thought to belong to the Buddha. The third point is that the rules are prescribed only after an offence has been committed. Thus rules are derived from experience and based on the practical need to avoid certain forms of behaviour in future. This means at the same time that the cause for a rule is always due to the wrong behaviour of a certain person, and consequently there is no existence system of Buddhist law.

To understand the authentic purpose of laying down the rules or the spirit of Vinaya, ten reasons cited by the Lord Buddha are worth quoting: “Sitting there, Upāli asked the Exalted One, ‘Lord, what are the reasons why the rule of training was laid down for the disciples of the Tathāgata [the Buddha] and the Pātimokkha appointed?’ [Lord Buddha responded]. For ten reasons, Upāli, the rule of training was laid down and the Pātimokkha appointed: Sikkhāpadapāṇiatti-atthavasa: reasons for laying down the course of training for monks; purpose of monastic legislation.

When one proceeds to examine the reasons for the prescription of the rules, the tradition appears with some valuable information. The Buddha had stated ten reasons for prescribing the rules known as Atthavasepakaraṇa. Buddhaghosa has also commented upon them in the Samantapāsādika. The original materials and the commentary throw much light on the issue. A brief account of the reasons may be appended here.

[1]. Saṅghasuttaṭhutāya: For the proper establishment of the Saṅgha, the rules were framed for smooth functioning of the Orders. That should be the flavor of the virtuous and spiritual gains. For this, there should be a convenient atmosphere and mindful effort by each member.

140 Vin.III.26-30.
142 Vin.III.20; A.V.70.
[2]. Saṅghaphāsūtāya: For the comfort of the Saṅgha. The second reason for the prescription of rules was the smooth functioning of the order. The Buddha established the monastic Order and wished that all the members should live in complete harmony.

[3]. Duṭṭhamkūnām puggalānām niggahāya: For the riddance of obstinate men. The rules were also framed to put a control over the person having no Hiri (individual shame) and Ottappa (respect for the society).

[4]. Pesalānām bhikkhūnām phāsuviḥārāya: For the gladful abiding of well-behaved Bhikkhus. The fourth reason is also seen in this context. It is said that the rules were framed for the smooth living and rightly following the words of the Buddha by the righteous monks.

[5]. Diṭṭhadhammikānām āsavānām samvarāya: For guarding against troubles (Āsava) in this present life. Diṭṭhadhammika means the cankers or the intoxicanting factors that is seen in this very life also. It is seen that the man is in possession of both the moral and immoral psychic factors, they are relished in day-to-day life.

[6]. Samparāyikānām āsavānām paṭighātāya: For guarding against troubles which may arise in a future life. It has been clearly stated in the process of describing the Sammāvāyāma (Right Effort) that there are some immoral states, which are functioning at the surface of mind.

[7]. Appasannānām pasādāya: For pleasing those not yet pleased. The word “Appasana” means he who has not developed confidence in the path of the Buddha, he has not also relished the flavour of Dhamma with the life happy in all possible ways here and hereafter.

[8]. Pasannānām bhīyobhāvāya: For the improvement of those who are pleased. It means for the development of more confidence among those who are already in possession of it.

[9]. Saddhammaṭṭhitiyā: For the establishment of True Dhamma. It is for making the Dhamma last for a long time. The Dhammas are learned in these ways, popularly known as Pariyatti (the study of the Scriptures), Paṭipatti (the practice) and Paṭivedha (the attainment) or by Sutamayapaññā (Hearing), Cintamayapaññā (Thinking), Bhāvanāmayaapaññā (practicing).

[10]. Vinayānuggahāya: For the benefit of Vinaya. The Buddha is a very practical thinker; He regulated his own life as well as the life of the monks by prescribing the norms of the Vinaya which may be classified into in four types; the Saṅvaravinaya, the Pahānavinaya, the Samathavinaya and Paññattivinaya.

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143 Vin.III.20. A.V. 70.
4.2.9.3. Types of Pātimokkha

The rules of discipline first laid down by the Lord Buddha in the *Vinaya* are called *Mūlapaṇṇati* which means ‘the root of regulation’. Those added later are known as *Sikkhāpadas*, it means ‘rule of discipline’. The act of transgressing these rules of discipline and thereby incurring a penalty is called *Āpatti*, that means ‘reaching, committing’. These two hundred twenty-seven rules of discipline are divided into eight categories depending on the degree of transgression committed. According to the *Theravāda* tradition the *Vinaya* rules were propounded by the Buddha, therefore they are in chronological order. These rules were codified at the First Council at Rājagaha soon after the *Mahāparinibbāna* of the Buddha. There were some modifications made to the original texts after the Second Council at Vesāli in the fourth century BCE Traditionally, the rules, which the Buddha enacted for the Order, can be classified into a recognized grouping The Buddha had laied down rules governing relations between *Bhikkhus* and *Bhikkhunīs*, which falls into two types: those governing formal relation between two communities, and those governing relations between individual monks and nuns. These rules, to be obeyed by monks and nuns, fall into eight different types. See table No.3

**Table No.3**

<table>
<thead>
<tr>
<th>No.</th>
<th>Pāli</th>
<th>Translation</th>
<th>Number of Rules</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bhikkhu</td>
</tr>
<tr>
<td>1</td>
<td>Pārājika</td>
<td>Offenses entailing defeat</td>
<td>4</td>
</tr>
<tr>
<td>2</td>
<td>Saṅghādisesa</td>
<td>Offenses which must be judged by a formal meeting of the Community</td>
<td>13</td>
</tr>
<tr>
<td>3</td>
<td>Aniyata</td>
<td>Offenses whose nature is not determined (requiring evidence from a lay woman)</td>
<td>2</td>
</tr>
<tr>
<td>4</td>
<td>Nissaggiya Pācittiya</td>
<td>Offenses requiring confession and forfeiture thereof what has been improperly obtained</td>
<td>30</td>
</tr>
<tr>
<td>5</td>
<td>Pācittiya</td>
<td>Offenses requiring confession</td>
<td>92</td>
</tr>
<tr>
<td>6</td>
<td>Pātidesaniya</td>
<td>Lesser offenses requiring confession</td>
<td>4</td>
</tr>
<tr>
<td>7</td>
<td>Sekhiya</td>
<td>Precepts of good behaviour</td>
<td>75</td>
</tr>
<tr>
<td>8</td>
<td>Adhikaraṇa</td>
<td>Procedural rules</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>227</strong></td>
<td><strong>311</strong></td>
</tr>
</tbody>
</table>

The eight types of disciplinary rules for *Bhikkhus* of the Order are treated in detail in the first two books of *Vinaya Piṭaka*. The total 277, 311 rules of *Bhikkhu* and *Bhikkhuni* *Pātimokkha* respectively, are base on Pāli Tradition. But for the Comparative number of the

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Bhikkhu and Bhikkhuni Pātimokkha in total in each school see Appendix No.6 at Page No.418.

The Pātimokkha forms the nucleus of the Vinaya Piṭaka. It is the oldest part of the Pāli Piṭaka, and its language appears to be older than that of the Nikāya. The Pātimokkha consists of two parts, namely, the Bhikkhu Pātimokkha and the Bhikkhuni Pātimokkha, for monks and nuns respectively.

[1]. Pārājikā: (Defeat)

The most important of the rules are the four Pārājikas, the violation of which involves permanent expulsion from the Order. The word Pārājika literally means ‘defeat’. It is understood in real sense of ‘defeat’ from the monastic life. It contains four offences a committing of any one is understood as defeated from leading the monastic life. They are related to committing adultery, theft, murder and claiming to of having super natural power, which one really does not posses. These offences are related as most dreadful and contemptuous for a monk, and committing any one of them a monk becomes unfit for leading the holy life. It is in this sense that the section has been named as ‘defeat’. In the Vinaya, if the Pārājika Āpatti fall upon him, he automatically loses the status of Bhikkhu. He is no longer recognized as a member of the community of Bhikkhus and is not permitted to become a Bhikkhu again. He has either to go back to the household life as a layman or revert to the status of a Sāmañera (a novice) even though he can never be ordained again.

[2]. Saṅghādisesa: (Formal Meeting)

The term Saṅghādisesa is the name indicative for the second section of the Bhikkhu Pātimokkha, it has three component part, namely: saṅga+ādhi+sesa. Adhi means beginning, Sesa means end, and altogether it refers to thirteen offences, committing any one of which a monk is temporally expelled from the Saṅgha. Doing the offences one appears before the Saṅgha for reinstatement. Since the Order of Saṅgha is necessary in the beginning and in the end, so the section is called Saṅghādisesa. Saṅghādisesa discipline consists of a set of thirteen rules. The transgression of these rules is considered a remediable act of disobedience. Of the thirteen rules, the first five rules deal with minor sexual offenses, such as touching a woman, talking to one with erotic words or acting as a go-between leading a

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147 Vin.I.172 f.; (See Mv.IV.16.12 et seq.); also Vin.101-102; 241f; 286, 287; (See Cv.IV.14.29; IX.3.3 et seq.; XI.1.6, 8)
149 Vin.I.172 f.; (See Mv.IV.16.12 et seq.); also Vin.II.241-243; 287; (See Cv.III. 20 et seq.; IX.3.3; XI.1.8.)
man and woman to become husband and wife. Then two injunctions follow which address
the building of huts and Vihāras (monasteries) and attempt to prevent Bhikkhus form over-
begging building materials from the laity and from building where harm might befall living
creatures. The last six rules involve violations expressed through speech to create, to defame,
or to purposely quarrel. A Bhikkhu who transgresses one or more of these thirteen rules of
Sāṅghādisesa must be removed from the Order. He can be reunited with the Order if his
Āpatti is lifted at a special congregation attended by at last twenty Bhikkhus. Thus, the
thirteen Sāṅghādisesa offences are related to five things, namely: (1) Five rules dealing with
minor sexual offence; (2) two with proper building of the Bhikkhu-dwelling; (3) two with
bringing false accusations against a fellow Bhikkhu; (4) two with causing dissension within
the Order; and (5) two with insubordination.

[3]. Aniyata: (Undetermined)

It means indefinite, not decided, or uncertain. It refers to two offences, the
punishment of which has not been decided before hand. It is determined according to the
situation. The nature of these offenses is uncertain and indefinite. It is unclear whether these
offenses are Pārājika, Sāṅghādisesa, or Pācittiya offences. These two offences are related to
sexual misconduct of a Bhikkhu. There are only two rules in this group: (1) A Bhikkhu
should not sit alone with a woman where they cannot be seen; (2) A Bhikkhu should not sit
alone with a woman in a place they cannot be overheard. In both cases of this type of
transgression, an investigation has to be supported by a lay person who will provide
evidence to determine the transgression and thus the suitable punishment.

[4]. Nissaggiya Pācittiya: (Forfeiture)

Literal meaning of the term Nissaggiya Pācittiya may be understood on the basis of
Nissagga, which means ‘giving up’. It refers to such offences, which are related to taking
something against the rules. A monk is required to receive only those things that are
permitted by the rules, when one takes any thing against the rules he is to return it back and
makes expiation. Therefore, it is translated as expiation and forfeiture, if transgressed. There
are thirty rules under this head, divided into three groups of ten; namely: (1) Civaravagga:
On yellow robe; (2) Kosiyavagga: On Rugs; and (3) Pattavagga: On alms bowl. There are
thirty rules under the Nissaggiya category of offense. These offenses are laid down to curb
inordinate greed in the Bhikkhus for possession of material things such as robes and bowls.

151 Vin.I.112; (See Mv.II.15.1); also Vin.II.287; (See Cv.XI.1.8.)
152 Vin.I.163; 254 ff; (See Mv.V.13.7; VII.1.5 et seq.); also Vin.II.287; (See Cv.XI.1.8.)
[5]. **Pācittiya**:\(^{153}\) (Expiation)

The meaning of the word ‘Pācittiya’ is ‘excepting of the offence’ and ‘begging expiation’. The ninety-two rules under this class of offenses are classified into nine sections. They deal with moral rules, such as lying, using abusive language, slandering, having unsuitable dealings with women, destroying any form of life including that of plants and other rules of regulating life in a monastery. Collectively speaking, these rules manifest in incredible degree of concern for appearing and acting in a specified accord that is none only conducive to the spiritual quests of the Bhikkhus but also meets the approval of the laity, the chief supporters of the Bhikkhus community. Nine groups of Pācittiya, namely:-

1. **Musāvādamavagga**: On false speech;
2. **Bhūtagānavagga**: On plants;
3. **Ovādavagga**: Exhortation to Bhikkunis;
4. **Bojanavagga**: Food;
5. **Acelakavagga**: On naked ascetics;
6. **Surāpānavagga**: On drinking liquor;
7. **Sappānavagga**: On living beings;
8. **Sahadhammikavagga**: On accordance to Dhamma; and

Every group has ten rules except the eighth one which has twelve rules.

[6]. **Pāṭidesaṇīya**:\(^{154}\) (Confession)

The meaning of the term ‘Pāṭidesaṇīya’ is ‘confession’. When a monk does some wrong doing and if it is pointed he appears before the Saṅgha and makes ‘confession’. There are four rules under this head related to the etiquette and of proceeding for the alms-rounds.

[7]. **Sekhiya**:\(^{155}\) (Training)

It literally means the “to be learnt, learnable, acquirable and to train.’ Actually speaking these are not offences, but rules to be acquired for good behavior. In the Sekhiya group of rules of discipline, there are seventy-five rules laid down for the proper behavior of Bhikkhus. They deal with more minor degrees of offense than the previous groups. The rules can be divided into four groups. The first group of twenty-six rules is concerned with good conduct and behaviour, when going into towns and villages. The second group of thirty rules deals with polite manners when accepting alms-food and when eating meals. The third group of sixteen rules contains rules which prohibit teaching of the Dhamma to disrespectful people. And the fourth group of three rules relates to unbecoming ways of answering the calls of nature and of spitting. It should be noted here that many of the Sekhiyas are declared in a positive fashion unlike the prohibitory declarations that characterize the first six Suttavibhaṅg classifications.

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\(^{153}\) Vin.I.172 ff; 147-175; 176 f; (See Mv.IV.16.12 et seq.; 26;17.7 et seq.); also Vin.II.241-243; 284; 306-307; (See Cv.IX.3.3; XI.1.8; XII.2.8.)

\(^{154}\) Mv.IV.16.12 et seq.; Cv.IX3.3; XI.1.8.

\(^{155}\) Vin.IV.185 et seq.
[8]. Adhikaraṇasamatha: 156 (Procedures of Settling Disputes)

The last section of the Bhikkhu Pātimokkha is Adhikaraṇasamatha. The word has two component parts, namely: Adhikaraṇa and Samatha. Adhikaraṇa refers to legal question and Samatha means ‘settlement’. The compound meaning is the settlement of legal question. Actually speaking, this rule does not entail any offence, but it refers to the method of settling of dispute arising in the Saṅgha. There are seven rules, which are the different method of settling the dispute arising among the monks leading monastic life. They are:- (1) Sammukhāvinaya: Proceeding in presence; (2) Sativinaya: Proceeding for the consciously Innocent; (3) Amulhavinaya: Proceeding in the case of those who are no longer out of their mind; (4) Paṭīṭhakaraṇa: Proceeding on confession of guilt; (5) Yeṭṭhuyasikā: Proceeding by majority; (6) Tassapāpiyasikā: Proceeding for the obstinate; and (7) Tiṇavatthāraka: Proceeding by covering over with grass.

Thus, Adhikaraṇasamatha is the last classification within the Suttavibhaṅga, which does not contain Pātimokkha disciplinary rules in itself. It consists of seven ways to settle disputes. The disputes, according to Vinaya, are classified into four kinds. (1) Vivādādhikaraṇa: Disputes as to what is Dhamma, what is not Dhamma; what is Vinaya, what the Buddha said, what the Buddha did not say; and what constitutes an offense, what is not an offense; (2) Anuvādādhikaraṇa: Accusations and disputes arising out of them concerning the virtue, practice, view and way of living of a Bhikkhu; (3) Āpattādhikaraṇa: Disputes about infringement of any disciplinary rules; and (4) Kiccaṇḍhikaraṇa: Disputes concerning formal meetings or decisions made by the Saṅgha.

4.2.10. Buddhist Court

4.2.10.1. Quorum and Authority of Judges in the Buddhist Saṅgha Court

The Buddhist Saṅgha Court and its composition is clearly spelled out in Buddhist Law. According to the transaction of a Saṅghakamma, a classification of courts and the number of monks that constitute a Court is laid down. 157 It would be necessary to assemble together the whole Saṅgha. Any one not able to join it must either remain outside the Śīmā (boundary) of the Āvāsa or send his consent through another, which was called Chanda. So, it is useful to state the number of monks considered to be necessary to conduct the legal proceeding in the Order to carry out the all the Saṅghakamma or all Acts as well as those pertaining to other Acts and rituals of the Order. A definite Order of Monks constituted the

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156 Vin.IV.207; 351.
Court on every occasion when a legal process had to be initiated. Each such Court comprises the stipulated number of monk regarded as necessary for an act of the Court to be legally valid. Four kinds of Order (or such Courts) are mentioned which functioned in the execution of either ritual (or ceremonial) and legal acts.

The ‘Court’ or the assembly of monks is categorized:

[1]. The fourfold Order of Monks: It is entitled to carry out all formal acts except the ritual acts of Upasampadā (Higher ordination), Pavāraṇā (Invitation) and Abbhāna (Rehabilitation).

[2]. The fivefold Order of Monks: It is entitled to execute all acts except Upasampadā (Higher ordination) in the Middle District “In such Border Counties, I allow, O Bhikkhus, the Upasampadā to be held in a meeting of only four Bhikkhus besides the Chairman who must be Vinayadhara.”,158 and Abbhāna (Rehabilitation).

[3]. The tenfold Order of Monks: It could carry out all acts except Abbhāna (Rehabilitation).

[4]. The twentyfold Order of Monks: It is legally capable of executing any legal or ritual act.

It is being understood that these minima could constitute quorums, but not committees. The boundaries for example, of an Āvāsa have got to be settled. Three Bhikkhus are present. They may not transact business unless another Bhikkhu turns up to help to form the quorum. Suppose now, only four Bhikkhus are present. They may validly transact business. Suppose again, seven Bhikkhus are present. They may transact business only if all of them join in it; it would be competent for four of them to transact the business apart from the remaining three that is by a committee. A committee is recognized only in one case, viz., the Ubbāhika form of procedure. The right of direct participation in the Saṅghakamma is inherent in each duly qualified member of an Āvāsa and is very zealously guarded. Specific qualifications are laid down in the case of ‘Judges’ or the ‘Court. The legal boundary of each ‘Court’ was strictly defined.159

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158 Vin.I.197; (See Mv.V.13.12): “Anujānāni bhikkhave evarūpesu paccantimesu janapadesu vinayadharapañcamena gate upasampadām.”

4.2.10.2. Qualifications of Member in the Buddhist Saṅgha Court

[1]. Vinayadhara:¹⁶⁰ Qualifications of a Judge in a Committee

In the Buddhist Court, according to the case of dispute to be settled, the Vivāđādhikaraṇa, a committee of judges (Bhikkhus) are selected with special qualities are selected to settled the dispute according to a Sammukhāvinaya. The Saṅgha may see the Vivāđādhikaraṇa, which is its duty to decide whether the matter is convenient for judgement or not. The reason given in the Pāli is that there are clamors and speeches cannot be heard. The Saṅgha may then choose a few Bhikkhu from the group to decide separately. The method is called Ubbāhikā, meaning ‘an action which is taken aside’, referring to choosing and separating off. In the Pāli of the Samathakkhandhaka, it is recommended to choose Bhikkhus possessed of ten factors as a Gāṇa, by Āṭṭidutiyakammavācā.

Those ten factors possessed by Bhikkhu are as follows:- (1) having Sīla; (2) of wide learning; (3) who uphold the Pātimokkha; (4) who are firm, not loosed, in Vinaya; (5) who are able to explain so that the disputing pair understands and have faith; (6) who are adept at settling arisen Adhikaraṇa. They know:- (7) what are Adhikaraṇa; (8) the causes for the arising of Adhikaraṇa; (9) the stopping of Adhikaraṇa and (10) the way to stop Adhikaraṇa.¹⁶¹ and for settling dispute in the case of Yebhuyyasikā, which means ‘an action with accords with the majority’. Judgment according to this method is thus: the Saṅgha should appoint a Bhikkhu endowed with five qualities to be the distributor of voting tickets by Āṭṭidutiyakammavācā. Those five qualities are:- not to be biased by desire, aversion, delusion or fear, and to know which votes are or not taken.¹⁶²

In the case of Anuvāḍādhikaraṇa, a qualities of Bhikkhu who brings up a legal case should first contemplate, and only raise it if it is seen to be complete with five factors. These are:- (1) it is a proper occasion; (2) it is a genuine case (or he is certain that it is so); (3) it is an affair, which is beneficial; (4) there will be Bhikkhus whom he has met and associated with who will join in support according to Dhamma and Vinaya; and (5) it will be the cause of difficulties leading to schism of the Saṅgha.¹⁶³

If the Saṅgha sees the accusation should be investigated, a Bhikkhu capable of being the investigator should be chosen to do the questioning. A Bhikkhu who is proper to be chosen has the following characteristics:- (1) he is one who has Sīla, has wide learning, is

¹⁶⁰ Vin.I.169;197;337; (See Mv.IV.15.4; V.13.11;12; X.I.2); also Vin.II.1;75;160-161; (See Cv.I.I;IV.4.4;VI.6.2)
¹⁶² Ibid., p.146.
¹⁶³ Ibid.,p.152.
one who upholds the *Pātimokkha*, and is able to explain so that the disputants understands and have faith; (2) he is one of pure bodily conduct, or pure verbal conduct, or pure livelihood, expert and learned, and able to explain the matter which is questioned about; (3) he knows the *Vatthu* (matter), the source, the laying down, the word coming later, and he knows the sequence of the connecting words (in all cases, of the training-rules); and (4) he knows *Dhamma*, *Vinaya* and their sequence; he is adept in *Ṭhāna* and *Aṭhāna*, this is, cases which are possible and impossible; he is adept in the meaning and the letter in the beginning and the end [where they are compatible or contradictory]; he is adept in judging.

The *Bhikkhu* that the *Saṅgha* choose to be the investigator should be one who gives weight [respect] to the *Saṅgha*, not one who gives weight to individuals. He should be one who gives weight to Saddhamma (True *Dhamma*), not to worldly things. He should be one who will (decide) according to the force of the case, not one who is seeking an assembly (a company of followers). He is one who knows his place to sit, and should sit upon his seat with his eyes lowered to a plough’s length (in front to him), give attention to the facts, and not get up from his seat to go anywhere. He should not follow a wrong course. He should not speak with wandering words [or gesticulating arms]. He should not speak without reflection. He should limit his speech. He should not speak heedlessly or carelessly. He should not hold enmity, nor be provoked, nor became furious. He should be one who is patient towards others. He should be one who has a heart of *Mettā*, who thinks with kindness, (hoping good results, one who has *Karunā* (compassion), and one who endeavours for benefit. He should know himself, and he should know others.

He should observe the accuser and the defendant so as to assess what kind of persons they are. If they are nervous, he should speak to make them cheerful. If they are afraid, he should speak comforting. If they are fierce, he should restrain them. If they are unclean [by their conduct], he should eliminate it. If they are upright, he should be gentle. He should not follow a course through desire, hatred, ignorance or fear. He should make himself balanced, both as to *Dhamma* and as to individuals. When questioning, he should question at the right time, not out of time; with true words, not with false words; with polite words, not with harsh words; usefully [about the case], not with useless words; with a heart of *Mettā*, not with hatred [such as being inclined to believe that the defendant has done wrong or that the accuser is making a false charge]. He should not be one who whispers in the ear, not should he glance about. He should not wink or raise his eyebrows. He should not stretch his neck. He should not make movements [signals] with his hands or point with fingertips. At the moment of question he should note the matter which both sides relate, not missing anything.
He should not insert things which they have not said. He should use words which go to the heart of the matter properly. By these indications he should know if the person who is accusing is the Dhamma (righteously), or without it; he should know if the person who is accused with Dhamma or without if. If (the latter) when asked admits his guilt, action should be taken according to the acknowledgement. A Bhikkhu who is the investigator, being endowed with these traits, is said to be one who acts according to the instructions of the Teacher. He is loved, admired, respected and praised by the learned Brahmācārī. There is a further strange matter. It is prohibited to ask about Upajjhāya, Ācariya, Saddhivihārika, Antevāsīsa, those with the same Upajjhāya, those with the same Ācariya; and it is not allowed to ask about birth, name, ancestry, Āgama or area of study, family, and country of birth, because like or dislike might arise on knowing about these things, and lead to the four Āgati (Bias).

The Vinayadharasutta165 and Vinayadharasobhaṇa Sutta166 of Aṅguttara Nikāya, mentioned the qualities of Vinayadharas Bhikkhu that the monk with the following qualities is worthy of the status of “being skilled in the discipline” (Vinayadharas):- (1) Recognizing monastic transgressions; (2) recognizing what is not a monastic transgression; (3) recognizing trivial monastic transgressions; (4) recognizing grave monastic transgressions; (5) attaining the recollection of previous lifetimes; (6) attaining the recollection of the previous lifetimes of others, and (7) attaining liberation of mind (Cetovimutti) and liberation of wisdom (Paññāvimutti).

[2. Codaka:167 Prosecutor’s Requirements]

Anuvādā means accusation considered to be Adhikaraṇa, together called Anuvādādhikaraṇa. specifically, it is Anuvāda about Āpatti, separated into four Vipattis (ways of decline). Silasāmaññatā that is, person of the same morality, is an important factor of concord. When a Bhikkhu of bad Sila comes into the Saṅgha, it is the duty of Bhikkhus who have Sila to rid of him. In this way, should one Bhikkhu accuse another of Āpatti-sometimes it is done with good intentions, sometimes with bad intentions, Anuvādādhikaraṇa arises. A person accusing out of concern of Dhamma-vinaya is said to act with good intention. A person who accuses because he wishes ill to other is said to act with bad intentions. In the Pāli Canon, it explains that the virtues and demerits which are the bases of Vivādādhikaraṇa are also the bases of Anuvādādhikaraṇa.

164 Ibid., pp.157-160.
165 A.IV.140 f.
166 A.IV.142.
167 Vin.I.171; (See Mv.IV.16.6 et seq.); Vin.II.248f; (See Cv.IX.5); Vin.V.160-162; [Codakakaṇḍa].
So, the Bhikkhu who wished to accuse another person should be established in five Dhammas which are:- (1) he is one who speaks at the proper time, not at the wrong time; (2) he is one who speaks truly, not falsely; (3) he is one who speaks politely, not harshly; (4) he is one whose speech is useful, not useless and (5) he is one who speaks with a heart of Mettā not speaking with hatred. Also, he should keep five Dhamma in his heart: Compassion, seeking welfare, sympathy, removal of Āpatti, and thinking that Vinaya is important. Considering one’s own standing and seeing that it is complete with these factors, and then it is proper to accuse another.

The connection between the Codaka (prosecutor) and the Cuditaka (defendant), following that, the Codaka (prosecutor) should ask leave of the Cuditaka (defendant) according to the proper procedure, and relate the accusation before the Saṅgha. In the Upālīpañcaka, the section XV of Parivāra it is stated that a Bhikkhu who asks should not be given leave if he is endowed with five factors:- (1) he is not pure in bodily behaviour; (2) his way of speech is not pure; (3) he livelihood is not pure; (4) he is dull, not clever and (5) being questioned he is not able to answer the matter asked about. One more group of five factors is:- (1) he is Alajjī (shameless person); (2) he is a fool; (3) he is not Pakatattaka (regular monk) [that is, he is not a regular Bhikkhu, being one practising Vuṭṭhāna (getting out of Saṅghādisesa Āpatti), or undergoing some other form of Kamma imposed by the Saṅgha]; (4) he is intent on decline; and (5) he is not intent on removal of Āpatti.

If the Cuditaka (defendant) should not agree to give leave from the first, the characteristics of the Codaka (prosecutor) should be considered as to whether or not they are those of the Dark Faction:- (1) he is not endowed with five qualities as same mentioned above; (2) he is one who bodily behaviour is not pure; one whose speech is not pure; one whose livelihood is not pure; one whose is dull, not clever; one who makes strife and quarrels. A Bhikkhu endowed with these qualities (also) may not suspend Uposatha or Pavāraṇā. If he is seen to have these traits, then it is not proper to let him raise Adhikaraṇa. the Codaka (prosecutor) should be prohibited. If the Codaka (prosecutor) does not have those characteristics, his accusation should be investigated as to whether or not it is well-grounded. If the Codaka (prosecutor) alleges that he has himself seen, heard, or has been reliably informed, or if the Codaka (prosecutor) has noticed suspicious conditions regarding the Cuditaka (defendant), these are held to be grounds and that matter should be

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169 Vin.V.180-206.
investigated. Without these three conditions, it is held to be unfounded and the accusation should be dismissed.\textsuperscript{170}

[3. \textit{Cuditaka}:\textsuperscript{171} Defendant’s Conditions]

The \textit{Cuditaka} or \textit{Cudika} (defendant) should be established in two kinds of \textit{Dhamma}: (speaking according to the truth, and not through resentment.)\textsuperscript{172} And According to the \textit{Samathakkhandaka},\textsuperscript{173} \textit{Cullavagga}, \textit{Tassapāpiyasika} is spoken about as being a method of \textit{Samatha}, and \textit{Tassapāpiyasikā} is spoken about as being a method of \textit{Niggaha} (rebuke). By this distinction we understand that giving fault of the \textit{Cuditaka} (defendant) who has transgressed does not admit to it refer to \textit{Tassapāpiyasikā}, which means action taken in the case of that person who is bad. Doing \textit{Niggaha} increases the punishment of the defendant, called \textit{Tassapāpiyasikā}, which means \textit{Kamma} was done due (to his being) \textit{Tassapāpiyasikā}. It should be done to a \textit{Cuditaka} (defendant) who, upon being questioned about \textit{Āpatti} in the midst of the \textit{Saṅgha}, changes his story—having denied he then admits, having admitted he denies, speaking obliquely to make the matter which he is questioned about ambiguous, speaking serious falsehood. This is one way of \textit{Niggaha} (rebuke).\textsuperscript{174}

[4. The Buddhist \textit{Saṅgha} Attendance’s Requirement]

In the \textit{Cūḷasaṅgāma},\textsuperscript{175} the section XII of the \textit{Parivāra} states that a \textit{Bhikkhu} who comes to arbitrate is like one who goes to war. Assembling with the \textit{Saṅgha} he should be humble. He should know his place to sit so as not to crowd his elders or to obstruct his juniors. He should sit on a seat which is proper. He should not speak of various matters but should maintain silence. \textit{Bhikkhus} who enter the \textit{Saṅgha}-meeting, whether accuser, defendant or witnesses, should follow this procedure.\textsuperscript{176}

[5. \textit{Sakkhika}: Witness’s Characteristics]

In addition to this there is the Pāli Canon of the \textit{Codanākaṇḍa},\textsuperscript{177} the section XI of the \textit{Parivāra} saying “If the seen corresponds with the seen, if the seen is in agreement with the seen; seeming to support each other but they do not match. That person is suspected uncertainly. Following his \textit{Paṭiṇṇā} (declaration of purity), \textit{Uposatha} should be performed

\textsuperscript{170} Ibid., p.157.
\textsuperscript{171} Vin.I.173; (See Mv.16.16 et seq.); also Vin.II.250f; (See Cv.IX.54 et seq.)
\textsuperscript{173} Vin.II.73-104; (See Cv.IV.1.1-14.33-34.)
\textsuperscript{175} Vin.V.163-165.
\textsuperscript{176} Somdet Phra Maha Samaṇa Chao Krom Phrayā Vajirahānānavorarasa, \textit{Loc.Cit.}, p.154.
\textsuperscript{177} Vin.V.160-162
with him.” After the same things are said regarding ‘the heard’ and ‘the understood’. The Mahāsaṅgāma sections says the same only substituting ‘Pavāraṇa for Uposatha’. That is to say, these words explain the characteristics for credibility of evidence.

(a). If the seen correspond with the seen: for instance: if the accuser relates having seen the defendant transgressing in a such-and-such manner, and his witness’ testimony accords with this regards conditions, such as day, time and place, with no divergences-testimony like this has credibility.

(b). If the seen is in agreement with the seen: if the testimony of the accuser’s witness is essentially the same, but diverges regarding unimportant details-this types of testimony similarly has credibility.

(c). Seeming to support each other, they do not match: if the testimony of the accuser and his witness is divergent on essentials, or the testimony of a witness is not consistent from the beginning to the end-this type of testimony should not be credited with truth. 178

4.2.10.3. Ubbāhikā: 179 Committee of Assessors

According to the Mahāsaṅgāma, 180 the section XIII of the Parivāsa, we find that a Saṅgha (community), a Gaṇa 181 (group) or a Puggala (individual) may decided Adhikaraṇa.

To follow this, the Saṅghathera should give consideration; If he sees that it is a small matter, he may decide it by himself; if it is a matter not extremely important, he should submit it to a Gaṇa to Judge, as an Ubbāhikā (Committer of Assessor); if it is a matter of significance, he should assemble the Saṅgha to decide. Once the Saṅghathera has received the accusation, he should have the Saṅgha meet, and call the prosecutor and the defendant to appear together. 182 Here the ‘Ubbāhikā,’ this word literally means ‘Act by means of referendum, this settlement of a dispute being laid in the hands of certain chosen brethren’. 183 On this context, when a unanimous decision of the ‘court’ is not possible; various devices were applied. One such devise was to appoint a committer of specialists to go into the question. It is possible to have a referendum. A majority decision is considered as the ultimate resort. This should be adopted only when all another methods have failed. 184

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179 Vin.II.95-96; 305-306; (See Cv.IV.14.9 et seq.: “Anujānāmi bhikkhave eva rāpo adhikaraṇaṁ ubbāhikāya vūpasametum.” and Cv.XII.2.7 et seq.)
180 Vin.V.1-171.
181 A group of monks consisting of two, three or four monks is known as Gaṇa in the matter of Pavāraṇa. But in some other cases for instance, the case of Uposatha, the number of monks to form a Saṅgha should be four; and then the Gaṇa (or group) would consists of two or three monks. Quoted in C.S. Upasaka, Op.Cit., p.78.
Ordinarily, there was no question of voting in the Buddhist Saṅgha. All the resolution must be moved properly and had to be announced thrice from the chair. If the resolution was not properly adopted by the unanimous consent of all the members, then the question of majority might arise occasionally. The question of majority was raised when the assembly was divided by the presence of guest monks (Āgantuka Bhikkhus) on certain complicated questions regarding the Vinaya discipline. If the number of resident monks was large than the number of guest monks the proceedings of the assembly would be regarded as valid. But the assembly must be careful of apprising the guest monk about the proceedings of the meeting. If there was a difference of opinion between guest monks and the resident monks as regard the fixation of the date of Uposatha the opinion of the former prevailed when their number was greater. The question of Ubbāhikā or body of assessors also arose when there was divergence of opinion among the different groups of monks on important matters relating to Vinaya code and when there was the possibility of unnecessary disputes if the matter was discussed in public monks were selected from among the member of the assembly in order to settle the dispute. These monks must have requisite qualification and finally elected by the members unanimously. The elected monks would investigate the matter and suggest measure for settling the dispute.

This method was adopted for settling the dispute in the Second Buddhist Council at Vesālī. Eight monks were selected from both the parties. The four monks from Pācīnaka (eastern countries) and four monks from Pāṭheyyaka, formed a committee of assessors. The Committee was elected unanimously and after investigation it submitted its report for approval to the Saṅgha. In the case of divided opinion in the Saṅgha, the question was referred to an arbitration Committee. The members of this Committee must be selected on the spot and they must possess special qualification as described in the Vinaya. If the question was not settled thus, the subject was put to the vote.

In the case of offences committed, the intention has to be proved before the accused is found guilty. This was done by examining the case with its history and questioning the accused closely. If it was proved that there was no willful intention to commit it, the offence of that accused was discharged. Evidence, both direct and indirect was carefully analyzed. Every opportunity was given to the accused to prove his innocence by questioning the

185 Vin.II.305f; (See Cv.XII.2.7 et seq.): “Yadi saṅghassa pattakallam, saṅgho imam adhikarunam ubbāhikāya vāpasameyya.”
186 Vin.II.305f; (See Cv.XII.2.7 et seq.): “Cattāro Pācīnake bhikkhū cattāro Pāṭheyyake bhikkhū uccinī: Pācīnakāmam bhikkhānām āyasamantaṁ ca Sābbamāṁim...Sālham...Khujaśobhitaṁ, ca Vāsabhāguṁika, Pāṭheyyakānaṁ bhikkhānām āyasamantaṁ ca Revataṁ āyasamantaṁ ca Sambhāṇanam Sānavāsim...ca Yasam Kāṇṇakakaputtakam...ca Sumanāṁ”
prosecution or its witness. Every judicial act had to be carried out according to the law as stipulated, and any deviation was considered illegal.

When the ‘court’ delivers a judgment, the accused could, if he is not satisfied with it, apply to a higher tribunal. In the Buddhist’s days such appeals went up to the highest court—the Buddha himself. The decision of the court should always be for the particular offence the accused is charged with, and for which his guilt should be proved. The Court, for example, could not carry out the verdict of insanity to one who merited a verdict of innocence, or carry out a formal act of depravity against one who was charged and proved as under the verdict of insanity. It was considered ‘illegal’ to open-up a legal question once it was settled in court. If one having agreed to the decision in court, criticizes it thereafter, it was considered and offence. The court is also bound by the collective decision it has made.

It is pertinent to say that all possible steps to follow in order to ensure that the majority decision is also in agreement with the Dhamma and Vinaya are laid down in Buddhist texts. Consequently, the value of a majority decision lies in the fact that it is a just and fair decision in line with the Dhamma and Vinaya.188

4.2.10.4. Jurisdiction of the Buddhist Saṅgha Court

[1]. Uposatha:189 Confessional Meeting

The term Uposatha (Observance) comes from the Vedic Sanskrit Upavasatha, a day of preparation, usually involving special observance, for the Soma ritual.190 A study of the earliest Brahmanical scriptures as well as the internal evidence of the Vinaya reveals the fact that the Uposatha ceremony was an old custom, commonly prevalent among all the Paribbājakas (Skt.:Paribrājakas) communities of the age. The origin of the ceremony is to be traced to the importance attached to the days of the New-Moon and Full-Moon, the antiquity of which goes as far back as the Vedic age. The Vinaya says that the Paribbājakas sects held assemblies on 14th and 15th and the 8th day of the fortnight in which they had religious discourses. The lay-devotees were also allowed to attend it.191

The Buddha also adopted this practice with certain modification suited to his Dhamma and Vinaya. Uposatha days were reduced by him from four to two in a month; to be held twice on the (i) Cātuddasī and (ii) on the Paṇṭarasī of the month.192 It is said that the Buddha adopted the custom at the instance by Bimbisāra. In this connection, the

189 Vin.I.102 ff; 111 f; 175 f; 177 f. (See M.II.3. et seq.; 14 et seq.; IV.17.2; 18.3 et seq.)
190 BMC.Vol.II.p.257.
192 Vin.I.104; (See Mv.II.4.2): “Anujānāmi bhikkhave sakīṃ pakkhassa cātuddase vā paṇṭarasase vā pātimokkham uddisitan ti.”
Mahāpadāna Sutta\textsuperscript{193} of the Dīgha Nikāya had received due attention where Vipassi Buddha is recorded to have advised his monks to assemble every six year to recite Pātimokkha, which is nothing but an abridged from of the teachings of Buddhism.\textsuperscript{194}

There is an Uposatha, which can be held on any day by the Saṅgha. This is called Sāmaggī-uposatha. This is held in order to give a formal seal of ‘reconciliation’ on a quarrel, which existed earlier in the Saṅgha but now which has been made up. This formal confession of ‘reconciliation’ is given by the ‘whole Saṅgha’ and hence, it is called Sāmaggī Uposatha or ‘reconciliation Uposatha’.\textsuperscript{195} When the Uposatha is attended by the Saṅgha (of 4 more Bhikkhus), it is called Saṅgha Uposatha. The Gaṇa Uposatha is one which is attended by a Gaṇa of the monks (i.e. by two or three Bhikkhus). And when the Uposatha is performed by one monk (Puggala) alone, it is called the Puggala Uposatha. A Saṅgha Uposatha is also known as Suttuddesa Uposatha simply because the Sutta, i.e. Pātimokkha, is recited in this assembly. During the Gaṇa Uposatha, the Pātimokkha is not recited. The monks only proclaim their Parisuddhi (purity) among themselves; and so it also called Pāsisuddhi Uposatha.\textsuperscript{196} The Puggala Uposatha is also known as Adhiṭṭhāna Uposatha,\textsuperscript{197} because the single person can only have this ‘revoke’ (Adhiṭṭhāna) to perform Uposatha.\textsuperscript{198}

With regard to this, the minimum number of monks required for the recital of the Pātimokkha was four without which three member can only perform the Uposatha but not the recital of Pātimokkha. If, per chance, there was only one monk within the Simā, he would do all pre-arrangements and wait for someone to come. If anyone comes he would perform his Uposatha with him; otherwise, he would do it simply by making a firm determination that the day was an Uposatha day for him. It is, thus, clear that there was no numerical bar to Uposatha ceremony but for loss of privilege, on that account, that an assembly of less than four members could not recites the Pātimokkha.\textsuperscript{199}

From this evidence, it can be assumed that earlier only the main teachings of the Buddha were repeated in the Uposatha assemblies, but accordingly as no impure monk was permitted to participate in it, later on, it assumed the nature of a confessional ceremony. The list of offences was repeated before the assembled monks and, if anyone guilty of any of

\textsuperscript{193} D.II.6-54.
\textsuperscript{195} Vin.I.105; (See Mv.II.5.2.): “…bhagavātā paññattaṃ samaggānām uposathakāmanti. …anujānāmi bhikkhave ettāvatā sāmaggī yāvatā ekāvāso ‘ti.”
\textsuperscript{196} Vin.I.125; (See Mv.II.26.10); “Tatra bhikkhave yattha cattaro bhikkhū viharantti, na ekassa parisuddhih āharitvā tīhi pātimokkham uddhitisitaṃ…”
\textsuperscript{197} Vin.I.125; (See Mv.II.26.9); “Ajja me uposatho ‘ti adhiṭṭhātābham”
these, he made a confession for which he was punished according to the nature of the offence.\textsuperscript{200} Even the presence of new arrivals within the premises was required in the assembly. The extent of stress laid down on the avoidance of partial \textit{Upasatha} can be seen in the ruling that if, owing to serious illness, a monk is unable to attend the assembly, the \textit{Upasatha} should be held at his place, or he should signify his presence by means of ‘\textit{Chanda}'. In unavoidable circumstance, however, exceptional observance of partial \textit{Upasatha} (\textit{Vaggena sa"{n}ghena}) was permitted. An insane monk could be excluded. The \textit{Upasatha} took place in a building fixed beforehand by the Order. On the injunction of their seniors, junior monks had to make all the arrangements of seats, sweeping of the place, lamp and water etc. It is called \textit{Pubbakara"{n}a}\textsuperscript{201} or pre-arrangement for the \textit{Upasatha} assembly. The \textit{Upasatha} was not observed by fasting. The participants had to come in complete dress excepting certain emergencies. At the same time the \textit{P"{a}timokkha} was to be recited completely, but, in some case of danger, it could also be abridged. The assembly should be perfectly pure certain measures were allowed for sick monk to declare his \textit{P"{a}risuddhi} by \textit{Chanda} (Proxy).\textsuperscript{202}

The main purpose of the repeated \textit{Upasatha} ceremony was to provide an opportunity for the accused monk to confess his guilt and seek therapy from the Elder to conduct himself in according to the teaching of the \textit{Dhamma}. The striking feature of this activity was to give a patient hearing to the caused before imposing any penalty on him for his wrongful deed. Confession or admission is the first step to be taken by the delinquent monk. If the offence was minor one under \textit{P"{a}cittiya} or \textit{Sekhiya} rules, he could be exonerated after repenting by him or issuing a warning not to repeat the same in future. For other serious and major offences the punishment was awarded according to the nature of the offence ranging from forfeiture of the property under dispute to the permanent expulsion from the order.\textsuperscript{203}

The procedure prescribed by the Buddha provided full opportunity to the delinquent monk to present his case. The Buddha is the first to think of the fair trial in the history of mankind and, therefore, He holds a unique place. While passing on judgment, “the intention of the accuser was to be looked into whenever a case was taken for examination. If a person does not consent in the commission of an act, he is considered as not guilty…One notices how the principle of mens rea is included in this practice of examining a doer’s intention in Buddhist Law.”\textsuperscript{204}

\textsuperscript{200} \textit{Ibid.}

\textsuperscript{201} Vin.I.118-119; (See Mv.II.20.1-6)

\textsuperscript{202} Vin.I.120; (See Mv.II.22.1); “\textit{Anujānāmi bhikkhave gilānena bhikkhunā parisuddhiṃ dātum.}”


\textsuperscript{204} Nandasena Ratnapala, \textit{Op.Cit.}, p.5.
[2]. Simā: Boundaries of the Buddhist Jurisdiction

Juristic responsibilities are carried out by individual communities. However, they have to conform to the established body of rules or laws. Freedom to abandon the minor rules that have become outdated was already allowed by the Buddha. The great indications referred to above permitted the formulation of new rules in order to deal with new situations. The jurisdiction of each community was limited by Simā (Boundaries). In addition, the community restricted by geographical ‘boundaries’, there was the unified community described as the “Community of four quarters, of the present and the future. The individual communities become part of the collective community through constant intercourse.

So, one of the prior conditions for the existence and continuance of the Buddhism community is Simā (a boundary), which defines the space within which all members of a single local community have to assemble as a complete Saṅgha at the place appointed for ecclesiastical acts. The completeness of the Saṅgha is prerequisite for the valid performance of each ecclesiastical act of the Buddhist Community. The invalidity of a boundary, therefore, implies the defectiveness of the Kamma performed within it.

With the introduction of Uposatha ceremony to the Saṅgha, there arises the question of suitable places for holding the assembly. At first there was no particular place for this purpose. The forefathers of the Theravāda school had taken every care to maintain the originally of the Vinaya discipline. The holding of the Pātimokkha assembly is intimately connected with the Vinaya jurisdiction of the Saṅgha. Rules were formulated for defining the extension of the Saṅgha and for limiting the boundary (Parisā) within which the Uposatha ceremony was held. The formulation of rules requires the selection of sites for holding the Uposatha and the demarcation of an area (Simā) occupied by the monks. The Uposatha service was to be held by the complete fraternity within a limited boundary. The requisites for holding the Pātimokkha assembly demand not only the selection of suitable place but also the presence of all the members residing within the jurisdiction of the residence (Āvāsa), which was later called ‘Uposathāgāra’. In the Vinaya Commentary, the Simā is divided into two types: (i) Buddhasimā and (ii) Abaddhasimā.

205 Vin.I.106 f; 279 f; 340; (See Mv.II.6 et seq.; VIII.32; X.1.9)
The Uposatha assembly was not regarded as valid unless it was attended by all the monks present within the Simā (territory). Rules regarding boundary demarcation were also made. For holding the Uposatha Ceremony the following could be held as residence: Vihāra (a monastery), Aḍḍhayoga (a golden bungalow), Pāsāda (a storied house), Hammiya (an attic) and Guhā (a cave), provided the assembly agreed to their being considered as such. Thus, Bhikkhus living within one Sima are required to hold their Uposatha at an Uposathāgāra or the hall for the Uposatha. The term Āvāsa now meant the Jurisdiction of an Uposathāgāra and it was further held, that it could not be of a dimension with its outskirts lying beyond three Yojanas (1 Yojana = a league-distance of approximately ten miles or sixteen kilometers) from the centre i.e. Uposathāgāra. And, within this jurisdiction there should, on no account, exist two Uposathāgāras. If it exceeds this, the offences of Dukkaṭa is committed. The Sima, however, should not be too small but even sufficient to accommodate 21 persons. The Nimittas (Signs) of Sima (Boundaries) of which, again, were to be determined by enumerating the places on the them, such as a Pabbata (hill), Pāśāṇa (a hillock), Vana (a forest), Rukkha (a tree), Magga (a highway), Vammika (a anthill), Nadi ( a river), and a Udaka (sheet of water). A Simā demarcated by these objects is known as Baddhasīma. On no account the Simā (boundaries) should extend to the other side of a river a sea or a lake overlap the boundary of another Uposatha area. Later, the difficulty in fixing the boundaries was overcome by declaring the existing boundaries of a Gāma or Nigama near which it was situated as those of the Uposathāgāra itself. In case Uposathāgāra is found too small, the place around the Uposathāgāra or another place fit for the purpose may be used after making such declaration by the Āvattidutiyakamma. This is known as Uposathapamukkha.

Therefore, the Uposathāgāra was the seat of head monk or Thera of the Āvāsa or the Uposatha jurisdiction. When the Uposathāgāras was found to be too small to accommodate all the Bhikkhus of a particular Āvāsa, for Uposatha a space as large as requires around the Uposathāgāra could be used by them to be designated as ‘Uposathapāmokkha’. It should

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209 Vin.I.117; (See Mv.II.18.4)  
211 Vin.I.107; (See Mv.II.8.1).: “Anujānāmi bhikkhave uposathagāram...vihāram vā aḍḍhayogam vā pāsādam vā hammiyaṃ vā guhām vā.”  
212 Vin.I.106; (See Mv.II.7.2.1). “Anujānāmi bhikkhave tiyojanaparamam simam sammantitun ti.”  
213 BMC.Vo.I. p.604.  
216 Vin.I.106; (See Mv.II.6.1). “Anujānāmi bhikkhave simam sammantitum...pabbatanimittaṃ udakanimittam”  
217 Vin.I.110-111; (See Mv.II.12.7)  
219 Vin.I.107-108; (See Mv.V.II.9.1-2).
be noted that the settlement of each of the issues referred to above required the formal sanction of the assembly without which no act was considered valid. Thus, arose in the Uposatha assembly the consideration of various questions required Chanda (Proxy) of the member apart from the Pārisuddhi required for the Pātimokkha. In case, when an act passed by the assembly was to be found in contravention of the existing rules, it had also to be modified or annulled, when necessary, by the common consent of the assembly.220

[3]. Pavāraṇā:221 Annual Assembly

On the rituals associated with the community of monks we have already made reference to the Uposatha ceremony in which Pātimokkha rules were recited and offences confessed.222 The ceremony known as Pavāraṇā (Skt.: Pravāraṇā) (Invitation). Pavāraṇā was the antithesis of Vassūpanāyika,223 so far as, observed at the expiry of the Vassāvāsa (Rain-residence) period. It was an annual assembling of the monks in which they were required to declare before the assembly that during Vassāvāsa they had been pure of all the seen, heard or apprehended sins.224 There are the two invitations: on the fourteenth and on the fifteen.225 The Mahāvagga226 tells us that the Buddha enjoined the Bhikkhus to lead the Vassāvāsa together. Naturally, when too many people gathered together, there were misunderstandings, mishaps, and lapses, etc. which were to be cleared before the gathering was dissolved. This was done by inviting the Bhikkhus, by Saṅghakammas and Ānattis, to confess their faults, accuse the wrong doer and proclaim the sort of punishment or penance the guilty person is served. The Pāvāraṇā was introduced by the Buddha with the intention that the Bhikkhus might live in peace and happiness sharing mutual confidences during the Vassāvāsa.227

The recital of the Pātimokkha was to remove offences by confessing them during the nine months of the year; the Pavāraṇā (Invitation) was to remove offences that monks committed during the wet months and would help them at grasping discipline.228 It was, thus, like the Pātimokkha assemblies, a confessional assembly with a difference that unlike the former, herein the Pātimokkha was not recited to the monks to ask them if they had committed any of the listed offences; on the other hand, the monks themselves, in a very

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221 Vin.I.160, 161, 176-179; (See Mv.IV.3.2, 3.5, 18); also Vin.II.5-6, 31-32, 276; (See Cv.I.5; 6 etc; II.1.2; X.20)
222 Nandasena Ratnapala, Op. Cit., p.34.
224 Vin.I.159; (See Mv.IV.1.13.): “…pavāretum diṭṭhena viduttaṇaṁ vā pariṣaiskāya viṁ”
225 Vin.I.160; (See Mv.IV.3.1.): “Dve’ mā bhikkhave pavāraṇā cātuddasikā pannaṁśasikā ca.”
226 Vin.I.170 ff.; (See Mv.IV.16.2 et seq.)
228 Nandasena Ratnapala, Op. Cit., p.34.
humble manner, requested the assembly to point out the sins that they might have unknowingly committed but had, however, come in the notice of the Saṅgha. It was an external means applied for the purification of the monks. Formalities were similar to those observed in the Pātimokkha assemblies. Declaration of Pavāraṇā, while one was not pure, constitutes an offence and also elaborate rules were made regarding interdiction for it. Suspension of the date of Pavāraṇa for a month was also permissible if the Saṅgha did not find a good Vihāra at that time.²²⁹

Finally, there is the fact that once the Pavāraṇa has taken place and corrective procedure have been meted out to offenders, the Bhikkhusaṅgha is considered to be collectively pure with regard to the disciplinary rules. This is particularly significant in the light of the fact that the Pavāraṇa is held immediately preceding the Kaṭhina ceremony. As the Kaṭhina ceremony represents an affair in which the laity expresses their admiration to the Bhikkhu community. In one sense, it serves as a preliminary event for the Kaṭhina ritual context.²³⁰ It would, therefore, be not unreasonable to ascribe to the authors of ancient Indian democracy, of which the Saṅgha government was only a special form made suitable for the monks, the belief, is it fundamental or not, that truth and purity lay in harmony and unity.²³¹

4.3. The Principles of Punishment in the Buddhist Jurisprudence

4.3.1. Saṅghakamma: Due Process of Buddhist Law

According to the primitive Āvāsa, which represents a republican colony of Buddhist Bhikkhus who formed a Saṅgha by themselves with a constitution and a system of self-government. The system was based on what is called ‘universal suffrage’, every duly qualified member having an equal right of participation in it. Any transaction which relates to the Saṅgha in its collective or corporate life was called a Saṅghakamma.²³² The term literally means ‘transactions of a Saṅgha’. But it is used in a specialized sense and with a constitutional import; the act of an entire corporate body performed in accordance with a set of rules and forms of procedure.²³³

²³² Sukumar Dutt, Early Buddhist Monachism, Op.Cit, p.120.
²³³ Sukumar Dutt, Buddhist Monks and Monasteries of India: Their History and Their Contribution to Indian Culture, Op.Cit., p.87.
There are several Buddhist texts referring to various types of Saṅghakamma. According to Cullavagga, the Buddha defines duty-issues as ‘any’ duty or business related to the community. This definition refers to the four types of statement that can constitute a formal Community transaction, wherein the Community meets and issues a statement that is in taking an action as a group. These duty-issues are substantially different from the other three types of issues. Other issues are problems that have to be settling in a formal way. Duty-issues, however, are formal ways of settling problems. They themselves, as Community transactions, are problems only in the sense that they have to be conducted strictly according to the correct formal pattern. If they are not, they are invalid, open to question and have to be conducted again. In the mature development, of the Saṅghakamma it became the normal mode of transaction of all Acts to be done by the Saṅgha— from the settlement of Śimā (territory) to the imposing of due penalty under the Pātimokkha code on a delinquent Bhikkhu.

4.3.1.1. Typology of Saṅghakamma: the Community Transactions

Saṅghakamma can be classified into four types, as follow:-

[1]. Apalokanakamma: An Announcement, Declaration

The Kamma done by informing each other in the midst of the Saṅgha without Ānattī and Anusāvanā, that is, the motion and announcement for the consultation and approval of the Saṅgha, is called Apalokanakamma, which is of five kinds:-

(1). Nissāraṇā: dismissing Sāmaneras (novices) who speak in dispraise of the Blessed One as (stated) in the 10th Sikkhāpada of Sappāṇāvagga in the Pācittiya chapter.

(2). Osāraṇā: accepting into the community again such Sāmaneras whose behaviour has improved.

(3). Bhañḍākamma: requesting permission to shave the heads of applicants for ordination, which that Bhikkhu himself will do.

(4). Brahamadaṇḍa: announcing the imposition of ‘not admonishing or not advising’ an obstinate Bhikkhu, for instance, it was imposed on Channa Bhikkhu after the Parinibbāna of the Buddha.

(5). Kammalakkhaṇa: an offence committed against the Bhikkhunīs when Bhikkhus made obscene gestures towards the Bhikkhunīs, and the Bhikkhunī- order was persuaded by the Buddha and was able to prohibit Bhikkhunīs from making Añjali to those Bhikkhus.

234 Vin.II.88-89; (See Cv.IV.14.2)
235 BMC.Vol.II.p.177.
236 Sukumar Dutt, Buddhist Monks and Monasteries of India: Their History and Their Contribution to Indian Culture, Op.Cit., p.88.
237 Vin.II.88-89; (See Cv.IV.14.2.2.)
[2]. Čattikamma:238 Kamma by motion
Kamma involving only Čatti without the chanting of the Anusāvanā is called Čattikamma. There are nine categories:

(1). Osāraṇā: calling into the midst of the Saṅgha those applicants for ordination who have been examined with regard to the obstacles to ordination.

(2). Nissāraṇā: the motion to dismiss and exclude from settling legal processes the incompetent Dhammakathika (Dhamma-preacher) who groundlessly opposes a case.

(3). Uposatha: recitation of the Pātimokkha.

(4). Pavāraṇā: performing the invitation to admonish.

(5). The declaring or announcing of various subjects, such as announcing oneself or another to question the applicant regarding the obstacles to ordination, announcing oneself or another to ask or answer question concerning Vinaya.

(6). Returning the original owner robes, alms-bowl, etc.

(7). Accepting the Āpatti of a confessing Bhikkhu in the Saṅgha.

(8). The motion dealing with the postponement of Pavāraṇā.

(9). Kammalakkhaṇa: other aspects of Kamma of which the Attakathā-ācariyas have been given as an example, declaring the initial step in settling a dispute through the Tiṇavatthūrakavinaya method.

[3]. Čattidutiya-kamma:239 Kamma by two pronouncements
The Kamma performed by reciting by the Čatti and the chanting of the Anusāvanā is called Čattidutiya-kamma, the Kamma which is completed in two pronouncements (Čatti and Anusāvanā) of which there are seven:

(1) and (2) Osāraṇā: an example is given (in the Pāli) as announcing the condemnation of Vaddhalicchavī, whose behaviour disagreed the (Buddha) Sāsanā, called ‘over-turning the alms-bowl’; and announcing the cancellation of such condemnation of Vaddhalicchavī who has realized his error and who again behaved properly, called ‘righting the alms-bowl’.

(3). Announcing various subjects, such as Sīmā (boundary) and declaring a Bhikkhu to carry out work on behalf of the Saṅgha, etc.

(4). Bestowing various things, such as Kaṭhina-cloth, and the Cīvara of dead Bhikkhus and Sāmañneras to those who nursed them during their illness.

(5). Declaring the cancellation of the Kaṭhina-privileges, etc.

238 Ven.II.88-89, 91-92; (See Cv.IV.14.2,11)
239 Ven.II.88-89, 91-92; (See Cv.IV.14.2,11)
(6). Announcing a plot of land where a Kūṭi will be built for Bhikkhus.

(7). Kammalakkhaṇa: which is explained (in Pāli) as Nattidutiyakamma, which is to be recited at the end of settlement of disputes through Tiṇavatthārakavinaya.

[4]. Natticatutthakamma:240 Kamma by four pronouncements

The Kamma performed by reciting the Natti and the triple recitation of the Anusāvanā is called Natticatutthakamma: the Kamma which is completed in four pronouncements (one motion and three announcements), of which there are seven:

(1). and (2). Nissāraṇā and Osāraṇā: which are explained (in Pāli) as the Saṅgha performs seven kinds of Kamma, Tajjanīyakamma, etc. punishing a Bhikkhu who behaves improperly, and forgiving that Bhikkhu who again behaves properly.

(3). Declaration: such as declaring a Bhikkhu to instruct the Bhikkhunī.

(4). Designating the undergoing of Parivāsa and Mānatta to Bhikkhu who is Saṅghādisesa.

(5). Niggaha (Censure, blames, reproach): A Bhikkhu who is undergoing Parivāsa or Mānatta and commits another Saṅghādisesa, must undertake them from the beginning.

(6). Samanubhāsanā: announcing the prohibition against Bhikkhus holding to wrong views, as stated in the Saṅghādisesa (training-rules) with the ‘triple declaration’, and in the 8th training-rule of the Sappānavagga in the Pācittiya chapter.

(7). Kammalakkhaṇa: which is given in Pāli as Upasampadā, and Abbhāna or the rehabilitation of a Bhikkhu who is Saṅghādisesa when the practice of Parivāsa and Mānatta has been completed.

The Kamma, which requires the chanting of the Anusāvanā three times is regarded as important, allowing Bhikkhus who participate as members of the Saṅgha sufficient time to deliberate about the matter.241

All the kinds of Saṅghakamma state above are included in Kiccādhiكارaṇa. They should be settled down only in the presence of four things, i.e., the Saṅgha, the Dhamma, the Vinaya and the Puggala, the so-called Sammukhāvinaya of the Adhikaraṇasamatha. Coming to the final stage of the chapter of Adhikaraṇasamatha, the following tables may reflect some materials exhibited herein.

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240 Vin.I.56; (See Mv.I.28.3.; Ven.II.88-89, 91-92; (See Cv.IV.14.2,11.)
This is divided as prescribed by Buddhaghosa in Kañkhāvītaraṇī.242

4.3.1.2 Various forms of Saṅghakamma: the Community Transactions

A Saṅghakamma is held in by constitutional rules, the meticulous observance of which settled the validity of the Act of transaction. Besides, it had to be in the particular form prescribed for it according to the character of the act - whether it was disputatious or non-disputatious.243

Sukumar Dutt pointed out that the formalism, in fact, is the most striking feature of Saṅghakamma, as appears clearly enough from the ninth section of the Mahāvagga on the ‘validity and invalidity’ of Saṅghakamma. The meticulous observance of the forms and punctilious of procedure is of the essence of its validity. Disregard, omission or dislocation of even an iota lays the act open to impugnment by any member of the Saṅgha and necessitates first proceeding ab initio. It is well-known to students of jurisprudence that formalism is a feature of all archaic law. As we have pointed out before, the lawfully made decisions of a Saṅgha were recognized by the State and held to be binding on its members as Samaya (conventional Law). The Vinaya in its operation and effect was the positive law of the monk-communities and its administration through Saṅghakamma partakes necessarily of the formalistic character of all archaic laws.244

According to them, some Acts were disciplinary and disputable and some were non-disciplinary and non-disputable. The Parivāsā, and Mānatta, the Tājjanīya, the Nissāya, the Pabbājanīyakamma, the Paṭisāraniyakamma, the Pakāsanīyakamma, and the Brahmadaṇḍa belonged to the first group. But the second group, although it is non-disciplinary and non-disputable, has its importance in the Buddhist Saṅgha. Its ecclesiastical acts, such as the Upasampadā, the Uposatha, the Pavaṭaṇa, the Kanṭhina, the Abbhāna, etc. played their great roles in the Buddhist Saṅgha for the progress and growth of Buddhism. It o be noted here that at the time of the performance of a Saṅghakamma all monks who within the Simā of an Āvāsa are present. Their presence was compulsory. But if some one failed to appear in person, he sent his consent and then his presence was counted by proxy. The Buddhist Saṅgha introduced several rules for the various Saṅghakamas. 245 They are as under:

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242 Kañkhāvītaraṇī is the commentary of the text Pātimokkha. The full name is “Kañkhāvītaraṇī-attakathā” or “Mātiṭṭhakathā and Pātimokkha-attakathā”. Buddhaghosa was the Author of this text, and date of composition is 409-431 A.D.”, Quoted in Phramaha Sanggom Chabechean, Ibid., pp.14-21.

243 Sukumar Dutt, Early Buddhist Monachism, Op.Cit, p.120.

244 Sukumar Dutt, Buddhist Monks and Monasteries of India: Their History and Their Contribution to Indian Culture, Op.Cit., p.91.

[1]. Disciplinary and Disputation

(1) Parivāsa: (1.1) Apatichanna; (1.2) Patichanna; (1.3) Suddhanta or Mūlāya paṭikassanā; (1.4) Somodhāna (2) Mānatta; (3) Tajjaniyakamma; (4) Nissayakamma; (5) Pabbājaniyakamma; (6) Paṭisaraṇiyakamma; Pattanikujjana (list counterpart); (7) Ukkhepaniyakamma; (7.1) Āpattiyā Adassane; (7.2) Āpattiyā Appatikamme; (7.3) Pāpikāya Diṭṭhiyā Appatinissagga; (8) Pakāsaniyakamma; (9) Brahmadānḍa

[2]. Non-Disciplinary and Non-Community Transactions

(1). Upasampadā; (2) Uposatha; (3) Simā; (4) Pavāraṇa; (5) Kaṭhina; (6). Appointment of all offers; (7). Dedication of any part of the building establishment for any special purpose; (8). Settlement of succession to the personal belongings of any deceased Bhikkhu; and (9). Abbhāna

[3]. Anomalous: (1) Tassapāpiyasikā; (2) Tiṇavatthāraka

Sukumar Dutt gives an account of the Saṅghakamma. From his account we get idea of these ecclesiastical acts. He described. “A primitive Āvāsa was a Republican colony of Buddhist Bhikkhus as directly democratic in its Constitution as any city-state of ancient Greece. The Government was based on universal suffrage, and every duly qualified member had an equal right of participating in it. Any transaction, which might affect the Saṅgha in any way was called a Saṅghakamma. There were various forms of Saṅghakamma.

Table No.4

Saṅghakamma (Due Process of the Buddhists Law)

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<th>I. Disciplinary and Disputable</th>
<th>II. Non-disciplinary and Non-disputable</th>
<th>III. Anomalous</th>
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<td>(1). Parivāsa</td>
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<td>(1.1). Apatichanna</td>
<td>(2). Uposatha</td>
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<td>(6). Paṭisaraṇiyakamma; Pattanikujjana (list counterpart)</td>
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</tr>
</tbody>
</table>
In class I, Nos. (1), (2), and (9) were probably older than the rest. The first two kinds of discipline to be imposed by the Saṅgha are the only ones mentioned and described in the Pātimokkha. No. 9 is described only in the Mahāparinibbāṇa Sutta. Nos. (3)-(7) seem to have been the regular and ordinary form. They could not be resorted to without previous confession on the part of the guilty Bhikkhu. They are explained and elaborated in the Cullavāaga, I. No. (8), they seem to have been an exceptional form, and there is no reference to it except in the story of Devadatta, on whom it was imposed. It is likely that other forms of discipline besides those enumerated in the above list could be invented to suit occasions.

In class II, No. (1) became a Saṅghakamma only later on. It passed through three formal stages: Ehi Bhikkhu, Saraṇāgama, and Kammavāca. In class III, No. (1) and (2) are called Forms of Procedure (Adhikaraṇasamatha), because they have all the characteristics of proper Saṅghakamma.246

The form of a Saṅghakamma consisted of two parts – First, Ńatti (Resolution) and then Anussāvana (Proclamation of the proposed act of Kammavāca). The inversion of this order would invalidate the whole proceeding ab innitio. The matter for decision by Saṅghakamma is announced defined by a Bhikkhu in the form of a Resolution placed before the whole assembly – ‘let this (the matter defined) be done.’ Then followed be a proclamation and those against it were called upon to speak and those who were for it to remain silent. This proclamation might be made only once when the act was called a Ńattidutiya-kamma or thrice when it was a Ńatticatutthakamma. Some Saṅghakammass belonged to the first order and some to the second, and the observance of this distinction was essential for the validity of an act. Perhaps the distinction was based on a consideration of the comparative gravity of the proposed Saṅghakamma.

To sum up, the following would be the essential conditions of a valid act.

(1) The presence of the minimum number competent to perform the act. This was a condition precedent. In other words, ratification (Anumati) by a member who was not actually present at the Saṅghakamma, given after it had been performed was invalid. This was decided at the Council of Vesāli; (2) the consent of all the absentees conveyed by Chanda (Proxy); (3) the proposal of the Resolution (Ņatti); (4) the proclamation of Kammavāca (Anussāvana), once or thrice according to the act whether it was of the Ńattidutiya or of the Ńatticatuttha class; and (5) Consent of the proposal given by the silence

of all duly qualified members of assembly. When there was a division of opinions, it became a case of Adhikaraṇa (Dispute), which must be settle as per rules explained below.

The failure to satisfy any of these conditions would invalidate the act. When the act was invalid, it might be impugned at another assembly by way of a Kiccaadhikaraṇa, and the matter opened afresh. But, when the matter was decided by a valid act, it become res judicata and the re-opening of it would amount to the Pācittiya offence, No.63.247

Now a Saṅghakama might arise in either of the two following ways: (1) by a general requisition, and (2) through a dispute. Non-disciplinary Saṅghakammas would generally arise in the first way. When the sense of the whole Saṅgha was understood to be in favour of a particular measure, it was brought formally before the Saṅgha and carried through by regular proposal and proclamation. When, on the other hand, the sense of the Saṅgha was divided, it become a cause of class (3) it is obvious that all disciplinary Saṅghakammas would belong to this class, for in them the rest of the Bhikkhus acted against a single or a number or Bhikkhus. But nevertheless, with a few specified exceptions there might be a division on almost any matter. With regarded to the latter class of Saṅghakammas, arising by way of dispute, the proceeding were somewhat special, consisting or the following stages:

(1) The Dispute (preliminary to the trial) (a) Accusation and denial; or (b) Confession of a guilt; or (c) Difference of opinion on any of the specified matters. N.B. – The denial in (a), if false, would be a fresh offence leading to Ukkhepaniyakamma (Act of suspension); (2) The Procedure (the trial proper): (a) Proposal of the Resolution (Ṭatti); and (b) Proclamation of Kammavācā, both in accordance with; (c) the rules of Adhikaraṇasamattha; and (3) The Decision of the Saṅgha (Judgment).

Now the difference between the form and procedure of a non-disciplinary and non-disputable action and that of a disciplinary and disputable one is this – in the former the first stage is absent and there are no special rules, as in class (2) (c), governing the Ṭatti. The brief outline sketched above appears to be simple enough, but when we proceed to details we are confronted with elaborate complications. The whole processes of conducting a disputable Saṅghakamma grows into such a tangled labyrinth that unless we tread our way through it with the greatest care and caution we are likely to be ‘lost in wandering mazes.’ I shall, however, try to set out the details of the process as clearly and simply as accuracy of presentment would allow.248

247 Vin.IV.126; BkhP.Pct.No.63.
4.3.2 Types of Punishment in Buddhist Jurisprudence

The types of Punishment in early Buddhism can be divided into four main types; (1) Adhikaraṇaṇasamatha (Settlement of Legal Process); (2) Niggahakamma (Buddhist Punitive Measures); (3) Vutṭhānavidhi (the Method for Getting Out of Saṅghādisesa Offence); and (4) Miscellaneous of Buddhist Punishments. The details of each type are as follows:-

4.3.2.1. Types of Adhikaraṇaṇasamatha:249 Settlement of Legal Process under the Buddhist Jurisprudence.

The term ‘Adhikaraṇaṇasamatha’ (Skt.: Adhikaraṇaṇasamatha) literary means ‘dispute’, ‘subject of dispute’, ‘jurisprudence’, ‘the subject of jurisprudence’, ‘settling questions or case that have arisen’, ‘the settling of issues’, or ‘settling of a dispute or a lawsuit’. The word ‘Samatha’ means ‘peaceful settlement,’ or ‘that which is settled by conciliatory method’. The seven rules in this section are actually principles and procedure for settling the four sorts of issues mentioned under Pācittiya No.63. Therefore, Adhikaraṇaṇasamatha means a dispute, which is settled by a peaceful method. The Cullavagga255 gives four kinds of Adhikaraṇa: (1) Vivādādhikaraṇa; (2) Anuvādādhikaraṇa; (3) Āpattādhikaraṇa, and (4) Kiccādhikaraṇa. This section deals with the ways of setting disputes. It is difficult to say why this section is included in the Pātimokkha. One reason may be that the differences of opinions are inevitable in the observance of Pātimokkha rules.256

The Canon’s explanations of these procedures are given on in the Vibhaṅga but in chapter IV: Samathakkhandhaka257 of Cullavagga, which starts with a sketch of the procedure, followed by a detailed discussion of how to apply them to each of the four types of issues. We will follow the same mode of presentation here.258
[1]. *Sammukhāvinaya:*\(^{259}\) **Proceedings in Presence**

The word ‘*Sammukhā*’ literally means ‘face to face with,’\(^{260}\) and ‘*Vinaya*’ means ‘discipline; the code of monastic discipline; removal.’\(^{261}\) Thus, the word ‘*Sammukhāvinaya*’ is derived from Sanskrit, meaning ‘proceeding in presence, requiring the presence of a chapter of priests and of the party accused,’\(^{262}\) that is, the manner of settling the legal process in the presence of a *Saṅgha*, the persons concerned, the matter concerned, and *Dhamma and Vinaya*.\(^{263}\) This means that the transaction of settling the issue must be carried out in the presence of the Community, in the presence of the individuals, and in the presence of the *Dhamma* and *Vinaya*.

(a). **In the presence of the Community:** It means that the group of *Bhikkhus* that has gathered is competent to carry out the transaction in question. In other words, it contains the minimum number of *Bhikkhus* required, all the qualified *Bhikkhus* in the valid territory (*Simā*) in which the meeting is held are either present or have sent their consent, and none of the qualified *Bhikkhus* in the meeting makes protest against having the matter settled by the group, although as we noticed under the *Pacittiya* No.80,\(^{264}\) if a transaction is being carried out against a *Bhikkhu*, his protest does not invalidate the act; any protest made by any other member of the group, though, would invalidate it, even if he only informs the *Bhikkhu* sitting next to him.

(b). **In the presence of the individuals:** It means that all the individuals involved in the matter are present. For instance, in a dispute issue, both sides of the dispute must be in the meeting; when the Community is carrying out a transaction against one of its members, the accused must be there; in an ordination, the *Bhikkhu*-to-be must be present. There are a few cases where this factor is not followed, such as the ordination of a *Bhikkhuni* by messenger and the act of turning the bowl upside down (refusing to accept donations from a lay person who has mistreated the Community), but these are rare.

(c). **In the presence of the *Dhamma* and *Vinaya*:** It means that all the proper procedures laid down in the *Vinaya* are allowed, and *Bhikkhus* who advocate what is not truly *Dhamma* and *Vinaya* are not holding sway over the group.\(^{265}\)

\(^{259}\)Vin.II.73-74.: “Evañ ca taṃ adhikaraṇaṃ vūpasaṃmati dhammena vūpasaṃmati sammukhāvinayena”; 93 f. (See Cv.IV.2; 3; 14.16 et seq.)


\(^{261}\)Ibid., p.226.


\(^{264}\)Vin.IV.152-153; BkP.Pct.No.80.

This means the presence of (1) the particular individual concerned; (2) of the Saṅgha or the full assembly; (3) of the Vinaya (which means the observance of the proper rules of procedure), and (4) of the Dhamma (which means the application of the law relating to the case). This ‘fourfold presence’ applies to all Adhikaraṇas.

It safeguards the proper conduct of the trial. There are no exceptional forms of Sammukhāvinaya - (1) Reference to the member of another Avāsa; and (2) reference to a committee of the same Avāsa duly appointed for the question.

In the case of; (1) if the referees were unable to decide the question, the custody of the case was returned by them. The following rules would govern; (2): Ubbāhiṅka (A committee) would be appointed when in the course of the proceedings confusion arose and the assembly found it impossible to come to a decision. The members of the committee would be appointed in the usual ⁵Natti-form by which all office bearers of the Saṅgha were appointed. The rule according to which the committee itself would proceed to consider the business before it is not laid down. But in the account of the Council at Vesali where such a committee was appointed the procedure of the committee is represented as follows. The committee consists of 8 members. One of them, Sabbakāmi, acts like a chairman and another, Revata, acts like a secretary. The points referred to the Committee are put one by the secretary to the chairman, and as each point is decided by the later. The Secretary announces it to the other members of the Committee and casts the ballot accordingly. When all the point are decided the chairman tells the Secretary that the matter is settled and concluded once for all, but that he (secretary) should nevertheless interrogated him (chairman) in the midst of the whole Saṅgha on all the points over again. This is accordingly done, which brings the whole proceedings relative to the case to a termination. However, if the committee found it impossible to decide the matter delegated to it, the custody of the case was re-transferred to the Saṅgha and is was then settled by the Saṅgha according to the Yebhuyyasikā form of Adhikaraṇasamatha, i.e. by the vote of the majority.²⁶⁶

²⁶⁷ Vin.1.325 f. (See Mv.IX.6.2); Vin.11.79 f.: “Tena hi bhikkhave saṅgho Dabbassa Mallaputtassa sativepullppattassa sativinayam detu.” ⁹⁹ f.; (See Cv.IV.4.10 et seq.; 14.27 et seq.)

[2]. **Sativinaya:**²⁶⁷ Proceedings for the Consciously Innocent

Sativinaya (Skt.: Smṛtivinaya) is the name of one of the Adhikaraṇasamathas; disciplinary proceeding under appeal to the accused monk’s own conscience; [the procedure of setting up mindfulness as the main point, that is, the chanting of the formal announcement by the Saṅgha making an allowance for one who is Arhanta, that “he is a fully mindful
person” for the settlement of Anuvādādhikaraṇa, there being an accusation against him regarding breaking of Sīla, or as not to let any one accuse him of an Āpatti.268

Thus, in case a person has been accused of any misconduct, yet he felt conscious of his innocence, then he could repudiate the charge by appearing before the Saṅgha and asking for a discharge in accordance with the Sativinaya form. That in terms of the request preferred the usual Ātīti followed. The Sativinaya form had five requisite conditions (a) the accused Bhikkhu must be actually innocent; (b) he must not have been charged with the offence of which he pleads not guilty; (c) he must ask the Saṅgha for a discharge; (d) the Saṅgha must be prepared to grant it, and (e) the Saṅgha must be duly constituted.269

[3]. Amūlḥavinaya:270 Proceedings in Case of Those Who are No Longer Out of Their Mind

This is also a conciliatory method of setting disputes arising out of the conduct of a monk who is suffering from insanity. The word ‘Amulha’ (Skt.: Amuḍa) means ‘no longer in delusion’, ‘whose delusion is broken’. In the Cullavagga271 the practical application of this is described in the following manner: A Bhikkhu named Gagga did many irregular acts while he was insane. Now he cannot remember all such actions inspite of repeated remonstrance made by other Bhikkhus. In this case, the Saṅgha asks him to appear before the assembly of monks and expresses regret for his improper actions, done during the time of his insanity. The Saṅgha in its turn grants him Amulḥavinaya whereby quarrels (due to the irregular actions) are settled for good. One thing should be noted here that the Amulḥavinaya must be granted to a monk who admits his previous offences. In the case of denials the punishment of Taijaniyakamma etc. should be inflicted on him.272

Thus, this form was observed when for an instance a person has been accused of an offence committed during insanity, and either (a) he fully confessed it, or (b) he could not remember it owning to lapse of memory, or (c) he continued in an insane state of mind, this form was observed.273 The procedure was exactly as in Sativinaya.274

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270 Vin.I.325 f. (See Mv.IX.6.2 et seq.); Vin.II.82 f.: “tūṭināṇi bhikkhave adhammikāni amūlḥavinayassa dānāti, tīni dhammikāni.”; 100 f.; (See Cv.IV.5 et seq.; 14.27 et seq.)
271 Vin.II.82: 100-101; (See Cv.IV.5; IV.14.28.)
273 Vin.II.82-83; (See Cv.IV.6.2)
[4]. *Paṭīṇātakaraṇa*: Proceedings on Confession of Guilt

*Paṭīṇātakaraṇa* (Skt.: *Pratīṇātakaraṇa*) is the method or procedure by which the offender is made to admit his offence, and upon such admission duly punished.276

Thus, this form was adopted when a Bhikkhu was guilty of slight offence (*Lahuka āpatti*) and he pleaded guilty to it. Here, the case need not necessarily be carried to the *Ñatti*-stage. The guilty *Bhikkhu* might approach another *Bhikkhu* or a number of *Bhikkhus* in the usual form of supplication and obtain a valid absolution on confession. If not, he had to appear before the *Saṅgha* and make a confession on which the usual *Ñatti*, etc. followed, and the confessing *Bhikkhu* was let off with a warning. It should be noted here that the granting of absolution was an act for an individual and not for the collective body. It was not the *Saṅgha* that granted absolution, but the person who proposed the *Ñatti*. It was only in the form called *Tiṇavatthāraka* that absolution was sought from and granted by the *Saṅgha* itself. The principle seems to be that an individual’s offence is absolved by an individual or a number of individuals, while the offence of the whole *Saṅgha* can be absolved only by the *Saṅgha* itself.277

[5]. *Yebhuyyasika*: Proceedings on the Basis of Community

*Yebhuyyasika* (Skt.: *Yadbhuyyasika*) literally means ‘according to the majority’ 279 or ‘the Judgment or decision made according to the words of the majority, i.e. a vote of majority of the chapter.’280 Thus, when the matter in issue was of a grave character 281 and the assembly got so out of hand that it was impossible to reach a unanimous decision or when there was a *Vivādādhikaraṇa*, then *Yebhuyyasika* form was adopted. The decision was arrived at by majority vote. *Salāka* or marked piece of wood were used for voting, which had to be distributed and subsequently counted and the majority opinion was ascertained. The polling officer was called *Salākagāhāpaka*, his appointment was done in the usual *Ñatti* form like all other office bearers of the *Saṅgha*. The office of *Salākagāhāpaka* carried with it a heavy responsibility; therefore, it required a person of unimpeachable honesty and impartiality, and somebody who was conversant with the rules of procedure. The

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275 Vin.II.83–84.: “Evam kho bhikkhave adhammikam hoti patiṇātakaraṇam evam dhammikam.”; 102-103. (See Cv.IV.7 et seq.: 14.30 et seq.)
278 Vin.II.84.: “Anujīnāmi bhikkhave evarūpāya adhikaranat Yebhuyyasikāya vūpāsasametum.”, 93-94, 97. (See Cv.IV.9; 14.16.24.)
281 Vin.II.85; (See Cv.IV.10.1.): “Dasa yime bhikkhave adhammikā salākagāhā, na ca yathādiṭṭhiyā gaṇhanti.”
Salākagāhāpaka had the constitutional power to reject the whole voting, if he felt that the opinion of the majority was contrary to Dhamma.

He was also vested with large discretionary power. According to Buddhaghosa, when (the vote) is improperly taken, it should be taken till third time (the Polling Officer) declaration. This improperly taken ballot should be taken again. If even at the third time those against the Dhamma are in the majority, the (the Polling Officer should rise saying). ‘Today is inauspicious; I shall announce it tomorrow.’ The ballot should be taken the next day with (lit. looking for) those who were in the right, with a view to discomfiting the unrighteous members. This is secret balloting. In following the whispering method, on the other hand, if any elderly member of the Saṅgha voted on the side of the unrighteous one (lit. took the Salāka of the unrighteous ones), this should be said and made known to him, ‘Venerable Sir, you are great and aged; this does not become your.’ The (right) ballot should then be shown to him. If he values it, it should be made over to him. But let him not misunderstand it. Therefore, he should be told, do not make it known to anybody.” The rest (of the procedure) is as laid down. (It is doubtful if Buddhadhosa, who wrote his commentary on the canon in the early part of the 5th century CE, set forth these tactics as his own recommendation, or he represented any actual practice in the Monasteries of his own time.) The point to be specially noted is that the Salākagāhāpaka was left with such large discretionary power mainly to check the possible abuse of the right and privilege of democracy. The procedure of Salākagāhāpaka functioning involves the following there: when the assembly grew unruly (Alajjasana). He calls upon the Bhikkhus to take away the marked Salakas telling each one as he came up the significance of the marks on it, and asking him to keep his ballot (this was the Gālhaka or the secret method). Or when the assembly comprised of ignorant or unintelligent members Salākagāhāpaka method was adopted, where by the polling officer whispered the same thing into the ear of each Bhikkhu, probably going round the assembly. Lastly, Vivataka or open method was adopted, dispensing with all secrecy in voting, when it (assembly) was inclined then it was known to the Salākagāhāpaka that the vote of the majority would be on the side of Dhamma.282

[6]. Tassapāpiyasikā: 283 Proceedings for the Obstinate

When a Bhikkhu in the course of interrogation at the trial was guilty of being obstinate or prevarication, this form was adopted as a disciplinary measure. After the
commission of the offence as above, the usual Ṇatti was proposed and the Bhikkhu was sentenced accordingly. It could arise out of an Anuvādādhikaraṇa and perhaps also out of Āpatādhikaraṇa. According to the Cullavagga, the text says the Bhikkhu must be ‘Sānuvādo’. It does not necessarily exclude imputation of Āpati. A too narrow interpretation of the word would be unreasonable, and the translation also seem to realize this when they write, “When a censure has been set on foot against him”. The circumstances, which would lead to Tassapāpiyasikā, might conceivably arise in both kinds of Adhikaraṇa. Confession, as in other disciplinary Saṅghkamma, is a necessary pre-condition. The Tassapāpiyasikā form is in fact exact analogous to Tajjaniya-kamma, the only distinction being, as pointed out, that in the former the offence arise in the course of the trial, while in the later before the trial.

[7]. Tiṇavatthāraṇaka: Proceedings by Covering over as with Grass

This form was adopted when during the sitting of the judicial assembly, quarrels and disputes took place among the assembled Bhikkhus with the result that numerous grounds of complaint sprang up. It would be obviously inconvenient, if not impossible, to take action on each and all of them. Under such circumstances, the Tiṇavatthāraṇaka form was adopted. Serious offences (Pārājika and Saṅghādesesa per Bhuddhaghosa) and those which concerned the laity however were beyond its province. Confession, as usual, was a necessary pre-condition. The usual Ṇatti was first proposed. Then one representative from each faction’s party would make confession of offences in general terms. When this was finished, each representative again brought forward the confession by way of Ṇatti and asked for absolution which was granted according to the terms of the prayer.

All the procedures were conducted on the democratic pattern. If a certain dispute could not be solved in the ordinary course, the subject was entrusted to a committee called Ubbāhikā. The members of the committee were duly selected by the Saṅgha. If the dispute was solved it was then a closed chapter; otherwise, it would again come to the Saṅgha to be decided by the majority opinion. No procedure was regarded as valid unless all the members within the Sīmā (Territories) were present.

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284 Vin.II.86; (See Cv.IV.12.1)
286 Vin.II.87.: “Samvatteyā ‘ti anujānāmi bhikkhave evaṁpaṁ adhikaravatam tiṇavatthāraṇaṁ vūpasame tasmā.”
287 102 f. (See Cv.IV.13; 14.30 et seq.)
The following chart will show how the Adhikaraṇaṣaṃathas were applied in the four kinds of Adhikaraṇas.

### Table No.5

The Adhikaraṇaṣaṃathas were applied in the four kinds of Adhikaraṇas.

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<thead>
<tr>
<th>No.</th>
<th>Adhikaraṇa</th>
<th>Adhikaraṇaṣaṃathas</th>
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</thead>
<tbody>
<tr>
<td>(1).</td>
<td>Vivādādhikaraṇa</td>
<td>Sammukhāvinaya</td>
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<tr>
<td></td>
<td></td>
<td>Sammukhāvinaya + Y ebhuyyasikā</td>
</tr>
<tr>
<td>(2).</td>
<td>Anuvādādhikaraṇa</td>
<td>Sammukhāvinaya</td>
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<tr>
<td></td>
<td></td>
<td>Sammukhāvinaya + Sativinaya</td>
</tr>
<tr>
<td>(3).</td>
<td>Āpattādhikaraṇa</td>
<td>Sammukhāvinaya</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sammukhāvinaya + Amuḷhavinaya</td>
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<tr>
<td>(4).</td>
<td>Kiccādhikaraṇa</td>
<td>Sammukhāvinaya</td>
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<tr>
<td></td>
<td></td>
<td>Sammukhāvinaya + Tiṇavattharaka</td>
</tr>
</tbody>
</table>

### Table No.6

This is to show counter-part of Adhikaraṇa and Adhikaraṇaṣaṃatha

<table>
<thead>
<tr>
<th>No.</th>
<th>Adhikaraṇa</th>
<th>Adhikaraṇaṣaṃathas</th>
</tr>
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<tbody>
<tr>
<td>(1).</td>
<td>Vivādādhikaraṇa</td>
<td>(1). Sammukhāvinaya</td>
</tr>
<tr>
<td>(2).</td>
<td>Anuvādādhikaraṇa</td>
<td>(2). Sativinaya</td>
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<td>(3).</td>
<td>Āpattādhikaraṇa</td>
<td>(3). Amuḷhavinaya</td>
</tr>
<tr>
<td>(4).</td>
<td>Kiccādhikaraṇa</td>
<td>(4). Paṭiṇīṭatakaraṇa</td>
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<td>(5). Y ebhuyyasikā</td>
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<td></td>
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<td>(6). Tassapāpiyasikā</td>
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<td></td>
<td></td>
<td>(7). Tiṇavattharaka</td>
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</tbody>
</table>

The Sammukhāvinaya, as said already, was common to all four of them. So was about the second stage of the trial. To proceed to the third and last stage, the decision might be (1) by the whole Saṅgha; or (2) by a committee of the Saṅgha; or (3) by a number of referees belonging to another Saṅgha; or lastly, (4) by the vote of the majority of the Saṅgha. One kind of these four tribunals could not be substituted for another except under specified circumstances.

To take an illustration: Suppose the Saṅgha failed to come to a unanimous decision. It would not be proper, except in the case of Vivādādhikaraṇa-to proceed at once to a decision by vote of majority. The case, as it is said, must have run in its course. The point at issue must first be referred either to a committee of the same Āvāsa or to a body referees belonging to another Āvāsa.

If they gave their decision, the Saṅgha was bound by it; if they did not, the case was returned to the Saṅgha to be decided, (1) by the vote of the majority when it has been

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returned by the committee, or (2) otherwise, probably by reference to a committee, when it has been returned by referees belonging to another Āvāsa. (There is no provision for Yebhuyyasikā when the case is returned by referees.)

But the Yebhuyyasikā mode of decision was hedged in with certain restrictions. Trivial matters could not be submitted to it. The polling officer was invested with plenary power and, after taking the ballot, he might refuse to ratify the result of the voting if he considered that it would necessarily lead or was likely to lead to a schism, or to the victory of the party manifestly in the wrong, or he felt that the voting had not been free and sincere. Under such circumstances he would arranged for another balloting.

Then, again, the decision must be in the term of the Ńatti. The Ńatti, as we have observed, might be a Ńatti of acquittal or discharge, as the Sativinaya, Amūḷhavinaya, Paṭiñātakaraṇa, and Tiṇavatthāraka, or one of conviction as in the several forms of disciplinary Saṅghakamma. The trial must be for the offence of which the guilty Bhikkhu is formally accused before the Saṅgha and not for an offence of which he may have confessed himself guilty. For instance, a Bhikkhu is charge with a Pārājika, but he confesses to a Saṅghādisesa; he must be tried for the former and not for the latter offence.290

4.3.2.2. Types of Niggahakamma: Buddhist Punitive Measures

Actions which should be done by a meeting of the Saṅgha, being variously Apalokanakamma, Ńattikamma, Ńattidutiya-kamma and Ńatticatutthakamma, are together called Kiccādhirakaraṇa, according to the conclusion of the Compiling Teachers. Looking only at Kiccādhirakaraṇa it may well be seen in that way, but looking at the actions which comprise their settlement, it doesn’t sound as plausible as did the actions of settling the three previous Adhikaraṇa. Kiccādhirakaraṇa which fit plausibly with those ways of settling are seen to refer to doing Niggaha (rebuking), sometimes to Bhikkhus, sometimes to layperson. The settling of Kiccādhirakaraṇa refers to the removal of that Niggaha, at the time when the person rebuked has returned to proper behaviour.

Niggahakamma is ‘applying pressure to, coercing’: is a resource of the leader of a group. It is of a pair with Paggaha (Commendation). Without these two things leadership is not possible: even in a Saṅgha group they are also desirable as resources. It is said that they are the intended result of laying down the rules of training also, found in the phrase; “for the control of unsteady men, for the comfort of well-behaved Bhikkhus”. When there is a...

Bhikkhu or a layperson who behaves wrongly and deserves rebuke, the Teacher was given his allowance for the Saṅgha to perform Niggahakamma against that person.²⁹¹

The five types of Niggahakamma, as depicted in Chapter I: Kammakkhandhaka of Cullavagga, and two another types i.e. Pakāsaniyakamma in Mahāvagga, and Brahmadanḍa in chapter XI: Pañcasatikkhandhaka of Cullavagga as well as in mentioned the Dīgha Nikāya, Mahāvagga of Suttanta Piṭaka, have been allowed and will be explained here, by which the Saṅgha may impose Niggahakamma on a Bhikkhu.

[1]. Tajjaniyakamma:²⁹² Act of Censure

The first in the list is Tajjaniyakamma. It is to be directed against a monk who is quarrelsome, or devoid of good conduct, or had undesirably much contact with householders; a monk faltering in the observance of disciplinary rules or who speaks ill of the Buddha, Dhamma, and Saṅgha, is also liable to this punishment.²⁹³

According to Cullavagga, a Community-if it wished-may impose a censure transaction on a Bhikkhu endowed with the following qualities: (a) He is a maker of strife, quarrels, disputes, dissension, issues in the community; he is inexperienced and incompetent, indiscriminately full of offenses; he lives in the company of householder, in unbecoming association with householder; (2) in terms of heightened virtue, his virtue is corrupted; in terms of heightened behavior, his behavior is corrupted; in terms of higher views, his views are corrupted; and (3) he speaks in dispraise of the Buddha; speaks in dispraise of the Dhamma; speaking in dispraise of the Saṅgha.²⁹⁴

The condemned monk has to observe the following 18 restrictions²⁹⁵ till the action taken against him is not ‘revoked’. These are: (1) He cannot confer Upasamapadā; (2) cannot give Nissaya (Instruction); (3) cannot accept the nomination or ‘exhort’ a Bhikkhunī; (4) cannot take the service from a Sāmañera (Novice); (5) cannot ‘exhort’ a Bhikkhunī even if he is nominated to do so; (6) should not commit the same offence for which he is condemned; (7) should not commit the similar offence; (8) should not commit the graver offences; (9) should not denounce the ‘action’ taken against him; (10) should not denounce

²⁹² Vin.I.49;53;143. (See Mv.I.25.22; 26.10; III.6.10 et seq.; 19 et seq.; IX.6.2 et seq.; 7; also Vin.II.4f.; 226; 230. (See Cv.I.1 et seq.; VIII.11.16;12.10.)
²⁹⁴ BMC.Vol.II.p.402.
²⁹⁵ Vin.II.5; (See Cv.I.5.1): “Tajjaniyakammakatena bhikkhave bhikkhanā sammāvattitabbaṁ, tatāyaṁ sammāvattanā: na upasampādetabbaṁ, ... na bhikkhūhi sampayojetabban ti.”.
those who took part in the Tajjaniyakamma; (11) cannot raise the objection against the presence of a monk alleged to have committed some offence in the Uposatha ceremony (as usually done by the monks); (12) or in the Pavāraṇā ceremony; (13) should not himself a subject of reproof; (14) cannot act as leader in the Saṅghakamma; (15) cannot seek permission to interrogate a monk alleged to have committed some offence; (16) cannot interrogate a monk who has committed some offence; (17) cannot remind a monk of the offence he has committed; and (18) should not make the monks quarrel among themselves.\(^{296}\) If the Saṅgha sees that the censured Bhikkhu is behaving properly, giving up his arrogant ways and making amend, they should settle that Tajjaniyakamma.\(^{297}\) Thus, this measure was meant for any transgression whatever, except Pārājika and Saṅghadisesa offences, even for living ‘in lay society, in unlawful association with the world,’ which is not listed as an offence in the Pātimokkha. The penalty consists in the imposition of certain disabilities. This penal disability continues for an indeterminate period till the request for Abbhāna is made by the Bhikkhu under sentence and is granted by the Saṅgha.\(^{298}\)

[2]. **Nissayakamma:**\(^{299}\) Act of Subordination; Demotion

Nissayakamma or Niyassakamma\(^{300}\) is a punishment inflicted on a monk who is incapable or recognizing his fault, who commits minor offences due to his foolishness, who in indiscreet and indiscriminate in his dealings with the public. In this case he is not eligible to take part in ecclesiastical functions, such as (1) giving of probation (Parivāsa); (2) renewal of probation (Mūlāyatikassanā); (3) suspension on Saṅghadisesa Offence (Mānatta); (4) and rehabilitation of Bhikkhus after Parivāsa and Mānatta.\(^{301}\) The Saṅgha then takes up this action. It is rather to persuade the ‘wrong-doer’ monk to take up a teacher and abide by his instructions. This action may also be taken against a monk who is quarrelsome and picks up quarrel in the Saṅgha; is foolish; indolent and prone to commit other offences and never amends for his offences committed; is unscrupulous to ‘higher morality’ or to ‘minor moral conduct’ or to the doctrinal views; speaks ill of the Buddha,


\(^{299}\) Vin.I.58; 60; 61-62; 65f; 79f; 91; 92; 95-96. (See Mv.I.30.4; 31.1; 32.1; 35;36;37;53;72;73;77; Also Vin.II.5; 6f; 32; 273; 227-228. (See Cv.I.5; 6 etc; II.1.2; X.17.7; 22.3)

\(^{300}\) Niyasakamma- in some editions of the Canon this is called dependence (Nissayakamma), Quote in BMC.Vol.II.p.401.

Dhamma and Saṅgha. The Saṅgha may take this action against such a person if it so desires.302

According to Durga N. Bhagvat, it is to be remembered in this respect that there is a great difference between this subordination and that imposed by the Parivāsa under the Saṅghādisesa. In the former he did not lose all the privileges of a fully ordained Bhikkhu, while according to the latter he was practically cast out of the Saṅgha, and reduced to the state of a novice; even after the end of the period of Parivāsa he was not free but had to undergo another rigorous penalty of Mānatta; hence the humiliation in the later case was much greater than in the former.303

By Nissayakamma the Saṅgha takes away for the time being his privileges and compels him to be subordinate to a competent teacher (Ācāriya) and study under him the necessary Dhammas and Vinayas. He must live with the teacher in such a way that he can easily ask him question as regards Vinaya discipline and other canonical and non-canonical literature. His punishment will not be ended until he acts properly and can distinguish between good and bad conduct. As soon as he shows signs of discretion and aptitude, for good conduct and moral behaviour, his supervision will be withdrawn and he can become free.304 A monk having an excessive relation with the laity or repeatedly violating the Pātimokkha rules, became liable to Nissayakamma.305 It means Kamma306 which the Saṅgha should to strip a person of status, or, that taking away of status. On the first occasion the Saṅgha performed it against Seyyasaka Bhikkhu.307

The traits that qualify a Bhikkhu for demotion and the procedure for imposing it on him are identical with those for censure, although Cullavagga indicates that this transaction is for a Bhikkhu who repeatedly commits Saṅghādisesa offences even when undergoing probation, etc. the restriction he must observe, once demoted, are the same as those for a censured Bhikkhu, with one addition: He must return to live in dependence under a mentor. If he adheres to his restriction, the demotion may be rescinded. The commentaries are silent on this issue of the minimum length of time the restriction should be imposed, but in this case ten to twenty days seems altogether too short. A wise policy would be to make sure that the dependence has had an effect and that the offender will not return to his old ways when released from dependence. If, when the demotion is rescinded, he does return to his old

307 Vin.II.8; See (Cv.I.9.1-2.): “Kataṃ sarikṣhenā Seyyasakassa bhikkhuṇo nissayakamman nissāya te vatthabbañā.”
ways, he may be demoted again and placed under dependence for an indefinite length of time.\textsuperscript{308}

Thus, this measure could be carried out against a Bhikkhu who has been repeatedly guilty of Saṅghādisesa offences and undergone sentences therefore. The penalty consists in subjecting the guilty Bhikkhu to surveillance. The period is as above.\textsuperscript{309}

\textbf{[3]. Pabbājanīyakamma: }\textsuperscript{310} \textit{Act of Banishment}

A monk, who brought about any corruption among the laity or earned bad name for the Saṅgha by his bad conduct, became subject to \textit{Pabbājanīyakamma.} \textsuperscript{311} This punishment entails the expulsion of a guilty Bhikkhu from his residence. This is imposed upon a monk who has defiled a good family (Kuladīsaka) and engaged in unholy pursuits, such as, singing, dancing, garlanding, drinking, encouraging, to play etc, in order to attract the attention of the public. The punishment for such kind of offence requires his removal from the center of attraction, thus his surrounding must be changed so that he may give up a monk who is quarrelsome, unscrupulous about Vinaya discipline, who speaks ill of the Buddha, Dhamma and the Saṅgha and who uses harsh words and earns a likelihood by illicit and improper means. He is not self-disciplined in the four postures of life. The Cullvagga mentions that this punishment was inflicted upon Assaji Punabbasukā, a Bhikkhu who was living at Kitāgiri.\textsuperscript{312}

A monk punished for the \textit{Pabbājanīyakamma} is required to leave the monastery or the place where he has been living in and to behave properly at his new residence by observing the following 18 restrictions scrupulously from the \textit{Tajjaniyakamma} as mentioned above.\textsuperscript{313} The formula for applying these \textit{Saṅghakamma} is very strict. Like all other legal procedures, the application of \textit{Saṅghakamma} should be with rigid formalities and the actual method be applied to all these cases. No \textit{Saṅghakamma} can be valid unless it is followed by formula mentioned in the Vinaya excepting the change in the name of the offender and the title of the offence he has committed. There can be no \textit{Saṅghakamma} without the proper application of ‘Ñatti’ and ‘Anussāvanā’. Sometime the constant reputation of stereotyped formula bores the reader and the study of the Vinaya becomes very dull. But the inherent advantages of it can not be denied. The frequency of repetition helps to preserve the actual

\textsuperscript{308} BMC.Vol.II. p.404.
\textsuperscript{309} Dutt, Sukumar, \textit{Early Buddhism Monaschism, Op.Cit.}, p.140.
\textsuperscript{310} Vin.49; 53; 143-144; 148; 153-155. (See Mv.I.25.22; 26.10; III.6.10 et seq.; 7.7, 14; Also Vin.II.9ff; 226; 230. (See Cv.I.13 et seq.; VIII.11.16; 12.10)
spirit of the legal tradition of the Vinaya discipline. In consideration of this inherent virtue, the older (Theras) or the Southern School of Buddhism urges that the rigid formalities of the Vinaya Kammas be maintained.314

The original story here is identical with the origin story of Saṅghadisesa No.13. The list of qualities that would qualify a Bhikkhu for banishment is the same as the list for censure with the following addition:

“He is endowed with bodily frivolity, verbal frivolity, bodily and verbal frivolity; he is endowed with bodily misbehavior, verbal misbehavior, bodily and verbal misbehavior; he is endowed with bodily injuriousness; verbal injuriousness, bodily and verbal injuriousness; he is endowed with bodily wrong livelihood, he gives medical treatments, verbal wrong livelihood, bodily and verbal wrong livelihood.”

Since Pabbājaniyakamma was prescribed for the control over Bhikkhus who engaged themselves with frivolous pursuits, the most natural punishment in that case was to remove such person or person from the source of attraction and change his surrounding atmosphere. Only this much not being a sufficient remedy for the evil, the Bhikkhu was made a Saddhivihārika (disciple) of an able and worthy man like Sāriputta and Moggallāna, who was formally appointed by the Saṅgha for that purpose. The difference between this penalty and that of Parivāsa is that, the former compelled the offender to be a Saddhivihāra of a special teacher; while in the latter case, no special teacher was appointed and the offender was supposed to be subordinate to all the senior of the Saṅgha.315

This measure could be carried out against a number of Bhikkhus who by their overt and blameworthy conduct had created a sandal from the place. The penalty consists in banishment from that place. The Saṅgha which pronounces the sentence of banishment has to proceed in a body to the place where the disciplinary act is to be performed. The period is as above.316

[4]. Paṭisāraṇiyyakamma:317 Act of Reconciliation

Paṭisāraṇiyyakamma originates as result of Saṅgha’s earnest desire to keep good relations with the lay devotees. It was conducted against a monk who has offended a householder by making a false accusation. The Saṅgha advise the monks to beg pardon of the offended by lay-devotee. He might be given a companion who, on his behalf, would persuaded the house-holder to grant pardon to the monk. If he failed to obtain it inspite of his

317 Vin.I.49; 53; 143-144; 145 f.; 325-326; 330, 331-332. (See Mv.I.25.22; 26.10; III.6.10 et seq., 19 et seq.; IX.6.2 et seq.; 7.8, 14; Also Vin.II.15 ff; 226; 230; 295. (See Cv.I.18 et seq.,VIII.11.16;12.10;XII.1.2)
best efforts, the would make the monk confess his guilt before the householder in an attitude of humility.318

The characteristics which are the causes for this Kamma to be performed are explained in the Pāli of the Kammakhandhaka319 as two groups, each group having five (factions), thus: (1) He endeavors for that which is not gain, not a benefit, and the non-residence (that is, he makes them uncomfortable) of lay-people; he vilifies them and makes insidious comparisons; he incites them to break apart; (2) He defames the Buddha, defames the Dhamma, defames the Saṅgha, to the laypeople; he speaks oppressingly and bully them; he does not keep promises to them which are in accord with the Dhamma. Other characteristics, duties, and the method of settling are the same for other Kamma.320

Paṭisāraṇiya-kamma means Kammap which the Saṅgha performs against a Bhikkhu who should be made to return (to apologize). The fist occasion on which the Saṅgha performed it was against Sudhamma Bhikkhu,321 who had reviled the householder,322 and this measure could be carried out against a Bhikkhu who has given offence to a householder. The guilty Bhikkhu was enjoined to ask and obtain the pardon of the offended householder. A companion might be appointed by the usual Ŋatti to accompany him. The guilty Bhikkhu must first ask pardon and in case he does not obtain pardon, the companion should intercede on his behalf. If he be not pardoned even then, the companion should personally ask the householder to pardon the guilty Bhikkhu. If there is no pardoned even then, the companion should ask pardon from him in the name of the Saṅgha. If pardon be not obtained even after, the companion should make the guilty Bhikkhu confess his guilt in the presence of the offended householder in an attitude of humility. The period of sentence is as above.

The counterpart to Paṭisāraṇiya-kamma is an act called Pattanikkujjana (lit. turning down of the begging bowl). When a Bhikkhu give offence to a householder, he has to submit to a former penalty; in the converse case the householder is subjected to the penalty of having the privilege of giving alms to Bhikkhus and thereby acquiring merit withdrawn.323

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319 Vin.II.21-25; (See Cv.25-13)
321 Vin.II.19; (See Vin.I.22.1-3.): “Atho kho saṅgho Sudhammassa bhikkhuno paṭisāraṇiya-kammaṃ akāsi Citto te gahapati khamāpetabbo ’ti.”
[5]. Ukkhepaniyakamma: 324 Act of Suspension

An intentional false denial to admit an offence pointed out by the Saṅgha, or, not, atoning an offences, amounted to Ukkhepaniyakamma. Literally, Ukkhepaniyakamma means an Act or resolution of suspension. 325 It was a social boycott of the guilty by other monks. 326 This Act may be imposed on a Bhikkhu who admits to an action that constitutes an offence but refuses to recognize it as an offense; who, admitting to an action that constitutes an offences; refuses to make amends for it; or who refuses to relinquish an evil view. 327 And are two kinds of Ukkhepaniyakamma viz. (1) not acknowledging a fault; and (2) not renouncing a sinful doctrine. The penalty on it is exactly the same as the Tajjañiyakamma. 328

The Commentary to Cullavagga states that being a maker of strife under the prerequisites for this transaction applies to case where the Bhikkhu in question uses his unrelinquished views as a basis for making strife. The retractions place on a suspended Bhikkhu are the same as those for a censured Bhikkhu except that he is told that he can have no communion with the Bhikkhu Saṅgha. Pācittiya no.69 329 explains on the meaning of being in communion by stating that any Bhikkhu who communes with a suspended Bhikkhu (sharing Dhamma or material things), affiliates with him (joining in a Community transaction with him), or lies down in the same lodging with him incurs a Pācittiya offense. If the suspended Bhikkhu abides by the restrictions, the community may rescind his suspension at his request. The Canon adds one special note under the case of a Bhikkhu suspended for not relinquishing an evil view: If he disrobes while under suspension, the community should rescind the suspension.

Suspension is the most serious disciplinary transaction in that it not only removes the suspended Bhikkhu from common affiliation, but it can also put him in the position where- if he can gain followers-he can form the nucleus for a more lasting separate affiliation within the Saṅgha. Because suspension touches directly on the grounds for disputes-what is and is not Dhamma, what is and is not an offense- it may prolong the strife that led to it, and even lead to schism. Therefore, it should not be performed lightly.

The Mahāvagga tells of how the Buddha, on learning that a Bhikkhu suspended for not seeing an offense had gained a following, went first to the Bhikkhus who has suspended

324 Vin.49; 53; 143-144; 145 f.326-326; 330 f.; 331 f. (See Mv.I.25.22; 26.10; III.6.10 et seq., 19 et seq.; IX.6.2 et seq. 7.9 et seq.; 14; Also Vin.II.226; 230; 298. (See Cv.VIII.11.16; 12.10;XIII.1.7, etc.)
327 BMC.Vol.II. p.405.
him and told them to reflect on the dangers of suspending a Bhikkhu. Not only would they be deprived of communion with him, but the act of suspension might be the cause of the strife of schism in the Community. Then he went to the partisans of the suspended Bhikkhu and told them to reflect in similar way, adding that one who senses the gravity of schism should confess an offence ‘even if just out of faith in other’ so as to avoid the dangers that suspension would entail both for himself and for the community at large.\(^{330}\)

The Ukkhepaniyakamma may also be taken against a monk who is quarrelsome, picks up quarrel in the Saṅgha, is foolish and prone to commit offences, mixes with the householders improperly, one who is not scrupulous about the higher morality and the minor rules of conduct, i.e. rules other than the Pātimokkha, one who does not follow the Doctrinal views, who speaks ill of the Buddha, Dhamma and Saṅgha. All such persons are liable to be dealt with the Ukkhepaniyakamma, if the Sangha so desires.\(^{331}\)

Thus, this measure could be carried out against a Bhikkhu for the three causes- (a) for not acknowledging a fault, (b) for not atoning for a fault, and (c) for not renouncing a false or sinful doctrine. The penalty consists in the imposition of certain disabilities. With regard to (c) it is laid down that the Bhikkhus should first exhort the guilty Bhikkhu to give up the false doctrine (so that his refusal to do so would amount to Pācittiya No.68).\(^{332}\) Now in Pācittiya No.69\(^{333}\) it is suggested that a Bhikkhu, guilty of Pācittiya No.68, should be subjected to a social boycott by the Bhikkhus. The present Saṅghakamma is based on this old rule. The sentence in an Ukkhepaniyakamma must be proclaimed against the guilty Bhikkhu at all Āvāsas. In case the sentenced Bhikkhu left the Order, the sentence was withdrawn because in that case it became inoperative.\(^{334}\)

[6]. Pakāsaniyakamma: \(^{335}\) Act of Information Transaction

Two more penalties finds no mention in the Chapter I: Kammakhandhaka of Cullavagga, but each having one single instance at other place, have been noted. There are Pakāsaniyakamma and Brahmadāṇḍa.\(^{336}\)

The Pakāsaniyakamma seems to have been an exceptional measure, being referred to only once in the Vinaya Piṭaka, in Cullavagga. The Pakāsaniyakamma is not included in the

\(^{330}\) BMC.Vol.II.pp.405-407.
\(^{332}\) Vin.IV.133-136, BhP.Pct.No.68.
\(^{333}\) Vin.IV.137-138.
\(^{335}\) Vin.II.189. (See Cv.VII.3.2 et seq.). “Kata samghena Devadattas Rājagahe pakāsaniyakamman pubbe Devadattassa aṁñā...tena dāṭṭhabbo ‘ti.”
traditional list of Saṅghakamma. This Act is the Act of proclamation imposed on a monk who tries to make Saṅghabheda (Schism) in the Saṅgha. It is not included in the traditional list of punishment for Bhikkhu in general. In the course of the Vinaya tradition it was resorted to only once and that too in the case of Devadatta who, without leaving the Order, openly rebelled against it, and for the reason, that he wished the leadership of the Saṅgha after the departure of the Buddha. It consisted in issuing a general proclamation from the Saṅgha to the effect that it renounced all responsibility for the words and acts of the sentence Bhikkhu. A Bhikkhu was appointed in the usual Āatti-form to issue the proclamation.

[7]. Brahmadaṇḍa: the Harshest Punishment

The punishment called Brahmadaṇḍa was called “the harshest punishment,” as referred to in the Mahāparinibbāṇa Sutta of the Dīgha Nikāya and also in the Pañcasatikkhandhaka, chapter XI of the Cullavagga, was also a means to implement social boycott of the accused monk. When the monk is condemned for this punishment, other monks should not speak to him, nor exhort him, nor instruct him. It is a sort of complete boycott to the monks and then no connection should be kept with him. No details are given as to what offences would merit this punishment nor does the manner in which it was to be imposed. It seems to have become obsolete later, being replaced by other forms of disciplinary Saṅghakamma.

According to the Pāli canonical literatures, the case study for Brahmadaṇḍa Act is Ven. Chana, a charioteer and companion of the Buddha, because of his arrogance toward the Community. And, the monks are advised to punish the disobedient Sāmaṇeras by refusing to converse with them and also by refusing to take their services and co-operation till they change their attitude and the punishment should be withdrawn. The exact nature of

339 Vin.II.189; (See Cv.VII.3.2.): “Atha kho bhagava bhikkhā āmantesi: tenahi bhikkhave saṅgho Devadattassa Rājaghe pakāsānyākammap' karotu ... tena daṭṭhabbo ‘ti.”
342 Vin.II.280-281; 291-292. (See Cv.XI.1.11, 14.)
345 Vin. II.284-293; (See Cv.XI.1.1-1.6.)
349 Vin.II.290-293; (See Cv.XI.1-14.): “Tena h’ ānanda saṅgho mam’ accayena Channassa bhikkhuno brahmadaṇḍam ānāpetā ti.”
scope of the punishment is not known, though some punishment of this nature may be traced in the *Mahāvagga*. Once the Buddha asked Ānanda to request the *Sāṅgha* to punish Channa with the *Brahmadaṇḍa*. After the *Mahāparinibbāna* of the Buddha, the *Sāṅgha* pronounced the punishment of *Brahmadaṇḍa* against Channa at the end of the First Buddhist Council held at Rājagaha, as desired by the Buddha. Ānanda then apprised him of this punishment at Kosambi. The version in *Cullavagga* states that Channa fainted on hearing the news of the punishment. Going into seclusion, “heedful, ardent, and resolute, he in no long time reached and *Arahanta*. He then went to Ven.Ānanda to request than his *Brahmadaṇḍa* punishment be revoked, but the later informed him that the attaining of arahantship. The Version in *Samyutta Nikāya*, however, tells of how Chana, after learning of his punishment, sought instruction from other Bhikkhus and finally gained Awakening on hearing the *Kaccānagotta Sutta* from Ven.Ānanda. None of these passages, however, described the *Brahmadaṇḍa*-punishment as a community transaction. Like the information-transaction, it is thus part of the Buddha’s repertories but not in Community.

### 4.3.2.3. Types of *Vuṭṭhānavidhī*: the Method for Getting Out of *Sāṅghādisesa* Offence

In this regard, it is worthy of considering the punishment meted out to monks guilty of committing these offences. Both *Vinaya* and *Suttas* mention four types of circumstances that call for disciplinary actions that should be taken on legal base. For the *Āpattādhikaraṇa*, it is more important, since legal proceeding against any commission of an offence comes under this category. The purpose of proceeding under this category is more relevant for personal well-being, whereas those coming under the other three categories are more related to the stability and purity of the *Sāṅgha* institution. The type of this penalty is called the *Vuṭṭhānavidhī*, which is the method for mainly getting out of *Sāṅghādisesa* Offences. The details of this penalty are as follows:

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352 Vin.II.292; (See Cv.I.15.).: “Atho kho āyasmin Ānanda yena Ghositārmo ten’ upasātākami, ... satthāvāna te āvuso Channa brahmadaṇḍo ānāpito ti. ...Yadaggena tayā āvuso Channa arahattāsa sacchikatāsa tadaggena te brahmadaṇḍo patipassaddho ti.”
353 S.II.16 ff.
354 BMC.Vol.II. p.413
355 Vin.II.73ff; 88f; (See Cv.IV.2 et seq.; 14.2 et seq.; X.7).:“Cattāri bhikkhave adhikaraṇāni vivādādhikaraṇān anuvādādhikaraṇān āpattādhikaraṇānām kiccadhikaraṇānām.”
[1]. Parivāsa: 357 Probation

Parivāsa is a kind of punishment inflicted upon a Bhikkhu, who is found to have violated any one of the 13 Saṅghādisesas and who has concealed it instead of confessing. The guilty Bhikkhu is denied the usual privileges of the Saṅgha enjoyed by a fully ordained monk unless he makes atonement according to the law prescribed by the Vinaya. He cannot perform Vinayakamma as usual with other monks. He is not allowed to attend any ordination ceremony (Uppasampadā), sit with other monks or accept salutation and services from the Sāmañera during the period of Parivāsa. He is prohibited from preaching to the nuns (Bhikkhu nī) even when he has received an invitation. He cannot plead the cases of a young Bhikkhu to the Saṅgha. Parivāsa is meted out to those monks, who conceal an offence of Saṅghādisesa for some reasons. There is no need for a monk to undergo Parivāsa, who has duly confessed; only Mānatta will be inflicted in case of confession.

The reasons for non-confession may be of the following types: (1) one of the 13 Saṅghādisesas (Āpatī); (2) notion of Āpati (Āpati saññī); (3) to think as the punishment of Ukkhepa (Pakatattā ca hoti); (4) awareness of non-punishment (pakatattāso natthi); (5) free from any one of the ten obstacles, e.g. king, thief, fire, water, man, non-human, venomous snake, life and chastity, (Antarāyiko co hoti); (6) acute disadvantage (Antarāyiko saññī); (7) ability to confess with other monks (Pāhu ca hoti); (8) consideration for going there (Pāhu saññī); (9) non-confession due to shyness and (10) concealment.

If he does not confess for fear of senior monks or teachers he will not be free from offence of non-confession. Parivāsa may be divided into three parts, viz., Saddhanta, Paṭicchana and Samodāna.358

The following are the rules for the determination of the Parivāsa period.

(a). Paṭicchanna: When the offences is confessed without any delay, the Parivāsa period is reduced to nil, that is, the guilty Bhikkhu is sentenced to Mānatta only.

If he does not confess for fear of senior monks or teachers. He will not be free from the offence of non-confession. Parivāsa may be divided into three parts, viz., Paṭicchanna, Saddhanta, and Samodāna.

(b). Paṭicchanna: when the offence is concealed knowingly, the Parivāsa period extends over as many days from the date of the sentence as he has allowed to elapse without confession. The period, it should be remembered, begins to run after the six days of Mānatta.

357 Vin.I.136; 131 ff. (See M.II.36.4; IV.4.4); Also Vin.II.31 ff. (See Cv.II.1. et seq.).
If the concealment is unwitting, the sentence is one of Mānatta only.\textsuperscript{359} Thus, there is no time limit for it. He has to undergo a punishment equivalent to the number of days during which he concealed the offence without confession.\textsuperscript{360}

(c). Suddhantaparivāṣa: when it is found to be impossible to determine the date or dates of the commission of an offence or a number of offences or the nature thereof, the Parivāṣa period extends over as many days as it intervene between the date of the sentence and the date of ordination of the guilty Bhikkhu.\textsuperscript{361} Suddhantaparivāṣa may be of two types: Cullasuddhanta and Mahāsuddhanta. If a Bhikkhu cannot remember the number of days of concealment, then the Saṅgha should prescribe Parivāṣa for an unlimited period equal to the days that have passed since the day of his Upasampadā up to the date of the beginning of his Parivāṣa. This number many be increased or decreased according to the memory of guilty Bhikkhu. When the numbers of day increases it is called the ‘Mahāsuddhanta’ and when the number decreases it is called ‘Cullasuddhanta’\textsuperscript{362}

(d). Samodhānaparivāṣa: when another offence is committed during the continuance of the Parivāṣa period, a fresh period begins to run from the date of the commission of the second offence and it extends over as many days as were covered by the Parivāṣa period prescribed for the first offence or the Parivāṣa period prescribed for the second offence, whichever period may be longer.\textsuperscript{363} Samodhāna may be of three types: (i) Odhāna, (ii) Agga and (iii) Missaka. The first category refers to a situation when undergoing punishment. In this case he has to start from the beginning with the addition of the newly incurred offence. This is referred to as “Odhāna Samodhāno”. If a Bhikkhu can remember the exact number of offences and take Pārivāṣa accordingly it is called the ‘Aggasamodhāna’, whereas if a monk commits many offences at the same time is called the “Missakasamodhāna”. The difference among these three is very slight. According to Dr. N. Dutt the distinction between Paṭicchanna and Aggasamodhāna is almost nil.

Pārivāṣa should be given by four or more Bhikkhus or Theras but after that the guilty Bhikkhu may make “Ārocanā with one or more monk. But he has to confess with as many monks as he sees during the day. If there are many Bhikkhus living in an Āvāsa he has to confess to all the monks of the same Nikāya. Of course, he is allowed to stay in a quiet and lonely place where there are few monks and in that case he may avoid the confession to

\textsuperscript{359} Sukumar Dutt, \textit{Early Buddhist Monachism, Op.Cit.}, p.139.

\textsuperscript{360} Rabindra Bijay Barua, \textit{Op.Cit.}, p.82.

\textsuperscript{361} Sukumar Dutt, \textit{Early Buddhist Monachism, Log.Cit.}, p.139.

\textsuperscript{362} Rabindra Bijay Barua, \textit{Loc.Cit.}, pp.84-85.

\textsuperscript{363} Sukumar Dutt, \textit{Early Buddhist Monachism, Log.Cit.}, p.140.
other monks. During the time that he is undergoing the punishment the guilty monk has to behave like a ceremonially impure person and must keep himself aloof from the association with regular Bhikkhus.

He must observe the following three restrictions: (1) he must not dwell among other monks (Sahavāso); (2) he must go to a residence where there are no monks (Vippavāso); and (3) he must make an announcement of Pārivāsa before an assembly (Ārocanā). If the guilty Bhikkhu deliberately fails to observe the above mentioned restrictions he is considered as one who has broken the vow of Pārivāsa.

In addition to these there is another kind of Pārivāsa which may be called Appaticchannaparivāsa, the Vinaya Commentary mentions that Appaticchannaparivāsa should prescribe punishments for those persons who come from other than a Sākya family or these Bhikkhus who have joined the Titthiya order and applied for readmission. In these two cases a Pārivāsa of four months or more would be required to qualify him for admission into the Saṅgha.364

[2]. Mānatta:365 Penance

The procedure of punishment for Pārivāsa and Mānatta is the same. The same system of confession and announcement (Ārocanā) is applicable in both cases. The only difference between them is that Pārivāsa may be imposed after a break during probation and it may be increased or decreased; but Mānatta must be completed in six days without break. The Pārivāsa taken from the Saṅgha can confess (Ārocanā) to a single Bhikkhu or more but the Mānatta must be taken from the Saṅgha and confessed within the Saṅgha. Confession cannot be made to one, two or three monks, because Mānatta requires the participation of all the Bhikkhus who commit the Saṅghadisesā offence. But Pārivāsa is prescribed for these monks who conceal the Saṅghadisesā offence, instead of confession it in due order. Mānatta cannot be complete unless the guilty Bhikkhu is freed from Pārivāsa transgression.

There are three reason for the violation of Pārivāsa, such as (i) Sahavāsa; (ii) Vippavāsa; and (iii) Anārocanā. But the reasons for the violation of Mānatta are four. They are: (i) Sahavāsa; (ii) Vippavāsa; (iii) Anārocanā and (iv) Unegañe carati.

364 Vin.I.49, 52-53; 143,144-145; 320-321, 325-326; (See Mv.I.25.21; 26.9; III.6.8,16; IX.4.6; 6.2 et seq.; also Vin.II.44-45. (See Cv.II.8.1-3)
Mānatta may be divided into two categories according to whether the offences are concealed or not. The re-acceptance of Bhikkhus (Abbhāna) cannot take place until the restriction imposed upon them for Parivāsa and Mānatta are properly observed. 366

[3]. Abbhāna: 367 Rehabilitation

After the completion of Pārivāsa and Mānatta the guilty Bhikkhu is received back into the Saṅgha by a formal procedure. The procedure for the re-acceptance of the guilty Bhikkhu is called the Abbhāna. The minimum number of Bhikkhu for performing Abbhāna-kamma is twenty. Assembly of monks less than twenty cannot perform Abbhāna. It should be remembered that the Abbhānakamma is prescribed to those monks who have successfully completed Parivāsa and Mānatta. If any monk performs twenty nine days Parivāsa for the thirty Saṅghādisesa offence his Pārivāsa Mānatta and Abhāna will not hold good and the guilty monk will not be free from the offence. The assembled monks who participate in the ceremony will commit Dukkāta offence. Therefore, everything must be done very carefully in accordance with the Vinaya rules and regulations. 368

[4]. Mūlāyapaṭikassana:  369 Throwing back to the Beginning of the Penance

If a monk happens to commit an offence of Saṅghādisesa during the period of Parivāsa or Mānatta (as the case may be; i.e. before the Abbhāna is held), he is required to take up the Parivāsa anew and the period of Parivāsa already observed by him is not taken into account; and a fresh Parivāsa is to taken up combining all the Saṅgha offense (Samodhānaparivāsa). This is known as Mūlāyapaṭikassana; i.e. “Throwing back to the beginning of the penance.”

4.3.2.4. Miscellaneous Methods of Buddhist Punishments

[1]. Pattanikkujjanakamma: 370 Overturning the Alms Bowl

Pattanikkujjanakamma, literary means Overturning the Bowl, or Ostracism and reinstatement of laypeople. 371 This is a kind of social boycott inflicted upon a layman who

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368 Vin.I.49;52-53; 143;145; 319-320, 320-321; 325-326 (See Mv.I.25.21; 26.9; III.6.9, 18; IX.4.1.6; 6.2 et seq.); also Vin.II.33; 36-37; 39 ff. 223-224; 230. (See Cv.II.1.4, 9; III.2 et passim; VIII.11.5, 12.9.)
369 Mv.I.25.21; 26.9; III.6.7, 18; IX.4.6; 6.2 et seq.; also Vin.II.33,34-35;43-44; 223-224; 230. (See Cv.II.1.4, 9; III.7; VIII.11.15; 12.9.)
370 Vin.II.125 ff; (See Cv.V.20.3 et seq.) “Aṭṭhahi bhikkhave aṅghē samannāgatassā upāsakkassa pattō nikkujjatabbo: bhikkhunām alabhāya parisakkatī, ... saṅghassā avaṇṇam bhāsati.”
cause a serious offence to a monk or monks by which the greater interest and dignity of the Saṅgha may be abused, or hampered. This offence is meted out by applying the act of turning down of the Pattanikkaujjana (Overtruing the alms-bowl) which means that Bhikkhus in their begging rounds turn their alms-bowl in front of the householder who insulted them. The Saṅgha makes a resolution that they shall receive anything from the householder in question and should not instruct him in any way till he begs pardon from the Saṅgha in a proper manner.

The Cullavagga mentions that this act of Pattanikkaujjana should be given effect by the community of monks reciting a particular formula. The reasons for the application of this punishment may be of eight kinds: (1) Punishment is inflicted upon the man who attempts to lessen the income of the Saṅgha; (2) to do some harm; (3) to a particular Bhikkhu; (4) to drive away general; (5) to cause disunion among the Saṅgha; (6) to talk ill of Buddha; (7) to talk ill of Buddha-Dhamma, and (8) to talk ill of Saṅgha.

The Commentary adds that a lay person who has done any one of these things qualifies to have the bowl overturned. There is no need for him/her to have done all eight. Unlike other disciplinary transactions (and unlike most community transaction in general), the object of the transaction does not need to be present in the meeting at which the transaction is performed. This is apparently what the commentary means when it says that the transaction may be performed within or without the territory. In other word, the lay person does not need to be in the same territory where the meeting is held.372

The Mahāvamsa mentions that his punishment was applied to a king Dāthopatissa II or Daṭṭhasīva (626-641 A.D.) who insulted the Bhikkhus of Mahāvihāra by passing a Law which went against the wishes of the Saṅgha. He tried to build a Parivena against the wishes of the Saṅgha within the limits of their boundary.373

[2]. Nāsanākamma:374 Revocation of the Privilege of Sāmañnera (Novice)

Forcing a person to give up his status because he is not suitable to hold it is called Nāsanā, which means “Sending to ruin”. There are three types of person for whom allowance is given to do Nāsanā. They are (1) A Bhikkhu guilty of a final matter (Aattimavatthu) who still declares himself to be a Bhikkhu; (2) A person who should not be ordained but who has received ordination from the Saṅgha; and (3) Sāmañneras.375

372 BMC.Vol.II.p.42.
374 Vin.I.85-86; (See Mv.I.61.1-3).
According to Ute Husken, the application of the term Nāsanā and to trace the development of the use of this term and its derivation in the Vinaya and in the commentarial literature goes back to the canonical as well as extra canonical literature. The combined texts referred to, suggest the following historical development. In the Kāraṇḍavasutta in the Aṅguttaranikāya and in the introductory story of Saṅghādisesa No.8. the term Nāsana is very general term for ‘expulsion’. As the juristic terminology in the Vinaya developed, and distinction between Pārājika and Nāsana was made, Nāsanā then designated the expulsion to be performed by the Saṅgha. The circumstances under which such as explosion was thought to be necessary vary considerably: For example, due to an invalid ordination, initial concealment of a Pārājika, or committing a serious offence such as rape. Additionally, the expulsion of novices is also called Nāsanā.\textsuperscript{376}

The story of the tenth training rule of the Sappāṇa-vagga of the Pācittiya (No.70) relates that (the Buddha) ordered the Saṅgha to expel Kaṇḍaka Sāmaṇera, who misrepresented the teachings, saying that they taught what was not true. In that case of Nāsanā he was not made to give up his status; he was just drive out of the residence, and this rules was laid down making a Pācittiya offence for a Bhikkhu who associated with him The Āṭṭhikathā-ācariyas call Nāsanā with these characteristics Daṇḍakammanāsanā, which means “bringing about ruination by punishment”, but Daṇḍakamma is a lighter punishment, and will be explained next. If it is called Sambhoganāsanā, which means “bringing about ruination by not ‘sharing together’, it will fit the story.

The Āṭṭhakathā Ācariyas further, classify Saṃvāsanāsanā, causing one’s fall from Saṃvāsa, referring to the doing of Ukkhepanīyakamma, removing from Saṃvāsa. A Bhikkhu to whom Ukkhepanīyakamma is done is not removed (from Savāsa) at all: behaving properly, the Saṅgha can settle that Kamma and receive him into Saṃvāsa again. It does not come to “ruination”, and so calling it Saṃvāsanāsanā is not accurate. Nāsanā with these characteristic should be seen as, for instance, with a Bhikkhu named as guilty of Pārājika; the Saṅgha prohibits Saṃvāsa absolutely and does not receive him again. These types of example are not, however, found in the textbooks, it is just that it has been used up to the present.\textsuperscript{377}

The Parivāra contains the first indication of a classification into three different types of Nāsana. The first categorization, however, is elaborate only in the commentaries, which


\textsuperscript{377} Ibid., pp.244-245.
were complied more than a half millennium later. There we find the terminological distinction of three kinds of *Nāsanā*. The three types of *Nāsanā*:

(1) *Liṅganāsanā*, causing to fall from the status (i.e. of a *Samaṇa*), i.e. Mettiya *Bhikkhunī*. It is the name for the irreversible expulsion of monk, nun, or novice.

(2) *Dāṇḍakammanāsanā* entails less harsh types of expulsion of novices since it can later be revoked.

(3) This expulsion equates to *Saṃvāsanāsanā* for monks, since *Saṃvāsanāsanā* determines the suspension of individuals who until their restoration are not allowed to live in the same communion (*samānasamvāsa*) with the suspending monks. Additionally, *saṃvāsanāsanā* probably designates the special case of the suspension of a monk due to non-recognition of this Pārājika offence. In this case no restoration is possible.378

[3]. *Dāṇḍakamma*:379 **Punishment imposed on Sāmaṇera (Novice)**

It is a kind of punishment imposed on a *Sāmaṇera* (Novice) who does not show proper respect and courtesy to the monks.380 When a *Sāmaṇera* does wrong but the fault does not warrant *Nāsanā*, the Buddha’s allowance is given to do *Dāṇḍakamma*. The Pāli of the *Mahākhandhaka*, *Mahāvagga* specifies wrong-doings of *Sāmaṇeras* which are the causes for *Dāṇḍakamma* being done. They are: (1) Endeavoring for that which is not a gain of *Bhikkhus*; (2) for what which is not benefit of *Bhikkhus*; (3) for the non-residence of *Bhikkhus*; (4) slandering and disparaging *Bhikkhus*; and (5) inciting division amongst *Bhikkhus*.381

When a *Dāṇḍakamma* is imposed upon a *Sāmaṇera*,382 he is then prohibited to stay at the place where he has been residing. But before taking this action of *Āvaraṇa* on account of the *Dāṇḍakamma*, the permission of his *Upajjhāya* (preceptor) or *Ācariya* (instructor) must be taken; otherwise the offence of *Dukkaṭa* (an offence of wrong doing) is committed.383

Punishment is primarily the responsibility of the novice’s mentor. Another *Bhikkhu* may inflict punishment on the novice only with the preceptor’s permission. The Commentary says that if the preceptor is informed three times of his pupils misbehavior and does nothing, one is allowed to make a prohibition oneself, but the Sub-commentary

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379 Vin.I.75.; ‘*Tena kho pana samayena aññattarlo puriso kasāhato katadaṇḍakamma bhikkhussu pabbajito hoti.*’; 76, 84; (See Mv.I.44; 45; 57 ;Vin.II.262); (also See Cv.X.9.1-2); ‘*Anujñāmi bhiṁkhhave tassa bhikkhuno daṇḍakammam kātuṁ ti.*”
381 Vin.I.84; (See Mv.I.57.1-3); ‘*Bhikkhunām alābhāya parisakkati, bhikkhunām anatthāya..., bhikkhunām anāvāsāya..., samannāgatassa sāmaṇeraṁśa daṇḍakamma kātuṁ.*”
382 Vin.I.84; (See Mv.I.57.1-3); ‘*Anujñāmi bhiṁkhhave yatthā vā vasati, yatthā vā paṭikkamati, tattha āvaraṇaṁ kātuṁ ti.*”
cautions that one should inform the Community before doing so. The mode of punishment is to place a prohibition on the novice—in other words, to place certain locales off limits to him. One is not allowed to place the entire monasteries off limits. Instead, one may place off limits the areas where the novice normally lives and normally congregates. Also, one should not impose a prohibition concerning food. The Commentary advises that other forms of punishment suitable to the novices’ offence—such as carry water, carrying firewood, or carrying sand are allowable. One may also promise food to the novice as reward if he willingly undergoes the punishment. Punishment must be given with the intention, “He’ll reform. He’ll stop misbehaving.” It should not be given with such malicious intent as, “He’ll be done in. He’ll disrobe.” Cruel and unusual punishment, such as making him carry bricks or stones on his head, submerging him in water, etc., are forbidden. The texts do not state how long the prohibition should be imposed. This is left up to the discretion of the Bhikkhu imposing it. When he sees that the novice has learned his lesson and mended his ways, the punishment should be rescinded.

Physical punishment is not allowed. A Bhikkhu may not hit or lift his hand against a novice any more than he can do so to any householder is forbidden. A Bhikkhu incurs a Dukkāta under Pācittiya No.52\(^{384}\) for tickling a novice, and A Dukkāta (an offence of wrong doing) under Cullavagga\(^{385}\) for flicking a novice with his tooth wood.\(^{386}\)

\[4\], Pañāma: \(^{387}\) Dismissal; Expulsion

The Pañāma: Dismissal of a Saddhivihārika (disciple) or an Antevāsī (pupil) by the Upajjhāya (preceptor) or Ācāriya (instructor) respectively if the former does not behave properly. The behaviour of a Saddhivihārika (disciple) or Antevāsī (pupil) is to be deemed as improper if he does not have much affection, does not have much faith, does not have shame, does not have much respect and does not have much amity towards his Upajjhāya (preceptor) or Ācāriya (instructor). \(^{388}\) The Pañāma as stated under Pācittiya no.70, \(^{389}\) a misbehaving novice may be subject to two types of dismissal or expulsion; expulsion from his status as a novice and expulsion as a punishment. As with punishment, expulsion is the responsibility of the novice’s mentor. Pācittiya no.70 covers the second form of expulsion. Here we will discuss the first. There are ten ground for a novice’s expulsion: (1) he is taker

\(^{384}\) Vin.IV.110-111.; BhP.Pct.No.52.: “Aṅgulipatodake Pācittiyaṃ.”

\(^{385}\) Vin.II.138; (See Cv.I31.1-2)

\(^{386}\) BMC.Vol.II. pp.458-459.

\(^{387}\) Vin.I.50-53; (See Mv.26.1-11)


\(^{389}\) Vin.IV.138-140.; “BhP.Pct.No.70.”
of life; (2) he is taker of what is not given; (3) he engages unchastely; (4) he is a speaker of lies; (5) he is drinker of intoxicants; (6) he speaks dispraise of the Buddha; (7) he speaks dispraise of the Dhamma; (8) he speaks dispraise of the Saṅgha; (9) he holds wrong views; or (10) he is molester of a Bhikkhuni.  

The Commentary details the extent to which any of these acts would subject the novice to expulsion: with regard to the first precept, killing ants or smashing bed bug eggs; with regard to the second, stealing a blade of grass; with regard to the third, genital, anal, or oral intercourse; with regard to the fourth, telling a lie even in jest; with regard to the fifth, intentionally drinking alcohol. As stated above, a novice who commits any of these acts has broken this Triple Refuge. If he sees the error of his ways, he takes away the Triple Refuge again. If not, he should be expelled from his status as a novice.

Dispraise of the Buddha, Dhamma and Saṅgha, the Commentary says, means speaking in terms contradictory to those used in the standard chant of praise to the Triple Gem—asserting, for instance, that the Buddha’s Dhamma is poorly taught, or that his disciples practice crookedly. An offender in this case should be reprimanded. If he sees the error of his ways, he should be punished with an appropriate prohibition and then given the training rules again. If he does not, he should be expelled. The same holds for a novice espousing wrong views—which, according to the Commentary, means espousing either the extreme of externalism or the extreme of annihilationism. Only a molester of a Bhikkhuni is automatically expelled without further ado. Such a novice also makes himself ineligible from taking the Going-forth or receiving Acceptance ever again in this lifetime.

Driving Sāmenera Kaṇḍaka out from the group and from the status may be included in “sending away” as an act of the Saṅgha. However, the words, “should be expelled” are used. For Saddhivihārika (disciple) and Antevāsika (pupil) possessed of the factors of fault, the Upajjhāya and Ācariya ought to “send them away” as an act of an individual. In this way, they become deserving of “sending away”. For these various kinds of “sending away” provisions, and when the person to whom it is done behaves well, there is the Buddha’s allowance to settle it.

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390 Vin.I.85; (See Mv.I.60.1).: “Anujānāmi bhikkhave dasah‘aṅgehi samannāgataṃ sāmaṇeraṃ nāsetuṃ: pāṇātipāti hoti, ... bhikkhumidāsako hoti.”
392 Vin.I.85; (See Mv.I.60.1).: “Tena kho pana samayena āyasmato Upannadassassu Saṅkhaṇaka nāma sāmaṇero Kaṇḍakasamānaṃ nāma bhikkhunīṃ dīsesa.”
4.4. The Pattern and Judicial Process of Punishment in Buddhist Jurisprudence

4.4.1. The Pattern and Punishment Process of Adhikaraṇasamatha

The procedures, which are in use for the application of Ānātī (motion), occurs in the last section of the Pātimokkha. Each of these seven Saṅghakammas is extensively discussed in the chapter IV, Samathakkhandhaka of Cullavagga. Out of the seven kinds of Saṅghakamma, two seem to be of a different character. Each of these Saṅghakamma is stated below:-

[1]. Sammukhāvinaya: Proceedings in Presence

The procedure of the Sammukhāvinaya is applicable to the four kinds of Adhikaraṇa (cases or disputes), viz., Vivādādhikaraṇa, Anuvādādhikaraṇa, Āpattādhisakaraṇa, and Kiccādhisakaraṇa. Sometimes when the Ubbāhika method for settling the dispute is adopted, the Saṅgha then appoints a component and able monk or monks to act on behalf of the Saṅgha. Since in this case the monk or monks represent the whole Saṅgha, it is also regarded as ‘Saṅhgasammukkha’. Here this is also regarded as a kind of Sammukhāvinaya. In case a person reopens a settled matter, he commits an offence of Pācittiya No.63.

[2]. Sativinaya: Proceedings for the Consciously Innocent

The procedure is applicable to only one kinds of ‘case’, i.e. Anuvādādhikaraṇa. The procedure requires five condition, viz., (1) the monk being accused is ‘pure’ and free from any ‘offence’ (Suddhassa anāpattikassa dānam ākām); (2) the monk is actually being accused by another monk (Anuvādītassa dānam ākām); (3) the monk requests the Saṅgha to declare him immunity from committing any ‘offence’ (Yācitassā dānam); (4) the Saṅgha is the lone component to grant such an immunity from ‘offence’ (Saṅghena dānam ākām); and (5) the immunity granted by the Saṅgha is just and unanimous (Dhammenā samaggena).

[3]. Amādhavinaya: Proceedings in case of those who are no longer out of their mind

A kind of procedure for the settlement of a ‘case’ which has arisen on account of the insanity of a monk who might have committed some offences while insane is discussed. It is in fact a sort of formal recognition by the Saṅgha of the insanity of a monk and hence to ignore any offence if committed by the monk. No ecclesiastical action is, therefore,
necessary against him. For this purpose the *Saṅgha* holds a *_UNIQUE* and the mad monk is asked to be present before the *Saṅgha*. The *Saṅgha* then declares him mad. The formal declaration by the *Saṅgha* is regarded as legal and just (*Dhammika*) only if the monk was actually mad and he did not remember any of the offences committed by him and also that he behaved truly like a mad person. The procedure involves the following three conditions; viz. (1) the Bhikkhu was actually insane; (2) some Bhikkhu actually accuse him of some previous offences committed by him; and (3) the Bhikkhu himself request the *Saṅgha* for such a ‘settlement.’

[4]. *Paṭiṇāṭakaraṇa*: Proceedings on Confession of Guilt

A kind of ‘procedure’ for the settlement of An *Adhikaraṇa* (Case) when the condemned monk candidly admits the ‘offence’ which he has committed is explained. This he does before the *Saṅgha* or before a monk. The condemned monk must be true to his statement that he is making. And the *Saṅgha* also should be fully ensured that the statement given by the condemned monk is perfectly true; and then only the *Paṭiṇāṭakaraṇa* should be performed. The ‘procedure’ is essential prior to any kind of ‘action’ like *Tajjanāyaṃkamma*, *Nissayakamma* (*Niyasakamma*), *Paṭīsāraṇīyaṃkamma* or *Ukkhepaṇīyaṃkamma*, taken up against a monk. The offence of *Dukkaṭaṇā* is committed if the *Paṭiṇāṭakaraṇa* is not taken up before the above ‘action’ (*Kamma*). This ‘procedure’ is applicable to only one kind of *Adhikaraṇa* (case), viz., the Āpattādhikaraṇa (i.e. the case connected with the ecclesiastical ‘offences’).

[5]. *Yebhuyyasīkā*: Proceedings on the Basis of Community

A kind of procedure of settling a ‘dispute’ by majority votes (*Salāka*) of the righteous monk (*Dhammavaḍḍi Bhikkhu*) is elaborated. The procedure is taken up only when the *Ubbāhikā* method (i.e. appoints a ‘component’ Bhikkhu or Bhikkhus by the *Saṅgha* instead of taking up the matter by the whole *Saṅgha*) fails. The voting may be taken up by any of these three methods, viz., secret ballot (*Gūlhaka*), by open ballot (*Vivaṭaka*) or by whispering in the ear (*Kaṇṇajapako*). A monk appointed by the *Saṅgha* to collect the ballots, is called *Salākāgahāpaka*. This procedure is applicable to only one types of ‘dispute’ (*Adhikaraṇa*), the Vivādādhikaraṇa.

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398 Vin.II.83-84; (See Cv.IV.8.1-2); *Ibid*, p.130.
399 Vin.II.85; (See Cv.IV.10.1-2); *Ibid*, p.190.
[6]. Tassapāpiyasikā: Proceedings for the Obstinate

A kind of procedure for settling the ‘case’ related to a Bhikkhu who prevaricates when charge with Pārājika or similar offences. He is indeed a ‘problem Bhikkhu’ and so the Saṅgha is to declared him formally a ‘sinful monk’. If a Bhikkhu is quarrelsome, or picks up quarrels, is a fool, prone to commit offences, does not get rid of them, mixed with the householders in unbecoming manner, commits the grievous or non-grievous offences, does not posses the right views, deprecates the Buddha, Dhamma and Saṅgha, then also a formal act of Tassapāpiyasikā may be taken up against such a person, if the Saṅgha so desires. For this purpose the full Saṅgha assembles and the matter is decided by a Ñatticatutthakamma. The action is considered as legal if; (1) the condemned person is ‘impure’ (Asuci); (2) he is unconsciencious (Alajj); (3) he is being ‘censured’ by the Saṅgha actually for an ‘offence’ (Sāmuvādo); (4) the ‘action’ is dealt with according to rules; and (5) the full Saṅgha is present (Samaggena). In other words these are the ‘legal grounds’ for such an action.  

After the formal declaration is over, the condemned monk is to observe the following 18 retractions: These are: (1) He cannot confer Upasampadā; (2) cannot give Nissaya (Instruction); (3) cannot accept the nomination or ‘exhort’ a Bhikkhunī; (4) cannot take the service from a Sāmaṇera (Novice); (5) cannot ‘exhort’ a Bhikkhunī even if he is nominate to do so; (6) should not commit the same offence for which he is condemned; (7) should not commit the similar offences; (8) should not commit the graver offences; (9) should not denounce the ‘action’ taken against him; (10) should not denounce those who took part in the Taijaniyakamma; (11) cannot raise the objection against the presence of a monk alleged to have committed some offence in the Uposatha ceremony (as usually done by the monks); (12) or in the Pavāraṇā ceremony; (13) should not himself be a subject of reproach; (14) cannot act as leader in the Saṅghakamma; (15) cannot seek permission to interrogate a monk alleged to have committed some offence; (16) cannot interrogate a monk who has committed some offence; (17) cannot remind a monk of the offence he has committed; and (18) should not make the monks quarrel among themselves. The Saṅgha can ‘take him back’ (Osāraṇā) only if he behave righteously and also if he asks for pardon. Otherwise he should not be ‘taken back’.  

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400 Vin.II.85-86; (See Cv.11.2-12.3)  
[7]. Ṭīṇavatthāraka: Proceedings by Covering Over as with Grass

A kind of procedure to settle down a quarrel between two parties monks with a view avoids any further bitterness. The ‘charges’ and ‘counter-charges’ are then ‘covered up’ by arriving at a mutual settlement. The matter, therefore, does not require any ‘verdict’ from the Saṅgha, except a formal approval of this effects. It is something like the filth which if disturbed becomes a greater nuisance; and so the safest course is to ‘cover’ it up by spreading grass over it. So also, some matter should be shelved in the largest interest of the Saṅgha. This sort of ‘settlement’ is followed only in the case of minor offences; but never in any grievous offence or in an offence concerning a layman. For this purpose both the parties assemble at a place then a ‘component’ and ‘able’ monk proclaims thus before the Saṅgha: Let us pacify this ‘legal’ question by way of ‘covering up’ with grass’, provided it does not concern any grievous offence or with a laity. After this each party through an ‘able’ and ‘competent’ monk of their consent, declare that this matter may be settled by way of Ṭīṇavatthāraka. Then a Ṛatticatutthakamma is held by each party in order to confess their ‘wrong’ which they had committed. Thus, the matter is settled and the monks are free from the offences. This procedure is applicable to the Āpattādhikaraṇa.\(^{402}\)

This clears all offenses except for- (1) any grave fault (Pārājika or Saṅghādisesa offense, says the Commentary) committed by anyone in the group; (2) any offenses dealing with the laity; (3) any offenses of any member of either side who does not approve of the procedure; and (4) any offenses of any Bhikkhu who does not attend the meeting.\(^ {403}\)

Point (3) here is interesting. If any member or either side were to dissent, that would invalidate the whole procedure. This point is thus probably added as reminder to any Bhikkhu who might be vindictive enough to want to deal with his enemies’ case-by-case that is his offences will have to be dealt with case-by-case as well. This might be enough to discourage him from dissenting. The Commentary explains the name of this procedure by comparing the offenses cleared in this way to excrement that has been so thoroughly covered with grass that it can be longer send an offensive smell.\(^ {404}\)

4.4.2. The Pattern and Punishment Process of Niggahakamma

It has been pointed out earlier than that Buddha handed over to his followers only a constitutional head to guide them after him. The monks themselves were to decide their

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\(^{403}\) Vin.II.88; (See Cv.IV.13.4)
\(^{404}\) BMC.Vol.I.p.552.
problems and difficulties with the only consideration that they were not against the laws of
the religion. Buddha recommended a gradual training for the monks and he believed that,
unlike that of animals, there could be lapses and slips in their training. Hence, there was a
necessity of corrections; this gave birth to formation of various modes of Niggaha correction
or punishment.405

[1]. Tajjanīyākamma: Act of Censure

The decision was to be taken by the whole Saṅgha a (Samaggena) in a proper
manner and the concern monks was to be give opportunity to remember his offence and
acknowledge it or, otherwise, to refute it and declare his innocence.

The method of settling is thus: the Bhikkhu should approach the Saṅgha, arranging
this Uttarāsaṅga over one shoulder, prostrate at the feet of the Bhikkhus senior to him, kneel
with his hands in Añjali, and request settlement of that Kamma three time. Then a capable
Bhikkhu should make the announcement to the Saṅgha explaining that matter, and saying
that the Saṅgha is settling that Kamma, by Āatticatutthakamma. Thus in this way the Saṅgha
has settled that Kamma, and that Bhikkhu is free of it. The characteristics for settlement of
the Kamma are strict practice of the duties.406

All these persons deserve Tajjanīyakamma (censure) and the Saṅgha may take action
against them if the monk is presented before the Saṅgha (Sammukhā kataṁ), he is thereafter
interrogated about the offence (Paṭipucchā), and he should then admit about the ‘wrong’ he
has committed (Paṭiṇṇāya katan). He is reminded of the rule of the Pātimokkha or any other
rules that he infringes (Āpatti katan) and then he is charged with the offence alleged to have
been committed by him. A ‘competent’ Bhikkhu moves the Āatti (motion) before the Saṅgha
(Samaggena) proclaiming that so-and-so is guilty of such-and such and such offence.
Thereafter he proclaims the ‘resolution’ for three times requesting the Saṅgha to pronounce
the Tajjanīyakamma against the monk, if the Saṅgha so desires. (It is kind of Āatticatutthakamma). The ‘resolution’ is supposed to have been carried out if the Saṅgha
keep silent. Any deviation from the above procedure makes the action invalid.
(Adhammakamma).

In case the monk observes the 18 restrictions407 properly, without any demur against
the ‘action’ taken or against any member of the Saṅgha who took part in the

407 Vin.II.5; (See Cv.I.5.1): “Tajjanīyakammakatena bhikkhave bhikkhunā sammāvatitabbaṁ, tatrāyaṁ sammāvattanā: na
upasampādetabbaṁ, ... na bhikkhūhi sampayojetabban ti.”.
Tajjaniyakamma, then he should approach the Saṅgha submissively and request the Saṅgha for the ‘revocation’ of the Tajjaniyakamma, imposed upon him. He is required to make such a request for three times. A ‘competent’ monk then takes up his case and place the ‘revocation’ of Tajjaniyakamma before the full Saṅgha. The Saṅgha, if it finds that the condemned monks has scrupulously observed the above restrictions, takes up his case of ‘revocation’ for consideration. For this purpose a Ātticatutthakamma is held by the Saṅgha and then the Tajjaniyakamma is revoked (Paṭipassambhanāti).

When the offenders assured the Saṅgha of their good conduct and fitness to be admitted as the authorized members of the institution, they were entitled to ask the Saṅgha for the release from the penalty and on the formal consent of the Saṅgha were readmitted unconditionally into the fold. In the rest of the Saṅghakamma also, the method of rehabilitation was just the same.

[2]. Nissayakamma: Act of Subordination Demotion

The method of doing it, the duties to be practised, the characteristics of doing it as Dhamma, the characteristics causing its performance and settlement, and the method of settling that Kamma, are the same as for Tajjaniyakamma, differing only in the Kammavācā used to explain the matter according to the circumstances. The punishment for Nissaya and Saṅghādisesa are not the same although in both cases the guilty Bhikkhu is denied the privileges of attending Saṅghakamma. The punishment in the former case does not entail loss of all privileges of a fully ordained Bhikkhu, but in the latter case while undergoing probation and Mānatta, the penalty of a guilty Bhikkhu is much more rigorous and he is almost reduced to Samaṇera. But in the former case the guilty monk has to perform all the duties applicable to a Antevāsika or Saddhivihārika.

The procedure for taking this ecclesiastical action is thus: the guilty monk is made present before the Saṅgha and then he is interrogated for this offence. He should then admit that he has committed something ‘wrong’. He is then reminded of the rule of Pātimokkha or any other rules that he has violated. After that he is charged with the offence alleged to have been committed by him. A competent monk moves a Ātti (motion) before the full Saṅgha that so and so is guilty of such and such offence/s and requests three times to the Saṅghā to

pronounce the Nissayakamma, if the Saṅgha thinks fit. (This is held as a Ṣatticatutthakamma). Any deviation from this procedure makes the action invalid.

A condemned monk is required to observe as many as 18 restrictions seen in the Tajjanīyakamma as mentioned above. In case the condemned monk observes the 18 restrictions scrupulously without any demur against any member of the Saṅgha who took part in this Nissayakamma, he may approach the Saṅgha for its revocation. He then requests the Saṅgha for the three times to this effect. A competent monk then moves the Ṣatti (motion) thus: “If the Saṅgha finds the condemned monk to have observed the restrictions scrupulously, the Saṅgha may take up his case of revocation”. This he utters for three times before the Saṅgha. Thus a Ṣatticatutthakamma is held by the Saṅgha for his purpose; and when all the members of the Saṅgha agree to revoke this Nissaya, then only the revocation is formally granted; and the monk becomes free from the offence.412

[3]. Pabbājanīyakamma: Act of Banishment

The procedures for banishing a Bhikkhu are identical with those of censure; and the restrictions he must observe, once banished are the same as those for a censured Bhikkhu, with one addition: He must not live in the same place he was living before banishment. In other words, he has to leave not only the monastery but also its neighbourhood, and must not associate with the lay people in the area. Banishment differs from the other disciplinary measures in this chapter in that it has an entire Saṅghādisesa rule No.13 devoted to it, treating the case of a Bhikkhu under banishment who criticizes those imposed the transaction on him For details, see the discussion under that rule. If the banished Bhikkhu adheres to his restrictions, the banishment may be rescinded on his request.413 A monk punished for the Pabbājanīyakamma is required to leave the monastery or the place where he has been living in and to behave properly at his new residence by observing the following 18 restrictions scrupulously seen in the Tajjanīyakamma as mentioned above.

The procedure of taking up the action of Pabbājanīyakamma is thus: the guilty monk is first made to be present and then he is interrogated for his offence, he should then admit that he has committed something wrong. He is then reminded of the rules of the Pātimokkha or the other rules that he has violated; and then he is charged with the particular offence alleged to have been committed by him. A competent monk moves the (motion) in presence

413 BMC.Vol.II.p.405.
of all the full Saṅgha stating that so-and-so is guilty of such and such offence and request the Saṅgha to pronounce the Pabbājanīyakamma against the monk if the Saṅgha may find it. He moves the Ṛatti (motion) for the three times. (It is a sort of Ṛatticatutthakamma). Any deviation from this procedure makes the action invalid.

For the purpose of the ‘revocation’ of this ‘action’ the condemned monk should approached the Saṅgha and having properly saluted the elderly monks, he should request the Saṅgha three time for the ‘revocation’ of this ‘action’. At this a ‘competent’ monk places his case of ‘revocation’ before the Saṅgha. If the Saṅgha finds that the condemned monks has scrupulously observed the 18 restrictions, his case of ‘revocation’ (Paṭipassambhānā) may be taken up. For this purpose the procedures of Ṛatticatutthakamma is adopted by the Saṅgha. The Pabbājanīyakamma is then ‘revoked’. 

[4]. Paṭisāraṇīyakamma: Act of Reconciliation

The procedure of taking up this action is thus: the guilty monks is made present (Sammukhā katām) before the Saṅgha and then he is interrogated for his offence (Paṭipuccha). He should then admit that he has committed something wrong (Paṭiṁśaya katām) He is then reminded of the rule or rules of the Pātimokkha or any other rule that he is infringing (Āpatti katām). He is then charged with the offence alleged to have been committed by him. A competent monk moves the Ṛatti (motion) before the full Saṅgha (Samaggena) that so-and-so is guilty of such-and-such offence, and the Saṅgha may pronounce the Paṭisāraṇīyakamma against the monks if the Saṅgha thinks fit. He requests this for three times. (It is sort of Ṛatticatutthakamma). Any deviation from this procedure makes that action invalid (Adhammakamma). The monk against whom this action is taken must observe the following 18 restrictions scrupulously seen in the Tajjaniyakamma as mentioned above. 

For the purpose of revocation of the Paṭisāraṇīyakamma (Act of Reconciliation), the guilty monk is required to approach the offended householder and to request him for pardon. In case the condemned monk needs an Anudūta (escort) for this help, the Saṅgha may formally select a monk by holding a Ṛattidutiya. This monk may go with him to beg pardon from the householder on behalf of the condemned monk, if it becomes so necessary. In the first instance the guilty monk should himself request for the pardon. In case the

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414 C.S. Upasak, Op.Cit., p.139-140
415 Ibid., p.131-132
householder does not respond to his request, he should beseech the householder for pardon in the name of Saṅgha (Saṅghassa vacanena). Even if this also goes in vain, the escort-monk should admonish the guilty monk in the presence of the householder or at a place from where the householder can hear the admonition. (Ordinarily this is not allowed). When the guilty monk is pardoned by the householder or admonished in the presence of the householder, his case of revocation is taken up by the Saṅgha. For this purpose the condemned monk approaches the Saṅgha and after proper salutation to the elder monks he inform the Saṅgha that he has been pardoned by the householder and also he has scrupulously observed the restriction imposed upon him. The Saṅgha then takes up the case of his revocation and that also if the Saṅgha deems him fit of revocation. For this purpose the Saṅgha holds a Āattriyacatutthakamma and then the ‘action’ is ‘revoked’.

Thus, the proper procedure for censuring him is the same as before; but in addition the guilty Bhikkhu is compelled to go to the offended householder (Gahapati) and beg his pardon. In most cases the Saṅgha appoints a suitably lay-devotee to accompany him and asks pardon of the offended householder on behalf of the guilty Bhikkhu. The transgressor must not leave the offended householder’s home until the layman is pleased with the monk. As soon as the guilty person has satisfied the offended house-holder, his punishment will be withdrawn.416

[5]. Ukkhepanīyakamma: Act of Suspension

The procedure adopted for carrying out the Ukkhepanīyakamma (Act of Suspension) is similar to the procedure employed in the case of the other Act before mentioned: the Order being duly informed by a competent monk of the motion, and the motion and resolution being put and agreed upon. A usual, the accused is summoned, reproved, and made to acknowledge his guilt before the Order. This Act imposes a series of disabilities in addition to those a person has to suffer when the Tajjanīyakamma (Act of Censure) is passed against him.417 The procedure for taking up the Ukkhepanīyakamma is laid down thus: the guilty monk is brought before the Saṅgha, and then he is interrogated about his offence, he should then admit that he has committed something wrong. He is then reminded of the rule or rules in the Paṭimokkha or others that he is infringing. He is thereafter charged with offence alleged to have been committed by him. A competent and able monk moves Āatti (motion) before a full Saṅgha to pronounce upon the alleged monk the Ukkhepanīyakamma. He

request thus, for three times. (It is a sort of Ńatticatutthakamma). Any diviation from the procedure of this action, the Saṅgha should despatched messages about it to all the Āvāsa (residences of the monks.) A condemned monk is required to observe as many as 43 restrictions. For instance, he cannot live with other monks under the same roof; he is debarred from all the Saṅghakamma; he is allowed to live at a place other than allowed for him, he cannot preach to any person etc. The ‘revocation’ or Paṭipassambhanā ‘revoke’ this punishment, the Saṅgha holds a Ńatticatutthakamma and take unanimous decision of this effect. The final rehabilitation and the revocation of this Act takes place before the Order in the same way as rehabilitation in the previous Acts. As soon as he behaves properly and admits the offences that he has committed, then the penalty will be withdrawn. This punishment was inflicted on Channa in Gositārāma.

A variant form of the Act of Suspension is seen in the case of another monk who did not give up his wrong view and against whom the Act of Suspension for not giving up a wrong view was invoked. The procedure followed was the same as in the case of other Acts. The Order moved the motion, passed the resolution, affirming it three times, and the accused then left the Order. The Order then revoked the Act because the accused was no longer in the community of monks.

And if a monk disrobes after being punished; and if he comes back and admits his offence or amends for his offence or give up the wrong view (as the case may be), he should be re-ordained. A Bhikkhu who is ‘pure’ and ‘free’ from offences should not be charged with the Ukkhepaniyakamma. If one charges him, he commits the offence of Dukkhaṭa.

**[6]. Pakāsaniyakamma: Act of Proclamation of Excommunication**

This Act has to be carried out in the Order with the motion and resolution being put, and agreed upon following the usual procedure. The immediate objective was to issue a general proclamation to the effect that the Order of monks should renounce all responsibility for the words and actions of the sentenced monk (i.e. Devadatta). This is a very rare instance when the Order exeultes an Act of punishment on a person without him was being brought to the presence of the Order. Devadatta’s subsequent actions which amounted to attempted

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murder bear evidence as to the foresight present in the Order of monks to invoke this Act against him and dissociate all relationships with him.423

[7]. Brahmandaṇḍa: the Harshest Punishment

Following the story it might be understood that Brahmandaṇḍa was laid down to perform specifically against Ven.Channa: but the Parivāra arranges it under Apalokanakamma (An announcement), which is as if to say that it is allowable to do it to other Bhikkhu as well. This Kamma which is opposite to the methods which the Saṅgha uses as explained in the twelfth Saṅghādisesa.424 There, the Saṅgha holds admonishing and speaking as important, because it is the way for progress of the company (of Bhikkhus), and goes so far as to recites Samaṇubhāsana to the Bhikkhu who has not taken noticed. It is compelling to obey by mandate of the Saṅgha. Here, (however), he is cut off at once with no admonition. Accordingly, it should be understood that first they should try admonishment until at last compelling (ordering) him to comply. When this does not succeed, they should then perform Brahmandaṇḍa or Ukkhepaniyakamma to cut him off from the group. Cases for Ukkhepaniyakamma are clear; as for Brahmandaṇḍa, it is still hazy.425

Thus, when the Saṅgha gives this punishment, a monk is deputed to inform the condemned monk about this punishment given by the procedure of Apalokanakamma (An announcement). If the condemned monk behave properly and request the Saṅgha for pardon, the Saṅgha may revoke the punishment.426

4.4.3. The Pattern and Punishment Process of Vuṭṭhānavidhi

The procedures for settling an offence are called Vuṭṭhānavidhi-literally, the course of getting up as depicted in the Chapter II: Parivāsikkhandhaka427 and Chapter III: Samuccayakkhandha428 of Cullavagga. The term ‘getting up’ plays on the literal meaning of the Pāli word for offense, Āpatti, or ‘falling down’. The purpose of the Vuṭṭhānavidhi is to enable a Bhikkhu who has stumbled in his practice to get up and continue on his way. This is an important point to bear in mind and one we will encounter again in the following chapter: that these disciplinary measures are aimed not at retribution but at rehabilitation. In other words, they are not meant to make the offender suffer as a way of paying off his crimes, but

424 Vin.II.158-166. BhP.Sng.12.: “Bhikkhu paṇeva dubbacajāti ko hoti... no ce paṭinissajjeya, saṅghādiseso.”
427 Vin.II.31-37; (See Cv.II.1.1-9.1.)
428 Vin.II.38-71; (See Cv.III.1.1-36.3.4.)
to teach him the *Hiri* and *Otappa*, the sense of conscience and compunction—that he will need to keep from stumbling again.\(^{429}\) The *Vutṭhānavidhī* for a *Saṅghādisesa* offense is as follows:-

[1]. **Parivāsa: Probation**

When a monk happens to commit a *Saṅghādisesa* offence, he is required to approached another monk immediately with a view to apprising him of the offence he has committed in order to ‘expiate’ himself. In that case he has to observe six nights of *Mānatta* only. But in case a monk conceals the offence of *Saṅghādisesa* for some time, he is then required to undergo a *Parivāsa* for the period he has concealed the *Saṅghādisesa* in addition to the six nights of *Mānatta*. For the ‘expiation’, he should approach the *Saṅgha* and request three times to ‘pronounce’ upon him the *Parivāsa*. The *Saṅgha* then holds a *Ñatticatutthakamma* to his effect. The condemned monk then observed all the restriction scrupulously for the period he has concealed the *Saṅghādisesa* offence beside the six nights of *Mānatta*. In case a *Bhikkhuṇī* happens to commit the *Saṅghādisesa* the *Parivāsa* she has to undergo only a *Mānatta* of a fortnight.

The monk who has been condemned of the *Parivāsa* by the *Saṅgha*, has to observed as many as ninety four restrictions of which three being most important, viz. *Sahavāso* (i.e. not ‘dwelling with other monks under the same roof), *Anārocanā* (i.e. not failing to announce his *Parivāsa* to the incoming monks to his own *Vihāra* or to other monks when visiting another and *Vihāra*), and *Vippavāso* (i.e. not going to a *Vihāra* where no monk is living. He should inform about his *Parivāsa* when the *Uposatha* or *Pavāraṇā* is held by the *Saṅgha*. There are certain restrictions about his movement from his own *Vihāra* to another *Vihāra*. He is not even allowed to accept the honour or respect ordinarily due to a monk. If he accept such respect or honour, he is liable to commit the offence of *Dukkaṭa*. Similarly the condemned monk is not allowed to confer *Upasampadā*, or *Nissaya*; or to take the service of a *Sāmaṇera*; or to accept the nomination for the ‘exhortation’ (*Ovāda*) to the *Bhikkhuṇis*; or to ‘exhort’ the *Bhikkhuṇis* even if he is allowed to do so by the *Saṅgha*; he should not commit the same offence on account of which he is condemned of the *Parivāsa*; he should not commit the similar or graver offence (s); he should not deprecate the punishment he is undergoing; nor should be deprecate to those who took part in the proceeding; he is not eligible to prohibit anyone present in the *Uposatha* or *Pavāraṇā* ceremony; he should not indulge in any reproached act; nor should he ‘interrogate’ any

\(^{429}\) BMCVol.II.p.358.
alleged monk; he should not create quarrel among the monks. He should behave as a most ‘lowly monk’ in the Saṅgha and so, he should occupy the lowest seat and reside in the worst of the Vihāra. He should not go to reside in the forest or observe such a begging as if a Dhutaṅga in order to escape himself from knowing others of his Parivāsa. He should not ask others to bring his meals in order to hide his punishment. He is required to get up from his seat when any monk comes to him and sit himself at lowest seat. He should not walk on the same ‘walking-path’ (Caṅkama) which is meant for the use of other monks.

When the Saṅgha holds any Saṅghakamma (ecclesiastical action) like Parivāsa, Mūḷāyapaṭikassananā or Mānatta, he is not eligible to be included as the ‘fourth monk’ (four is the minimum number of the Saṅgha for this purpose) or as the ‘twentieth monk’ for Abbhāna (where 20 is the minimum number to constitute the Saṅgha).

In case such a monk resides with another monk under the ‘same roof’ (Sahavāso); or lives at a place where there is no monk (Vippavāso); or fails to inform of his Parivāsa to the incoming monks in his Vihāra or to other monks when visiting himself to another Vihāra (Anārocanā), then his observance of Pārīvāsa is regarded as null and void for the night he has spent thus. This period is, therefore, not counted with the period of his Parivāsa.

An occasion may arise when the Vihāra may have too many monks and so it may be difficult to observe the Parivāsa with all its restrictions scrupulously. The Buddha has, therefore, allowed the monks to ‘drop off’ the Parivāsa for the time being so long as such circumstances remain. But he must ‘take it up’ again as soon as he finds the appropriate time to observe it. For this purpose the monk is to approach another monk and inform him or his ‘dropping off’ and ‘taking up’ of the Parivāsa. In case a monk commits another offence of Saṅghādisesa during the Parivāsa period, he is required to take up the Parivāsa anew and then the period of Parivāsa already spent is not taken into account. The fresh Parivāsa is taken up combining with the Saṅghādisesa offence(s) committed during the period. This is known as Mūḷāyapaṭikassananā. In case a Bhikkhu is punished to undergo Parivāsa on account of more than one Saṅghādisesa offence that he has committed and also concealed, the period of his Parivāsa would be in accordance with that which is concealed for the longest period; but the punishment of all offences would go concurrently. This is known as Aggasamodhānaparivāsa. In case a monk does not remember the number of the Saṅghādisesa offence he has committed or does not remember the number of the days he has concealed them he is required to recollect the approximate number of the offences and days; and he should then observe the Parivāsa accordingly. This is known as Suddhantaparivāsa.
It may happen that a monk while observing the Parivāsa disrobe or goes mad or falls ill seriously or something happens, which makes the Parivāsa disrupted, he is then allowed to take it up again when he finds fit. He then observes the Parivāsa for the rest of the period only. When the Parivāsa period is fully observed and the Mānatta period of six nights is also over, the monk than approaches the Saṅgha (consisting of at least 20 ‘pure’ monks) and requests for three times to ‘call him back’ (Abbhāna). The Saṅgha holds a Āṭṭicatutthakamma for the purpose and if it is agreed upon, he is declared as ‘clean’ and free from the Saṅghādisesa offense(s).  

[2]. Mānatta: Penance

The monk who commits the Saṅghādisesa offence is required to approach the Saṅgha and to request for the pronouncement of Mānatta on him for the period of six nights. The Saṅgha then holds a Āṭṭicatutthakamma for this purpose. This Mānatta is called Apariccanna-mānatta because the Saṅghādisesa offence is not concealed for any period. In case a monk conceals his Saṅghādisesa offence, he is required to undergo a penance known as Parivāsa, for the days it is concealed. But the ‘expiation’ of the offence is not complete unless Mānatta of six nights is observed after Parivāsa. Since the Mānatta is attached with the Parivāsa (for concealing the Saṅghādisesa offences), it is known as Paṭicchannamānatta. In case a Bhikkhu commits a Saṅghādisesa offences, she is required to undergo a penance of Mānatta for the period of a fortnight, no matter whether she has conceals the Saṅghādisesa for some time or not. She has to approached both the Saṅghas, the Bhikkhusaṅgha and the Bhikkhusaṅgha and beg for the pronouncement of the Mānatta. The Saṅgha then holds a Āṭṭicatutthakamma for the purpose.

The restriction imposed upon the monk during the Mānatta period of six nights are almost the same in the case of Parivāsa, except that condemned monks has to inform about this Mānatta daily to the Saṅgha; and if sick, through a messenger. He should observe the Mānatta living in a Saṅgha which is not less than that of four monks. Some of the restrictions are the following:- He should not dwell with another monk under the same roof (Sahavāso); should not live at a place there is no monk (Vippavāso); he is regarded as an ‘unclean’ monk and so he should not accept the respect or honour as due to a monk; he should not confer Upasampadā or Nissaya or accept the services of a Sāmaṇera; should not ‘exhort’ the Bhikkhuṇis even if he is so allowed by the Saṅgha; should not commit similar or

graver offences for which the Mānatta is pronounced against him; should not denounce the ‘action’ taken against him nor should he denounce those who took part in the ‘action’; should not debar any person from the Uposatha or Pavārṇā ceremony; should not so act as to be a topic of criticism; should not ‘interrogate’ a monk alleged to have committed some offences; should not make other quarrel. He should take the lowest seat and the worst apartment in the Vihāra. He should not live in the forest as a Dhutaṅgadhara or dispatch other for his meals with a view to hide his Mānatta. There are many other restrictions regarding his movement from this own Vihāra to another. For instance, he should not go to a Vihāra where there are no monks. Similarly, there are some other minor restrictions given in the text. There are four such occasions when the Mānatta is interrupted and the nights so spent are not taken into account (Ratticcheda). These are: (i) When he dwells with another monk under the same roof (Sahavāsa); (ii) when he lives at a place where there is no monk (Vippavāsa); (iii) when he fails to inform daily to the Saṅgha about his Mānatta; and (iv) when he observed the Mānatta amidst a Saṅgha of less than four monks (Une gaṇe caraṇaṃ).

In case a monk happens to commit another Saṅghādisesa offence during his Mānatta and informs about it immediately to another monk, his days already spent as Mānatta became null and void and he has to take up the Mānatta anew; but if he conceals the Saṅghādisesa offence, the Mānatta is transformed into a Parivāsa. The Mānatta then only comes after the Parivāsa period is spent. This is called Mānattamūlāyapaṭikassanañ. After the observance of Mānatta of six nights, the monks becomes eligible to be declared as ‘clean’ and to be ‘called back’ to the Saṅgha. This is known as Abbhāṇa (Rehabilitation).

[3]. Abbhāṇa: Rehabilitation

The monk, who has completed the Mānatta, approaches the Saṅgha with the request to Abbhāṇa to ‘call him back’. The Saṅgha then holds a Āṭṭicatutthakamma for the purpose. In the Abbānakamma the minimum number of monks in the Saṅgha should be not less than twenty ‘clean’ monks. If it is performed with less than twenty ‘clean’ monks, the Saṅgha commits the offence of Dukkaṭa (an offence of wrongdoing). Those monks who have been condemned of Parivāsa or Mānatta or not yet have been ‘called back’ are still

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431 Ibid., pp.183-184.
‘unclean’ monks and hence they cannot be included in this number; but they may be present in the Assembly if the number is already twenty.\footnote{Ibid., p.21.}

[4]. \textit{Mūlāyapaṭikassanā: Throwing back to the Beginning of the Penance}

The monk who has to observe the \textit{Mūlāyapaṭikassanā}, approaches the \textit{Saṅgha} and requests for pronouncing the \textit{Mūlāyapaṭikassanā}. He repeats this request for three times and then the \textit{Saṅgha} holds a \textit{Ṇatticatutthakamma} for the purpose. The monk condemned of \textit{Mūlāyapaṭikassanā} has naturally to observe the same restrictions as in case of \textit{Parivāsa}, such as, \textit{Sahavāso} (Not dwelling with another monk under the same roof), \textit{Vippavāsa} (not going to a residence where there is no monk), \textit{Anārocanā} (informing about his \textit{Mūlāyapaṭikassanā} to the monks coming in his \textit{Vihāra}) and the life.\footnote{Ibid., p.186.}

\textbf{4.4.4. The Pattern and Process of Miscellany Buddhist Punishments}

[1]. \textit{Pattanikkujanakamma: Overturning the Bowl}

The procedure is this: The Community meets and agrees to the transaction statement, which-in \textit{Ṇattidutiyaκamma} (a motion and proclamation) explains the lay person’s wrong doing and announces that the Community is overturning its bowl to him/her, that there is to be no communion between him/her and the Community. (The word for communion, here as elsewhere, is \textit{Sambhoga}, which literally means “Consuming together” or “Sharing wealth.” An interesting anthropological study could be written on the implication of this word’s being used to describe a \textit{Bhikkhu}’s accepting alms.) The Commentary adds that the Community should then inform other Communities that they, too, are not to accept alms or offering from the household of the lay person in question. And, so the origin story shows, the lay person should be informed of the transaction.

If the lay person mends his/her ways- in other words, stops doing the action for which the bowl was overturned in the first place and does not start doing any of other actions that are grounds for overturning the bowl-the Community may then turn its bowl upright. This is known as \textit{Patta-ukkujjana} or \textit{Osāsanā}, as mentioned in the \textit{Cullavagga} \footnote{Vin.II.126-127; (See Cv.V.20.5-7): “Atthaḥ bhikkhave angehi saṃśamāgataassa upāsakassa patto ukkujjītabbo: na bhikkhunām alābhāya parisakkati, ..., na samghassa avanṇam bhāsati.”} “the bowl may be set upright for a lay follower endowed with eight qualities: (1) He/she doesn’t strive for the \textit{Bhikkhu}’s material loss; (2) doesn’t strive for the \textit{Bhikkhu}’s detriment; (3) doesn’t...
strive for the Bhikkhu’s non-residence; (4) doesn’t insult or revile Bhikkhus; (5) doesn’t cause Bhikkhu to split from Bhikkhu; (6) doesn’t speak in dispraise of the Buddha; (7) doesn’t speak in dispraise of the Dhamma; and (8) doesn’t speak in dispraise of the Saṅgha.”

The procedure here is the person in question dresses respectfully, goes to the community, bows down, and with hands palm-to-palm over the heart makes a formal request to have the bowl turned upright. The commentary adds that the person should state the request three times and then leave the Hatthapāsa\textsuperscript{435} (the distance within a hand’s reach) of the community’s meeting while the transaction statement uprighting blow is recited, although there is nothing in the Canon to indicate that this last step is necessary. After the recitation, the Bhikkhus may again accept offerings at the person’s house. None of the text mentions this point, but the community would seem honor bound to notify any of the other community who were informed of the bowl’s original overturning that the bowl has now been set upright.\textsuperscript{436}

\section*{[2]. Nāsanākamma: Revocation of the privilege of Sāmaṉera (Novice)}

A Bhikkhu who has committed any of the four Pārājika offences can no longer have Samvāsa with the Saṅgha. He is one who is condemned for his entire lifetime. There is no way to remedy it. He must get out of the group. This is the only way for him. If that person does not give up his status on his own but declares himself a Bhikkhu, once the Saṅgha knows of this, it should expel him from the group. Persons whose higher ordination will not stand have been specified, and dealing with Pabbajja and Upasampadā. Should this type of person come for Upasampadā and should the Saṅgha unknowingly give Upasampadā to him, it will be Vatthuvipatti (defect of the material, that is, the candidate). That Upasampadā is not valid and he is not a Bhikkhu according to the Buddha’s rules. Whenever it becomes known, they should expel him. Allowance is given to expel a Sāmaṉera endowed with ten factors. They are: he is one who takes life; one who steals; does not practice the Brahmacarīya-he indulges in sexual intercourse; lies; takes intoxicants; he defames the Buddha, defames the Dhamma; defames the Saṅgha; has wrong views; and harms Bhikkhunīs; that is rapes them. The refraining from the first five factors are training rules for Sāmaṉeras. If any of these are violated, then the Aṭṭhakathā Ācariyas state that the Going-for-Refuge is ended. We say that Sila is broken. All the rights of a Sāmaṉera are lost, only the status remains. I prefer to translate it (as meaning) that he is established in a condition for which Nāsanā should be done to him. If he is one who is full of fault and without restraint, it

\textsuperscript{435} A distance of 2.5 cubits, or 1.25 meters: Quoted in BMC.Vol.II.p.575.

\textsuperscript{436} BMC.Vol.II.p.412.
is stated that he should be driven away. If he transgresses in haste and then realizes his fault, desiring to be established in restraint again, it is stated that Nāsanā need not be done. Sarāṇa and Sila should be given again. That some persons should be driven away but Nāsanā should not be done to others is proper, because only a Sāmaṇera endowed with those ten factors is one who has set up the conditions for expulsion to be proper. Nāsanā need not be done in all cases, because it is just an allowance of the Buddha, not his absolute command, as for doing Nāsanā to a person with invalid ordination. Also, the working of the first five factors indicates that it refers to doing them frequently. A Sāmaṇera acting thus hastily (not habitually), and not brutally, does not fit the criteria. As to the statement that the Going-for-Refuge is finished and the rights as a Sāmaṇera lost, this is on the strong side. If it is said only that Sila is broken, as we do, with the explanation that he is a Sāmaṇera of bad Sila, and he is then made to undertake the precepts again, it is sufficient to give the feeling that he has settled the matter, like the confessing of Āpatti by Bhikkhus. This will be enough. If that Sāmaṇera of bad Sila does not undertake the precepts again, then he is one to whom Nāsanā should be done, as a Bhikkhu who does not resolve his Āpatti is one whom the Saṅgha should remove from Saṁvāsa. Nāsanā may be done to that Sāmaṇera to prevent Sāmaṇeras from neglecting their duties.437

[3]. Daṇḍakamma: Punishment imposed on Sāmaṇera (Novice)

When a Daṇḍakamma is imposed upon a Sāmaṇera, he is then prohibited to stay at the place where he has been residing. But before taking this action of Āvaraṇa438 on account of the Daṇḍakamma, the permission of his Upajjhāya (preceptor) or Ācārāya (instructor) must be taken; otherwise the offence of Dukkaṭa (an offence of wrong doing) is committed.439 Similarly he should not be debarred from the Saṅghabhatta (community meal); otherwise the offence of Dukkaṭa (an offence of wrong doing) is committed.440 A Daṇḍakamma may be imposed upon a Bhikkunī also if she is found behaving improperly. It the first instance the condemned Bhikkunī should be disallowed to enter into the Vihāra (a dwelling-place). But if she does not even mind this prohibition, she should not be granted ‘exhortation’ (Ovādam ṭhapatum). And when a nun is disallowed of ‘exhortation’, she should not be allowed to be present in the Upsosatha (Observance) Ceremony with the other

438 A kind of Daṇḍakamma, (punishment) which pronounced against a nun or a Samaṇera for unmannerly behaviour towards the monks.: Qouted in C.S. Upasaka, Op.Cit., p.32.
439 Ibid., p.111.
440 Ibid., p.33.
Bhikkhuis till the matter is settled. In case the monks do not behave with the Bhikkhu is proper manner, a Daṇḍakamma may be imposed upon them and then the Bhikkhu need not pay them respects (Avandiya).

[4]. Pañama: Dismissal Expulsion

When a Saddhivihārika (a disciple) or Antevāsī (pupil) has to be ‘dismissed’, the Upajjhāya (preceptor) or Ācariya (instructor) should say thus: “I dismiss you” or “Do not come back here” or “Take away your bowl and robes” or “I need not be waited upon by you.” If the Saddhivihārika (a disciple) or Antevāsī (pupil) repents for his improper behaviour and begs pardon, he should be granted exculpation and should be taken back (Kammāpanā). The ‘dismissal’ should never be imposed upon a Saddhivihārika (a disciple) or Antevāsī (pupil) whose behaviour is upright; otherwise the offence of Dukkāta (an offence of wrongdoing) is committed.

From the foregoing discussion, it can be concluded that the Vinaya Piṭaka also enjoyed state recognition as the conventional laws of Buddhist monk community and were to that extent part of the civil law, infringement of which was punishable by severing authority. For instance, in a Pabbājanīyakamma, when the Saṅgha passed a sentence of banishment against a number of Bhikkhu residing in a locality, the sentence was regarded to be more effective one, it had the backing of sanction and authority of the State. Whenever there arose a possibility of Saṅgha failing to enforce its decrees, the executive power could be invoked. The sovereign in such a case was supposed to act on the advice of a Vinayadhara for that was a recognized rule and practice. It is pertinent to note here that the Buddhist Vinaya is also the first legal system in the world to follow the rule of law both in theory and practice. As such, it is the pioneer in this field.

The Saṅgha (Buddhist Order) was established by the Buddha on the bed-rock of jurisprudence and democratic ideas. The importance of an individual was accorded and recognized in the Buddhist Order. The right to assent and dissent was granted. The most important organ and tool of democracy is the “Voting Right”, which was introduced in the Buddhist Saṅgha. It was technically known as the “Ubbāhika” in the Buddhist tradition. All the facts vouch for the jurisprudence in Buddhism from the beginning itself.