

CRIME AND THE CONTROL OF CRIME:

An Ethical Analysis from a Theravāda Buddhist Point of View

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Presented to

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Doctor of Philosophy

By

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CRIME AND THE CONTROL OF CRIME:

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I hereby declare that this dissertation has not been submitted
as an exercise for a degree at any other institution,
and that it is entirely my own work.

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ABSTRACT

CRIME AND THE CONTROL OF CRIME:

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By

Sarananda Thero Elamaldeniye

This dissertation represents a systematic study of Theravāda Buddhist texts and their discussions of crime and criminal behavior. Theravāda Buddhism does not exercise any legal authority, nor does it claim to enforce the law within the social realm. However, Theravāda Buddhism does include a monastic code of conduct meant to regulate the behavior of the Sangha. Upholding a monastic code of conduct is not only a good ethical example, but also promotes universal harmony among fellow citizens. Inasmuch as proposed in the *Nikāya* and other Buddhist discourses, Theravāda Buddhism is meant to guide human beings towards a happy and a peaceful life and includes an inherent analysis of criminal behavior and a system of ethics. The purpose of this study is to bring to light this analysis and its relation to the concept of human crime.

Applying as a theoretical basis the Buddhist notion of dependent origination (*Paṭiccasamuppāda*), known as the law of cause and effect, this dissertation will investigate the psychological roots responsible for criminal behavior, such as greed (*rāga*), hatred (*dōsa*), and delusion (*mōha*), as well as the psycho-ethical prescriptions as to how to reduce these “three poisons” in the human mind. The intent of this study is to bring to focus the ways through which Theravāda Buddhism presents the theory and practical implications of controlling crime in society. The present study will also examine the role of punishment with respect to the reduction of crime as discussed in Pāli

Buddhist discourses, viz., *Cakkavattisihanāda Sutta* and the *Aggañña Sutta* of the *Dīgha Nikāya*. Pāli sources emphasize a reformatory approach over a punitive one, and also propose the importance of addressing socio-economic issues that contribute to criminal behavior.

In total, this dissertation seeks to explore the connection between the religious laws of the Theravāda Buddhist tradition and human social laws. The project will also give a deep understanding of human nature and possibly offer more humane strategies in dealing with crime and addressing criminal behaviors, based on the relevant teachings of the *Vinaya* and *Sutta* in the Theravāda Buddhist tradition.

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CHAPTER 1

1.1 Introduction

Crime is a legal term, and it is generally defined with reference to law. Sociologists and psychologists were the prominent scientists who discussed crime academically, apart from those in the legal profession. However, it is also undeniable that religion and philosophy also have, at least in its ethics, a shared domain with jurisprudence in discussing crimes. From the earliest times, religions also have shown remarkable interest in analyzing crimes, with a view to creating a peaceful, ethical society. The subject matter of the concept of crime comes, therefore, into ethical consideration of religions. For instance, deviation and criminal behaviors like robbery, burglary, assault, rape, murder, embezzlement, etc. are discussed as unacceptable and punitive at least in the God's court. Buddhism is also one such classical religion that focuses on a crime-free society.

The Pāli Buddhist term used for crime is “*aparādha*.”¹The Buddha, at certain occasions, had accused monks who engaged in wrongdoings, stating, “Here in this respect you have committed a crime (*etthatāyāparāddham*).”² However, before charging them for such actions, the Buddha analyzed the intention of the person at the time of involvement in that act. This was an admirable stand of the Buddha, and it took a very long time for the Western world to consider the importance of taking the motive into consideration when punishing an offender. Even during the middle Ages, the main concern of Anglo-Saxon law was only the nature and gravity of the damage done. In the

¹ Michel Viggo Fausboll, ed., *The Jātaka Together with Its Commentary*, vol.1, *Being Tales of the Anterior Births of Gotama Buddha*. (London: Pali Text Society, 1877), 264.

² T. W. Rhys Davids and J. Estlin Carpenter, eds., *The Dīgha Nikāya*, vol. 1 (London: Pali Text Society, 1890), 91,103, 180; Léon Feer, ed., *The Saṃyutta Nikāya*, vol. 1 (London; Pali Text Society, 1884), 103.

Buddhist code of discipline, terms like *ajānanta* (not knowing), *asādiyanta* (not tolerating), *ummattaka* (insane), *khittacitta* (under stress), and *vedanādiṭṭha* (pain-pressed) are used to introduce reasons to exempt an accused from punishment.

1.1. Error! Bookmark not defined.. **Buddhism and the Law.**

Buddhism, as a religion, did not have any capacity to establish legal procedure in relation to crime. Defining and identifying crime and penalizing criminals had being universally done by the State. However, the Buddha had the authority over his own Sangha and therefore, he was able to have a monastic law within the order of monks.

Rebecca Redwood French observes:

According to Buddhist tradition, the historic *Sākyamuni* Buddha, during his nearly fifty years of teaching, expounded regularly on the correct legal rules for the followers all of which were then assembled into a body to determine rules, regulations and guidelines called the *Vinaya*, the first of the three “baskets” of the Buddhist canon. In fact, this may be the only religion in which a founder had thought of expounding regular and detailed decisions on legal matters in a narrative causative format covering hundreds of topics over a period of approximately five decades. While the Buddhist community may have altered and adjusted the rules before they were first redacted around the First Century BCE, there is little doubt that the Buddha, the foremost religious leader and his community of followers, cannot be considered the sole source of these rules, the architects of the Buddhist law.³

Analysis of the monastic law in Buddhism will show the Buddha’s insight into this universal problem of understanding crime and the causes behind criminal behavior, and there are insights that have inspired even modern lawmakers. For instance, Buddhism insists on motive and intention behind all actions and emphasizes the relevance of analyzing *cetanā* or the mental factor in deciding a crime.⁴ Even though the Buddha

³ Rebecca French, “What Is Buddhist Law?,” SUNY Buffalo Legal Studies Research Paper (Buffalo, NY: University at Buffalo Law School, April 1, 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2587990

⁴Richard Morris et al., eds., *The Aṅguttara Nikāya*, vol. 3 (London: Pali Text Society, 1885), 15.

taught both of these in his ethical moral criteria and in the Buddhist monastic discipline, these need to be adhered to in the name of justice in any modern law.

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The theory that Buddhism applies to analyze and offer solutions to crime is called the *Paticca Samuppāda*, the Buddhist theory of causation. Using it as the theoretical base, Buddhism offers a psycho-social analysis of crime. According to *Theravāda* Buddhism, the first crime in society at the time of the Buddha was examined and explained in the form of a myth. The myth states that human hatred, greed and delusions were the root causes of crimes. As they are shared and considered as characteristic weaknesses of human beings, crime still continues to be committed in spite of grave punishments. The *Aggañña Sutta*⁵ story highlights the tendency to imitate, another human characteristic that has led to the increase of crime. People have a tendency to imitate what others do; hence, criminal behavior is contagious. The myth presented in the *Aggañña Sutta* describes the context in which it was necessary to institute law to contain the criminal behavior of those human beings who were motivated by evil desires. According to the story, stealing was the first crime that occurred. The first partners, after having divided agricultural lands among themselves, started stealing rice from the neighboring fields in order to keep their fields intact. As a result of this action, hatred was caused, which is one of the roots of evils in the minds of the affected parties. They resorted to attacking and eventually killing those who were caught stealing. To avoid punishment, the culprits denied that they had committed thievery, but then there were others to give evidence.

⁵ Davids and Carpenter, eds., *The Dīgha Nikāya*, 3:27.

Thus, crimes followed one after the other. When crime became prevalent, people invented the democratically appointed monarchical government as a controlling mechanism to introduce law and keep order in society. The main function of law in the good old days was to protect the property rights of people by punishing miscreants. Buddhist analysis makes it clear that crime necessitated law and an authority for implementing law and order. The authority trusted was the democratically appointed king. Even though the law was not highly systematic and technical like it is today; there was the authority to reprove, rebuke and punish the criminals. According to the discourse delivered by the Buddha on this topic, the first person appointed to kingship was one “who should be wrathful when indignation is right, who should censure that which is to be censured rightly and should banish him who deserves to be banished”⁶ in order to curb escalation of crime. Before the king’s authority to arrest and punish criminals was properly instituted, individuals took on these roles according to their wishes. The Tibetan version of the story found in the Dulva records⁷ shows that criminals arrested by individuals were produced before people at large; they used to investigate into the case and sometimes acquit the accused. At such events the acquitted criminals charged the complainants for having them arrested and hurting their feelings unnecessarily. This shows that legal activities must have been carried out only by the bodies in which authority was vested. As a matter of fact, the Buddhist story dictates that it is a state duty to control crimes, and that therefore, the law should be a matter for the government.

⁶ Ibid.

⁷ Theodore Duka, M.D., “Life and Works of Alexander Csoma De Koros,” real-eod.mtak.hu.com, Accessed November, 02, 2016. <http://real-eod.mtak.hu/2867/1/Life%20and23%20works%20of%20Korosi%20CS%20S.pdf>.

According to the *Cakkavatti sīhanāda sutta*,⁸ a retired sage king instructed his son to “make sure that in your kingdom there is no crime.”⁹

However, it was not easy to control crime even when the laws are made and activated. Criminals become so shrewd that they could evade the grip of the law. Even though law has not been completely effective as an ideal instrument in eliminating crime, it remains necessary. There is no other way to control crimes more effectively in a society where people are increasingly overwhelmed by craving (*rāga*), hatred (*dōsa*) and delusion (*mōha*). These tendencies are latent in the minds of every being and they inter-nourish each other. For instance, insatiable craving to acquire, when dissatisfied, generates ill will and hatred, which are directed towards other human beings. It blurs the discrimination between good and bad, and this creates a vicious circle, as people tend to seek revenge. According to the Buddhist analysis on this, it is attributed mainly to the ignorance of people of the natural law of karma. People who do not know the karmic repercussions of their wrongdoings behave criminally, gaining or destroying what is not possible for them to acquire by lawful means.

Even though the Buddha was not a lawmaker who could have established courts to punish offenders in society, he happened to enforce a cord of discipline with some constructive punishments. The Buddha’s disciplinary system, called the *Vinaya*, along with his general observations made on psychology and sociology of crime in some discourses, sheds light on the problem of crime and punishment.

Furthermore, it is important to note in the Buddhist approach that the need for law and order is recognized as an innate need of the people, not imposed upon them by

⁸ Davids and Carpenter, eds., *The Dīgha Nikāya*, 1:26.

⁹ *Ibid.*, 27.

human or super-human authority. In other words, the myth given in the *Aggañña sutta* implies that the necessity of law to curb crime was an idea originated among people who really felt that crime is a problem. Therefore, it is considered as an instrument in making life safe and enjoyable for people in the social context while not depriving them of their reasonable fundamental rights. While protecting the fundamentals such as rights of life and property ownership for everyone, the state should provide equal opportunities to everyone for realizing a trouble-free and fruitful life. That is because the law and order originated as a measure to cater to people's desire to live in a crime-free and peaceful society. It is necessary, then, for the law to be a "people-friendly" institution. It should never be an oppressive mechanism. This fact is implied even in the reasons given by the Buddha for making monastic "laws" (*vinaya*) for the Sangha. The Buddha has given ten reasons as to why rules for the Sangha were introduced by him. They are as follows:

1. For the excellence of the monks
2. For the comfort of the monks.
3. For the restraint of evil-minded individuals
4. For the ease of well-behaved monks.
5. For the eradication of this worldly evil
6. For the eradication of other-worldly evil
7. For the winning of unfaithful ones
8. For the strengthening of faithful ones¹⁰
9. For the establishment of good *dharma*
10. For the encouragement of disciplined behavior.

In the above list, the conditions from one to six are relevant even in the context of general law. The eloquent message it presents concurs with the famous saying, "the law is for man and man is not for law." Laws are to be made and changed according to the development of new situations. So the Buddha kept revising some of the *Vinaya* rules during his lifetime and allowed the order of monks to revise some minor rules as

¹⁰Morris, eds., *The Āṅguttara Nikāya*, 5:70.

necessary after his demise. It is even reflected in the functions and evolutionary process of the concept of law given in the *Aggañña Sutta* story¹¹ with respect to development of law against increasing crime.

1. 1. Error! Bookmark not defined. Error! Bookmark not defined. Error! Bookmark not defined.. **Buddhist Jurisprudence and Monastic Law**

Buddhism very strongly holds that the concept of justice has to be the philosophical basis of law. Justice has to be extended to everyone, big or small alike. In the eyes of the law, equality of justice is to all and prejudice is to no one. The Buddha insisted that judges should never get angry, as the angered cannot see justice. He should not be motivated in the process of executing law through the four evil drives, such as partiality (*chandā*), hate (*dōsa*), fear (*bhaya*), and ignorance (*mōha*). He has to take all relevant factors into account in giving a judgment. Moreover, he should consult expert opinion if and when necessary, to assure that correct judgment is made. A good example for this is that the Buddha himself, when acting as judge in a case of Bhikkhunī Kāssapamātā, was reported to have consulted the expert opinions from Visākhā, the wise and experienced lady. There are many stories depicting the correct procedure of making wise judgments in the collection of *Jātaka* stories.

Buddhism, however, is not heavily dependent on the concept of punishment as a deterrent factor. Punishment has to be implemented with care and caution. Unless the causes of crime are attended to, merely punishing criminals will not put an end to crime. For instance, when poverty is making people commit crimes, any amount of punishment is not going to eliminate crime; it might only aggravate the problem by making criminals

¹¹ Davids and Carpenter, eds., *The Dīgha Nikāya*, 3:27.

adopt more subtle, sophisticated means which are difficult to be detected. A good example is given in the *Kūṭadanta Sutta*.¹² The king's attempt to curb thieves and bandits who were plundering villages, according to the story, had failed badly. A wise minister had come up with a plan of economic development, which would provide everyone the opportunity of employment and becoming economically sound. By merely implementing that plan, crimes were effectively curbed, creating a peaceful and happy society. This shows that elimination of crime is not as simple as punishing the culprits harshly; a fair amount of political wisdom and sincere commitment to the welfare of people is also needed. This, however, should not be taken as a solution based on economic determinism, as envisaged in some materialistic ideologies. The Buddha has brilliantly explained the moral and ethical reasons for criminality of human beings and explained the necessity of righteous, educational and moral practices that may improve the quality of citizens in society. The real basis of a non-criminal mind is neither the fear of law nor mere economic wellbeing.

Punishment, the Buddha maintained, should be given, when deemed necessary, with the kind intention of making culprits better citizens. The wrongdoer should never be punished to avenge. During the period of *Mahā Sammata*, according to the legend, there was only whipping, condemning and expulsion as punishments. Nāgārjuna advised a king that he should never resort to cutting parts of the body or killing, and prisoners, he added, will be reformed if treated kindly. Therefore, lifelong imprisonment should also not be applied.

The Buddhist concept of punishment, on the other hand, is more constructive and reformatory than destructive. Most of the criminals could be reformed, and therefore, one

¹² Davids and Carpenter, eds., *The Dīgha Nikāya*, 1:110–23.

should not rush into destructive punishment. People commit crimes mainly because they are ignorant, insensitive and not convinced of the repercussions they would suffer according to the law of *kamma*. Therefore, people are to be educated on the moral consequences of their activities and should be made sensitive to the sufferings of other people. They may need to be aware of the suffering of guilty feelings. The Buddha educated the people of the four fears, to be reflected upon by anyone who is getting tempted to commit an evil act, and they are as follows:

1. Fear of self-reproach or the guilty feeling (*attānuvādabhaya*)
2. Fear of others' reproach (*parānuvādabhaya*)
3. Fear of punishment (*dandanabhaya*)
4. Fear of being born in a woeful state (*duggatibhaya*).¹³

The fate of a person who does a criminal act, as per the *Dhammapada*, is “Here he suffers. Hereafter he suffers. In both states the evil-doer suffers. He suffers thinking ‘I have done an evil.’ Furthermore he suffers having gone to a woeful state.”¹⁴ Elsewhere the Buddha says the fool experiences a threefold anguish and dejection by committing a crime, such as:

1. Knowing that he is a criminal
2. Knowing that criminals are punished by the law
3. When taking rest, he feels remorse, retribution follows him, and after death he will be reborn in a place of woe.¹⁵

The judicial system applied to the Sangha has many exemplary features that any modern system could appreciate and even follow. It insists that until the wrongdoing is proved beyond a reasonable doubt, the accused must be treated as innocent. “The court should have the accused present during the procedure and he has to read the charge against him and be allowed to speak on behalf of himself. The court has to be sure that he

¹³ Morris, eds., *Anguttara Nikāya*, 2:121.

¹⁴Oskar Von Hinüber and K. R Norman, eds., *Dhammapada* (London: Pāli Text Society, 1994), 17.

¹⁵Vilhelm Trenckner and Robert Chalmers, eds., *the Majjhima Nikāya*, vol. 3 (London: Pāli Text Society, 1887), 163.

was sane during the course of his action. And the laws cannot be introduced with retroactive effect.”¹⁶ In the Buddhist Sangha, every effort is taken to reform and reinstitute the accused in the proper place.

1. 2 Literature Review

Primary sources

According to the primary sources consisting of the scriptures of early Buddhism, it is held that the Buddha’s senior followers performed a council to assemble all of his discourses and disciplinary rules into texts and arrange for their continuation, mainly depending on oral transmission. There are five *nikāyas* (collections) in the *Sutta Pitaka*: *Dīghanikāya*, (the “long” discourses), *Majjhima Nikāya* (the “middle-length” discourses), *Samyutta Nikāya* (the assorted discourses), *Anguttara Nikāya* (the “numerical” discourses) and *Khuddaka Nikāya* (the minor discourses). The *Vinaya Pitaka* consists of five books such as *Mahāvagga*, *Cullavagga*, *Pārājikāpāli*, *Pācittipāli* and *Parivārapāli*. It is notable that the five collections in the *Sutta pitaka* have titles ending *Nikāya*, while *Vinaya* texts have the word “*pāli*” at the end of every title.

Theravāda tradition strongly vouches for its attempt of maintaining the original form of the *Sutta* and *Vinaya Pitakas* during the last 25 centuries without allowing any interpolations or degeneration. However scholars have different skeptical opinions of different levels of this claim. Akira Hirakawa says “only the prose sections formed what the First Council collected and the verses were added later making them into full length *Suttas*, describing important doctrines during the next century.”¹⁷ Richard Gombrich thinks “most of the first four *Nikāyas* go back to the Buddha in contents, yet not in the

¹⁶Ibid., 3:247.

¹⁷Akira Hirakawa, *A History of Indian Buddhism* (Honolulu: University of Hawaii Press, 1974), 69.

form.”¹⁸ As for the form, *Majumdar* and *Pusalkar* have observed that *Vinaya* and *Sutta Pitakas* are “not as old as the first or even the Second Council, but quotations from the scriptures in the Asokan edicts, references to persons well-versed in sacred texts in inscriptions on the railings and the gateways at Bharhut and Sanci suggest that the works on *Dhamma* and *Vinaya* were current before the Mauryas and Sunga dynasties. The *Milinda Pañha* is the earliest evidence of the existence of the three *Pitakas* and five *Nikāyas*.”¹⁹

However, in studying the *Theravāda* Buddhist approach to crime and control of crime it is not necessary to enter into arguments on antiquity of the writings, as it would be a winding and unending activity. The fact that in the fifth century a group of commentaries available were collected, edited and compiled into an accepted authentic bulk interpretations implies that there was a textual tradition of reasonable antiquity. Alexander Wynne in his observation mentions thus: “The internal evidence of the texts themselves, as well as archaeological and epigraphical evidence, suggest that ancient texts have been preserved in the early literature, in spite of the corrosive effects of time.”²⁰

The books in the *Vinaya Pitaka* provides a very useful information in crystallizing the Buddhist definition of crime, causes and conditions of such activities and also the procedure of exercising justice in handling crime. Even though *Vinaya* is specifically monastic, it demonstrates a high level of sophistication, which has been admired by many modern students of law. Every rule is presented in a very systematic form. Sub-rules,

¹⁸ Richard F. Gombrich, *Theravāda Buddhism: A Social History from Ancient Benares to Modern Colombo* (New York: Routledge, 2006), 20.

¹⁹ R. C. Majumdar, *Age of Imperial Unity* (Bombay: Bharatiya Vidya Bhavan, 1953), 408.

²⁰ Alexander Wynne, *The Origin of Buddhist Meditation* (New York: Routledge, 2007), 5.

interpretations and exceptions are given after presenting the law and the contexts in which the rules and exceptions implemented are recorded.

Sutta Pitaka of the Buddhist scriptures provides much light on the necessity, evolution and implications of secular law. *Aggañña*, *Chakkavatti Sihanāda*, *Kūṭadanta* and *Mahā Nidāna suttas*²¹ are of special importance in this respect. The Buddha's views were recorded in these *Suttas* which discuss the significant relation of moral concerns in criminal activities. In fact, unlike in the *Vinaya*, the Buddha had to keep in mind, as it were, that he was only able to discuss crime, in relation to lay people, in a philosophical and no-punitive tone. Laymen live in subordination to state law. Punitive aspect would be looked after by the state. The Buddha could, of course, enlighten on the matters connected to justice. Even though he was not reluctant when the kings approached him in relation to such matters, he Buddha nevertheless thought it was his obligation to make his lay followers morally trained so that they would not come under the king's court. Considering the merits of this stand, Gombrich comments: "My personal feeling, which is no more than a guess, is that this idea is so bold and original that it is probably that of the Buddha."²²

There are two jurisprudences in the *Jātaka* collection,²³ which offers much relevant scenarios useful in relation to jurisprudence and criminal justice. The *Jātakas* provide many stories of kings meting out justice and enforcing law. Those stories are very useful in evaluating the *Theravada* approach and provide guidance in defining crime and penalizing criminals.

²¹ Davids and Carpenter, eds., *The Dīgha Nikāya*, 1:12.

²² Gombrich, *Theravāda Buddhism* (London: Routledge Taylor and Francis Group, 1988), 83.

²³ Fausboll, "The *Jātaka* Together with Its Commentary, Being Tales of the Anterior Births of Gotama Buddha," Google.com. Accessed February 08, 2019, <https://archive.org/details/jtakatogetherwi02andegoog/page/n15>.

While understanding the proper meanings of Pāli technical terms and the relevant socio-cultural information, anyone could be rewarded and also be guided by the commentaries compiled by Acariya Buddhaghōsa. He compiled commentaries for the four main books in the *Sutta Pitaka* (nikāya texts) and *Vinaya Pitaka*. His commentaries are recognized in the Theravāda world as the most authoritative theoretical source books.

The Seekers' Glossary comments:

Ven. Buddhaghōsa first systematically examines the nature and constituents of virtue, raising a series of questions which he proceeds to answer in painstaking detail and exploring a range of possible meanings for almost every word used in the canonical sources. In the course of his analysis, and in presenting anecdotal examples of illustrations of the points he desires to make, he himself provides a vivid picture of the social customs and sensibilities of his society and a mass of definitions of mundane as well as towering concepts.²⁴

Secondary sources

There are several scholars who have attempted to present the Buddha's teachings in a criminological point of view. One of the pioneer studies is Durgā Bhagavati's *Early Buddhist Jurisprudence*. Written more than six decades ago, this work could be taken as preliminary spadework, as her scope is more a systematic discussion on the *Vinaya* prescribed for Buddhist monks. Another authentic study was made by Prof. Jotiya Dheerasēkara.²⁵ This is a very informative and analytical study that examines *Vinaya* of the *Sangha* in the light of both *Vinaya Pitaka* and *Sutta Pitaka*. He critically examines the evolution of *Vinaya* during the lifetime of the Buddha. He discusses how the *sīla* (positive moral instructions given in *Suttas* as guidance for the noble life aiming at *Nibbāna*) was sufficient in the beginning of the Order but that the increase of

²⁴ Buddhaghōsa, *The Seeker's Glossary of Buddhism*, Translated by Sutra Translation Committee of the United States and Canada (New York: Sutra Translation Committee, 2003), 112.

²⁵ Jotiya Dhirasekara, *Buddhist Monastic Discipline: A Study of Its Origin and Development in Relation to the Sutta and Vinaya Pitakas* (Colombo: Ministry of Higher Education, 1981), 197.

membership resulted in degeneration of moral quality among some members of the Order. It was, according to him, the main reason that necessitated *Vinaya* laws with a punitive character. Prof. Dheerasēkara's treatment of *Adhikarana* and *Adhikarannasamatha* is very much useful in this study.

Ananda Grero's *An Analysis of Theravada Vinaya in Light of Modern Legal Philosophy*²⁶ makes an attempt to show parallels between the Buddhist *Vinaya* and modern legal thought. The author was professionally a senior judge in Sri Lanka and so he effectively draws many parallels in Buddhist law and modern law.

Dhamma Man and Law by Prof. K. N. Jayetillake²⁷ is a collection of lectures given at Hague. This publication deals with Buddhist concepts related to politics and law in a comprehensive manner, beginning with the Buddhist view of reality and extending to a discussion to Buddhist ethics and its relevance to law. Then he presents the Buddhist view of society, law and human rights as a prelude to his target topic: Buddhism and international law. This is a comprehensive and highly informative work.

Another recent publication of interest is the collection of articles by Rebecca Redwood French, titled *what is Buddhist Law*, a Buffalo Legal Studies Research Paper Series. Paper No. 2015-022, where she says: "In fact, this may be the only religion in which the founder is thought to have made regular, detailed decisions on legal matters in a narrative casuistic format covering hundreds of topics over a period of approximately five decades."²⁸ I refer to her observations wherever it is necessary in my research.

²⁶ C. Ananda Grero, *An Analysis of the Theravada Vinaya in the Light of Modern Legal Philosophy* (Colombo: Karunaratne and Sons, 1996), 259.

²⁷ K. N. Jayatilleke, *Dhamma, Man and Law* (Dehiwala: Buddhist Cultural Centre, 2000), 198.

²⁸ French, "What Is Buddhist Law?," 57.

Dr. Nandasena Ratnapāla's *Crime and Punishment in the Buddhist Tradition* is another important study of crime in a Buddhist perspective compiled by a sociologist. His main focus is on the ethical implications of the monastic law, i.e., the control of greed, hatred and delusion. His analysis is an attempt to evaluate the Buddhist *Vinaya* in the context of moral procedures leading to attainment of the goal of the Buddhism, *Nibbāna*. Dr. Rathnapāla equals the laws in Buddhist *Vinaya* as signposts indicative of danger zones for practitioners to keep in mind. He opines that it is maintained in Buddhism that the best method of preventing crime is education. Through education, one may realize the full consequences of criminal actions and refrain from committing them.

Praneeth Abhayasundara has published a book in Sinhala called *Social Control and Buddhist Teachings on Crime*.²⁹ As I am conversant in Sinhala, the views presented by him will be discussed as relevant in this study. His work, in rather an exegetical tone, presents the legalistic aspect of the Buddha's dealings on immoral actions and evaluates their effectiveness in social control. He focuses on emphasis given to motives in the Buddhist judgmental procedures as well.

However, this approach does not go unchallenged. Malcolm Voyce has written an article claiming that "presentation of 'Vinaya as law' promulgated the understanding that the *Vinaya* was an applicable code for all monastics, that the Buddha was a judge or legislator, and that rules embodied in this 'code' set out a compulsory form of identifiable behavior."³⁰ He argues that

The *Vinaya* was misrepresented by being viewed through this Eurocentric lens as a code or form of regulation. I suggest it is now more appropriate to see the

²⁹ Praneeth Abhayasundara, *Social Control and Buddhist Teachings on Crime* (Colombo: S. Godage and Brothers, 2002), 96.

³⁰ Voyce, Malcolm, "The Presentation of the *Vinaya* within Forms of Western Scholarship," *Journal for the Academic Study of Religion*, Vol. 28, no. 1 (London: Equinox Publishing Ltd., 2015), 59.

Vinaya as a “training scheme” or like a form of medication to be prescribed for each monastic as needed. The codification of what are best called suggestions, in their present form, reflects a contingency that the rules were made for that one occasion and not necessarily for all other occasions; the rules are only a record of a choice made on a particular occasion.³¹

This, is considered as a reductionist view and presents a methodological challenge. Many other scholars, however, have pointed out that the case is otherwise.

1.3 My Contribution

Almost every scholar who has dealt with the Buddhist *Vinaya* has offered analytical understanding of it and evaluated the significance of *Vinaya* rules in socio-cultural contexts. However, the aspects of jurisprudence in defining crime and the practical benefit that could be obtained in control of crime in society at large does not seem to have been discussed sufficiently. They have mostly examined crime in the limited context of violations of monastic rules, but there is a deeply humanitarian philosophy behind the Buddha’s approach to crime. Further, most of the scholars seem to focus on the rules and regulations in monasteries, highlighting the punitive aspect. Emphasis was given mostly to the technical procedure adopted in identifying the gravity and other relevant aspects of the offences which were taken into consideration for deciding punishment. However, there is a humanitarian reformative spirit that seems to pervade the Buddhist approach to monastic misbehavior. This study intends to emphasize this aspect.

An attempt will also be made in this study to highlight the impact the Buddhist *Vinaya* may provide on crime control in general. If the Buddha’s insight is only useful in a monastic context to keep monks and nuns disciplined, its use is very limited. It is true

³¹ Ibid.

that the *Vinaya* is very effective in the purpose that it was enacted for, yet the value of the philosophy it implies has a wider meaning that could be extended to any lay context. My study will contribute to highlight these aspects.

1.4 Research Problem

Buddhism is a very valuable philosophy in the social context. It has moral perfection of beings as one of the principle goals along with achievement of wisdom. As there are millions of Buddhists today in the world, it is nothing but right to look for the Theravāda Buddhist analysis of crime and the ways it has proposed to control crimes. On account of these issues discourses such as the *Agāṇṇa* (D.1.27), *Cakkavattisihanāda* (D.1.20), *Kūṭadanta* (D.1.127), etc., are of prime importance. It is intended to examine the teachings of the Buddha with this in mind and to evaluate them in the light of ideas generated mainly by modern writers on the subject.

Theravāda Buddhism offers a psycho-social analysis of crime. The usual practice in Buddhism is to apply the theory of dependent origination in analyzing social problems. Therefore, one naturally expects adoption of the same to the problem of crime as well. The myth presented in the *Agāṇṇa Sutta* explains the institutional evaluation of human society and how it is necessary to institute law to contain criminal behavior of those beings who are motivated by evil desires. Stealing was the first crime to occur in society. The first human beings, in order to save rice in their fields, started stealing rice from the neighboring fields. This rooted evil, anger, in the minds of the affected parties, leading to many other crimes one after the other. Crime necessitates law and the authority of implementing law. The Buddhist legend shows how the democratically elected first king, Mahāsammata, was entrusted of this responsibility by the people. The law, even though it

was not highly systematic and technical like it is today, authorized the ruler to reprove, rebuke and punish the criminals.

Just as early Buddhism has recognized, the importance of eliminating crime provided. Sufficient causal analysis of the problem of crime. There is promising research potential for a critical academic study of the topic in the light of Theravada Buddhist teaching. In this study, it is also intended to observe certain theories and concepts found in law, criminology, philosophy, psychology and sociology as well.

The project will be guided by the following research questions.

- 1) How is crime and criminality defined in the Theravāda Buddhist tradition?
(With the materials found in Pāli canon, an attempt will be made to identify the way Theravāda Buddhism defines crime and criminality.)
- 2) What is the theoretical foundation of the Buddhist explanation of criminality?
(Buddhism has analytically discussed why people behave criminally in a psychosocial manner, providing theoretical explanations based on dependent origination.)
- 3) What is the Buddhist attitude towards punishment?
(It will be shown that Buddhism does not promote punishment as an effective measure of eliminating crime).
- 4) How compatible are the Buddhist crime control techniques with the religious goal of Buddhism?
(A comparison will show that moral ethical training which leads practitioners to *nibbāna* does not contradict the principles of crime control; instead, they are complimentary).
- 5) How practical is the implementation of a Theravāda Buddhist perspective in a democratic society?
(Modern democracies with their humanitarian outlook may find the Buddhist approach safeguards fundamental rights of people and is psychologically very much progressive).

1.5 Methodology

This study follows the textual analysis as research methodology. During the comparatively long history, the Buddhists of Theravāda countries – mainly Sri Lanka, Myanmar and Thailand – have maintained their scriptures in Pāli. As established at the sixth Theravāda council held in Myanmar during the 2500 Buddha Jayanti festival period

(1952 to 1956), disagreement about the content of the texts among the Buddhist clergy in these lands did not appear. The unanimously agreed upon *Tripitaka* edition of the *Chatṭha Sangāyana* committee and the Pali Text society edition commonly used among the modern academic community are almost identical, with the exception of certain spelling deviations that do not affect the meaning.

In order to crystallize the Theravāda approach to crime and control of crime, the canonical texts with their commentaries are considered as of prime importance. Among the Tripitaka texts, relevant materials to the theme of the research are mainly found in *Sutta* and *Vinaya* texts. While they form the basic mine of material, the commentaries and sub-commentaries also provide much light. The *Sutta Pitaka* contains several dialogues on crime and crime control held between the Buddha and the contemporary kings. The Buddha has presented, rather in mythological form, the genesis of crime along with the crystallization of criminal law. Another rich mine of information is the collection of stories found in the *Jātaka* Commentary. *Jātakapāli* contains only the stanzas, while in the commentary we find the stories presenting the narratives relevant to them.

The Theravāda monastic *Vinaya Pitaka* provides an exemplary legal system, though ecclesiastical in nature, which has continued to practically function even after twenty-six centuries. It provides a system of criminal justice procedure as well. It contains not only crime analysis and judicial procedure, but also the Buddhist approach to punishment as applied in monastic contexts.

There are systematic commentaries made to *Sutta* and *Vinaya* texts by Acariya Buddhaghōsa. Hermeneutical texts like *Pētakōpadēsa* and *Nettipakarana* kept guiding the commentators on extracting the correct meaning and preserving a conservative

interpretation. As there were several alternative commentaries developed by senior monks in India and Sri Lanka, the final standardization of them was done by commentators who came from India, such as *Acariya Buddhaghōsa*, *Acariya Dhammapāla* and *Acariya Buddhadatta*. As the commentaries were completely edited for uniformity and translated into the lingua franca of Theravāda, the *Pāli* language, they are well accepted in every Theravadin land.

The methodology of our work involves collecting data from these two levels of texts, i.e., canonical and commentarial, and analyzing them to find out Buddhist jurisprudence (theory of crime) and the early application of it. We will also explore the methods proposed for crime control and the judicial procedure contained therein.

Some academic studies done on these problems by modern scholars such as Ananda Grero and Nandasena Ratnapāla are also available. We will use them comparatively to see if their findings concur with ours, and if any discrepancy is found, we will critically examine them.

From the texts, we will not only attempt to crystallize the theory but also evaluate their practical suitability in implementing them in modern contexts. Thus our textual analysis will be critical, analytical and evaluative.

1.6 Hypothesis

Even though it might appear, *prima facie*, that the supra-mundane nature of the scope of Buddhism might not support a wider jurisprudence, Buddhism has much to offer in relation to crime and crime control. In addition to the precise monastic law, which may stand in juxtaposition to any modern legal system, the Buddha has given advice to kings in matters related to crime and crime control. Moreover, the Buddhist *Jataka* book

presents many narratives of rather mythological kings who managed crimes in their lands. The Buddhist teachings on crime and crime control are so universal in practicality that if implemented, it would have positive effects on creating a society with less crime.

1.7 Overview of the Chapters

This thesis is presented under the title *Crime and the Control of Crime: An Ethical Analysis from a Theravāda Buddhist Point of View*. After the introductory chapter, this theme is expanded in five chapters. The first four body chapters will focus on different aspects of the topic which are essential to develop the thesis. In the last chapter, all the arguments and insights will be brought together to give conclusions that may propose positive guidelines for the establishment of peace in a society free of crimes. On the whole it shows the way Theravāda Buddhism understands crime and offer solutions to the problem of crime.

Chapter two

The Theravāda Buddhist and Western criminological definition and classification of crime

This chapter will be devoted to explore what is crime and also to establish the definitions of crime. In order to eradicate crimes, it is important to understand crime clearly and analyze factors that constitute crimes. Therefore, different contemporary definitions pertaining to crime and various ideologies that enable us to witness crime from different angles, will be explored and discussed in this study. Moreover, the definitions will be sorted according to ideological foundations in religions, philosophies and jurisprudence, and criminology as well. The goal is to explore how Theravāda Buddhism, having its base in the Buddha's teachings, works against crime.

Chapter Three

Reasons for crime and criminal behavior as analyzed in the Theravāda Buddhist teaching.

Chapter three will explain as to how Buddhism examines the origin of crime and criminal behavior. The aim of this examination is to present the Theravāda Buddhist point of view. With respect to the prevention of crime, it is important to explain the causes behind the arising of crime. Hence, in this chapter, crime and criminal behavior will be discussed in accordance with Theravāda Buddhism, which has early Buddhism as its foundation. It is noticed that there are three relevant points agreed upon in all schools of Buddhist thought that may even be fit to be identified as the aims of Buddhism. These three points are as follows:

- (1) The avoidance of evil deeds³²
- (2) The performance of wholesome activities³³ and
- (3) The purification of the mind.³⁴

If these three are realized, the world would be a place of peace.

Chapter Four

Law and punishment in the Theravāda Buddhism.

We are accustomed to these two words in the legal context. However these words are used in different contexts in religion. For instance, in relation to Devadatta, Prince Jeta and King Ajāsattu, etc., it is possible to understand the religious application. Ven. Upāli's dealings in the *Vinaya* are especially relevant here, as Upāli Thera was appointed chief of the *Vinaya* matters.

³² Oskar Von Hinüber and K. R. Norman, eds., *Dhammapada* (Oxford: Pali Text Society, 1994), 28.

³³ Ibid.

³⁴ Ibid.

In religion, it is proper to deal with the ideology of the founder. In this case, it is the Buddha, and we should observe as to how Buddha saw crime and how punishments were enforced. Since Buddhism does not rely on divine grace and instead believes in karma, karmic efficacy takes precedence over civil law, which is created by civil society and in which the physical punishment (torture) may apply. However, it has to be pointed out here that, the *Pāli Nikāya* literature is predominantly concerned with doctrinal and philosophical issues and crime and punishment issues are treated as peripheral issues. Therefore, one does not find, strictly, a legal treatment of the subject.

Chapter Five

Elimination of Crime; Theravada Buddhist perspectives.

This chapter is on “Elimination of Crime and Buddhist Approach to It.” Everybody in this society aims to eliminate crime, so there are so many ways and methods suggested and applied for it, and also there are so many views and theories about it.

Buddhism is also interested in these universal issues and provides means to understand the nature of crime and as to why people are provoked to behave in a criminal way. Theravāda Buddhism discusses all that is relevant to control crime under *Sīla* (morality). Its two broad divisions are monastic ethics and lay ethics. Theravāda Buddhism, while presenting its own view about this problem, uses other points of view taken from outside wherever necessary. The *Agāṇṇa Sutta* of the *Dīgha Nikāya* provides the origin of crime in the society and its solution. Here the stealing was the beginning of crime, which leads us to the Buddhist ideology of *lobha* (greed) and the elimination of *lobha*. *Lobha* itself is not a crime from the contemporary civil law perspective, but from

the Pāli Buddhist perspective it is an immoral crime to foster *lobha*, a negative efficacy. Here it has to be remembered the Pāli textual literature the *Dasadhamma Sutta* of the *Anguttara Nikāya*, in which the Buddha pronounced, “*kammassakōmhi, kammadāyāda, kamma yonī, kammabandhu, kammaṭṭisārano.... Yamkammaṃ karissāmi kalyāṇamvā papakamvā tassa dāyādo bhavissāmi* [I own my kamma. I am an here to my kamma. I have kamma as my progenitor and relation and also as refuge. Whatever kamma I produce whether good or bad I will become the inheritor of it.]”

The *Agañña Sutta* also testifies how the Mahāsammata (great elect) punished the thief who collected food for multiple consumptions out of *lobha*. The *Cakkavatti-Sīhanāda Sutta* of the *Dīgha Nikāya*, further, provides us with the evidence that because of breaking the *Sīla (Pañcasīla)*, an entire generation fails. Here the punishment is self-created and is a result of karmic efficacy.

Chapter Six

Conclusion: Evaluation of Theravada Buddhist approach to crime and control of crime.

The task of the final chapter is to sum up the teachings discussed in the previous chapters and demonstrate how they contribute to establish peace in society.

In fact, the creation of a moral and peaceful society was the aim of all the Buddhas. When people are motivated to live morally and evade evil doings, crime will cease. Lawfulness might not be achieved fully as people with evil motives would try to find occasion for mobilizing their evil thoughts.

Buddhism is therefore for the good and welfare of the whole world (*Bahujana hitāya – sukhāya*). It is the moral conviction that can make a person completely reformed.

Buddhist history has good examples to substantiate this, such as Asoka the Fierce (Candāsōka) becoming Asoka the Righteous (Dharmōsōka).

CHAPTER 2

The Theravāda Buddhist and Western Criminological Definition and Classification of Crime

There is no universally accepted definition for crime,³⁵ states the *Encyclopedia of Sociology* in an article on crime. It, therefore has chosen to expound on various aspects of crime in order to introduce the subject. However, according to the sociologist Vander Zanden, “Crime is merely an act that is prohibited by law.”³⁶ Further, he says that “For an act to be considered criminal, the state must undertake a political process of illegalizing or criminalizing it.”³⁷

Even though there are several approaches to define crime, reviewing a few dictionary definitions may be a rewarding exercise and be beneficial at this point. The *Collins English Dictionary* defines crime as “an action or omission prohibited and punished by law.”³⁸ The *Penguin Reference Dictionary* defines it as (1) a violation of law and (2) a grave offence. The definition given in the *Longman Dictionary of Contemporary English* is that crime is “illegal activities in general,” Criminologist Paul Tappan defines crime as “an intentional act or omission in violation of criminal law ... committed without defense or justification, and sanctioned by the state as a felony or misdemeanor.”³⁹

The *Encyclopedia of Buddhism*, confessing that it is difficult to present a specific Buddhist definition, refers to the *Encyclopedia Britannica*, where crime is defined as “an anti-social act, a failure or refusal to live up to the standards of conduct deemed binding by the rest of the community, some act or omission in respect of which legal punishment

³⁵ Edgar F. Borgatta, Rhonda J. V. Montgomery, eds. *Encyclopaedia of Sociology* (New York: Macmillan Reference, 2000), 529.

³⁶ James W. Vander Zanden, *Sociology, The Core* (New York: McGraw-Hill Companies, 1993), 145.

³⁷ Ibid.

³⁸ Peter Terrell, *Collins German-English, English-German Dictionary: Unabridged* (New York: E. Klett Verlag, 2010), 15.

³⁹ “Definitions of Crime,” cliffsnotes.com, Accessed April 4, 2017, <https://www.cliffsnotes.com/study-guides/criminal-justice/crime/definitions-of-crime>.

may be inflicted on the person who in default whether by acting or omitting to act.”⁴⁰

Even though it may be difficult to find a technically perfect definition in 2,600-year-old Buddhist literature, the concept of crime is not alien to Buddhism. Terms such as *accaya*,⁴¹ *vajja*,⁴² and *aparādha*⁴³ are used in Buddhist scripture for crimes.

Almost every definition has made it clear that a crime is necessarily connected to law. Hence, someone can argue that “if there are no laws there are no crimes,” and vice versa. Even though both are logical arguments, practically the idea of crime seems to have an extra legal dimension. In common parlance, anything that people do not like is called a crime. However, the common use of the term crime has no legal connotation. It is through their experience or common sense of injustice involved in infliction of pain, mental hurt, deprivation of basic human needs, waste of something valuable, etc., that people define “crime.” Nevertheless, everything people consider immoral or wicked does not constitute a crime in the eyes of law. According to Vander Zanden, “Rather, the distinguishing property of crime is that people who violate the law are liable to be arrested, tried or pronounced guilty, and deprived of their lives, liberty, or property. In brief, they are likely to become caught up in the elaborate social machinery of the criminal justice system and the reactive agencies of the state that include the police, the courts, and prisons.”⁴⁴

There is no problem in accepting the obvious relationship of crime and law. In other words, it is law that defines crime and decides on the procedure to follow when a

⁴⁰ P.D. Premasiri, “Karma,” in *Encyclopaedia of Buddhism*, ed. G. P. Malalasekara and W. G. Weeraratne, vol. 4 (Colombo: Government of Sri Lanka, 2000), 264.

⁴¹ I. B. Horner, *The Book of the Discipline: Vinaya-piṭaka* (London: The Pāli Text Society, 1982), 315.

⁴² Morris, eds., *The Aṅguttara-nikāya*, 1:47.

⁴³ Fausboll, *The Jātaka Together with Its Commentary, Being Tales of the Anterior Births of Gotama Buddha*, vol. 1 and vol. 3 (London: Strassbourg: Kph. Kbh, 1877), 264 and 394.

⁴⁴ James W. Vander Zanden, *Sociology, The Core* (New York: McGraw-Hill College, 1993), 146.

criminal is identified. Buddhist scripture also has an interesting story – one may call it rather mythological – describing the origin of crime, law and punishment. It is presented in a long Sutta called the *Aggañña Sutta* recorded in the *Dīgha Nikāya*. An analysis of narrative presented in Buddhist literature provides us some socio-anthropologically important facts in relation to the appearance of crimes and how people react to crimes. The people’s reaction was a factor in the evolution of state laws in response to a genuine human crisis.

According to the narrative presented in *Aggañña Sutta of Dīgha Nikāya*,⁴⁵ there was a time in the dim, distant past—way back when life arrived on earth after a long period of hibernation during a long uninhabitable period of earth—that people had enough natural resources to fulfill their basic needs. Earth and its surroundings were unpolluted, and there was no life when the light and luminous bodied flying beings arrived from outside. They were happily enjoying what nature had provided for their survival. It was their attraction to fragrant and edible jelly-like substances on the earth’s crust that made those beings alight on earth and settle down to enjoy the jelly-like earth food. When the earth food gradually became rough and inedible, there appeared self-growing mushrooms, which was followed by a kind of creeper, which they could eat without cooking. Then, due to its gradual disappearance, the creepers were replaced by a variety of self-growing edible rice, which needed no processing. However, after a very long time, natural resources became depleted, and people were compelled to divide the land and the crops among them as a remedial action. It was then that the first crime appeared among people: stealing from other people’s fields and saving their share of rice for future use. The thieves were caught red-handed, and the owners expressed their anger

⁴⁵ Davids and Carpenter, eds., *The Dīgha-Nikāya*, 3:27.

by reprimanding them. Even though the thieves admitted their folly, abuse or warning was not effective in preventing them from repeating the act of stealing again and again. Then the owners resorted to punishing them physically. Thieves, who previously used to admit what they have done, then started lying to avoid being punished. Yet, other people who saw them stealing gave evidence stating that they witnessed the act. The greed in the minds of thieves was so strong that it was not possible to prevent the theft, which then compelled angry owners of the fields to kill the thieves.

This was an alarming scenario that made concerned people confer about an effective and responsible way to eliminate the problem. According to the *Aggañña Sutta*, they reflected on the fact that crimes like taking what is not given, use of abusive language, falsehood and resorting to physical violence have become prominent in society. Thinking of a way to eliminate such deplorable degeneration in the community, people agreed to elect a person to be their leader, who would become indignant at appropriate times and would take necessary actions such as reprimanding or banishing culprits. They agreed to grant him a share of rice as their token of gratitude for controlling crimes. They elected unanimously a very handsome (*abhirūpataro*), approachable person (*pasādikataro*) with a commanding personality (*mahesākkataro*) as their leader whom they agreed to call king (*rājā*). The Pāli term, as defined in the *sutta* itself, meant a person who makes people happy with *Dhamma*. This story implies that the king's prime duty was to control crime by implementing law and exercising punishment. This is the Buddhist story of the appearance of crime, law and punishment as remedial action.⁴⁶

It is their attempt of making these norms “formal” and respected as sacred that made the law crystallize into a systematized code. According to anthropologists, laws

⁴⁶ Ibid., 26.

evolve out of social norms. People in any community develop their own view of acceptable and non-acceptable behavior. They seem to think that whatever stands to harm and deprive them of their personal rights is an unacceptable activity. People create norms against such activities, even when there are no laws they could use to punish the miscreants. According to Emil Durkheim, people feel that they should formalize conventions of religion.⁴⁷ However, in spite of the adoption of religious ethics, some people still have an urge to break them. Then even within that religious community, punitive law becomes necessary. “Even in a community of saints living in a monastery there will be laws and even in that community every once in a while, someone will break a law. It will count as a crime in that particular society.”⁴⁸ The Buddhist Order of *Sangha* is no exception. During the first twenty years after it was established, there were no laws (and no crime) but the “feel” of right and wrong actively kept the monks away from crimes. Yet at the 20th year, one monk broke the implied norm of celibacy. Then the Buddha thought of legalizing morality to prevent recurrence of that crime. As J. S. Roucek has pointed out, all social rules including political rules or laws originated first in custom or folkways of longstanding informal practice and are based upon existing conceptions of justice and rights in a given community. It is true that “in all societies law is based upon moral notions. Laws are made and legislations are enacted on the basis of social doctrines, ideals and mores.”⁴⁹

When the breaking of law occurs, the next necessary step would be introducing punishment. When crime is inevitable, punishment of criminals become necessary and

⁴⁷ Emile Durkheim and Joseph Ward Swain, *the Elementary Forms of the Religious Life* (Mineola: Dover Publications, 2008), 51.

⁴⁸ Nasar Rao and Jay Goblar, *Sociology for Dummies* (West Sussex: Willy Publishing, 2011), 215.

⁴⁹ C. N. Shankar Rao, *Sociology* (New Delhi: Chand, 1997), 483.

people tend to approve it, as otherwise life becomes almost impossible. Criminals can even enjoy the idea and action of punishment itself, rather obtaining a sadistic pleasure. For instance, it was reported that in ancient Rome, crowds filled the Colosseum to watch criminals be thrown to the lions; public hangings were popular entertainment.⁵⁰ Even though this does not happen in modern civilized contexts, secret sadistic pleasure seems to be obtained when people read with delight how criminals are corporally punished. Reading about crime and punishment is a way of passing time for some people. For an instance, in Sri Lanka, there is a weekly tabloid called *Manchu* (Handcuff), which is only for the purpose of reporting crimes and punishments in details.

Even in the Brahmin tradition, where the origin of law is traced to the Vedas (which are claimed as divine in origin) the *Dharmaśāstrās* (law texts) have also recognized some natural sources for law. As Olivelle points out, the Brahmanical texts acknowledge the existence of customary practices that were not written. These include *deshadharmā*, practices specific to regions, *jātidharmā* or those of distinct communities, and *kuladharmā*, those of distinct lineages or families.⁵¹ These seem to be the sources of law that influenced the shaping of laws in *Dharmaśāstrās*. Going against those *dharmās* also constitute crimes. This, more or less, confirms the theory of Durkheim that social norms function as the basis of law.

The dictionary definitions of crimes immediately bring the act-and-punishment dimension of state laws to anyone's mind. In the pursuit of an academic study of attitudes on crimes in a religion, the first impression one may obtain is that it needs to be mainly ethical rather than legal, and the punishment mechanism is either divine or metaphysical

⁵⁰ Ibid., 217.

⁵¹ Patrick Olivelle, *Dharmasastras: The Law Codes of Ancient India* (New York: Oxford University Press, 1999), 21.

rather than human. Punishment for unethical behavior, according to most religions, is generally given in a future life, except when religious authorities have assumed themselves the role of penalizing followers of that particular religion in mundane ways like whipping, amputation of limbs, financial compensation or even stoning to death. This usually happens when religions assume political and administrative roles or a certain country is declared as a religious state. Nevertheless, the authority to punish in theistic religious ethics is generally left to the judgment of God.⁵²

Theistic religions can justify the role of God in penalizing people for their immoral behavior, as the genesis of the world and beings is related to God, who is believed to be keeping close watch over the behavior of his created beings. Therefore, the law, crime and punishment also could be traced back to God.⁵³ For instance in Judaism, the law originates in the Ten Commandments communicated to the Jews by God at Mount Sinai. In fact, it is a covenant, a treaty or a bond between God and his chosen people. Moses, the prophet of Judaism, received the Torah (law) from God on behalf of the Israelites. Torah can mean authoritative teaching, instructions or guidance as well. The basic commandments given by God are ten,⁵⁴ but presently there are 613 commandments covering every aspect of life including law, family, food and personal hygiene. The Ten Commandments are:

1. I am the Lord, thy God; No other Gods before me
2. No carved image or likenesses of anything heavenly or earthly
3. Not take the Lord's name in vain.
4. Remember the Sabbath day.
5. Honor thy father and thy mother.

⁵² Note should be made on Islam as it maintains a system of law that enables punishment by human religious judges.

⁵³ In fact the very purpose of creating man was to find someone to fulfill Torah and commandments. Kedar Nath Tiwari, *Comparative Religion* (Delhi: Motilal Banarsidass, 1997), 115.

⁵⁴ Exodus chapter 20 and Deuteronomy chapter 5.

6. Thou shalt not kill
7. Thou shalt not commit adultery
8. Thou shalt not steal
9. Thou shalt not bear false witness
10. Thou shalt not covet

In fact, in all Abrahamic religions (Judaism, Islam and Christianity), Moses is a significant character. Muslims call him Musa.⁵⁵

In theological religions, God is believed to be the highest authority for judging and penalizing of human behavior. Yet this does not preclude the need of a human hand in it. Lewis B. Smedes writes: “Many evangelical Christians believe that when it comes to wrong doers (or criminals) the state’s first task is to make them suffer for the wrong they have done. Whether the lash, or exile from their homeland or a stretch on the rack or exposure to public shame (*The Scarlet Letter*) or confinement to jail—or even the noose—punishment is expected.”⁵⁶ There seems to be some arguments on the nature of punishment approved in the Biblical tradition. In pre-Christian societies, people believed in retributive justice. “In ancient Israel, for instance, when anyone acts against the God’s commandments penalty was harsh; even include stoning. The New Testament does not disavow the Old Testament way of punishing wrong doors. The apostle Paul insists (Rom.13) the God invested the state with a sword.”⁵⁷ We can reasonably deduce from this that the God has invested the right of penalizing wrongdoers on the state. Yet, while retributive justice is left for the state, restorative justice seems to be thought of as a better

⁵⁵ “Moses,” BBC, accessed June, 02, 2019,

https://www.bbc.co.uk/religion/religions/judaism/history/moses_1.shtml.

⁵⁶ Lewis B. Smeds, “How to Deal with Criminals: Is there a Biblical Principle behind the Punishment of Those Who Break the Law?” *Justicia Restaurativa*, accessed July 8, 2002,

<http://www.justiciarestaurativa.org/contact-info>.

⁵⁷ *Ibid.*

way. Apostle Paul urged the Galacian church, “If a man be overtaken in a fault, you who are spiritual, restore such a one in a spirit of meekness.”⁵⁸

Islam seems to be mainly punishment-oriented in criminal justice. The main crimes named are defined as going against five things that people have to preserve: Life, religion, reason, lineage and property. Thus the crimes or transgressions against these are: murder or assault (against life), apostasy (against religion), using intoxication (against reason), fornication and false accusation of adultery (against lineage), and highway robbery (against property). The punishments seem to be mainly retributive.⁵⁹

Thus, we notice that certain religions are more concerned about punishing crime here itself and have much to say about practical implications to secular law as well. Buddhism however, leaves mundane aspects of lay behavior in relation to crime to the state and even asserts that the monastic community also needs to respect state law. However, it reserves the responsibility of maintaining loyalty of the monastics to monastic laws.

The Buddhist approach to the problem of crime and punishment is, of course, mainly ethical both in a religious and a philosophical sense. Nevertheless, Buddhism is devoid of the concept of judgment day, as it is a non-theistic religion. The punishment, according to Buddhist ethics, comes in consequence to the operation of *kamma*, an application of the natural law of causality called *paticca samuppāda*, which, again, is operative with several other natural laws.⁶⁰

⁵⁸ “Galatians 6:1 Parallel Verses,” BibleRef.com, accessed April 29, 2019, <https://www.bibleref.com/Galatians/6/Galatians-6-1.html>.

⁵⁹ Abdurrahaman al-Muala, “Crime and Punishment in Islam,” Islamreligion.com, accessed June 02, 2019, <https://www.islamreligion.com/articles/253/viewall/crime-and-punishment-in-islam/>.

⁶⁰ Y. Karunadasa, *Early Buddhist Teachings, the Middle Position in Theory and Practice* (Hong Kong: Centre of Buddhist Studies, the University of Hong Kong, 2013), 21.

However, someone, challenging the stand that Buddhism offers a concept of crime and crime control, might argue that while other religions, at least, have God with a punitive power, Buddhism lacks even that. If *kamma* offers an equivalent to crime or if breaking precepts constitute crime, who is the judge to decide and institute punishment? It is true that neither the Buddha nor the monks enjoy any punitive authority over lay followers. An observer could ask, “What is there, then, to compare and contrast with the general concept of crime in relation to the punishment aspect of it?”

Another objection to the attempt of approaching criminal law from a Buddhist view is based on the degree of the segregation of monks from the lay community. In the words of Redwood French and Nathan:

Just as the prevailing notions of Buddhist monasticism have been built on faulty assumptions about the degree of separation between Sangha and lay society, so too have perceptions of Buddhism and law rested unsteadily on the incommensurability of monastic law and secular law. The monastic lay distinction has been interpreted as severely limiting the conclusions that can be drawn about the relationship of Buddhism to law. Some might go so far as to suggest that it would preclude even the possibility of studying Buddhism and law unless we are talking strictly about *Vinaya* and the monastic setting.⁶¹ It is possible that this perception may discourage the study of Buddhism and law.

Granted that Buddhism may not provide an exact parallel to any secular system of law, we are able to show that a study of criminology will still be fruitful in several ways.

Buddhism has never shown any interest in a secular political project that enables arrest of criminals and punishment of them, the way the state does. It did not attempt to create a political authority with (or without) judicial powers either. Yet, a careful reading of Buddhist scripture will reveal that the idea of crime and control of crime are not unknown to Buddhism. It can offer useful philosophical input to the problem of crime and crime

⁶¹ Rebecca Redwood French and Mark A. Nathan, *Buddhism and Law an Introduction* (Cambridge: Cambridge University Press, 2014), 8.

control and offer practical instructions as well. Moreover, Buddhist monastic culture is equipped with an “in-house system” of law (*Vinaya*) with clear definitions of crime and a more enlightened and humanitarian system of punishment practiced within the *Saṅgha*. Buddhism is capable of providing input for jurisprudence through philosophical and psychological insights and also by providing practical examples from the ecclesiastical law implemented within the *Saṅgha*. As Rebecca Redwood French and Mark A. Nathan correctly observe: “The *Vinaya* is a set of canonical law texts containing rules, descriptions, case studies, definitions and punishments and some ancillary material that was used to regulate the saṅgha.”⁶²

The Buddha appears in all *Vinaya* traditions, as the law giver to the *Saṅgha*.

Rebecca Redwood French observes:

After hearing accounts from others and thoroughly investigating the causes and conditions surrounding a suspected transgression or moral laps on the part of monks and nuns, the Buddha decided on cases as the highest spiritual and legal authority concerning what is good and true. On that basis, he is said to have created a substantial body of law for the community of monks and nuns, making Buddhist law in this sense quite unique among the major world religions.⁶³

As we are dealing with *Theravāda Vinaya* as monastic law, we have to note that it has preserved a very high percentage of rules intact. *Theravāda* being the most conservative school, it presents us with a story of struggle against any revision of the *Vinaya* rules. It was this conservative nature of *Theravāda* in relation to *Vinaya* that mostly gave occasion to the division of *Saṅgha* to schools. However, there are scholars like Schopen who disagree with this stand. According to him, placing the *Vinayas* in their

⁶² Ibid.

⁶³ Ibid., 9.

current forms during or close to the Buddha's life would mean that Buddhist monasticism had little or no real history of development.⁶⁴

This is a rather vague statement, as the story of the evolution of *Vinaya* rules is carefully recorded and faithfully preserved by the monks. It is true that they were strictly conservative. Even Mahayanists were very careful in previsioning the rules. A closer observation would reveal that the later development of monasticism seems to have very little, if any, effect on the original *Vinaya* of the Theravādins. They had their own methods of evolving their institutional behavior without altering the original texts. For instance, the Sri Lankan *Saṅgha* had a system of “*Pāli Muttaka Vinaya*,” logically justifying the exceptions to the rules in the *Vinaya* while still remaining loyal to their *Vinaya* texts when they had to adjust to new situations and challenges.⁶⁵

Buddha might definitely have had enough opportunity to familiarize himself with secular law during his twenty-nine years of lay life in a royal family. With that knowledge and recognizing the growing needs of discipline in the Order, the Buddha functioned as an effective lawgiver. Whenever a misdemeanor was escorted to him by those monks who were concerned about the moral health of the order, the Buddha investigated the case thoroughly and took appropriate action in light of the causes and conditions. He, of course, had the unchallenged authority in deciding the moral and legal implications of the behavior of the monks and, therefore, introduced, one by one, the laws to safeguard his order from deterioration. The laws covered not only moral behavior but also matters concerning the relationship with devotees and the rulers of the country.

⁶⁴ Gregory Schopen, “Deaths, Funerals and the Division of Property in a Monastic Cord”, in *Buddhism in Practice*, ed. Donald S. Lopez, Jr., (Princeton: Princeton University Press, 1995), 475.

⁶⁵ Walpola Rāhula, *History of Buddhism in Ceylon, The Anuradhapura Period, 3rd Century BC – 10th Century AC* (Colombo: M.D. Gunasena and Co. Ltd., 1956), 14.

When introducing laws commenced, even minor ethical conduct relating to abuse of privileges, propriety in using common utilities and social mannerism also assumed a legal flavor and was categorized as non-penalizing *sekhiyās* (manners) and simple misbehaviors (*dukkatās*).

The criminological erudition is Buddha had left for his followers could be seen in action when we read the story of Godatta Thero, who impressed even the king of Sri Lanka. It happened in King Bhatiya's days. According to *Samantapāsādikā*,⁶⁶ a monk happened to judge a complicated case of a monk charged of stealing when he had taken a drinking cup made of coconut shell left by a foreign monk. The case was settled by him addressing the value of the cup, and the monk was declared not to be excommunicated, as the specified value of an excommunicating offence (*pārājikā*) was higher than the value of the cup. When the king heard of the judgment, he was amazed at the wisdom of the monk and appointed him to be the highest authority over all the judges in the country.⁶⁷ This incident is indicative of the possible impact of criminological insights of the Buddhist monastics on general legal practice. The discriminative criminological insight the monk had displayed, no doubt, was gained in consequence to theoretical and practical familiarity of *Vinaya*. We, therefore, consider that Buddhist monastic *Vinaya* is imbued with strongly legal characteristics and look for Buddhist views on crime and crime control.

⁶⁶ Jayawicrama Buddhaghosa, *The Inspection of Discipline and the Vinaya Nidāna: Being a Translation and Edition of the Bahirānidāna of Buddha's Samantapāsādikā, the Vinaya Commentary* (London: Pāli Text Society, 1986), 243.

⁶⁷ G. P. Malalasēkara, "Godatta" in *Dictionary of Pāli Proper Names* (London: Pāli Text Society, 1960), 387.

The Buddha used several Pāli terms to mean what we understand by the term crime today. The terms, *akusala*,⁶⁸ *duccarita*,⁶⁹ *vajja* and *pāpa* are more common in general contexts. The technical terms employed in *Abhidhamma* in the ethical evaluation of human behavior are: wholesome (*Kusala*), unwholesome (*Akusala*), neutral (*Avyākata*) and mixed, i.e., both sides of right and wrong (*Vokinna*). In order to explain the complex moral nature of human action, the Buddha used a color code: white actions (*sukka kamma*), black actions (*kanha kamma*), black-and-white actions (*kanha-sukka kamma*) and neither-black-nor-white actions (*Akanha-asukka Kamma*).⁷⁰ Thus the term mostly applied for immoral or criminal behavior is *akusala*.

In monastic contexts (*Vinaya*), terms such as *āpatti*, *dukkata*, and *aparādha* are used for criminal actions committed by monks.⁷¹ Even though the ethical dealings with what is generally described as *akusala*, *vajja* and *pāpa* do not imply any mundane punishments, the acts are defined in clear terms under the religio-philosophic principles. Legal and punitive aspects are mostly limited to *Vinaya*, while karmic values are related to ethical aspects.

One might perhaps question about the ethical connotations of these terms as against the purely legal nature of the term crime in modern parlance. It should be noted that Buddhism, being a philosophy and a religion, should have a definition appropriate to moral use rather than a purely legal one. The Buddha was not a lawmaker in the general sense. His analysis of crime and the causes of crime should be taken as emerging from a philosophical standpoint. On the other hand, we have Buddhist ecclesiastical law, which is

⁶⁸ Davids and Carpenter, eds., *The Dīgha Nikāya*, 3:269.

⁶⁹ *Ibid.*, 214.

⁷⁰ Vilhelm, Trenckner and Robert Chalmers, eds., *The Majjhima Nikāya*, vol. 1 (London: Pāli Text Society, 1887), 389.

⁷¹ Trenckner and Chalmers, eds., *Parivārapali, Vinayapitaka*, 1:1.

more comparable to state laws as they carry the authority of *Dhamma* for judicial procedures.

According to the Buddha's definition, an *akusala* or a "crime" can be identified very clearly by self-examination rather than by referring to a fixed list. As Buddhism is, according to the Buddha's own definition, a religious system for intelligent people, the criteria of identifying a crime in the moral sense is given for individuals to apply in their own reflective thinking. This means a process of "reflection in action." The *Ambalatthika Rāhulōvāda Sutta*⁷² brings out this point in very clear terms. The Buddha explains to Rāhula the procedure for bodily actions in the following words:

Whenever you want to do a bodily action, you should reflect on it: "This bodily action I want to do would it lead to self-affliction, to the affliction of others, or to both? Would it be an unskillful bodily action, with painful consequences—painful results?" If, on reflection, you know that it would lead to self-affliction, to the affliction of others, or to both; it would be an unskillful bodily action with painful consequences, painful results, then any bodily action of that sort is absolutely unfit for you to do. But if on reflection you know that it would not cause affliction ... it would be a skillful bodily action with pleasant consequences, pleasant results, then any bodily action of that sort is fit for you to do.⁷³

Here the Buddha explains about thinking before action. The Buddha was observant of the fact that volition precedes any action and it is where one can have a thorough reflection. For this one need to have a healthy ethical orientation which would guide him in deciding on the suitability of committing the intended action. The Buddha has explained this further in the following words:

While you are doing a bodily action, you should reflect on it: "This bodily action I am doing—is it leading to self-affliction, to the affliction of others, or to both? Is it an unskillful bodily action, with painful consequences, painful results?" If, on reflection, you know that it is leading to self-affliction, to the affliction of

⁷² Trenckner and Chalmers, eds., *Majjhima Nikāya*, 1:95.

⁷³ *Ibid.*, 405.

others, or to both ... you should give it up. But if on reflection you know that it is not ... you may continue with it.⁷⁴

Here the Buddha, more or less, repetitively states the importance of prevention of an action which would appear, upon reflection, as resulting in unpleasant experiences to self, others or both.

Then the Buddha emphatically advises to reflect after committing an action. If a person was not very careful in analyzing the harmful repercussions of his actions, he should resort to reflect back to find out how the act has been causative of pleasant or unpleasant experiences to self, other or both parties. If in analysis it is found to have been generative of suffering to any party, his advice is to discontinue that action. This could be termed as reflection in action.

Having done a bodily action, you should reflect on it: “this bodily action I have done, did it lead to self-affliction, to the affliction of others, or to both? Was it an unskillful bodily action, with painful consequences, painful results?” If, on reflection, you know that it led to self-affliction, to the affliction of others, or to both; it was an unskillful bodily action with painful consequences, painful results, then you should confess it, reveal it, and lay it open to the teacher or to a knowledgeable companion in the holy life. Having confessed it ... you should exercise restraint in the future. But if on reflection you know that it did not lead to affliction ... it was a skillful bodily action with pleasant consequences, pleasant results, then you should stay mentally refreshed and joyful, training day and night in skillful mental qualities.⁷⁵

This technique is given further elaboration in the *Āṅguttara Nikāya*, where the Buddha explained it as “*Attūpanāyika Dhamma Pariyāya*” (self-as-the-measure technique). It teaches that one should not do anything to others that one does not like done to himself. The application of this criterion involves reflecting on one’s own basic instinctive characteristics that one shares with other fellow beings. In this reflection one may see that he fears death, loves life, fears punishment and harassment, wishes to be

⁷⁴Trenckner and Chalmers, eds., *Majjhima Nikāya*, 1:405.

⁷⁵Ibid.

happy and dislikes suffering. In the same way he should realize that others also, like him, fear death, love life, fear punishment and harassment, wish to be happy and dislike suffering (*amaritu kāma, jivitu kāma, dandana bhīta, sukha kāma, dhukkha patikkūla*).⁷⁶

In defining criminality of an action, Buddha takes the impact of one's action on oneself and others. In his advice to Rāhula, the Buddha has stated one should reflect: whether one's action leads to suffering to self, suffering to others or suffering to both. If, on reflection, it were found to cause pain and unhappiness to self or others or both parties, it should be known as an evil action.⁷⁷ Even though this criterion is offered to assist people to distinguish *akusala* from *kusala* and vice versa, it helps us to crystallize the Buddhist definition of crime as well. The implication is that instilling pain and causing hurt to self or others is a defining characteristic of crime.

Instead of depending on a list provided by a religious authority, one can understand what is painful to others by putting oneself in other's shoes. Everybody hates to die, or be punished to undergo suffering. Understanding thus, one can define in his own thinking that to kill, to incur pain, to rob, or to deprive others of happiness is a crime.

According to the modern sociological analysis, there are different types of crimes.

The basic categories are:

1. Crimes against people
2. Crimes against property.⁷⁸

In a more detailed classification, generally, they are divided into four major categories.

- 1) Personal crimes are "offences against the person" that result in physical or mental harm to another person or persons including assault, false imprisonment, kidnapping, homicide, rape and other sexual crimes.

⁷⁶ Lankānanda and Nānālōka. *Samyutta Nikāya*, 5:354.

⁷⁷ Trenckner and Chalmers, eds., *Majjhima Nikāya*, 414.

⁷⁸ Nandasēna Ratnapāla, *Crime and Punishment in the Buddhist Tradition* (New Delhi: Mittal Publications, 1993), 50.

- 2) Property crimes involve interference with another person's property. Property crimes include larceny (theft), robbery (theft by force), burglary, arson, embezzlement, forgery, false pretenses, and receipt of stolen goods.
- 3) Inchoate or incomplete crimes are termed as "attempted" as in attempted robbery. This group includes solicitation and conspiracy too.
- 4) Statutory crimes are violations of specific state statute and can involve either property offence or personal offence. This group involves driving a vehicle after drinking or selling alcohol to a minor.⁷⁹

The fivefold precepts in Buddhism provide a simple classification of crimes covering both crimes against life and crimes against property. However, in Buddhist ethics the Buddha has given criteria for his followers to define what crime is for themselves rather than by depending on a given list of crimes. Yet, not everybody in society is equipped with such intellectual discriminative wisdom to decide on their own and depend on the guidance from religious dignitaries, law makers or wise people. For the benefit of such people the Buddha has left a few lists containing already defined crime. In the monastic context, of course, it was necessary to list the prohibited activities in legal terms, mainly because there is a specific punitive procedure of the Order to maintain its purity.

The five precepts recommended for the lay followers identify five criminal activities the Buddha considered as areas where avoidance is advisable.⁸⁰ The five precepts are self-regulatory moral undertakings going against immoral acts which are more or less universally agreed as crimes. They are legally defined as crimes by the state. A lay Buddhist is supposed to proclaim to himself and others that he would refrain from:

1. Killing (*pānātipātā*)
2. Stealing (*adinnādānā*)
3. Sexual misconduct (*kamēsu micchācārā*)
4. Lying (*musāvādā*)

⁷⁹ Ashley Crossman, "7 Different Types of Crimes," thoughtco.com, accessed September 03, 2016, <https://www.thoughtco.com/types-of-crimes-3026270>.

⁸⁰ Lankānanda and Nānālōka, *Anguttara Nikāya*, 3:203.

5. Alcoholism (*surāmeraya majjapamā datthānā*).⁸¹

In this list, the first two are directly related to the above-mentioned two categories of crime given by sociologists (i.e., crimes against people and crimes against property). Sexual misconduct and lying are also crimes against people. Certain secular societies, however, may not agree with the last one, as drinking alcohol has been accepted by them as a means of socialization. However, the precept includes the reason why one needs to refrain from intoxicants. The precept defines taking alcohol by qualifying it as something intoxicating that may cause losing moral awareness and negligence of his work (*majjapamādatthānā*). Other precepts do not contain such “justificatory explanations,” most probably because of the universal agreement over their criminality. Regarding consuming alcohol, Buddha perhaps thought it necessary to provide the reason why alcohol consumption was made a crime; in the first four precepts, one directly recites that he undertakes to refrain from the referred criminal activities. For instance, the first precept is recited as “I undertake to observe the precept of refraining from killing (*Pānātipātā vēramanī sikkhāpadam samādiyāmi*).”⁸² In the fifth precept, however, unlike in the previous four precepts, refraining from alcoholic drinks is qualified with the phrase “intoxicating and causing negligence” (*majja pamādatthānā*). Buddha has elsewhere explained the ill effects of drinking in detail. One may still wonder why the Buddha has not included drinking alcohol in the famous list of *akusala* (demeritorious actions). In modern law also, drinking itself is not crime; yet drunken behavior that disturbs public life is a crime. That ill behavior and the psychological confusion caused is meant by the justificatory phrase “*majja pamādatthānā*,” which the Buddha has added to the precept.

⁸¹ Lankānanda and Nānālōka, *Kuddakanikāya*, 1:2.

⁸² Ibid.

Refraining from these crimes, according to the Buddha, creates a peaceful social context pleasant to live in.⁸³ by refraining from these crimes, one offers “*abhaya dānā*” (gift of the opportunity of living fearlessly and peacefully) to himself and others.⁸⁴

Another Buddhist list of crime, a little more detailed than the five precepts, is the ten *akusala kammās*. Crimes in this list are classified as *kammās* (immoral acts) committed through body (physical), word (verbal) and mind (mental).

The three kinds of physical actions are:

1. Killing any living being
2. Taking what is not given
3. Committing rape and adultery.⁸⁵

The four kinds of verbal actions:

1. Lying
2. Slandering
3. Harsh speech
4. Frivolous talk.⁸⁶

The three kinds of mental actions:

1. Covetousness
2. Ill-will
3. Wrong (harmful) views.⁸⁷

Any action acquires an ethical quality only if it is consciously committed by a sane person. In other words, only volitional action is evaluated for its karmic efficacy.⁸⁸

Without volition there is no karmic value for any action. That stand made the Buddha very different from the next influential Śramaṇic religion of the day, Jainism. While Jains gave prominence to the physical aspect of the act, the Buddha emphasized the motive.

⁸³ Lankānanda and Nānālōka, *Anguttara Nikāya*, 8:39.

⁸⁴ *Ibid.*, 4:246.

⁸⁵ Lankānanda and Nānālōka, *Digha Nikāya*, 3:269.

⁸⁶ Labugama and Nānālōka, *Majjhima Nikāya*, 1:287.

⁸⁷ Lankānanda and Nānālōka, *Anguttara Nikāya*, 3:415.

⁸⁸ *Ibid.*, 3:263 and 1:415.

Actions performed with the three criminal motives of greed, hatred and delusion are categorized as three bad motives behind the *akusalās* committed by thought, word and deed.⁸⁹ In the religious or spiritual-moral context, they are crimes because of the bad motives behind them.

These activities go against “universal justice” identified in terms of common survival instincts – happiness (*sukha kāma*), life (*jīvitū kāma*) and dislike of death (*dukkha patikkūla*). In addition to the motive, intention is also taken into consideration when evaluating the criminality of an action. Buddhist ethics is mainly inward-looking in its approach. An action is not judged just by looking at the external or physical aspect of it. The intention of the person who committed the action is of utmost importance in the evaluation of any action. If the aim of the actor was to harm or cause pain to someone physically, verbally or mentally, that action is *akusala* – unwholesome.⁹⁰

Killing is the intentional destruction of a living being. The Pāli word “*pāna*” is used to denote the present existence of a living being. *Pāna* literally means breathing. *Pāna*, therefore, is used in Indian religious and medical literature to denote all forms of life, including animals. However, plants are not counted as *pāna*, as they were not recognized as thinking or possessing mind. However, as there were followers of Jainism who believed even plants have life as they have a sense of touch, the Buddhist monks are instructed not to harm plants. Nevertheless, this prohibition is not extended to Buddhist lay people. Killing is termed as *pānātipātā* for the reason that breathing is taken as a synonym to life. When the breathing stops, it is generally believed life comes to an end, as it is the most evident sign that indicates the being is still living. Killing involves

⁸⁹ Ibid., 415.

⁹⁰ Bhikkhu Nānamōli and Bhikkhu Bōdhi, *Majjhima Nikāya* (Kandy: Buddhist Publication Society, 1993), 524-526.

consciously causing discontinuation of the process of life by not allowing it to take normal course.

There are five conditions which are necessary to complete the evil action of killing.

- (1) Killing a living being,
- (2) Knowledge that it is a living being,
- (3) Intention of killing,
- (4) Attempt to kill and,
- (5) Consequent death.⁹¹

Stealing or taking what is not given is the second criminal activity. Five conditions are necessary for the completion of this evil action of stealing, namely:

- (1) Stealing another's property,
- (2) Knowledge that it is so,
- (3) Intention of stealing,
- (4) Effort to steal, and
- (5) Actual removal.⁹²

Getting involved in sex with protected individual is sexual misconduct. To complete this evil action it is necessary to complete:

- (1) Thought to enjoy
- (2) Consequent effort
- (3) Means to gratify and
- (4) Gratification.⁹³

Lying is the next evil action. The conditions necessary to complete the evil action of lying are:

- (1) An untruth
- (2) Intention of deceiving
- (3) Utterance and
- (4) Actual deception.⁹⁴

⁹¹Trenckner and Chalmers, eds., *Majjhima Nikāya*, 1:178.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid.

Four conditions are necessary to complete the evil act of slandering. Such as,

- (1) Persons to be divided
- (2) The intention to separate them or the desire to endear oneself to another
- (3) Corresponding effort and
- (4) The communication.⁹⁵

The evitable consequence of slandering is the dissolution of friendship without any sufficient reason.

Three necessary conditions to complete the evil act of harsh speech are:

- (1) A person to be abused
- (2) Angry thought and
- (3) Actual abuse.⁹⁶

Two conditions are to be completed for counting talks as frivolous:

- (1) The intention of engaging in frivolous talk
- (2) Engaging in frivolous talk.

Two conditions are necessary to complete the evil action of covetousness:

- (1) Another's possession and
- (2) Adverting to it, thinking it would be mine.⁹⁷

To complete the evil action of ill will two conditions are necessary namely

- (1) Another person and
- (2) The thought of doing harm The last in the list of ten is immoral views (such as rejecting the efficacy of volitional action).

There are two conditions necessary to complete the evil action of false beliefs. They are:

- (1) Perverted manner in which the object is viewed and
- (2) The understanding of it according to that misconception.⁹⁸

The Buddha has offered insights on the origin of crime and crime control methods in several suttas. The *Aggañña Sutta of Dīgha Nikāya*⁹⁹ is such a discourse of utmost

⁹⁵ Bhikkhu Nānamōli and Bhikkhu Bōdhi, *Majjhima Nikāya* (Somerville Massachusetts: Wisdom Publications, 1995), 269-277.

⁹⁶ Ibid.

⁹⁷ Trenckner and Chalmers, eds., *Majjhima Nikāya*, 1:178.

⁹⁸ Ibid.

importance, as it presents the origin of crime and the evolution of the crime control mechanism in non-metaphysical terms. What is of significance here is the fact that Buddhism, unlike other contemporary Indian religions, did not resort to a theistic or metaphysical approach in discussing social institutions. It presents socio-psychological factors working within changing physical and social conditions as causing criminal behavior among men. And, according to the Buddhist interpretation, it was human beings, through their own trial-and-error methods, who invented reasonably effective crime control techniques in the primordial past. The myth presented in the *Aggañña Sutta*¹⁰⁰ is sociological rather than religious. It is free of any creation myth or supernatural intervention. The sutta, of course, has legendary and mythological characteristics, a very useful communicative strategy for 2,600 years ago. Even in the modern world, myth has a purpose, and its usefulness endures in the future as well.¹⁰¹ Every Indian religion employed myths for presenting their speculations on various issues. Thus the Buddhist story discussing the evolution of social institutions such as the state, crime, law, punishment etc., also take that form. We might even say it is a myth against myths.

In addition to suttas such as *Kūṭadanta*¹⁰² and *Cakkavatti Sīhanāda*,¹⁰³ there had also been dialogues between the kings of the day and the Buddha on matters related to crime and crime control. The Buddha, being a crown prince hailing from a Śākya family, was definitely provided with a systematic education on legal practices among

⁹⁹ Davids and Carpenter, eds., *the Dīgha Nikāya*, 3:27.

¹⁰⁰ Ibid.

¹⁰¹ *In the US, there are myths around people such as George Washington (e.g., the cherry tree myth), Benjamin Franklin, Abraham Lincoln, etc*; Moson Locke Weems, "The Fable of George Washington and the Cherry Tree," Barrel, accessed June 02, 2019, <https://www.whatsoproudlywehail.org/curriculum/the-american-calendar/the-fable-of-george-washington-and-the-cherry-tree>.

¹⁰² Davids and Carpenter, *The Dīgha Nikāya*, 1:110–123.

¹⁰³ Ibid.

other secular subjects before his renunciation. Therefore, he, even after his enlightenment, managed to maintain close and positive relationships with the powerful kings of the day. They reportedly frequently visited the Buddha and had discussions with him on many subjects. Some of these discussions are also useful resources in a study of Buddhist insights on crime.

Moreover, there is a complete system of monastic law (*Vinaya*) in Buddhism, which provides useful insights on understanding a Buddhist attitude to crime. The Buddhist monastic *Vinaya* is a carefully codified law with subtle details of occasions, rules, exceptions, punishments and reformatory procedures. Furthermore, in the Buddhist philosophical analysis of human behavior, also we have the Buddha's views on crime and crime control. Thus it appears that a criminological approach to Buddhism would be a rewarding pursuit.

The above observations identify two important dimensions in the Buddhist approach to crime. The first is looking at it from ethico-philosophical angle. From this angle, criminal activities are analyzed as karmically unwholesome activities, the punishment for which comes as a natural outcome. They are defined in relation to motives, intentions and their "natural" (samsāric and causal) and social consequences. The second dimension is institutional. For the members of the *Saṅgha*, crime is going against the monastic system of law. Monastic crime has a special term, "*āpatti*," meaning fall. As in the secular legal systems, they are crimes because they come into conflict with the monastic law, and they incur punitive or reformatory results. Most of the crimes taken into consideration therein do not have karmic value. The "punishment" for such crimes is institutional. As these monastic laws do not depend on God or any supernatural agency

for the authority or validity, they are flexible and revisable. The Buddha himself revised some rules several times under new circumstances. There were times that he was informed by the monks about the practical difficulties encountered when the rules were to be adhered to. As a sympathetic and understanding teacher, the Buddha provided necessary amendments to the rules in such situations. Before his *Parinibbāna*, the Buddha kindly accorded permission to the Saṅgha to revise minor rules as and when necessary. However, in the *Theravāda* tradition, the monks have decided to adhere to all of the rules in a rather strict conservative manner, refraining from revising them.

In the Buddhist analysis of crime the ten *akusala kammās* are identifiable as a classification of crime in a moral ethical sense, and actions are denoted in 220 *Vinaya* rules as institutional crimes. However, from the religio-philosophical viewpoint, moral-ethical aspects of criminal activities take precedence. Even if one may evade state punishment, the natural law of *kamma* will be operative on a criminal of this type. It is stated that a criminal has no escape from the consequence of his evil action, in spite of his being in the sky, in the ocean or in a mountain cave.¹⁰⁴ Therefore, Buddhist teachings take special interest in defining criminal actions in ethical terms.

The Buddhist order of Sangha functioned for twenty years without any law. The monks had a “feel” of the way they should behave and refrained from un-monk like activities. Yet one senior follower of the Buddha wanted to convince the Buddha of the importance of having a system of monastic law by providing examples showing that previous Buddhas who had established laws had their teachings (religions) last longer than those who did not. Buddha, even though he did not venture into immediate

¹⁰⁴ Narada Thera, *Dhammapada, Pāli text and translation with stories in brief and notes* (Colombo: Buddhist Cultural Center, 1971), 62. Verse 127.

introduction of rules for monks, did not reject the fact that laws make the order last longer. Instead, he stated that he would institute laws when the time was ripe to do so. (As a matter of fact, he found it good to introduce rules when the first grave monastic offence was noticed.) It is of utmost importance here to note that the reasons for introducing monastic laws in the Buddhist order:

- i. For the well-being of the Community,
- ii. For the convenience of the Community,
- iii. In order to curb miscreants,
- iv. For the ease of well-behaved monks,
- v. In order to restrain misbehavior in the present,
- vi. In order to check future misbehavior,
- vii. In order that those who have no faith (in this religion) may acquire faith,
- viii. In order that those who have faith may be further strengthened in their faith,
- ix. In order that the good *Dhamma* may last long and
- x. For the promotion of discipline.¹⁰⁵

These were the reasons for introducing *Vinaya* rules to the order in a legal sense. In fact, these stand as additional to the natural law on which the Buddha does not claim any authority. For instance, five precepts are given as voluntary undertakings on the premise that one who needs his own protection should offer protection to others.¹⁰⁶ The Buddha has justified them with reference to the benefits one brings to others which, in effect, bring the same benefits to one as well. He has explained the five precepts as factors generating mutual love, respect, cooperation, agreement, friendship, and unity in society.¹⁰⁷ Thus, in relation to lay society, the Buddha had a socio-philosophical recipe for a crimeless society. Punishment for breaking five precepts is not related to Buddhist religion. It comes consequent to universally operative *Kamma niyāma*.

¹⁰⁵ I. B. Horner, *The Book of the Discipline: Vinaya piṭaka*, vol. 3 (London: The Pāli Text Society, 1982), 21.

¹⁰⁶ Morris, eds., *The Aṅguttara Nikāya*, 4:246.

¹⁰⁷ *Ibid.*, 289.

Buddhism presents *kamma* as a universal principle. It is similar to the notion that every action has a consequence. However, karmic consequence is limited to volitional action only. Karmic law is one of the five universal laws (called *niyāmās*) recognized in Buddhism.¹⁰⁸ Punishment to criminal actions, therefore, comes as a natural outcome. No one is there to operate this process, as it is a part of the nature which is automatic in operation.

This does not mean that Buddhism leaves the responsibility of punishment for criminal acts entirely on *kamma*. We may see that Buddhism is cognizant of the mundane functions of judicial agencies that human beings themselves have established to control harmful activities of uncivilized and unconcerned people. In other words, the laws of any state operate independently of the function of karmic law. They belong to two different realms. As a practical religious person, the Buddha has instructed his followers to obey the laws of the state.

The foregone brief account of ethical (karmic) profile of criminal actions appear as inward looking rather than external and physical. It has given sufficient weight to motive (*kusala mūla*) and intention (*cetanā*). Buddha has emphasized that as volition is behind all actions; action is mainly mind driven. He has said, “It is will that I call *kamma*. Having the will, one acts through body, speech or mind.”¹⁰⁹ Unwholesome and unskilled actions have greed, hatred and delusion as the motive. To inflict suffering to someone, deprive him of his rightful property, to rape sexually, to deceive, abuse or insult, to be jealous and covet someone else’s achievement or harness hatred against someone are evil

¹⁰⁸ *Crystallizing of the niyamas into five was done in the commentaries.* Rhys Davids, T. W. *Dighanikaya Commentary*, vol. 2 (London, Pali Text Society, 1995), 432; Muller, *Dhammasangani* (London, Pali Text Society, 2001), 272.

¹⁰⁹ *Cētanāham Bhikkhavē kammam vadāmi. Cetayitvā kammam karōti kayēna vācāya manasā.* Lankānanda and Nānālōka, *Digha Nikāya*, 3:415.

intentions that make someone involved in criminal activities. Holding a wrong view of morality is behind all crimes. It darkens one's wisdom and causes unwise decisions. All these indicate the psychological nature of a Buddhist analysis of criminal behavior in an ethical approach.

The Jains led by Mahāvīra held a different view. They claimed that the physical aspect was more significant. According to the Jains, the unintentional or accidental stepping on an insect is criminal, as it indicates that a person has behaved irresponsibly by not being careful of the lives of other creatures.¹¹⁰ Buddhism, not subscribing to such a mechanical view, provides exceptions to non-intentional situations that might otherwise appear criminal. Some examples from the *Vinaya* are: 1) a monk was not held responsible in a case of a woman having sexual intercourse with him while he was in deep sleep;¹¹¹ 2) a case of rescuing a lost item without the thought of stealing;¹¹² 3) a case of death of a man during building work due to the unintentional, accidental dropping of a stone.¹¹³

In addition to the above-mentioned two criteria, viz., motive and intention, the social and spiritual consequences are also taken into consideration in defining crime. The Buddha, in providing a criteria for identifying evil action (which actually is crime in moral-ethical terminology), taught that any action that brings suffering to self or others should be understood as evil and one has to refrain from doing it.¹¹⁴ In the *Dhammapada*, he states: "Evil doer suffers here; he suffers hereafter. In both states the evil doer suffers. Furthermore, he suffers having gone to a woeful state."¹¹⁵ He reiterates: "Better that act is

¹¹⁰ S. R. Goyal, *A Religious History of Ancient India* (Meerut: Kusumanjali Prakashan, 1984), 184.

¹¹¹ I. B. Horner, *The Book of the Discipline: Vinaya Piṭaka*, vol. 3 (London: The Pāli Text Society, 1982), 33.

¹¹² *Ibid.*, 63.

¹¹³ *Ibid.*, 81.

¹¹⁴ Trenckner and Chalmers, eds., *Majjhima Nikāya*, 1:64.

¹¹⁵ Narada Thera, *Dhammapada, Pāli text and translation with stories in brief and notes*

not performed, after doing which, one repents, and reaps the fruit there of weeping with tearful face.”¹¹⁶

It appears, then, the Buddhist approach to crime is mainly ethical and the focus therein is a balance between volitional and consequential criteria. This is important, since law and punishment handled by political and judicial authorities alone may never completely eradicate crime. Observes Satyanarāyan Rao:

Humans have dark side that loves crime and violence. We all may deny it but the contrary is true. And it applies regardless of our age, caste, social status, region, religion or education. The television, movies, sports and many happenings reported in newspapers and magazines are indicative of our obsession with the fact and fiction of crime and violence. Modern culture in fact can be referred to as the most violent culture in history in the number of crimes and in the nature brutality.¹¹⁷

This observation seems to tally with the Buddhist theory that human beings are born having *rāga*, *dōsa* and *mōha* behind their birth. If these three roots were eradicated from someone’s mind, he would not be born again; rather, he would enter *parinibbāna*. However this does not mean that people are essentially bad. All defilements, according to the Buddha, are acquired and can be removed. That is implied in the Buddha’s statement, “pabhassaramidaṃ, bhikkhave, cittaṃ, tañca kho āgantukehi upakkiliṭṭha”¹¹⁸ (Pure is the mind; it has become impure as a result of the inflow of defilements).

A Buddhist view of crime, as in the secular law of modern times, is essentially connected to law. When there is no clearly established law against any action defining it as a crime, there is no punishment. This is clear in examples of the Buddha refraining from punishing the first offenders of any unacceptable deed. The first offender is called

(Colombo: Buddhist Cultural Center, 1971), 19. Verse 17.

¹¹⁶ Ibid.verse 67.

¹¹⁷ T. Sathyanarayana Rao, “Psychiatrist and the Science of Criminology: Sociological, Psychological and Psychiatric Analysis of the Dark Side,” Indian Journal of Psychiatry, accessed September 03, 2016, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2899996/>.

¹¹⁸ Lankānanda and Nānalōka, *Anguttara Nikāya*, 1:10.

ādikkammika and considered as someone who had not seen the ill effects of his doing (*ādīnava dassāvi*) when he committed that particular action. The Buddhist law recognizes insanity as a mitigating factor. If someone has committed an offence when he was not sane, his act is not considered a crime. It appears, therefore, that the Buddhist definition of crime has many parallels with the approach of modern law.

However, the Buddha's stand against crime was not limited to legally defined crimes. He went to an extra-legal dimension to express his views against criminal injustice prevalent in his contemporary Indian society. The Buddha was not happy with "social crime." There was appalling discrimination against the weak classes by powerful groups. One such crime was caste discrimination and another was oppression of woman. He raised his voice against these in extra-legal ways. The Buddha did not remain silent against social crime, even though he could not do anything legal, as he was not a law maker. Yet there are records of his attempts to convince the ruling class of the cruelty of oppressing the weak.

The social environment of Buddhism in the sixth century B.C. was rigidly caste dominated. Sir Henry Maine describes the caste system as "the most disastrous and blighting of human institutions."¹¹⁹ Brahmins claimed that their caste was the highest, blessed and respectable caste and even the Kṣatriyās (the royalists) were not superior to them as far as caste was concerned. They very strongly insisted that the Brahmin caste was to be considered the upper stratum of society while the rest of the society was to be in lower strata. The four strata or *varṇās* to which people were divided into were called Brahmins (the priestly), Kṣatriya (royalty and nobility), Vaiśya (traders), and Sudra (slaves). Brahmins were so dominant in their pride that they dictated terms to the three

¹¹⁹ V. D. Mahajan, *Ancient India* (New Delhi: S. Chand and Company, 2018), 129.

other classes. They provided the top rung castes (Brahmins, Kṣatriyās and Vaiśyās) with a life agenda called *Āsrama*, which recommended celibacy during student days, married life during the youth, asceticism when old, and meditation approaching the end of life. Castes were given caste norms, which were not to be violated. This strictly limited freedom of choice in living life according to one's choice. The main criterion of caste was birth, and it did not make provision for "low-born talents" to rise and "high-born incompetents" to occupy a low position.

Brahmins maintained that God ordained all human beings into four groups from the very day of creation. God's plan is something the humans have to accept without argument. Even though this was hypocritical and unkind, Hindu writers say that, the purpose of the *Varnāśrama* social system is to provide a structure which allows people to work according to their natural tendencies and to organize society so that everyone, regardless of their position, makes spiritual advancement. Some modern Hindu writers argue that when this system is followed there will be no shortage of skills in society, since there is always someone born to fulfill every need of society. They also claim that as functions are kept in practice through generations of families, higher skills can be expected from families who have been perfecting them for a longer time.

As a matter of fact this discrimination could be traced to the early Vedic days. It was a result of social friction evolving into a stratification that was later justified with the help of religion. In a historical point of view, there were only two groups in the society, namely, the Aryans and their slaves (*dasyus*), consisting of the dark Indus Valley people who survived brutal genocides during the aggressive Aryan invasion. As their difference was mainly in skin color, the stratification was called *Varna dharma* (color-based policy).

This system, as a matter of fact, originated in conjunction with the ethnic prejudice of the conqueror extended against the conquered aboriginals. Aryan invaders were different not only in complexion, but also in religion, customs and manners from the non-Aryan inhabitants. Invaders made the aboriginals their slaves, calling them *dasyus*. However, the Brahmins, who were the religious priest class, developed this stratification further, providing it with a theological basis but keeping the term “Varṇa,” even though it no longer carried the same meaning. According to Sham *Shastri*, the four castes were given four colors for their garments: white was for Brahmins, red for *Kṣatriyās*, yellow for *Vaiśyās* and black for the *Sudras*.¹²⁰

Āsrama refers to four stages of life recommended in Brahmanism. This was mainly intended for people of higher classes. They were supposed to devote a reasonable part of their life for education. Education of a Brahmin child begins with learning grammar when he is 12 years old and then continuing with Vedas. If one learns all three Vedas it takes 36 years. This, in effect, means the person is 48 years old when he becomes a fully learned Brahmin. All these years the students were supposed to practice *brahmacariya*, celibacy. This is called *Brahmacarya āsrama*. The next was *Gruhastha*, married life. Third *Āsrama* is *Vānaprastha*, living in the forest, performing various sacrificial rituals to fire god. The last stage of life is *Sanyāsī*, getting ready for death while engaged in meditative practices as a hermit. The last two were not considered essential. As a matter of fact, Brahmins were discouraged from practicing them.

The *Puruṣa Sūkta* in the tenth Maṇḍala of Rig Veda was composed during the time that the Brahmins were contemplating a religious justification for the finalized concept of Varna. In the *Bhagavad Gītā*, Śrī Krishna appears providing further

¹²⁰ Ibid.

justification claiming that he created the system of four *Varṇas* in respect of the qualities and deeds (of people). (Cātur-varṇam mayā sṛṣṭam guṇa-karma-vibhāgaśaḥ.)¹²¹ Hindus believe that the Creator made the intelligent class of men into Brāhmaṇa class, the passionate into *Kṣatriya*, mixed between passion and ignorance into *Vaiśya* and ignorant into Śūdra.¹²² The descriptions of the four castes were as:

1. Brahmanās: spiritual teacher, priests, the intellectual and learned class
2. Kṣatriyās: the administrator and military class, responsible to give protection to people.
3. Vaiśya: primarily responsible for agriculture, protecting the cows, food production, trading and farming.
4. Śūdra: laborers, capable assistants to the other three classes.

However, even when coated in beautiful terms, the *Varna* system did not allow the Sudra class to claim any social rights. They were deprived of education, riches or religious practice. In the *Dharma Sastra* books, like that of Manu, some very strict punishments were recommended for Sudras who tried to exceed their “limits.” For instance, if any Sudra calls a Brahmin by name, a red hot iron nail with the length of ten fingers should be thrust into his mouth. If he tries to advise a Brahmin, hot oil should be poured into his mouth and ears. If he listens to a hymn being sung, hot lead must be poured into his ears. If he chants a hymn, his tongue should be cut off. If he is found learning a hymn, he should be cut vertically into four. By killing a Sudra, a Brahmin commits only the sin of killing a dog or a cat. Mahajan states that “the chief curse of the caste system is ‘untouchability.’” The upper castes did not regard the low-caste Sudras as human beings. They were treated with contempt. Their shadow defiled the upper classes. Their touch was unbearable. They were not allowed to touch the utensils or water used by the members of upper classes. It was also prohibited for them to draw water from the

¹²¹ Juan Mascaro, *The Bhagavad Gita* (Baltimore: Penguin Books, 1962), 4-13.

¹²² *Ibid.*, 18-41.

wells that high-class people drink from. The temples that high-class people used to worship were also barred for them. In short, they were not treated as human beings but as animals.¹²³

The Buddha felt that this was a crime, as it deprived people from upward movement in the social ladder. He challenged the epistemological basis of Varna theory and raised scientific and logical arguments against it, stating that it was very undemocratic and outdated. He opened the door of his monastic order to any person who expressed willingness to join. The Buddhist monks were known only as *Samana Sākyaputtiyā*, “recluses, the sons of *Sākya*.” Even the monks who joined the Buddhist *Sangha* from a very low caste, therefore, were elevated to the rank of *Sākya putta*. And the members who had come from high-class families shaved their heads, discarding the external signs of their high class. The Order was equated to the ocean, which does not discriminate between water from all rivers.

The Buddha had no other way than logically proving this was wrong and disregarding it in his socio-religious activities. All throughout his missionary life, he raised many arguments against it. The arguments he raised could be classified into epistemological, historical, anthropological, sociological, political, biological, physical, legal and moral categories.

Epistemological argument (*Canki Sutta*): Brahmins claim that the creator God Brahma himself became the primordial person to evolve mankind. At that time, from his mouth Brahmins were born, while from his hands, the *Kṣatriyās* and legs, *Vaiśyas*. The Sudras were born from his feet. The Buddha asked whether any Brahmin or their ancestors saw this taking place. It was confessed that it was not something that either they

¹²³ V. D. Mahajan, *Ancient India*, 129.

or their ancestors had witnessed but something every one of them accepted out of faith. It was just a matter of believing tradition. The Buddha maintained that it was not possible to grant any truth value for such beliefs on tradition alone, since there was no guarantee that they were correctly handed down or not. Even if correctly transmitted, there was the possibility of it being wrong.

Anthropological argument (*Aggañña Sutta* (evolutionary process)): In the process of the crystallization of communities in the present period of evolution of the world system, after a long period of dissolution, people developed the system of private property along with their increasing desire to possess and live a luxurious life. With that, gradually they resorted to various immoral practices, such as stealing, lying, fighting and killing. In order to control crime, they appointed one of them as their king. This gave rise to the *Kṣatriya* (ruling warrior) class. However, some others were worried about the degeneration of morals that had occurred in their society and decided to commit themselves to run away from evil. They, as a group, committed to avoiding of evil and immorality, formed the Brahmin class. Among the rest of the people, those who were interested in trade and industry formed the Vaisya class, while those who happened to engage in menial and manual work were to be identified as Sudras. The Buddha maintained that there was a justifiable basis for this division at that time, as it had, at least, a functional (economic political and religious) importance. Now that the basis was no longer to be seen there was no point in having it any longer.

Historical argument – (*Ambattha Sutta*)¹²⁴ (purity of the castes): The Buddha brought forward some historical incidents that show the purity of castes got defiled, in contradiction to the claim of Brahmins that they were blue blooded.

Sociological arguments- (*Madhura Sutta*)¹²⁵ : The Buddha pointed to the possibility of a rich low-caste person employing a high-class person as his employee. This social reality then stands to challenge the so called god-ordained order of things. *Assalāyana Sutta*¹²⁶ (non-universality) explains this further by pointing out that in some societies, the four-fold division was not to be found. Instead there was, in *Yōna* and *Kambōja*, a two-class system, *Ārya* and *Dāsa* (masters and slaves). Even that was subject to social change taking place from time to time. The master today may become a slave tomorrow.

Political argument –*Bhasukari Sutta* (non-consultation and hypocrisy): The Buddha asked a Brahmin, who maintained that there were restrictions pertaining to the vocations that each caste had to comply with, whether these limitations were imposed after consultation with all parties concerned. When he answered in negative, the Buddha said it was extremely undemocratic and standing against universal justice. It, he stated, is like someone feeding a vegetarian with meat by force and asking for money afterwards.

Biological arguments – *Assalāyana Sutta*¹²⁷ (argument related to child birth and argument related to mixed parenthood): Brahmins kept emphasizing that they were born out of the mouth of the Brahma. The Buddha mockingly remarked against this by claiming that he had seen Brahmin girls after their puberty going for marriage and

¹²⁴ Davids and Carpenter, *The Dīgha Nikāya*, 1:87.

¹²⁵ Trenckner and Chalmers, eds., *Majjhima Nikāya*, 1:83-90.

¹²⁶ *Ibid.*, 2:147.

¹²⁷ *Ibid.*

getting pregnant to give birth to children the normal way. This amounts to asking if it were a different biology at the beginning of the Brahmin *Kannakatthala* race why the same could not continue up to now. *Vāseṭṭha Sutta*¹²⁸ brings a more serious biological argument, where the Buddha asks for the physical characteristics that distinguish Brahmins from others as a different group of people. He argued, pointing to the fact that when different trees and animals do have their distinguishing physical characteristics, why there cannot be such physical features for the four *varṇās* if they are essentially biological groupings. And when Brahmins speak of purity achieved by in-breeding, preventing any inter-caste marriage etc., the Buddha questioned the validity of the claim by adducing to the reality in the animal world. He also asked who can be so sure about women's morality in relation to sexual relations to guarantee that absolute purity has been maintained throughout the history of mankind. And who knows about the previous life caste of the life (*gandhabba*) that a lady gets pregnant with?

Physical argument and *Assalāyana Sutta*¹²⁹: If the Brahmins and Sudras are essentially different beings, they ought to have different physical outcomes when they endeavor various activities. For instance, the fire kindled by a Brahmin has to be brighter, hotter and quicker in burning power. And when they go to the river for washing themselves, both should gain equal physical purity.

Legal argument – *Madhura Sutta*¹³⁰: The Buddha asked a king if he would prefer a criminal Brahmin to a moral Sudra. The king, while expressing his preference to a moral citizen in spite of his caste, said that a criminal is a criminal, whether he is a Brahmin or a Sudra. Thus in the eyes of law, the caste system becomes meaningless.

¹²⁸ Ibid., 2:196.

¹²⁹ Ibid., 125.

¹³⁰ Ibid., 83-90.

Moral argument – *Kannakatthala Sutta*: This *sutta* contains the Buddha’s stand on the efficacy of *kamma* in relation to the castes. He actually gets a Brahmin to admit that when *kamma* comes into fruition, caste becomes immaterial. According to the admission of the Brahmin *Assalāyana*, any immoral Brahmin ends up in purgatory, while a moral Sudra is bound to reborn in heaven. *Assalāyana* also admits that a Sudra is more worthy of respect than an immoral Brahmin. In both the *Sōṇadaṇḍa Sutta* (131) and the *Vasala Sutta*, the Buddha affirms that the measure of man is morality. One becomes a Brahmin (a person of quality) not by birth but by character (*Kammanā vasalō hōti Kammanā hōti Brahmanō*).

The Buddha did not stop by this systematic criticism. By ordaining members from the Sudra caste, he displayed in practice that in spite of so-called low birth, people from the lower rungs of society also could achieve higher spiritual attainments.

Conclusion:

According to sociologists, crime is any action committed against the law. An act is considered criminal if the state has illegalized (criminalized) it. Criminologists also define crime as an intentional action committed without any legal justification and punitive by the state law. Anthropologists, tracing the history of laws to social norms, claim that people create norms on the basis of their own views of acceptable and non-acceptable behavior. Thinking that what stands to harm and deprive them of their personal rights is “criminal,” people wanted to punish the miscreants even before the institution of laws.

Buddhist myths on the origin of law, crime and punishment, presented two millennia before the modern theories, seem to anticipate this anthropological theory.

¹³¹ Davids and Carpenter, *the Dīgha Nikāya*, 1:111.

According to the Buddhist discourses, laws and crimes are interrelated. The Buddhist story states that the first crime was stealing and that other major crimes, such as abusing, lying, killing, etc. followed one after other, which necessitated a lawmaker who could punish criminals.

Buddhism recognizes secular or universally acceptable crimes as *lōkavajja* and monastic misbehavior as *paññatti vajja*. Arresting, prosecuting and punishing for *lōkavajjās* is left for the state and therefore, neither the Buddha nor monks were involved in that procedure. However, Buddhism maintains that even if a criminal managed to avoid state punishment, there is a natural moral process called the law of *kamma*, which brings punishment for crimes people commit. Buddhism does not claim any “Buddhist” involvement in this “natural program” and holds this simply as a universal phenomenon.

A Buddhist approach to the problem of crime and punishment is mainly ethical, both in a religious and a philosophical sense. Some might argue that because Buddhism has no God to punish criminals and the Buddhist monks are socially segregated group from laymen, there is no point in turning to Buddhism to study or to get any inspiration regarding law and crime. However, scholars opine that it offers highly inspirational discourses and exemplary monastic legal literature.

Buddhism has offered a very useful typology based on social ethics that could be used in analyzing crimes psychologically. The Buddhist definition of *akusala* (unwholesome) actions is a good example. It identifies the harmful motives behind crimes and offers an effective meditational technique employable in rehabilitation of criminals and crime control.

For monastic indiscipline, which does not constitute a crime in lay terms, there is an “in-house” punishment procedure. Those punishments are reformatory and not destructive. No physical punishment is applied to any monastic criminal behavior.

The Buddhist five precepts are an identification of the essential type of crimes and the motivation of followers to refrain from crimes. The way it is presented and the evaluative discourses make it universally practical without referring to the Buddha. Justification for the moral philosophy behind the precepts is made in terms of social well-being.

The Buddha even extended his interest into extra-legal categories of crime. For instance, the long-standing social discrimination of India –the caste system – was criticized by the Buddha. He even opened the door of the Order for people born in oppressed classes.

CHAPTER 3

Reasons for Crime and Criminal Behavior as Analyzed in *Theravāda* Buddhism

Crime and criminal behavior are global phenomena found in different forms and intensities. In the opinion of Ananda Grero, a senior judge in Sri Lanka:

Laws are promulgated with the hope that they are obeyed by the persons to whom they are applicable. Laws that are common to all sections of the people in a country require the obedience of all of them. For example, the penal laws of a country are applicable to all its citizens, and those who are responsible for the promulgation of such laws expect every person to obey such laws.¹³²

However, the unfortunate thing is that some people seem to find breaking the law is a habit that they cannot break. That might be one of the reasons that no criminal justice system, whether reformatory or punitive, has been successful in eliminating crime. One might even wonder whether crime is also natural as natural law (as some rights are considered natural and not man-made). Adam Smith illustrated this view, saying that a smuggler would be an excellent citizen “had not the laws of his country made that a crime which nature never meant to be so.”¹³³

Many criminologists, psychologists, statesmen and religious holy men have tried to understand and resolve this worrying problem by analyzing in depth human nature and interpersonal relationships. Religious faith has been resorted to as a preventative measure by teaching children religious morals. Some have suggested “...religious faith as a preventative, turning ex-convicts to a meaningful life in society. There is evidence that the bonds of family can be a deterrent, embedding the would-be criminal within

¹³² Grero, *An Analysis of the Theravada Vinaya in the Light of Modern Legal Philosophy*, 23.

¹³³ Frank Kaumann, “New World Encyclopedia,” [newworldencyclopedia.org](http://www.newworldencyclopedia.org), accessed February 10, 2016, <http://www.newworldencyclopedia.org/entry/Crime/>.

bonds of caring and obligation that make a life of crime unattractive.”¹³⁴ Married persons may think of the consequential fate and stigma that his family would suffer in case he was found out and penalized.

Some countries, such as Singapore, proudly claim that they have reduced crime rate to a remarkably low degree. They have also introduced a project called “Yellow Ribbon” to reintegrate criminals incarcerated for committing crime back to society by removing all prejudices against them, as they strongly believe in the effectiveness of the reforming philosophy. Yet some other nations are struggling hard to reform prisoners without satisfying results. Crime and control of crime are matters of vital interest among sociologists, philosophers, and politicians. Research work so far carried out by scholars from various fields of study indicate the gravity of the situation. Social and political leaders, along with religious dignitaries, have pointed out the necessity of addressing these issues because allowing criminality to continue in society is not only detrimental to progress, but also a serious challenge to society’s very survival. From time immemorial, concerned people, with the help of philosophers, religious leaders, rulers, and law makers, have formulated and experimented with remedial actions.

Athenians in ancient Greece, for instance, thought it was the duty of all citizens to maintain a crime-free and law-abiding society. For this purpose they formed a forum called the “assembly” that had judicial powers. They insisted that all citizens should participate in the assembly and serve as jurists to maintain law and order. Those who did not cooperate in this very important function were called “useless” persons.¹³⁵ The Greek

¹³⁴ Ibid.

¹³⁵ Marvin Perry, *Man’s Unfinished Journey* (Boston: Houghton Mifflin, 1974), 45.

philosopher Socrates urged men to do “good” and avoid evil.¹³⁶ In the same century, the Buddha in India urged the same thing.¹³⁷ And Plato warned, “Watch out: do not allow distrust of law to gain a foothold...in your city. Distrust for law is the poison that causes the complete dissolution of the state.”¹³⁸ This shows us that the first thing philosophers, who had a dream of a crime-free society, thought of is creating a law-abiding community. Even the Buddha emphatically asserted that crime (*akusala*) was something that could be given up. Addressing the monks, the Buddha is reported to have said, “Monks, give up evil actions. It is possible for one to give up evil. If it were not possible to completely give up crime I would have never instructed you to give up evil.”¹³⁹ If people respect law and act accordingly, there would be no crime. So the religious and philosophical thinkers insisted that condemnation and distrust of law should be discouraged. Buddha seemed to have implied the same thing when he introduced a *pācittiya* rule against denouncing *Vinaya* rules.¹⁴⁰ It is prohibited in Buddhist monastic judiciary system to criticize a judgment or the judges. They have to understand that it is the law (*dhamma*) that makes them punitive, neither the act of judging (*kammam*) nor the judges (*kammikā*). Thus, Buddhism holds law in the same glorious position and believes that disrespect of law is detrimental to the well-being of the monastic community.

The reasons for crime and criminal behavior are studied by many concerned thinkers. Theoretical explanations of the causes of crime have been different, from the works of Italian criminologist Cesare Lombroso (1836-1919), who discussed the physical

¹³⁶ Sharon Kaye, *Philosophy A Complete Introduction* (London: Teach Yourself, 2013), 3.

¹³⁷ *Sabba papassa akaranam –kusalassa upasampada*. Meaning, avoid all evil, increase in good.

¹³⁸ Marvin Perry, *Man’s Unfinished Journey* (Boston: Houghton Mifflin, 1974), 54.

¹³⁹ Lankānanda and Nānalōka, *Anguttara Nikāya*, 1:351.

¹⁴⁰ Sikkhapada vivannake pacittiyam. Induruve Uttarananda, *Pacittiyapali* (Colombo: Buddhajayanti edition, 2005), 384.

and psychical characteristics of what may be called a “criminal type,” to theories of role, status and lack of opportunity or ability to realize goals, to theories of anomie and conflict.¹⁴¹ Lombroso was an anthropological determinist. He maintained that criminality was inherited and such born criminals could be identified by physical defects, which confirmed a criminal as savage. According to Lombroso, we can identify a potential criminal by studying someone’s physical features, such as large jaws, forward projection of jaw, low sloping foreheads, high cheekbones, flattened or upturned nose, handle-shaped ears, large chins, very hawk-like nose or fleshy lips, hard shifty eyes, prominent in appearance, scanty beard or baldness, and insensitivity to pain. And he further claimed that a criminal might have long arms. Lombroso’s study of female criminality began with measurements of their skulls and photographs in his search for “atavism” (primitive characteristics). According to him, female criminals were very rare and they were evolved less than men due to the inactive nature of their lives. He also argued that it was the female’s natural passivity that withheld them from breaking the law, as they lacked the intelligence and initiative to become criminal.¹⁴²

Sigmund Freud presented his observations on factors that make a criminal: deviant behavior was a result of an excessive sense of guilt due to an overdeveloped superego. People feel guilty for no reason and wish to be punished in order to relieve this guilt; committing crimes is thus a method of relieving guilt. In addition, Freud maintained that the “pleasure principal”—the basic unconscious biological urge for immediate gratification and satisfaction —is another factor that might make someone criminal. The pleasure principal includes desire for food, sex and survival. If these could

¹⁴¹ F. J. Wright, *Basic Sociology* (London: Macdonald and Evans, 1970), 108.

¹⁴² C N Truman, “Why Do People Commit Crime?” historylearningsite.co.uk, accessed February, 24, 2016, <https://www.historylearningsite.co.uk/sociology/crime-and-deviance/why-do-people-commit-crime/>.

not be obtained legally, people would instinctively try to get them illegally. Freud believed that such desires are controlled by the moral principles learned in childhood. But some people do not acquire this control sufficiently (owing to poor parenting) and therefore grow up into adults unable to control the natural urges that propel them to acquire whatever is attractive.¹⁴³

Neo-Freudian August Aichorn, improving on Freudian reasoning, explained that there were three predisposing traits that enable a life of crime, viz.:

- 1) The desire for immediate gratification,
- 2) Placing greater desire on one's personal desires over good relationships with others,
- 3) Lack of guilt over one's actions.¹⁴⁴

Albert Bandura, in his observations on how one gets into the criminal mindset, suggests that it is something that people learn from others. As most of the behaviors of people are learned through repeated exposure to reinforcements, so is criminal behavior too. However, some behaviors receive no support or receive negative reactions, and thus do not form permanent impressions that effectively influence one's mind. Bandura thought that when people observe other people's behaviors, they decide whether or not they should adopt them.¹⁴⁵

Yochelson and Somehow employed the theory of free will in order to explain criminal behavior. According to their view, criminals employ pre-meditated plans or decisions in committing criminal activities. As the actions are committed according to their free will, they have to be held responsible for what they do. This, they maintain, has five points:

1. The roots of criminality lie in the way people think and make their decisions.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

2. Criminals think and act differently than other people, even from a very young age.
3. Criminals are, by nature, irresponsible, impulsive, self-centered and driven by fear and anger.
4. Deterministic explanations of crime result from believing the criminal who is seeking sympathy.
5. Crime occurs because the criminal wills it or chooses it, and it is this choice that rehabilitation must deal with.¹⁴⁶

Some of the major factors mentioned as causative of crime in modern —both Western and Eastern—include shortcomings of educational systems, financial difficulties, and unsuccessful marriages, abuse of male supremacy, cultural and religious beliefs, and even domestic commotions. Psychologists have focused on mental factors, while sociologists and political thinkers have focused on socio-economic factors. Disbelief, faithlessness, and insensitivity to ethical considerations are central reasons highlighted by religious thinkers. Various agencies, including the United Nations, have also reviewed the causes of crime and presented their analytical reports. They have mainly focused on “homicide, assaults, sexual violence, robbery, kidnapping, theft, burglary, bribery, trafficking of persons, and wildlife crimes.”¹⁴⁷ Anthony Holzman-Escareno has observed that all of these factors plague ghettos infamously known for various types of crimes.¹⁴⁸

Scholars have identified three essential factors needed to commit a crime.

According to them, the factors need to come together for a crime to occur are:

1. an individual or group must have the desire or motivation to participate in a banned or prohibited behavior;
2. at least some of the participants must have the skills and tools needed to commit the crime; and

¹⁴⁶Ibid.

¹⁴⁷ “Report of the Secretary-General, Report of the Secretary-General Thirteenth United Nations Congress on Crime Prevention and Criminal Justice Doha,” UNODC, accessed April 12, 2016, <http://www.unodc.org/unodc/en/data-and-analysis/crime-and-criminal-justice.html>

¹⁴⁸ Anthony Holzman- Escareno, “*The Cause of Crime*,” University of Hawaii Hilo, accessed April 12, 2016, <https://hilo.hawaii.edu/campuscenter/hohonu/volumes/documents/Vol07x03TheCauseofCrime.pdf>.

3. An opportunity must be acted upon.”¹⁴⁹

Thus, when someone is motivated to commit a crime, he must have the necessary skills to perform it and may need weaponry and other gadgets. He also needs to know how to use them. Otherwise, it will end up being just a cruel thought for which he would only mentally suffer. Even if he has the skill, he has to wait for the opportunity to arise for materializing his plan. These three, more or less, are reflected in the Buddhist analysis of crime as well. For instance, in explaining how the five precepts lead to criminality, conditions similar to these are given. In Buddhist monastic law, just the thought of committing a crime and/or missing the target will not make a person punishable, even though the intention is an essential ingredient in generating *kamma*.

Even though there are many theories employed to explain why people commit crimes, there seems to be a general agreement on how people become criminals. It is agreed, in general, that criminal behavior fits into one or more than one of these categories:

- Criminal behavior caused by a person's free choice;
- Criminal behavior prompted by the environment a person is brought up in – for instance, a broken home, lack of education;
- Criminal behavior as seemingly the only option for a person if they are unable to conform to society; and
- Criminal behavior as a consequence to exposure to other criminals.¹⁵⁰

In modern descriptions, criminal behavior is generally categorized either as: 1 Criminal Offences or 2 Civil Offences.¹⁵¹

Criminal and civil wrongs are also described as public wrongs and private wrongs, respectively. A public wrong is an offence committed against the community at large and dealt with in proceedings to which the state is a party.

¹⁴⁹ “*Criminal Elements*,” Lumencandela, accessed April 12, 2016, <https://courses.lumenlearning.com/suny-criminallaw/chapter/4-1-criminal-elements/>.

¹⁵⁰ Littlejohn Shinder, Michael Cross, “Criminal Behavior,” *sciencedirect.com*, April 05, 2017, <https://www.sciencedirect.com/topics/psychology/criminal-behavior>.

¹⁵¹ Grero, *An Analysis of the Theravāda Vinaya in the Light of Modern Legal Philosophy*, 28.

Whereas a private wrong (civil wrong) violates private right or rights and such a wrong is dealt with at the suit of the private person injured or affected.¹⁵²

Crime has been traditionally viewed, from the very long past, as originated owing to many reasons. Finding the reasons for this rather disastrous problem is important because a good insight into the reasons for crime could be immensely helpful in controlling, reducing, and even potentially eliminating it. If the actual social and individual roots of the problem could be discovered, most problems will be easier to handle. Criminologists, therefore, have devoted their research to find out the underlying reasons that make people resort to crime.

The Buddhist analysis of crime has employed the technique of going to the roots. It is the general approach to any problem for which Buddhism looks for solutions. The Buddha applied his theory of causality, i.e., dependent origination (*paticca samuppāda*) to analyze the problem of crime in the *Cakkavatti Sihanāda Sutta*¹⁵³ and the *Kūṭadanta Sutta*.¹⁵⁴ The Buddhist theory of causality has two modes: *anulōma* (with the grain) and *patilōma* (against the grain). *Anulōma* is the way to analyze how any problem begins and become developed. *Patilōma* is the way one finds the method of solving the problem by eliminating the factors that cause it. This indicates that crime could also be analyzed via the *anulōma* way and elimination of it could be planned if the causes were rightly identified by applying the *patilōma* way.

It is natural for people to desire better social status in comparison to others. Many may even look for various means of climbing the social ladder to achieve economic, political or other types of success. Some people inherit a respectable status due to their

¹⁵² Ibid.

¹⁵³ Davids and Carpenter, *the Dīgha Nikāya*, 3:58.

¹⁵⁴ Ibid, 1:134.

prestigious birth into a fortunate family, while others have inborn capabilities. Yet many in society have to struggle to come up from their less prestigious status. The expectation may be to acquire affluence, become famous, popular, or achieve a powerful social status. This desire to rise in the social hierarchy is more or less universal.

A person may be desirous of rising to a higher social rank in society yet may lack any inborn qualifications such as a respectable family background or a good education and therefore fails to achieve his goal. Being desirous of carving out a niche above others, to live an impressive life in society, and getting the attention and respect of others, one has to struggle very hard as it is not easy to realize such goals. Some people, then, in desperation, may even resort to unacceptable, wrong or criminal activities, thinking it is easier to achieve prestigious positions by such crooked and dirty means rather than doing positive things.

A powerful Buddhist example for this kind of deplorable means is the character of the monk called *Devadatta*. He was related to the Buddha as his brother-in-law, yet was jealous of the revered status the Buddha was accorded by the followers. *Devadatta* wanted to achieve the same leadership heights as Buddha and kept on insisting that Buddha should retire and appoint him as the chief of the Buddhist Order. However, as he had not achieved sufficient spiritual heights and even if he did, as Buddha himself never thought he was “governing” the Sangha or that he was being looked upon as the “boss” by the Sangha, his request was not granted. Failing to achieve his goal, he turned into a criminal and tried to assassinate the Buddha in order to assume the role of the leader of the Sangha.

Social conditions do not always match the ideals that people have. Even though there are many catalysts, religious dignitaries, philosophers, social reformers, and community leaders trying to create wholesome social conditions for everyone to achieve their justified goals, their ideals are seldom realized. Exploitation, injustice, and poverty exist in almost every society. Thus, for many people, even mere survival as simple, peace-loving human beings is difficult because of the inequalities and injustice prevalent throughout society. People who have power manipulate conditions to their own gain, not allowing others to have their basic rights. This is one major reason that it is not possible to prevent or eliminate crime and criminal behavior in the world.¹⁵⁵

Without a proper and suitable education, a person cannot find a satisfactory livelihood. It is much more important today than it ever was. Education is considered everywhere in the world as a means of achieving reasonable recognition and satisfying economic status. It enables people to acquire many useful social skills and insights into the values and norms of good behavior. At present, school has become a very important socializing instrument, second only to home, if at all. Research has proved that among the prison population, there are many who have not had sufficient education.¹⁵⁶ It has also been discovered that school dropouts tend to be more criminal in their mindset in comparison to educated people. Harlow observed,

Youth who dislike school and teachers, who do not get involved in school activities, and who are not committed to educational pursuits are more likely than others to engage in delinquent behavior.... Those who display this lack of ambition usually begin skipping school and eventually drop out altogether.¹⁵⁷

¹⁵⁵ Anthony Holzman- Escareno, "The Cause of Crime," University of Hawaii Hilo, accessed April 12, 2016, <https://hilo.hawaii.edu/campuscenter/hohonu/volumes/documents/Vol07x03TheCauseofCrime.pdf>.

¹⁵⁶ Lance Lochner, "Education and Crime" (Los Angeles: International Encyclopedia of Education, 2008), 1.

¹⁵⁷ Caroline Wolf Harlow, *Education and Correctional Populations* (Virginia: US Department of Justice, 2003), 11.

Education provides students with a future-driven vision of life that prompts them to contemplate the consequences of criminal activities before leaping into criminal life. That is why education and discipline are given prominent place in Buddhism for acquiring the success taught by Buddha.¹⁵⁸ Buddha frequently used the term “*assutavā puthujjanō*” (average person who has no education) when referring to persons who tend to commit evil actions. Learned people may think twice before doing something and he will think of the future repercussions of his action.¹⁵⁹ A future-driven individual is more patient, discriminative, and less likely to take the risk of criminal activity. Moreover, educating prisoners has been proven to reduce crimes among criminals (recidivism). This substantiates the argument that education is an effective means of preventing crime.¹⁶⁰ Sri Lankan prisons also provide educational opportunities to prisoners who wish to improve their knowledge during their prison life. Education, by improving moral stance and promoting the virtues of hard work and honesty, might have a civilizing effect.¹⁶¹

However, just memorizing what is taught and gathering a large amount of knowledge does not make a person perfect. One has to learn meaningful things and put them into practice. If a person even with an enormous lot of knowledge does not practice according to what the Buddha says, he will not be a partner to the joy of Dhamma.¹⁶² Knowledge and conduct are both necessary. (The Buddha is praised by Buddhists as “*vijjā carana sampanna*” for he had both knowledge and conduct.)

¹⁵⁸ Davids and Carpenter, eds., *Sutta Nipāta*, 43.

¹⁵⁹ Carpenter and Davids, *Anguttara Nikāya*, 3:185.

¹⁶⁰ Daniel Karpovitz and Max Kenner, “*Education as Crime Prevention: The Case for Reinstating Pell Grant Eligibility for the Incarcerated*,” [prisonpolicy.org](https://www.prisonpolicy.org/scans/crime_report.pdf), accessed January 25, 2019, https://www.prisonpolicy.org/scans/crime_report.pdf.

¹⁶¹ Allan C. Ornstein and Daniel U. Levine, *An Introduction to the Foundations of Education* (Boston: Houghton Mifflin Harcourt, 1985), 496.

¹⁶² Narada Thera, *Dhammapada, Pāli text and translation with stories in brief and notes* (Colombo: Buddhist Cultural Centre, 1993), 23. Verses 19-20.

Poverty is also a factor identified as causative of crime. Poverty can make people feel like aliens in their own society, deprived of the good things that well-to-do people enjoy.¹⁶³ Families with more members than the breadwinner can support may experience hardships and may be compelled to seek unlawful ways to make ends meet. When their income remains static and expenses continue to rise, they may choose to earn some extra income in immoral ways. Consequently, there is the tendency for crime and criminal behavior to increase forever if proper actions are not taken to control the factors leading to crime. The Buddha has explained how poverty makes life difficult for people and how they may even end up in prison. Poor persons, hard pressed to borrow money on interest to live, may get increasingly indebted and unable to pay even interest. Such a person will become bankrupt and will be taken to the courts.¹⁶⁴

It is found that crime is contagious in nature.¹⁶⁵ This is mostly true with children and youth. Most of the juvenile offence cases indicate that peers of the offenders elicited a powerful influence over them and their crimes. The juvenile offenders were impressed by the financial and other luxuries their friends enjoyed and became tempted to resort to criminal activities so they also could enjoy a bit of pride and joy. The thrilling sensation young people normally call “fun” is also a factor involved in juvenile crime. And when poor children are hungry, they will think of having money in the pocket to join their affluent friends in enjoying some junk food together. They have attractive and thrilling ways of getting money in their environment and their financially successful criminal

¹⁶³ Anthony Holzman- Escareno, “*The Cause of Crime*,” University of Hawaii Hilo, accessed April 12, 2016, <https://hilo.hawaii.edu/campuscenter/hohonu/volumes/documents/Vol07x03TheCauseofCrime.pdf>.

¹⁶⁴ Davids and Carpenter, eds., *Anguttara Nikāya*, 2:35 and 65.

¹⁶⁵ *Ibid.*

friends may become their role models. Street children, youths from ghettos and slums, and school dropouts are more likely to fall victim to this.

Theravada Buddhism has offered an analysis into this social problem in several discourses. In them, we find explanations relating to the reasons for criminal behavior, concrete examples of crime and criminal behavior in past societies, and how the political advisors of the time guided the leaders on addressing the problem. Contemporary readers familiar with modern jargon and complicated theories might find the Buddhist analysis rather mythological and theoretically simple. Yet we have to note that twenty-six centuries ago, myths were effective communication tools and techniques generally used in all religious communities. And in the modern age, too, myths have not diminished in communicative value. Even in the story of evolution from primitive society to feudalism and then to capitalism presented in Marxism, we find the myth that a communist society existed before the feudalist system evolved.¹⁶⁶ Story is a very effective tool in communicating values in an easy-to-follow form. The Buddhist story of luminous and flying beings arriving from an outer space to inhabit the earth has many similarities with Marxist myth and also with the scientific theory that states that life came to earth from outer space. It might have been easier for the Buddha, who lived 26 centuries ago, to teach Indian people with myths and stories. A myth, according to sociology, should be taken as a communicative tool. It is not meant for scientific analysis or to find truth value. It is neither true nor false. It is a vehicle through which a philosopher delivers a theory, concept or moral. On the other hand, Buddhists in India already had before them an elaborate myth promoted by Brahmin teachers. What the Buddha did was present a new

¹⁶⁶ Vander Zanden, *Sociology, The Core*, 143.

myth in order to critically reject the Brahmin myth of creation. In other words, the Buddhist story is a myth against myth.

Grero observed:

Human law is framed for the multitude of human beings, the majority of whom are not perfect in virtue. Human laws do not forbid all vices, from which the virtuous abstain, but only the more grievous vices from which it is possible for the majority to abstain and chiefly those that are injurious to others without the prohibition of which human society could not be maintained.¹⁶⁷

But it appears laws are practically effective and provide a rational basis for any society to implement. “Buddhist tradition relates how various teachings were promulgated for different types of people at different times.”¹⁶⁸ True, they are not lengthy research reports like the modern economic and social researchers present, yet they, nonetheless, hit the nail right on the head.

In Buddhism, the behaviors that go against the Buddhist principles of a “good life” are called “unskillful actions” (*akusala*)¹⁶⁹ and “immoral conduct” (*duccarita*).¹⁷⁰ The technical terms employed in the *Abhidhamma* regarding ethical evaluation of human behavior are: wholesome (*kusala*), unwholesome (*akusala*), neutral (*avyakata*), and mixed with both sides of right and wrong (*vokinna*). In order to explain the complex moral nature of human action, the Buddha has used a color code: white actions (*sukka kamma*), black actions (*kanha kamma*), black and white actions (*kanha-sukka kamma*) and neither-black-nor-white actions (*akanha-asukka kamma*).¹⁷¹ Accordingly, the term most applied to immoral or criminal behavior is *akusala* (unwholesome or evil).

¹⁶⁷ Grero, *An Analysis of the Theravāda Vinaya in the Light of Modern Legal Philosophy*, 27.

¹⁶⁸ Ratnapala, Nandasēna, *Crime and Punishment in the Buddhist tradition* (Colombo: Visva Lanka, 2005), 3.

¹⁶⁹ Lankānanda and Nānālōka, *Majjhima Nikāya*, 1:287.

¹⁷⁰ Lankānanda and Nānālōka, *Dīgha Nikāya*, 3:214.

¹⁷¹ Lankānanda and Nānālōka, *Majjhima Nikāya*, 1:389.

One might perhaps wonder about the ethical connotations of these terms as compared to the purely legal nature of the term “crime” in the modern parlances. It should be noted that Buddhism, as it is a philosophy and a religion, must use definitions appropriate to use with moral implications as well, rather than purely legal ones. The Buddha was not a lawmaker in the general secular sense. His analysis of crime and causes of crime should be taken mostly from a philosophical standpoint. On the other hand, we have Buddhist ecclesiastical law, which is comparable to state laws because they carry the authority of the *Dhamma* (doctrine) for judicial procedure.

However, we have to note that Buddhism recognizes that most human actions are not so simple as to be labeled as merely “good” or “bad.” It is a complicated issue in ethics as well as in law. “Man is always changing either for good or for evil. This changing is unavoidable and depends entirely on his own will, his own action, and on nothing else.”¹⁷² Every action is evaluated separately, focusing on the motive, intention, and consequences and recognizing their complicated nature. Therefore, the Buddhist law is always intertwined with moral analysis. “Buddhism is a religion that accepts the reality of this life and future lives. In other words, rebirth is an essential concept in Buddhism.”¹⁷³ Therefore, the possibilities of next-life repercussions are also brought into the discussions on the ethical nature of human behavior. However, it does not mean that we have to be constantly constricted in analyzing the ethical quality or criminality of an action by being always dominated by the idea of “next-world effects.” Sufficient guidance is given in Buddhism for evaluating an action in the present-life context. When it comes to monastic law, jurisdiction depends on legal concerns only. The “other world”

¹⁷² Piyadassi Thera, *The Buddha's Ancient Path* (Colombo: Vajiraramaya, 1974), 63.

¹⁷³ *Ibid.*

or “future life” concern is left for the self-operative moral law (*kamma niyāma*). However, Buddha has emphasized the importance of balancing one’s sense of both worlds. He has explained that if one is concerned only about the worldly consequences, he is like a person who is blind in one eye. As one needs to have good vision in both eyes to see clearly, people need to be aware of the effects of their deeds in relation to this life and the next life.

Buddha speaks of this worldly happiness of the average man in relation to his economic security (*atthi sukha*, happiness of having), the enjoyment of the wealth (*bhōga sukha*, happiness of enjoying), freedom from debt (*aṇana sukha*, happiness of not being indebted) and the blameless moral and spiritual conduct (*anavajja sukha*, happiness of guiltlessness).¹⁷⁴ Freedom from debt and the happiness of guiltlessness in relation to his wealth has much relevance to a crime-free life. When someone is indebted and either refuses to pay back or is unable to pay back owing to his poverty, he will be taken to court and charged as a criminal. A guilt-free life, of course, implies freedom from being a criminal. Therefore, anyone who wants to live a happy life should avoid committing criminal actions. Buddhist economic philosophy, therefore, insists that corrupt and dishonest economic ventures or evil vocations should be avoided by Buddhist laymen.

It may be relevant here to consider the nature of man as analyzed in Theravāda Buddhism, for it is the philosophical basis on which all ethical, legal and criminological concepts become meaningful. In India, there were many theories on the subject of moral behavior of men. In considering moral issues, the Buddha has emphasized three things identified in the *Apannaka Sutta*.¹⁷⁵ The first is freedom from external factors, *i.e.*, people

¹⁷⁴ Lankananda and Nanaloka, *Anguttara Nikaya*, 2:69.

¹⁷⁵ Trenckner and Chalmers, eds., *Majjhima Nikaya*, 1:401-413.

function on their own self decision (*kiriyavāda*, belief in moral action), or in the terminology of modern philosophy, free will. The second is survival after death (*atthi paro lokō*, belief in afterlife). The third is moral causality (*hetuvāda*,¹⁷⁶ belief in causality). These three assumptions make moral responsibility a reality and self-development a practical possibility (as well as a dire necessity).

This is how it is emphasized in the *Dhammapada*: “By oneself alone is evil done, by oneself alone evil avoided and by oneself alone is one saved. Salvation and damnation depend on oneself (*paccattam*), no one else can save another.”¹⁷⁷ “You yourselves must make the effort,” says the Buddha, “the transcendent ones are only teachers and those who follow the path and meditate are delivered from the bonds of Māra.”¹⁷⁸

Some review of the nature and characteristics of the acts classified as right or wrong will be relevant here, as the Buddhist analysis of crime is essentially intertwined with the theory of morality. The Buddhist moral theory is concerned with the dilemma that people face in distinguishing right actions from wrong actions and looking for a measure or criteria to apply in doing so.

Here we are confronted with a variety of ways philosophers have dealt with the problem. There is no agreement among the philosophers on the nature of right and wrong, as they employ conflicting bases in their analyses.

Some religionists may think that the analysis of an action can be done by looking at it objectively, not by analyzing the context with which it was committed. For the convenience of doing this, they may employ a list, probably dictated by religious

¹⁷⁶ Bhikkhu Nanamōli and Bhikkhu Bodhi, *Majjhima Nikaya* (Kandy: Buddhist Publication Society, 1993), 269-276.

¹⁷⁷ Narada Thera, *Dhammapada*, Pāli text and translation with stories in brief and notes (Colombo: Buddhist Culture Center, 1978), 165.

¹⁷⁸ *Ibid.*, 220. Verse 275.

scripture or personal authority, human or superhuman. Just the action is examined in relation to superhuman instruction; the motive and intention are not necessarily considered. The person, time, and context in which the action was done are also not relevant. Theists are a good example of such objectivist theorists. According to them, an action is right only if God has pronounced it right. There does not exist any other criterion for ethical evaluation other than God's Word.

However, different theistic religions have different Gods. In particular for the monotheistic religions, it is complicated, as they all insist that theirs is the only God. So, this becomes a difficult theory for some to accept. Some of the alleged divine commandments might not be agreeable to some other theists and also, the relativists may argue that the validity of them may depend on different space-time realities.

In the attempt of analyzing the Buddhist approach to crime, it is important to review the Buddhist definition of good and bad. In a religious context, committing what is ethically wrong is considered criminal. The *Pāli* terms *Vajja* and *Aparādha* are used both for crime and ethically wrong actions.¹⁷⁹

In the Buddhist theory of good and bad, the concept of free will is considered necessary for the purpose of evaluation and ascribing responsibility. A person cannot be held morally or criminally responsible for his actions if he was under pressure to act the way he has done.

The Buddhist concept of causal conditioning does not imply a deterministic position. As touched upon earlier, the twelve-link formula of Buddhist dependent origination (which explains the life-death continuum or *samsāra* of a person) contains

¹⁷⁹ Polwatte Buddhadatta Thero, *Pali Sinhala Dictionary* (Colombo: M. D. Gunasena and Co. Ltd., 1950), 426.

two modes of function, called “*anulōma*”¹⁸⁰ (with the grain) and “*patilōma*”¹⁸¹ (against the grain). *Anulōma* means the general flow of causal events, which may continue if no reversing intervention from the individual takes place. *Patilōma* is the reversal of the flow in consequence of conscious intervention by the individual concerned. If there were no free will possible, the Buddha would not present a reversal procedure for the causal flow. It should be taken as a strong affirmation of the possibility of free will. Thus, there is no difficulty in assuming the factor of responsibility at work among participants in a criminal activity. The Buddha asked a Brahmin (who claimed that he had no free will) how can a person who is able to move forward and backward as he likes, deny he has freedom of action?¹⁸² (In fact, the Buddha got him to admit that he came to see the Buddha on his own without being propelled by anybody and his going back was also his own decision.) This stand, of course, has an essential criminological relevance. A person who has committed a crime is prosecuted only under the assumption that he has acted with free will. If one were not acting with freedom of choice, there would be no possibility of ascribing responsibility of action and prosecuting him.

After affirming that people have free will to make choices, the next step in the Buddhist criminological discussion is to explain how and why people use that freedom of choice to act criminally when they could do otherwise. Buddhist ethics explain that people’s immoral and criminal actions are preceded by evil motives and intentions. In evaluating whether an action was criminal or otherwise, Buddhism makes reference to these important aspects. The main focus of Buddhism is the motive of the action.¹⁸³ The

¹⁸⁰ Lankānanda and Nānālōka, *Samyutta Nikāya*, 2:2.

¹⁸¹ Ibid.

¹⁸² Lankānanda and Nānālōka, *Anguttara Nikāya*, 3:337.

¹⁸³ G.S.P., Misra, *Development of Buddhist Ethics* (Delhi: Munshiram Manoharlal Publishers, 1984), 42.

degree of significance the Buddha attributed to motive and intention could be noted in his statement that *kamma* is *cetanā* (motivation). According to the Buddha, people act physically, verbally, and mentally when motivated to act.¹⁸⁴

Buddhism recognizes three motives behind criminal actions. As every criminal act is identified as *akusala* in terms of moral evaluation, the three bad motives are called *akusala mūlās* (roots of immorality, which is equivalent to the three poisons of *rāga* (greed), *dōsa* (aversion), and *mōha* (delusion)).¹⁸⁵ Every such act has one or more of these motives behind it. Greed covers all degrees of egocentric desire, longing, attachment, and gasping. Aversion includes all forms of ill-will, anger, animosity, irritation, and annoyance, along with so-called righteous anger and moral indignation. Aversion can range from mild irritability to uncontrollable rage. Delusion is another expression for ignorance (*avijjā*)¹⁸⁶ and it is defined as the absence of clear comprehension and objectivity. These motives are behind all mental, verbal, physical, immoral, and criminal acts.

The Buddhist story of the evolution of social institutions presented in the *Aggañña Sutta of Dīgha Nikāya*¹⁸⁷ demonstrates how crimes could be caused by these motives. As described earlier in this study, according to the myth presented in the *sutta*, the first life form that came to earth from a subtle hibernation during the era of involution (*samvaṭṭa*) period of the planetary system alighted on earth as a result of their greed for jelly-like, fragrant terra firma. Greedily enjoying the sweet edible crust of earth, they lost their luminosity, flying ability and subtlety of body. After transforming into the present

¹⁸⁴ Ibid., 415.

¹⁸⁵ Davids and Carpenter, eds., *The Dīgha Nikāya*. 3:180, 275.

¹⁸⁶ Lankānanda and Nānālōka, *Samyutta Nikāya*, 2:2.

¹⁸⁷ Davids and Carpenter, eds., *The Dīgha Nikāya*, 3:27.

physical form and having learned agriculture after losing naturally provided food, their greed increased and other motives also began to grow. The myth presents how the people who were experiencing a short supply of food divided agricultural land equally among them, but owing to their desire to save their harvest, they resorted to stealing other's crops. Then they were caught red-handed, creating anger in the minds of the owners, which caused further criminal behavior. The owners of the crops took to weapons (cutting weapons and hitting weapons), causing physical harm to the captivated thieves. As even such punishments were not effective in preventing thieves, land owners eventually resorted to killing offenders. This demonstrates how crime could be resorted to by people owing to their greed and anger in an otherwise crime-free society. And their resorting to crime was no doubt due to their ignorance of the natural law of kamma, which we may call delusion. In explaining how craving, lust, or sensuality are behind criminal behavior as an evil motive, the Buddha says:

Kings quarrel with kings, warrior-nobles with warrior-nobles, divines with divines, householders with householders, mother with child, child with mother, father with child, child with father, brother with brother, friend with friend. And here in their quarrels, brawls and disputes they attack each other with fists or with clods or with sticks or with knives, whereby they incur death or deadly suffering. Again with sensual desire for the reason (men) take swords and buckle on bows and quivers, and they charge into battle massed in double array with arrows and spears flying and swards flashing; and there they are wounded by arrows and spears, and their heads are cut off by swords, whereby they incur death or deadly suffering.... Again with sensual desire for the reason ... (men) break in and steal, turn bandit, rob highways, seduce others' wives.¹⁸⁸

Anger (*dōsa*) is another basic motive behind criminality. Buddha has stated that one who is motivated by anger cannot see justice. In the *Jātaka* collection, there is a story of a king called Kalabu torturing a sage called Khantivāda. The king felt jealous and angry when he saw his escort girls rallying around the sage and listening to his sermon. Having

¹⁸⁸ Trenckner and Chalmers, eds., *Majjhima Nikaya*, 1:90-91.

known his name was *Khantivādi*, which means “patient,” the king wanted to know the limit of his patience. He first ordered his executioner to beat and whip the sage to find out if he would get angry. When the sage said he was still patient, the king continued to sever his limbs one by one, asking, “Are you still patient?” The sage took even very painful torture with unshaken patience, which made the king angrier. The sage died in pain, yet with a calm and forgiving mind, after the king kicked him at the chest. The king was reported to have destined to suffer in hell for a long period of time for his dreadful evil *kamma* after his tragic death.¹⁸⁹ This story is illustrative of both criminal motives, anger and delusion. The king was presumably not a believer in *kamma* and rebirth.

In another context, the Buddha identified four factors that motivated people for criminal activities. They are called “four wrong courses” (*agati*), namely, partiality (*chanda*), aversion (*dōsa*), cowardice (*bhaya*) and delusion (*mōha*).¹⁹⁰ In this list, we have cowardice added to the three motives. These four are recognized as very strong motives that some non-Buddhist Indian thinkers (mainly skeptics) argue are universal characteristic of human beings. They argue that people are hardwired with these evil motives, so that justice is impossible to even consider. They prevented every possibility of knowing what is true or just.¹⁹¹ However, Buddha rejected that extreme view, which amounts to claiming that people are essentially bad and therefore criminality is natural. The Buddhist stance in relation to the so-called hardwiring is that the mind of beings is not naturally impure. It is defiled owing to defilements gathered as external things. Impurities are not part and parcel of the mind. All defilements, according to the Buddha,

¹⁸⁹ Jataka No.310. *Khantivadi Jataka*, (Dehiwala: Buddhist Cultural Centre, 2000), 634-635.

¹⁹⁰ Davids and Carpenter, eds., *The Dīgha-Nikāya*, 3:180, 275.

¹⁹¹ Trenckner and Chalmers, eds., *Anguttara Nikaya*, 2:18.

are acquired external things and therefore can be removed. That is implied in the Buddha's statement,

Pabhassaramidaṃ Bhikkhave citam tañca kho agantukēhi upakkilēsēhi upakkilittham, (Pure is the mind; it has got invasive external 'visiting' impurities.)¹⁹²

Among some Christian circles there is a belief that people are born with seven sins, namely, lust, gluttony, sloth, envy, pride, wrath, and greed. There seem to be some similarities with the four *agatis* and these seven. However, if these sins were all hardwired to our brains, training and meditations would be useless, as purity would only be possible if the defilements could be removed. Therefore, to claim that people are hardwired to these four-fold wrong courses (*agatis*) is rather discouraging, as it makes getting rid of them hardly possible. However, in contrast, Buddhism identifies them as causes that make people engage in criminal activities.

The Buddha stated that noble and saintly people like Arahants never resorted to these kinds of evil courses. One should, according to the Buddha's advice, try one's best to refrain from regaining such criminal mindsets and consequential partiality and injustice.¹⁹³ The Buddha, in his advice to kings and leaders, emphasized the importance of avoiding these evil courses because resorting to them would render them unrighteous and their fame would fade away as the moon in the late half of the lunar month.¹⁹⁴

Chanda among the four *agatis* does not mean that all partialities are to be unconditionally condemned as instigators of crime. *Chanda* is more or less synonymous to greed, attachment, and taking a side owing to naïve worldly desires. Certain partialities can be put to positive use. For instance, *dharmacchanda* or being partial to

¹⁹² Lankānanda and Nānāloka, *Anguttara Nikaya*, 3:81.

¹⁹³ Davids and Carpenter, eds., *The Dīgha Nikāya*, 3:133.

¹⁹⁴ Lankānanda and Nānāloka, *Anguttara Nikaya*, 3:18-19.

dhamma would definitely be beneficial. *Chanda* is willingness arising in our minds to engage in any course of action. According to the *Abhidhamma*, it is one of the fifty-two mental factors in the human mind. *Chanda*, therefore, should be taken as a mindset which has dual effects. In other words, while *kamacchanda* (partiality to sensual pleasures) might encourage someone to commit a crime, *dhammacchanda* (partiality to *dhamma*) would not.

Dōsa (Sanskrit: *dveṣa*) could be called the other side of the coin, as it goes against *chanda*. Some people disregard their duty to another party just because of personal dislike. This may be owing to race, caste, color or religion. People form prejudices against others owing to their belonging to a different group without any other reason. This kind of irrational aversion to other people may propel emotional people to criminal behavior.

Bhaya or fear is the third *agati* the Buddha highlighted as a factor making people commit crimes. A person may dish out undue favors to a party he fears, or he might plan to destroy them, suspecting that he would be in danger if he does not take some action. And *mōha* or delusion is the fourth factor. This stand is taken by people who lack discriminative wisdom to decide what kusala is and what to do.

In addition to these conscious motives, Buddhism recognizes seven more unconscious proclivities. They are called *anusayās* (dormant proclivities) because it is not possible for us to detect their existence when we are normal in our behavior. They are deep-seated innate desires and until enlightenment, they remain in our subconscious minds. They raise their heads only when appropriate stimulation is provided. They are:

1. Sensual gratification (*kāma-rāga*),
2. Self-perpetuation,

3. Grudges, aggression, predisposition to acts of violence (*patigha*),
4. Ego-centric beliefs and various perspectives (*ditthi*),
5. Obsessive doubting, diffidence, skeptical doubt (*vicikiccha*),
6. Conceit that manifests as feelings of equality, superiority and inferiority (*māna*), and
7. Ignorance of the nature of actuality.¹⁹⁵

These proclivities remain latent in the subconscious mind and manifest in mental turbulence only when the conditions are provocative enough. The origin of these latencies is nothing but our own conscious activities seeped into the unconscious. They might even have been gathered throughout our previous life experiences in *saṃsāra* (the life-death-continuum). Under normal circumstances, people do not realize their deep-seated nature. This explains why people who look rather saintly suddenly could display criminality.

Based on the analysis of the psychological factors made by the Buddha, it is clear that external appearance itself is not sufficient in evaluating the criminality of an action. A person, for example, could be seen cutting open another's body. Just by the fact that he is cutting open someone else's body, one cannot judge him as criminal. We cannot attempt to determine the action. In evaluating and passing value judgment, we have to know the motive and intention of the action. If the intention of the person was to injure or kill the other person motivated by personal hatred, we may judge his action as criminal. If however the intention was to prolong the other person's life by performing a surgical operation and the motivation is compassion, then we would regard it as a non-criminal right action (*kusala*). Thus, it is logical to assume that evaluation of criminality or otherwise of an action is not possible just by looking at the physical act itself and it is necessary to examine the motive behind such action.

¹⁹⁵ Ibid., 4:9.

According to the Buddha's terminology, the motive and intentions are called *cetanā* (volition). However, merely focusing on volition is not what constitutes the appropriate procedure of defining criminality. The act must have been actually physically or verbally performed as well, as in the case where a person plans to kill his enemy but for some reason fails to carry out his plan. Here, he had the intention of killing but did not totally complete the unskillful (*akusala*) action of *prānaghāta* or "destroying life." In the Buddhist conception of crime and criminality, his planning would not make him punishable. Yet this does not mean he is completely free of karmic responsibility. *Cetanā* is sufficient for him to be blamed for a defiled mentality. According to the Buddhist ethical theory, the manner the action is carried out, the consequences of the action and how it affected people also have to be taken into account in evaluating the criminality and the karmic nature of action. The motive and intention, therefore, constitute only the essential conditions in evaluating the criminality of an action, as there are other factors also to be taken into account.

Even with such ethical and philosophical analysis, the Buddha was not unaware that some people may have tough, insensitive attitudes to such discourses. People may take recourse in destructive and negative "philosophies" of their own fancy by which they justify their criminal mindset before committing crimes. Criminologists today are also interested in studying this phenomenon and have found that criminals have their own justifications based on the "philosophical" stands they adopt in consequence to their own system of logic. They have interviewed criminals from different backgrounds, such as deer poachers, terrorists, rapists, shoplifters, cyber hackers, murderers, etc., and found

they all have what criminologists call “techniques of neutralization.”¹⁹⁶ This means self-formulated internal argument processes that culminate in neutralizing moral thinking. It will prevent conscience from creating a guilty feeling within.

These neutralization techniques are presented by sociologists David Matza and Gresham Sykes in the 1950s. According to that theory, criminals neutralize values to remove the possible “prohibitions” emerging within against their intended criminal action. The two sociologists have identified five methods of justification criminals employ in such neutralizations:

- 1) Denial of responsibility,
- 2) Denial of injury,
- 3) Denial of the victim,
- 4) Condemnation of the condemners, and
- 5) Appealing to higher loyalties.¹⁹⁷

Denial of responsibility is resorted to by claiming that the circumstances in which the criminal happened to commit the act were such that he was propelled to do it and so it was beyond his responsibility. Denial of injury means insisting the crime was harmless (in spite of appearing to some as harmful). Denial of the victim is to believe that the person who was subjected to it was actually asking for it. Condemnation of the condemners is when the criminal blames those criticizing or meting out punishment as doing so out of spite or to shift the blame from themselves. Appealing to higher loyalties is to argue that the law had to be broken for the good of a smaller section of society, the gang he favors or his friends.

¹⁹⁶ Nick Chester, “*Criminals Explain How They Justified Their Crimes to Themselves*,” vice.com, accessed June 02, 2019, https://www.vice.com/en_us/article/avypmj/tonbridge-securitas-robbery-heist-10-year-anniversary.

¹⁹⁷ Ibid.

The Buddha also provided an analysis of neutralization by criminals beyond the three motives, i.e., greed, hatred and delusions, yet, his focus is on some philosophical stands used in justifying criminal acts. As crime can leave deep impression in a person's mind, offenders would naturally search for justification of their behavior. One such strong justificatory stand is the refusal of moral efficacy of human actions. Refusing to believe in karmic consequences and rebirth might propel someone to dissociate from ethical considerations.

Some heavy crimes are premeditated, and criminals may spend a long time planning a crime. Naturally they may think about the problem of the moral nature of their activity. Since the prevailing religions and philosophies mostly contain ethical teachings and belief of repercussions, it is likely that even highly notorious criminals may find their unconscious mind accusing them and bringing ethical problems up. As a result, criminals may be attracted by unethical and rather nihilistic views in their struggle to justify their actions, which may facilitate them to carry out their plans comfortably.

Early Buddhist literature has identified ten such unethical and nihilistic views that were probably utilized by persons who wished to evade responsibility through neutralizing perspectives. They are: (in *Pāli*)

Natthi dinnam
Natthi ittham
Natthi hutam
Natthi sukata dukkata kammānam phalam vipakō
Natthi ayam lokō
Natthi parō lokō
Natthi mātā
Natthi pitā
Natthi sattā opapāptikā
*Natthi lōke samana-brāhmanā sammaggata sammā paṭipannā.*¹⁹⁸

¹⁹⁸Lankānanda and Nānāloka, *Dīgha Nikāya*, 2:55.

(In English)

- No meaning (practical benefit) in giving
- No meaning (practical benefit) in sacrificial ritual
- No meaning in religious offerings
- No fruition in good and bad *kammas*
- No this world (it is unreal)
- No next world (no rebirth)
- No mother
- No father
- No self-born beings
- No *saintish samaṇās* or *brāhmaṇās* who have either achieved or striving to achieve salvation

Kamma occupies a highly significant place in the Buddhist belief system.

According to Conze, it is one of the four essential constituent factors of Buddhist faith (*saddhā*), the rest being 1) trust in the three jewels, 2) acceptance of dependent origination and three *signata* and 3) belief in the efficacy of the prescribed path.¹⁹⁹

Kamma is accepted with different definitions and elaborations in the main Indian religions, i.e., Brahmanism, Buddhism, and Jainism. In Buddhism the belief in *kamma* occupies a central place. The Buddha even gave special sanctions to people who had faith in *kamma* and rebirth when they come to him asking for ordination in the Buddhist Sangha.²⁰⁰ (For instance, they were exempted from living under probation for some time before integration, which was mandatory for candidates from other religions.) Disbelief in *Kamma* and rebirth constitutes, according to Buddhism, a “*micchādiṭṭhi*,” a wrong and harmful dogma. Belief in *kamma* and rebirth is one sure way that propels people to consider moral concerns as important in social life. Lack of concern towards the moral aspect of their actions makes it easy for criminals to justify their evil actions.

¹⁹⁹ Edward Conze, *Buddhist Thought in India* (New York: Routledge Library, 1964), 48.

²⁰⁰ I. B. Horner, *The Book of the Discipline: Vinaya Piṭaka*, vol. 1 (London: The Pāli Text Society, 1982), 71.

Disbelief in moral values, in fact, is one of the common ways that criminals justify their behavior even today. In an article to *Vice Channels*, Nick Chester reviews a few statements made by some ex-criminals to this effect.

Next up was former armed robber Frank Prosper, now an actor who said he purposefully avoided thinking about the rights and wrongs of what he was doing while he was an active criminal. He suggested that it would have been difficult to go through with a robbery if he'd spent too long agonizing over the morality of his chosen career.²⁰¹

According to Copes, willfully abstaining from considering the ethical implications of a crime is another documented technique that criminals use to prevent their guilty consciences from stopping them in their tracks. "Pushing thoughts out of their heads is a way to overcome the guilt," he said. "This is exemplified by saying or thinking phrases like '.... it' immediately before or after the crime."²⁰²

For the Buddha, the law of *kamma* was a doctrine derived through inductive inference on the basis of the data of extrasensory perception.²⁰³ Buddha is reported to have been able to observe, as he would focus his clairvoyant vision, the decease and survival of beings (*sattānam cutūpapātō*).²⁰⁴ As the text has it:

He sees some beings endowed with bodily, verbal or mental misconduct, who reproach the holy men, hold false views and act in accordance with false views born in a state of decline, in an unhappy condition, in a state of downfall and a lower state at death on the dissolution of the body; and (he sees) other beings, who are born in a happy state, in a heavenly world at death on the dissolution of the body.²⁰⁵

²⁰¹ Nick Chester, "Criminals Explain How They Justified Their Crimes to Themselves" vice.com, accessed June 23, 2016, https://www.vice.com/en_CA/article/gqmqz4m/how-criminals-justify-crimes-psychology-gangsters-uk.

²⁰² Ibid.

²⁰³ K.N. Jayatilleke, *Early Buddhist Theory of Knowledge* (London: George Allen and Unwin Ltd., 1963), 460.

²⁰⁴ Lankānanda and Nānālōka, *Anguttara Nikāya*, 2:183.

²⁰⁵ Davids and Carpenter, eds., *The Dīgha Nikāya*, 1:182.

Seeing thus how beings fare according to their *kamma* leads to understanding of the correlation between the moral character of one's life here and the hedonic (or otherwise) state after death is called knowledge of *kamma* and rebirth.

However, *kamma* is verifiable only with clairvoyant vision. One cannot perceive it through normal perception. The Buddha claimed that he observed the unethical behaviors of some human beings and formed the hypothesis that these people may be born in suffering conditions after their death, which he, at a later time managed to confirm with his clairvoyant vision.²⁰⁶ For those who have not developed their extrasensory perception (ESP), it is a matter for rational consideration. Or, having listened to sermons, one may develop rational faith in the teachings of the Buddha.

It is noteworthy, however, that it is not as simple as it appears *prima facie*. It does not appear as simple tit-for-tat. There is no back-to-back reciprocity of an evildoer suffering for his actions immediately after his death. He may have done some meritorious acts in one of his previous lives and that *kamma* may come to maturity to bring him happiness after this death. And also, there is the possibility of a person who has lived a good life receiving a suffering fate as a result of a previous life *kamma* coming to maturity. The Buddha mentions the possibility of someone witnessing this confusing nature and adopting a wrong view. That person might conclude that there is no such a thing as karmic effects.²⁰⁷ This kind of harmful philosophical stand would encourage potential criminals to carry out their criminal plans without any moral guilt. Even though the Buddha mentioned only about clairvoyant individuals who may adopt such a harmful

²⁰⁶ Ibid.

²⁰⁷ Trenckner and Chalmers, eds., *Majjhima Nikaya*, 3:212-215.

view, there were organized non-orthodox teachers who even professed religions without any moral teachings.

The aim of Buddhist ethics is not only to restrain people from criminal behavior, but also to help them live in a crime-free, positive way. It is not just selfish moral conduct, but involves rather an extroverted orientation in ethical conduct as well. In relation to this, the Buddha says there are four types of people in the world according to their social conduct.

- 1) He who is bent neither on his own welfare nor on the welfare of others;
- 2) He who is bent on the welfare of others but not his own;
- 3) He who is bent on his own welfare but not of others; and
- 4) He who is bent on the welfare of oneself as well as of others.²⁰⁸

According to the Buddha's point of view, the fourth type is the best, topmost, highest and supreme out of the four.²⁰⁹ It shows us that an ideal Buddhist is not just a crime-free, neutral person, but a positive practitioner of moral actions. This is why right actions tend to benefit not only oneself but others as well.

Avoiding criminality is of absolute importance in Buddhist ethical living, as exemplified by the ten right actions. The ten right actions (*dasa kusala kamma*) which have this non-criminal behavior as the prominent characteristic are:

- 1) One refrains from killing;
- 2) One refrains from stealing;
- 3) One refrains from sexual misconduct;
- 4) One refrains from lying;
- 5) One refrains from slander;
- 6) One refrains from harsh speech;
- 7) One refrains from idle gossip;
- 8) One refrains from covetousness, does not covet another's property;
- 9) One refrains from ill-will; and

²⁰⁸Lankānanda and Nānālōka, *Anguttara Nikaya*, 4:9.

²⁰⁹Ibid., 2:95.

10) One refrains from false views.²¹⁰

People who commit criminal actions do so because of their delusions. They are not aware that the bad *kammās* they are accumulating are harmful for their samsara journey. They are only thinking of causing harm to others. It constitutes not only a powerful “road block” obstructing the path of realization of the goal on the part of oneself, but makes life uncomfortable and causes suffering for others. This aspect is highlighted in the Buddhist criteria of *kusala* (good) and *akusala* (bad). In the *Cūla Rāhulōvāda Sutta*, the Buddha has made this point clear when he defined bad action as that which causes suffering for oneself and causes suffering for others.²¹¹ Wrong actions or *akusala*, therefore, could be classified criminally causing pain to oneself (*attantapa*) or others (*parantapa*) or both. As the Buddha has shown in the *Kandaraka Sutta*, ascetics who mortify the flesh cause pain to themselves, hunters, fowlers, and robbers cause pain and suffering to others, and kings who perform rites and rituals also burden their subjects with wasteful and cruel sacrifices.²¹² Some of them, of course, know that they are causing pain to others yet are not concerned. This is because they suffer from delusion and moral ignorance in their mindset.

Among the motives that get people into criminal behavior, the Buddha recognized greed (*raga*) or addiction to sensual pleasures as one strong factor highly detrimental to the self and others. People who do not see any evil in indulging in sensual pleasures or having lavish or lustful desires claim there is nothing wrong in greed or lust (*natthi kāmēsu dōsā*) and easily tend to commit sexual crimes.²¹³ Such people may easily

²¹⁰ Trenckner and Chalmers, eds., *Majjhima Nikaya*, 1:47-52.

²¹¹ *Ibid.*, 1:414.

²¹² *Ibid.*, 3:71.

²¹³ *Ibid.*, 1:305.

commit crimes such as rape and adultery. The joy they get may provide them temporary happiness, but their own moral ignorance and the suffering they cause to others make them criminals.²¹⁴ The criminality of their action is judged on the motivation (which is *rāga*, lust) and the consequential suffering, both physical and psychological, that they caused others and the karmic consequences to themselves, which may fall on them in this life or the life after.

Karmic consequences of some of the criminal actions, according the Buddha, may cause people to be reborn in subhuman states. Even in the present life among human beings, one is likely to experience some extra legal consequences of these criminal actions. For instance, “a habitual liar is likely to become the object of false accusations.”²¹⁵ One who frequently gossips is not likely to be accepted at his word. The *Dhammapada* says, “Speak not harshly to anyone for those thus addressed will in turn retort.”²¹⁶ One who drinks heavily is likely to be become insane. The heavy drinker is said to end his days as an alcoholic and an insane person.²¹⁷

The major crimes recognized in the Buddhist moral teachings as implied in the Buddhist five precepts are:

- 6) Killing (including making others kill);
- 7) Stealing (including robbing, burglary of any type taking what is not given);
- 8) Sexual misbehavior;
- 9) Lying; and
- 10) Getting intoxicated and losing moral sense.²¹⁸

²¹⁴Ibid., 1:308.

²¹⁵ Lankānanda and Nānālōka, *Anguttara Nikaya*, 4:247.

²¹⁶ Narada Thera, *Dhammapada, Pāli text and translation with stories in brief and notes* (Colombo: Buddhist Cultural Center, 1971), 133. Verse 127.

²¹⁷ Andersen Dines and Helmer Smith, *Sutta Nipāta* (London: Pāli Text Society, 1997), 398.

²¹⁸ Lankānanda and Nānālōka, *Anguttara Nikaya*, 3:70.

These five precepts were given to laymen but are included in the Monastic law as well. However, the Monastic rules are punitive and given in different order and in different gradations. For instance, in *pānātipāta* or killing, killing a human being and killing an animal are given different punitive values. A monk becomes fit to be excommunicated if he has killed a human being, yet killing an animal does not make him so. In relation to lying, he becomes worthy of excommunication in relation to false claims of sainthood, yet not for other cases of lying.

These crimes have roots discussed in the chapter beside them – greed, hatred, and delusion, with the intention of harming others or oneself. In addition to these, the Buddha highlighted the latent proclivities called *anusaya*. He also focused on four courses of making criminal actions. All the monastic crimes have the same greed, hatred, and delusion as the motives. Intentions are rather situational.

Conclusion:

Some of the major reasons for crime and criminal behavior identified by concerned social thinkers and criminologists include shortcomings of educational systems, financial difficulties, unsuccessful marriage, abuse of male supremacy through cultural and religious beliefs, and even domestic violence. Psychologists have focused on mental factors while sociologists and political thinkers focus on socio-economic factors. Disbelief, faithlessness and insensitivity to ethical considerations are thought of as central reasons by religious dignitaries.

There are three factors essential to making an act a crime or an evil act, namely, motive, skill or tools, and opportunity. These three, more or less, are reflected in the Buddhist analysis of crime as well. For instance in the Buddhist analysis of five moral

precepts recommended for crime-free living, it is indicated that the desire or motivation, use of skills and tools and the actual committing of the crime have to be there for the completion of a crime.

It is agreed that a person may take on criminal behavior for one or more than one of these reasons: 1) his own choice, 2) propelled by the environment he is brought up in – for instance, a broken home or lack of education. 3) Inability to conform to society, creating the seeming lack of other options or 4) the consequence of exposure to other criminals.

The Buddhist analysis of the reasons for crime, as with any other problem, follows the technique of dependent origination. It is more or less similar to the way criminologists are conducting their research for finding the reasons why people resort to crime. In several discourses of the Buddha we find explanations relating to the reasons for criminal behavior along with concrete examples as to how crime and criminal behaviors were resorted to in past societies and the ways the political advisors of the time guided the leaders on how the problem could be addressed. Buddhist analysis may appear rather mythological (and therefore theoretically simple). Yet, twenty-six centuries ago (and even today) myths can be seen as effective communication instruments.

CHAPTER 4

Law and Punishment in Theravāda Buddhism.

In this research the literary sources utilized are mainly related to Theravada Buddhism. Theravada is the form of Buddhism practiced in Sri Lanka, Myanmar, Thailand, Laos, Cambodia and some other East Asian countries. Historically speaking it is the oldest form of Buddhism presently practiced. In fact, “*thera*” in Pāli language means elder. Theravada, therefore, literally means the tradition or theory of the elders. Thus the name of the tradition itself has an implied claim for seniority.

Dīpavamsa, a Sri Lankan chronicle, defines Theravada as “the tradition that begins from elders who conducted the first council.”²¹⁹ The sub-commentary of the *Vinaya, Sāratthadīpanī*, calling the first council “*Therikā*,” claims that Theravada is what took shape as a special tradition at that council.²²⁰ However, it was at the second council that a group of monks refusing to abide by the conservative stand taken by the elders or *thērās* seceded from the traditional Sangha and formed a reformist sect, calling themselves *Mahāsāṅghika*, meaning the Order of the Majority. Then, if we assume that there were no divisions among the *Sangha* until they divided at the second council, we have to amend the claim as “the tradition crystallized from the senior group left behind by the dissenters at the second council.” In other words, traditionalists and the revisionists were separately grouping within the Sangha though they did not try to officially separate, which means there was no need for calling them with a special term as

²¹⁹ *The Dipavamsa: An Ancient Buddhist Historical Record*, trans. Oldenberg (Colombo: Buddhist Culture Center, 1879), 465.

²²⁰ Sariputta and Devarakkhita, *Saratthadeepani* (Christchurch: University of Canterbury Library, 1914), 90.

there was no open schism. Yet the seeds of dissension might have been developing from the day of the first council, presumably on the “texts” officially canonized.

The Penguin Dictionary of Religions defines the term “Theravada” in the following way:

The most usual name for the Buddhism of Ceylon (Sri Lanka) and south-east Asia. Theravada (Sanskrit *Sthaviravāda*), “doctrine of the elders” was upheld by one party in the first Buddhist schism (4th century BCE). Although some scholars believe the *Mahāyāna* to originate ultimately from the opposing *Mahāsāṃghikas*, all extant branches of the Buddhist Order (*Sangha*) derive from these original elders.²²¹

The Seeker’s Glossary of Buddhism defines Theravāda as “one of the two major streams of Buddhism, the other being Mahayana.” Regarding “Southern Buddhism, the general name for the early Buddhism propagated after Asoka in the south of India, Sri Lanka, Thailand, Burma, etc.,” the source expounds, “the scripture preserved in these countries are written in the Pāli language and belong to Theravada teachings. Practitioners aim at attaining the state of *Arahat*.” “It is distinguished from Mahayana in putting emphasis on one’s own liberation, whereas the teachings of Mahayana stress the attainment of Buddhahood for all sentient beings.”²²²

Nonetheless, the Penguin Dictionary of Religions does not share the remark on freedom enthusiasm of Theravada with the Seeker's Glossary. It peruses:

Classical Theravāda recognises three alternative goals of *Arahat*, *Pacchēka* Buddha and fully awakened Buddha. It is usually the path of the disciple (*sāvaka* Skt *Srāvaka*) to *Arahat-ship* which is set forth, but a *Bōdhisatta* (Sanskrit: *Bodhisattva*) path to Buddhahood is recognized. Theravada differs from Mahayana in rejecting the suitability of the *bōdhisatta* role for all and not accepting the authority of the Mahayana scripture. The path of *Arahant-ship* is not considered selfish, but as beneficial for both self and others.²²³

²²¹ John R Hinnells ed. *The Penguin Dictionary of Religions* (London: Penguin Books, 1997), 523-24.

²²² Sutra Translation Committee, *The Seeker’s Glossary of Buddhism* (New York: Corporate Body of the Buddha Educational Foundation, 1998), 622.

²²³ John R. Hinnells ed. *The Penguin Dictionary of Religions*, 524.

There are many forms Buddhism historically developed across the times and in different lands where it is practiced. They proclaim many different teachings, even contradictory to each other. Their meaning of salvation, their frame of mind to the status of the Buddha and their ceremonies and customs vary enormously. As featured by The Seeker's Glossary:

Unlike Mahayana schools, the Theravada tradition makes no mention of Amitābha Buddha, the Bodhisattva *Avalōkitēsvara*, etc., or the Pure Land. Theravādins believe mainly in *Sākyamuni* Buddha and the Bodhisattva *Maitrēya*, but not in the numerous trans-historical Buddhas and Bodhisattvas of the Mahayana tradition. This is because Theravada stresses the historical Buddha and his early teachings, applying the term Bodhisattva mainly to the previous incarnations of Buddha *Sākyamunī*.²²⁴

Therefore, some modern scholars might insist that Theravada, in spite of its claim for antiquity, needs to be considered as just another school of Buddhism. Yet, as every school maintains, Theravada is the most established convention and pretty much every other school diverge from it.²²⁵ Theravada, thusly, is the nearest to Early Buddhism. Any following back to the first Buddhism needs Theravada as the base, as some other endeavour of looking for pre-Theravada unique Buddhism is only speculative. It doesn't imply that no exploration is conceivable to reproduce Early Buddhism. There have been numerous insightful endeavours to do as such, applying authentic, philosophical and relative analysis.²²⁶

In the look for early Buddhism, researchers have received the accompanying criteria:

- What is in understanding among numerous schools could be taken as right on time.
- What is commentarial is partisan.

²²⁴ Sutra Translation Committee, *The Seeker's Glossary of Buddhism*, 624.

²²⁵ A. K. Warder, *Indian Buddhism* (Delhi: Motilal Banarsidass, 1980), 288- 422. A. K. Warder presents a systematic account of how school after school developed from the main body of Theravada, Charles S. Prebish, *Major Schools of Early Buddhists in his Buddhism: A Modern Perspective* (1975) also presents a comprehensive introduction.

²²⁶ G. C. Pande, *Studies in the Origins of Buddhism* (Delhi: Orient Book Distributors, 1995), 149.

- What is fanciful, otherworldly and practically superstitious is later advancement since the reasoning of the generally concurred writings is non-mystical and free of folklore.
- Language and meter likewise can be utilized to follow what is early and what is later.

There are numerous insightful endeavours to take shape early lessons of the Buddha and recognize Theravada from Early Buddhism. J. Takakusu, for example, contrasted the Pāli *Sutta Pitaka* and the Chinese Agamas and discovered there is considerably more understanding than contradiction between them. Be that as it may, he found that the *Abhidhamma Pitakās* of different organizations share numerous focuses that are not practically speaking.²²⁷ Along these lines, the *Abhidhamma Pitakās* are viewed as improvements that occurred after the partisan divisions. In any case, the way that even the *Mahāsāṅghikās*, the primary faction to fan out from Theravada, articulated that they don't acknowledge the *Abhidhamma* to be the expressions of the Buddha demonstrates that it was making and framing a different character when of the second board. The same number of *Suttās* in the *Dīgha*,²²⁸ *Majjhima*²²⁹ and *Anguttara Nikayās*²³⁰ allude to *Abhidhamma kathās*, we can securely accept that notwithstanding amid the season of the Buddha the advancement of *Abhidhamma* scholasticism had started.²³¹

Theravada is the most preservationist and puritan among the Buddhist schools. From the time they shaped a gathering arousing around the seniors, they were worried about the defencelessness of the Buddha's words to twists. They realized that there were numerous events when some naughty priests endeavoured appalling bends

²²⁷J. Takakusu, "The *Abhidhamma Literature, Pāli and Chinese*," scribd.com, accessed January 19, 2019, <https://www.scribd.com/document/340067518/J-Takakusu-The-Abhidharma-Literature-of-the-Sarvāstivādins-1904-5>.

²²⁸ Lankānanda and Nānālōka, *Dīgha Nikāya*, 3:267.

²²⁹ Trenckner and Chalmers, eds., *Majjhima Nikaya*, 2:238.

²³⁰ Lankānanda and Nānālōka, *Anguttara Nikaya*, 3:107.

²³¹ I. B. Horner, *The Book of the Discipline: Vinaya Piṭaka*, vol. 4 (London: The Pāli Text Society, 1982), 144. Refer to *Abhidhamma katha*.

notwithstanding amid the lifetime of the Buddha. The likelihood of further twisting endeavours was predicted by the Buddha himself and he, as a healing measure, presented *mahāpadēsās*, a system of dismissing unwholesome perspectives that could be exhibited in the appearance of the Buddha's words. Thusly, the *Theravādins* gathered and ordered the talks of the Buddha and doled out them to gatherings of priests to ensure them. Those priests, at that point, were designated "*bhānakās*" (reciters), as the strategy for protection was for the most part presenting piece of the talks each day.²³²

In simultaneousness with the *bhānaka* custom there was *ācaraiya paramparā*, who kept universal elucidations unchallenged, and this convention was usually settled upon by the three early schools of Buddhism, i.e., Theravada, *Mahāsānghika* and *Sarvāstivāda*.

A note must be made here that even the Theravada analysts were aware of the way that their critiques did not comprise early Buddhism. For example, *Buddhaghōṣa*, the theoretician of Theravada, in his editorial to *Vinaya* guaranteed that there are four strata in power, in particular, *Sutta*, (Discourses and Discipline), *Suttānulōma* (Facts as per dhamma and vinaya), *Ācariyavāda* (Old analyses and educator's convention) and *Attanōmati* (Views of scholars took in individuals' perspectives). *Buddhaghōṣa* clarified *attanōmati* as commentarial choices touched base by scholarly exercise by individual experts and incorporates them in Theravada. He adds that they are of lesser grade in importance while the first three holds more authoritative position in explaining *Dhamma*.²³³

²³² E. W. Adikaram, *Early History of Buddhism in Ceylon* (Colombo: Migoda: 1946), 398.

²³³ Jayawicrama Buddhaghōṣa, *The Inspection of Discipline and the Vinaya Nidāna: Being a Translation and Edition of the Bahiraniḍāna of Buddha's Samantapasādikā, the Vinaya Commentary* (London: Pāli Text Society, 1986), 131.

Theravādins hold *Vinaya*, the premise of Buddhist law, as of prime significance. They even went to the degree of practicing *Vinaya* before the *Suttās*. "*Vinaya* is the life of religion. At the point when *Vinaya* stands set up the religion stands firm as well," they guaranteed. As they didn't need any unsuitable modification by priests bowed on extravagances later on, they went to the extraordinary of not enabling future priests to appreciate the freedom given by the Buddha to change minor guidelines of the *Vinaya*. The Buddha knew that with the change of space and time the future monks will need this allowance. During the twenty-five years of the growth of *Vinaya*, he had well experienced the difficulty of keeping the same rules unchanged. He very compassionately provided for such occasions by changing the rules according to the new conditions. Yet the Elders at the council decided they need not revise any rule. This rather impractical decision led to the first schism in their tradition.

Theravādins, however, did not belittle the *Dhamma* either. In order to prevent misinterpretations and distortions of *Dhamma*, they developed a unique tradition of providing commentaries on *dhamma* and *Vinaya*. The methodology for this is described in *Petakōpadēsa* and *Nettipakarana*. However it does not look like that the rigidity they applied to the *Vinaya* was extended to *Dhamma*. Making commentaries on *Dhamma* was more done in relation to *Dhamma*. This opportunity was perhaps used generously by teachers whom are referred to as *Porānās* by *Buddhaghōṣa*. When he was ready to compile a universal set of commentaries by digesting all available resources, it is recorded that he had twenty sets of commentarial texts and traditions to consult. Custodians of those resources at the Theravada headquarters at Anuradhapura, Sri Lanka did not straight away give access to *Buddhaghōṣa*. In order to gauge his loyalty to

Theravada and his skills in commentary making, they gave a stanza for him to compile a sample commentary. This further illustrates their traditional rigidity extended to *Suttas* as well.

The genuine religio-philosophical character of Theravada is found in the created *Abhidhamma* lessons, which has infiltrated into their commentarial convention.

Visuddhimagga of *Buddhaghosa*, is the focal critique on *Sutta Pitaka* which pursues *Abhidhamma* regulations all around intently.

Culturally speaking, *Theravādins* were not very positive towards the *Bhikkhunī Sāsana* in its inception. They have depicted the establishment of it in their *Vinaya* book rather negatively and do not show that they were very pleased with it. The hostility is epitomized in accusing Ananda for being instrumental therein and asking him to confess an error. And no *bhikkhunī* was invited to take part in any of the councils. They were not given any part of the *Tipitaka* to recite and preserve. However the *Bhikkhunī* Order continued to exist for more than fifteen centuries among Theravādins.

It is not true to say that Theravada and early Buddhism insisted everyone should try to attain *Arhat*-hood, not Buddhahood. The possibility of attaining *Nibbāna* by any one of these paths are recognized. There is no insistence that everyone should attain a single goal. Theravadins, as a result of coexisting with other schools, adopted some new concepts when they found that they were not against early teachings and useful in promoting a religious life. For instance, they adopted the concept of *paramitās* from Mahayana but in a revised form. At a later date they adopted protective chants and elaborated upon bodhisattva worship as well.

In our study what is called Theravada law is mainly the monastic code of rules found in the *Theravada Vinaya* texts preserved in the Pāli language. Of course there are *Vinaya* texts belonging to different schools of Theravada who maintained their *Tipitaka* in Sanskrit. Mahayana Buddhist *Sangha* also follow those Sanskrit *Vinaya* texts.

Buddhism is a religion founded by a human teacher. The Buddha never claimed that he was an agent of any God or he himself was God. “Among the founders of religions,” writes *Rāhula*, “the Buddha (if we are permitted to call him the founder of a religion in the popular sense of the term) was the only teacher who did not claim to be other than a human being, pure and simple. Other teachers were either God, or their incarnations are in different forms, or inspired by him. The Buddha was not only a human being; he claimed no inspiration from any God or external power either.”²³⁴ Buddhist religion, therefore, has no divine authority or justification for its law. For that reason there is no any punishment for violation of law from such supernatural authority.

In spite of it being religious in nature, the Buddhist Law is human-centric as there is no divine authority whatsoever behind it. In other words the Buddha was the sole lawmaker. He was the spiritual leader of the *Sangha*, as it was claimed that all who ordained accepted the Buddha as their spiritual guide. As is the case with other man-made laws, the Buddhist Law is also not considered sacred and irrevocable. The Buddha changed, revised and improved on *Vinaya* laws whenever he thought it necessary according to his own administrative experience. There were even times he completely changed certain laws for the convenience of his followers. It was actually an essential ingredient in his legal philosophy. In the ten reasons he had given for instituting laws he

²³⁴ Walpola Rahula, *What the Buddha Thought* (London: Gordon Fraser, 1958), 1.

indicated that he introduced laws for the wellbeing and convenience of the Sangha.²³⁵ He could do this because he was the only lawgiver. And as a real human being, he was able to understand the genuine needs of his human followers.

In spite of the clear indications that the Buddha was the sole lawgiver, Oldenburg has opined that the origin of the Buddhist law took place in *pātimokkha* assemblies. He wrote: “The origin of the earliest rules or laws laid down by the Buddhist community for the guidance of its members appears to have been connected with those assemblies of *Bhikkhus* which met at full and new moon.”²³⁶ Careful reading of the texts will definitely show that the case was otherwise. The rules were given and modified when necessary by the Buddha himself. And the reciting of laws at the assemblies was also originated with guidance provided by the Buddha.

However, it is clear that he was doing it in consultation with his monastic followers. He was responsive to the practical difficulties that the monks had to experience. In other words, the Buddha was not making laws for the sake of laws. Laws were for the benefit—both physical and spiritual—of *sangha*, as made clear in the *dasa atthāvāsa*²³⁷ (tenfold welfare) policy explained by the Buddha when he was requested by *Sariputta* to introduce laws for the *sangha*.²³⁸

Further, he did not contribute to the view that more laws necessarily make monks moral. They help to augment moral behavior. According to the *Sekha sutta*, voluntarily accepted moral practice (*sīla*) plays a vital role, while law (*sikkhāpadās*) adds to moral behavior when immature members knowingly or unknowingly spoil their moral conduct.

²³⁵ Ambalangoda Dhammakusala Thera, *The Vinaya Pitaka*, vol. 3 (Colombo: Department of Government Publications, 1957), 21.

²³⁶ H. Oldenberg, ed., *The Vinaya Pitaka*, vol. 1, *The Mahavagga* (London: Luzac and Company, 1964), 15.

²³⁷ *Ibid.*, 3:21, and 4:9.

²³⁸ *Ibid.*, 21.

As a matter of fact, if someone could behave in a perfectly moral manner, for him there would be no need of any law. This is implied in the story of the monk who came to the Buddha to complain that there were too many rules and he found it difficult to obey. The Buddha advised him to confine himself to *adhisīla* (higher morals), *adhicitta* (higher mental training) and *adhipaññā* (higher wisdom, which means *vipassanā* meditation) despite worrying about laws.²³⁹ However, it was necessary to discourage and prevent immoral behavior of less-trained and newer brethren in the Order of Sangha. The moral code known as *sīla* was no law and it carried no potential of legally handling the monks who violated moral considerations. It was this inadequacy that made Law (*sikkhā*) necessary. The punitive potential in the law can especially help to discourage trainees from behaving wrongly.

When the monks complained about practical difficulties of keeping to a certain rule, the Buddha was not reluctant to revise it if the revision did not go against the spirit of *Dhamma-Vinaya*. He would also introduce a new rule when people complained certain unacceptable behaviors of monks not fitting to monkish life. This is an indication that common people of the day had different expectations regarding the Buddhist monks. In the criticisms made by them, they mostly used to compare the behavior of mendicants of other religions and asked how the Buddhist monks could do the same unethical things. However, careful reading of the *Vinaya* will show that the Buddha was a kind legislator who was willing to revise the rules when it appeared uncomfortable for the Sangha. He listened to people when he found the criticism was sound. As a matter of fact, it seems that people were expecting the Buddhist monks to behave differently from mendicants of

²³⁹ Lankānanda and Nānālōka, *Anguttara Nikaya*, 1:230.

other religions. Lay people were familiar enough with the spirit of Buddha's teachings to have a sense of what was suitable and unsuitable for Buddhist monks.

Lay Buddhists have five precepts that they have to live by.²⁴⁰ The precepts are recited by lay people after taking three refuges and constitute an essential part of all practical lay "rituals" or worship sessions. The stereotypical formula of undertaking five precepts known to the lay community runs as:

1. I undertake the precept of refraining from killing.
(*Pānātipātā vēramani sikkhāpadam samādiyāmi*)
2. I undertake the precept of refraining from taking what is not given.
(*Adinnādānā veramani sikkhāpadam samādiyāmi*)
3. I undertake the precept of refraining from committing adultery.
(*Kāmēsumicchācārā vēramani sikkhāpadam samādiyāmi*)
4. I undertake the precept of refraining from lying.
(*Musāvādā vēramani sikkhāpadam samādiyāmi*)
5. I undertake the precept of refraining from consuming intoxicants.
(*Surāmēraya majjapamādatthānā veramani sikkhāpadam samādiyāmi*).²⁴¹

One might be tempted to consider them as the Buddhist law for lay people. However, in the modern way of using terms or rather the way the word "law" is defined today, we have to think twice before calling five precepts the laws of lay devotees. They do not cause laymen to be arrested and prosecuted by anyone, religious or otherwise. There is no court procedure against the misdemeanor. There is no authority to punish them either. Thus there are many essential features of law which are missing here. If we are to call them law we have to resort to the Indian term *Dharma* which is frequently translated as law in a special way. It is the *Dharma* of laymen which is accepted voluntarily and punishment for violation comes only in karmic way.

Unlike the Ten Commandments, five precepts are not given as divine laws. The five precepts were never considered as commandments or church laws. Moreover, there

²⁴⁰ Ibid., 3:203.

²⁴¹ Lankānanda and Nānālōka. *Kuddakanikāya*, 1:2.

is no covenant or agreement with any supernatural authority regarding five precepts. They are voluntary undertakings which the laymen agree to live by. No fear of God is involved therein. The Pāli term “*samādiyāmi*” literally denotes happy and voluntary acceptance to oblige the precepts. Buddhist ethics are convincing enough to educate followers of the reasons why they have to refrain from the criminal acts such as killing. The “*Attūpanāyika Dhammapariyāya*” (similar to the golden rule of Confucius) given in the *Veludvāra Sutta*²⁴² encourages that one ought not to do anything to others that one doesn't care for done to oneself. The use of this model includes thinking about one's own essential intuitive attributes that one offers with other individual creatures. In this reflection one may ponder the way that he fears demise, cherishes life, fears discipline and provocation, wishes to be cheerful and loathes enduring. Similarly he ought to understand that others likewise dread passing (*amaritu kāmā*), love life (*jivitu kāmā*), dread discipline and badgering (*daṇḍana bhītā*), wish to be upbeat and aversion enduring (*sukha kāmā dukkha patikkūlā*).²⁴³ One should, therefore, think of others in analogy to oneself and refrain from killing others. This method is known as *Attūpanāyika dhamma pariyāya*, the technique of seeing others in analogy to oneself.²⁴⁴

In the *Dhammapada* this is stated as “*Attānam Upamaṃ katvā- na haneyya na ghātaye-* Thinking of others in analogy of oneself do not kill; not destroy.”²⁴⁵

Breaking the five precepts, in the context of Buddhist lay ethics, does not lead to punishment from any religious authority. In fact, the Buddhist *Sangha* holds no legal authority over laymen. Buddhism, being the least institutionalized religion, does not

²⁴² Lankānanda and Nānālōka, *Samyutta Nikāya*, 2:182.

²⁴³ Lankānanda and Nānālōka, *Anguttara Nikāya*, 4:124.

²⁴⁴ Lankānanda and Nānālōka, *Samyutta Nikāya*, 5:352.

²⁴⁵ Narada Thera, *Dhammapada, Pāli text and translation with stories in brief and notes* (Colombo: Buddhist Culture Center, 1971), 124. Verse 131.

enroll lay members into any formal congregation or church as such. They are just voluntary practitioners and devotees who provide respect and support to the Buddhist clergy out of conviction. Theoretically, the monks are also not attached to any “congregation” as permanent parish priests. The monks, therefore, have no punishing authority over devotees (except for refusing to accept the four requisites from them). In that case one might question the relevance of the five precepts for a discussion on law. How can it be considered law without any punishment?

However, Buddhism teaches that people who break five precepts accrue bad *kamma* (*akusala*) for which they will have the natural “punishment.” The quality of anyone’s life mostly depends, according to the Buddhist analysis, on his *kamma*. (This does not mean that everything that happens to a person is owing to *kamma*. *Kamma* operates with four other natural laws and human effort has much to do with *kamma*.) Moreover, the Buddha was aware that the secular government will punish the crimes implied in the five precepts and recognized the significance of them in secular law.

The recognition of the five precepts in a broader secular context is presented in the *Chakkavatti Sihanāda Sutta* in the *Dīgha Nikāya*.²⁴⁶ According to the rather mythical story presented in the *Sutta*, the five precepts constituted the international policy of the universal monarch (*cakkavatti rājā*). After he made his own kingdom self-sufficient and crime-free, he wanted to extend his philosophy of righteous rule to other kingdoms as well. He, then, travelled to other countries, making the kings of those states united into a group similar to the modern Commonwealth or rather, the United Nations. The universal monarch advised all countries united by him to rule their lands according to the five

²⁴⁶ Davids and Carpenter, eds., *The Dīgha Nikāya*, 1:26.

precepts, so creating a universal monarchy called *Cakkavatti*. Thus in this myth, five precepts are given a political face and pre-law status.

It is in the *Sāmanēra* training that a real legal characteristic was given to the five precepts. They were incorporated into the ten precepts of the novices and a punishment aspect was also added to it. Except for the third precept (refraining from wrong sexual behavior (*kāmēsu micchācārā*),²⁴⁷ which was modified to be stricter in application (refraining from sexual behavior (*abrahmacariyā*),²⁴⁸ the rest were identical in form and meaning. In addition to the first five, five more were added to the *Sāmanēra* (novice) precepts. They are:

6. *Vikālabhōjanā veramanī sikkhāpadaṃ samādiyāmi*
I undertake the precept to refrain from eating at the forbidden time (i.e., after noon).
7. *Nacca-gīta-vādita-visūka-dassanā veramani sikkhāpadaṃ samādiyami*
I undertake the precept to refrain from dancing, singing, music, going to see entertainments.
8. *Māla-gandha-vilepana-dhārana-mandana-vibhūsanatthānā veramanī sikkhāpadaṃ samādiyami.*
I undertake the precept to refrain from wearing garlands, using perfumes, and beautifying the body with cosmetics.
9. *Uccāsayana-mahāsayanā veramani sikkhāpadaṃ samādiyāmi.*
I undertake the precept to refrain from lying on a high or luxurious sleeping place.
10. *Jātarūpa-rajata-patiggahanā veramani sikkhāpadaṃ samādiyāmi.*
I undertake the precept to refrain from accepting gold and silver (money).²⁴⁹

As the *sāmanēra* ordination formally makes a candidate a novice, undertaking the ten precepts is a legally binding act. Violation of the ten precepts, then, constitutes a punishable crime. However, the commentary to the *Khuddakapāṭha* makes a distinction between the first five and the second five. According to it, the first five are “naturally blamable” (*pakativajja*) and the second five are “blamable because of ordinance”

²⁴⁷ Lankānanda and Nānālōka. *Kuddakanikāya*, 1:2.

²⁴⁸ Ibid.

²⁴⁹ Ibid.

(*paññatti vajja*).²⁵⁰ This means that the first five are wrong even if they are not proclaimed wrong in the monastic Vinaya. On the contrary, the second five are not wrong if they were not prohibited for novices in the Vinaya. However, one may argue that the third precept on sexual intercourse is not universally accepted as a criminal act and therefore could not be called naturally blamable. But the world generally considers that it is improper for a monk to engage in sexual relationships. However, the Vinaya commentary simply states “as it is done due to lust (*rāga*) it is blamable by the world (*loka vajja*). It involves an unskillful (*akusala*) *citta*.”²⁵¹

The crimes recognized in the context of five precepts and included in the ten precepts of novices are absorbed into the monastic law of higher ordained monks in a more legal manner. They are defined with gradations, definitions and specific manners. For instance the first precept dealing with killing is legalized with specific emphasis on killing a human being. In the higher monastic code called the *pātimokkha*, killing a human being is a *parājikā* (total defeat) offence, while killing an animal is only a *pācittiya* (expiational) offence. When it comes to sex, anal, vaginal or oral sex constitute an offence of the first grade leaving the monk defeated in his monkhood (*pārājika*) while heavy necking and petting leads to a grade two offence called *saṅghādisēsa* (temporary suspension), which leaves the monk restorable after spending a period of probation. Thus the Vinaya laws for higher ordained monks are precise and clear.

Buddhist law for monks was introduced by the Buddha only when he found it necessary to have it. Buddha did not consider that the monastic culture needed institution

²⁵⁰ Widurapola Piyatissa Mahā Thera, *Khuddakapatha atthakatha* (London: Pali Text Society, 1986), 24.

²⁵¹ Jayawicrama Buddhaghōsa, *The Inspection of Discipline and the Vinaya Nidāna: Being a Translation and Edition of the Bahiraniḍāna of Buddha's Samantapasādikā, the Vinaya Commentary* (London: Pāli Text Society, 1986), 271.

of law until it was practically necessitated. When Sāriputta once requested the Buddha to introduce laws for the *Sangha*, arguing that the Orders of the previous Buddhas who did not introduce laws did not last long, the Buddha refused the request, stating that he would introduce rules only when corruptive behaviors become prevalent among the monks.²⁵² When a monk called Bhaddāli made rather a negative comment asking why the achievers of attainments became fewer after establishing the laws, the Buddha stated, “It was the moral degeneration that necessitated laws and the reason for reducing the number of achievers is also the same moral decline.”²⁵³ It shows that the Buddha did not like unnecessary demeaning of Law. He seems to accept that it was a necessary and reasonably effective instrument in curbing moral decline. The *dasa atthāvāsa* (ten purposes of introducing rules) mentioned by us earlier is proof that his attitude towards law was positive.

There, in fact, is a list of factors identified by the Buddha as the causes of corruptions in the Order. Appearance of these corruptive factors made introduction of laws necessary in order to maintain proper conduct among the monks. The causes of moral laxity among the monks, as recorded in the *Bhaddāli Sutta*, are:

1. *Mahattā* (increase, success)
2. *Lābhaggā* (abundance in material support)
3. *Yasaggā* (fame)
4. *Bāhusaccā* (learning)
5. *Rattaññutā* (long standing)²⁵⁴

These factors indicate that when an institution is small in size, fewer problems arise, while along with increase of size, wealth, fame, learning, and antiquity,

²⁵² Ambalangoda Dhammakusala Thera, *The Vinaya Pitaka*, vol. 3 (Colombo: Department of Government Publications, 1957), 9.

²⁵³ V. Trenckner, *Majjhima Nikaya*, vol. 1 (London: Pāli Text Society, 1964), 445.

²⁵⁴ *Ibid.*

degeneration of morals becomes increasingly possible. This makes laws necessary. The same reasons are given in a different form in the Vinaya:

1. *Rattaññu mahattatā* (increase in age – long standing)
2. *Vēpulla mahattatā* (increase in membership)
3. *Lābhagga mahattatā* (increase material support)
4. *Bahusacca mahattatā*.²⁵⁵ (increase in learning)

Mahattatā (increase), which was in the Sutta list as a specific condition, is changed here to a general attribute added to others in the Vinaya list. *Yasagga* is also left out in the *Vinaya* list. However, the general tone seems, more or less, similar. In both lists the notion of *mahattatā* refers to increase. Accordingly, we may assume the genuine interest shown by early members of the Order in practicing morals gradually declined with time. And increase in the membership, gain and learning were also factors contributive to decrease in sincerity and spiritual earnestness.

It is noted that there were a few monks who were not happy with the introduction of the *Vinaya* rules. For instance, the *Chabbaggīya* monks (monks of “the gang of six” who were known for looking for loopholes in *Vinaya* laws in order to misbehave) were conferring among themselves to belittle and disgrace the *Vinaya* rules. They feared being accused by the monks who were conversant with the *Vinaya* rules. They did not like to be questioned on their bad behavior by those senior masters of *Vinaya*.²⁵⁶ The Buddha was informed of this and then he introduced a *pācittiya* rule (no. 72), prohibiting criticizing and demeaning the *Vinaya*.

In fact, as the Buddha stated to *Sāriputta* when he was requested to promulgate *Vinaya* rules, the Buddha, actually, awaited for the correct time to introduce laws.

According to the tradition, it was twenty years after the inception of the Order that the

²⁵⁵ Dhammakusala Thera, *The Vinaya Pitaka*, 3:192.

²⁵⁶ *Ibid.*, 4:143.

Buddha introduced the first law against sex (*mēthūnadhamma*), one of the four *Pārājikās* (full defeat). The first “crime” to appear in the monastic context is reported as sexual intercourse, which is not a crime in lay circles. There is a form of sex legally recognized by the state law. However, involvement in sex by a monastic was generally frowned upon by lay people in almost every religion, and, therefore Buddhist monks voluntarily refrained from such behavior even before the law preventing sex was introduced. However, after twenty years of the Order of the *Sangha*, the case of a monk impregnating his former wife created an issue. In fact the monk involved, namely *Sudinna*, did not commit the act owing to his lust or any disregard of religious life. He merely responded to the constant and apparently reasonable plea made by his in-laws and former wife for a child to inherit their enormous wealth. As people around them recognized it as giving just a “seed,” the son born in consequence to the act was appropriately called by them as “*Bījaka* (the Seed-Boy).” However, the monks who came to know the case and even the father monk had their qualms over the moral correctness of the act. When the Buddha was approached by the monks for his verdict, he condemned the act and introduced the first ever *Vinaya* law in the *pārājika* group, preventing sexual intercourse for monks. In fact, it was assumed that nothing else runs so contrary to the spirit of monkhood as the violation of the virtue of celibacy.²⁵⁷ The Buddha’s criticism of the act of the monk *Sudinna* shows this fact. The Buddha rebuked him, stating:

Foolish man, it’s not suitable, it’s not proper, it’s not worthy of an ascetic, it’s not allowable, it’s not to be done. How could you go forth in such a well-proclaimed teaching and training and not be able to practice for life the perfectly complete and pure spiritual life? Haven’t I given many teachings for the sake of dispassion, not for the sake of passion; for the sake of freedom from bondage,

²⁵⁷ Jotiya Dhirasekara, *Buddhist Monastic Discipline: A Study of Its Origin and Development in Relation to the Sutta and Vinaya Pitakas* (Colombo: Ministry of Higher Education, 1981), 84.

not for the sake of bondage; for the sake of non-grasping, not for the sake of grasping?²⁵⁸

Questioning further on his failure, the Buddha asked him how he could

give into passion, bondage, and grasping. He further asked:

Haven't I given many teachings for the fading away of sensual desire, for the clearing away of intoxication, for the removal of thirst, for the uprooting of attachment, for the cutting off of the round of birth and death, for the ending of craving, for fading away, for cessation, for extinguishment? Haven't I in various ways taught the abandoning of sense pleasures, the full understanding of the perception of sense pleasures, the abolishing of thirst for sense pleasures, the elimination of thoughts of sense pleasures, the stilling of the fever of sense pleasures?²⁵⁹

Condemning further his failure to stand by the morality fit for a monk, the Buddha even added it would have been better if the monk inserted his penis into the mouth of a terrible and poisonous snake, the mouth of a black snake or a blazing charcoal pit than to enter a woman. Explaining why he condemned sexual intercourse, the Buddha added:

Because for that reason, you might die or experience death-like suffering, but you wouldn't because of that be reborn in a bad destination. But for *this* reason, you might. Foolish man, you have practiced what is contrary to the true teaching, the common practice, the low practice, the coarse practice, that which ends with a wash, that which is done in private, that which is done wherever there are couples. You're the forerunner, the first performer of many unwholesome things. This will not generate faith in those who do not have it or increase the faith of those who have it, instead it will hinder faith in those who do not have it, and it will cause some who are with faith to change their minds.²⁶⁰

Even though the Buddha condemned (*vigārahi*) *Sudinna* for not having the essential sense of the evil nature of his act, *Sudinna* was forgiven, as there was no law prohibiting sexual intercourse for monks at the time he committed the act. Even though the idea of sexual behavior was not advisable for monks who were supposed to control

²⁵⁸ Weradoda Amaramoli, *Parajika Pali* (Colombo: Department of Government Publications, 1959), 41-43.

²⁵⁹ Ibid.

²⁶⁰ Ibid.

their *raga* (desire and craving), as it was not legally prohibited there was no possibility of punishing *Sudinna*.

The Buddha recognized the universally acceptable general belief that when there is no law, there is neither crime nor punishment. *Sudinna* was considered guilt-free legally even though he was the one who provoked the promulgation of the rule. Moreover, this was made a special characteristic in the Buddhist monastic law not to accuse or punish the first culprit.²⁶¹ The nature of Buddhist law is such that there is no punishment when there is no law. Thus in case of all of the *Vinaya* laws promulgated by the Buddha, the first offender (*ādīkammika*) was always forgiven for the reason that he did it before the law was introduced (*āpannatte sikkhāpade*), not knowing the repercussion (*ādīnava dassāvi*). This is one of the democratic and sophisticated features of Buddhist law.

As we have already stated, the first ever monastic law is related to the third in the five precepts given to the lay followers. The significant difference, however, is that it makes a complete ban of sexual behavior for monks in contrast to “criminalizing” only sexual misconduct in the laymen’s discipline. Yet there are certain aspects of sexual conduct in the monastic law where the punishment has gradations depending on the nature and gravity of the act. When the incidents that followed the introduction of the original law were not covered by the initial wording of the law, the Buddha would amend it to include that aspect as well. That was how the rules were improved and given precision. However, when a related incident brought to the Buddha was not equal to the gravity of the offence covered by the initial rule, then it was relegated to a different

²⁶¹ Ibid., 33.

category. Very often it was not the physical and prima facie similarity the Buddha would focus on, but mainly the psychology and ethics behind the case.

To illustrate how the Buddha improved the initial law when an offence related to it was committed by an offender, deliberately or because of ignorance, examining how the *pārājikā* rules developed into the present form would be helpful. *Pārājikāpāli* (of the “*Vinaya suttavibhaṅga*”) ²⁶² reports the development of the rules step by step. All the incidents leading to the development of the rule are narrated with the way they were reported to the Buddha and how the Buddha rephrased the rule to cover the aspect that the rule did not cover originally. For instance, the following is the step-by step-process through which the first *pārājikā* rule evolved into the present form.

Step one: *Sudinna* was reported to have had sex with his former wife after being ordained as a Buddhist monk. In fact, the monk was newly married when he happened to listen to the Buddha and became a monk. His parents were worried about there being no inheritor to their property. *Sudinna* was implored by his relations to make his wife pregnant just to help the family line to continue unbroken. In response to the continuous insistences, *Sudinna* gave in and had sexual intercourses three times. As a result his former wife became pregnant. The Buddha then instituted the law in this form: “If a monk has sexual intercourse, he is expelled and not in communion” ²⁶³

Step two: A monk was reported to have kept a she-monkey in the monastery and had sexual intercourse with her. Then the Buddha amended the rule to prevent this type

²⁶² Ibid., 34.

²⁶³ Thanissaro Bhikkhu, “Bhikkhu Patimokkha The Bhikkhys’ Code of Discipline,” accesstoinisght.org, accessed June 02, 2019, <https://www.accesstoinisght.org/tipitaka/vin/sv/bhikkhu-pati.html>.

of offences. ‘If a monk has sexual intercourse, even with a female animal, he is expelled and not in communion.’²⁶⁴

Step three: Some monks enjoyed sex and other mundane ways and behaved in a decadent manner without resigning from the training, revealing their inability to keep the rules. Later they regretted their behavior and requested for full ordination. The Buddha then amended the rule to allow admitting back those who have confessed their inability and forsaking the training. If a monk enjoys sex without fulfilling this condition he is deemed to have committed a *pārājikā* offence and cannot be higher ordained. At this step the rule took the following shape: “If a monk, after taking on the monks’ training and way of life, without first renouncing the training and revealing his weakness, has sexual intercourse, even with a female animal, he is expelled and not in communion.”²⁶⁵

This narrative of the development of this rule shows us that the Buddha patiently waited until unwholesome acts occurred. When case after case was brought him, he would make the rules more precise to cover all possible attempts of misbehavior.

The second crime in the *parājika* group is stealing (*adinnādānā*, taking what is not given). This rule also developed in two steps.

Step one: The story behind the introduction of the rule concerns a monk called Dhaniya Kumbhakaraputta. He wanted some timber for building a monastery for himself and approached the keeper of the king’s timber store to get some timber. As there was no suitable timber there, he was instructed by the store manager to get the king’s permission to obtain some timber from the stock the king had reserved to be used only at a disaster or

²⁶⁴ Ibid.

²⁶⁵ "yo pana bhikkhu bikkhūnaṃ sikkhāsājīva samāpanno sikkhaṃ appaccakkhāya dubbalyaṃ anāvikatvā methunaṃ dhammaṃ paṭiseveyya, antamaso tiracchāna gatāyapi, pārājiko hoti asaṃvāso". I. B. Horner, *The Book of the Discipline: Vinaya Piṭaka*, vol. 3 (London: The Pāli Text Society, 1982), 23.

a city development project. Then the monk resorted to cheating, claiming that he had the permission from the king and removed as much as he wanted from the king's reserved stock. He was found out when the king wanted timber for some urgent work in the city. Monk *Dhaniya*, when questioned by the king, reminded the king of the blanket permission he had given for monks to obtain timber from woods, parks, etc. As a matter of fact the king had given that general permission but it was not meant to cover the emergency stock. The king explained that the monk was wrong but did not punish him as he was a Buddhist monk. However, the news spread among people that the monk had abused the king's general permission and had taken what was not given. This was the story behind the third *parājikā*.

When introducing the *pārājikā* rule for this type of “taking what is not given,” the Buddha wanted to know the type of punishment for someone caught for an act of theft by the king's men. He consulted a former royal judge who had joined the *Sangha* and then set the value he quoted as the punishment threshold for the *Vinaya* rule as well.

Step two: At the second stage, it was reported that a group of monks known as the “gang of the six” (*chabbaggiya*) stole a pile of robes from a washing place of *dhobis*. Their excuse was that the place where they took the robes was not a village. The rule, as a matter of fact, did not cover thieveries done at the forest. Then the Buddha added the words “either in the village or city” to the rule. Thus, the final rule read like this:

*Yō pana bhikkhū gāmā vā araññā vā adinnaṃ theyyasaṅkhātāṃ ādiyeyya yathārūpe adinnādāne rājāno coraṃ gahetvā haneyyūṃ vā bandheyūṃ vā pabbājeyyūṃ vā corō 'si bālo 'si mūlho 'si theno 'sī'ti; tathārūpaṃ bhikkhu adinnaṃ ādiyamāno ayampi pārājiko hoti asaṃvāso.*²⁶⁶

Should any bhikkhu, in what is reckoned a theft, take what is not given from an inhabited area or from the wilderness — just as when, in the taking of what is not given, kings arresting the criminal would flog, imprison, or banish him, saying,

²⁶⁶ Dhammakusala, *The Vinaya Pitaka*, 3:102.

"You are a robber, you are a fool, you are benighted, you are a thief" — a *bhikkhu* in the same way taking what is not given also is defeated and no longer in affiliation.²⁶⁷

The third *parājikā* rule also took the present shape as a result of a two-step revision. At the first step, the Buddha was informed of a monk who started killing other monks after being misled by an evil spirit. The monk used to meditate on the impurities of the body. However, he could not properly digest it and start hating his own body and the bodies of others. He, in fact, intended to commit suicide but then started killing others, with the delusion that he was offering help to them to find release from the disgusting body. Some of those monks motivated by him were reported to have killed each other. Having come to know of these murders, the Buddha introduced the *parājikā* rule preventing monks from taking life or even providing a weapon to another as help for suicide.

In the second step, the Buddha heard that *Vajjiputtaka* monks were encouraging patients who were in pain to commit suicide. People came to know that some persons committed suicide after listening to the monks who glorified death. They criticized and deplored this activity of monks. Then the Buddha revised the rule to include that persuading someone to commit suicide is also a factor that makes a monk *parajika*. Thus the final form of the rule was mention in *parajikāpāli* as follows.

yo pana bhikkhu sañcicca manussaviggahaṃ jīvitā voropeyya, sattahāraṃ vāssa pariyeseyya, maraṇavaṇṇaṃ vā saṃvaṇṇayya, maraṇāya vā samādapeyya, "ambo purisa kiṃ tuyhiminā dujjīvitena mataṃ te jīvitā seyyo " ti, iti cittamano cittasiṅkappo anekapariyayena maraṇavaṇṇaṃ vā saṃvaṇṇayya, maraṇāya vā samādapeyya, ayampi pārājiko hoti asaṃvāso." "yo pana bhikkhu sañcicca manussaviggahaṃ jīvitā voropeyya, sattahāraṃ vāssa pariyeseyya, maraṇavaṇṇaṃ vā saṃvaṇṇayya, maraṇāya vā samādapeyya, "ambo purisa kiṃ tuyhiminā dujjīvitena mataṃ te jīvitā seyyo " ti, iti cittamano cittasiṅkappo

²⁶⁷ Dhammakusala, *Parajika Pali*, 217.

*anekapariyayena maraṇavaṇṇaṃ vā samvaṇṇayya, maraṇāya vā samādapeyya, ayampi pārājiko hoti asaṃvāso.*²⁶⁸

Should any bhikkhu intentionally deprive a human being of life, or search for an assassin for him, or praise the advantages of death, or incite him to die (saying): "My good man, what use is this evil, miserable life to you? Death would be better for you than life," or with such an idea in mind, such a purpose in mind, should in various ways praise the advantages of death or incite him to die, he also is defeated and no longer in affiliation.²⁶⁹

The fourth Pārājikā is the only rule that did not undergo any improvement after its introduction. It prevents monks from bragging that they have achieved supreme spiritual heights when they have not cultivated them. The first offenders were monks who lived near the river bank of *Vaggumuda*. They were of the habit of introducing their inmates to devotees as super achievers on the noble path. In turn, they would also get the same introductions by those who were glorified by them. The deceived lay people would shower them with venerations and gifts. When the Buddha was informed of this unprovable practice, he introduced the fourth *parājika* rule:

Should any bhikkhu, without direct knowledge, claim a superior human state, a truly noble knowledge and vision, as present in himself, saying, "Thus do I know; thus do I see," such that regardless of whether or not he is cross-examined on a later occasion, he — being remorseful and desirous of purification — might say, "Friends, not knowing, I said I know; not seeing, I said I see — vainly, falsely, idly," unless it was from over-estimation, he also is defeated and no longer in affiliation.²⁷⁰

*Yo pana bhikkhu anabhijānaṃ uttariranussadhammaṃ attupanāyikaṃ alamariyañāṇadassanaṃ samudācareyya "itti jānāmi, itti passāmi" ti, tato aparēna samayēna samanuggāhīyamānō vā asamanuggāhīyamānō vā āpanno visuddhā pekkho evaṃ vadeyya "ajānamevaṃ āvusō avacaṃ jānāmi apassaṃ passāmi, tucchaṃ musā vilapi" nti aññatra adhimānā, āyampi, pārājiko hoti asaṃvāso.*²⁷¹

The process of the development of the Buddhist legal system has encountered occasions of some monastics making sexual advances towards another person whom

²⁶⁸ Ibid, 160.

²⁶⁹ Thanissaro Bhikkhu, "Bhikkhu Patimokkha The Bhikkhys' Code of Discipline," accesstoinight.org, accessed January 14, 2017, <https://www.accesstoinight.org/tipitaka/vin/sv/bhikkhu-pati.html>.

²⁷⁰ Ibid.

²⁷¹ Dhammakusala Thera, *The Vinaya Pitaka*, 3:200.

he/she fancies without daring to perform complete sexual intercourse. Such deviant behavior also had to be controlled even though they were not of the same gravity of *pārājikā*. In such cases the offences were categorized as *Sanghādisesa* (temporary suspension of membership) which makes the culprit subjected to a punishment without complete expulsion from the Order. His institutional privileges are suspended for six days for the offence plus an equal number of days to the number of days he kept the act a secret. During the period of punishment he is kept under probation. As he is to keep away from several important formal acts of the community every member of the *Sangha* will know that he is suspended for having done some offence. After the number of days he has to be under probation is completed, he has to appear before an assembly of monks and formally inform them he has completed his punitive period. Then the assembly moves a proposal to reinstate the monk into his previous status. This formal action is called *Abbhāna kamma* (act of reinstating). Among the *sanghādisēsa* offences there are sex-oriented offences such as touching (in a sexual way), flirting and propositioning. Still lesser offences such as being alone with a woman, talking privately, staying together and travelling together are included in a minor category called *pācittiya* (clearing the mind). These offences do not carry extra punishment other than confession. The miscreant makes the confession in an assembly and makes the promise that it would not be repeated. He will then be free of guilty feelings.

However, reasonable magnanimity is shown by the Buddha in marking the “no punishment threshold” in relation to rules. For instance in the case of first *pārājikā*, if the incident has happened when the monk was sleeping or when he was not aware of the intercourse, there is no responsibility for the accused monk.

1. If the act took place without the monk's consent.
2. If the act has happened when the monk was unconscious or was insane.
3. If the monk was possessed by a spirit and was not in control of himself
4. If at that time the monk was under an unbearable pain.
5. If the monk committed this act before the rule prohibiting it did not exist.

In relation to the second *pārājikā*—stealing— more strictness is noticeable. The second precept of laymen as a voluntary commitment has only karmic punishment, no religious punishment. When it is transformed into a *pārājikā* rule in monastic Vinaya, it gets a little more precise as there is a serious monastic punishment attached to it. And also when introducing the second *pārājikā* rule, the Buddha was concerned about the parallel law in the state. Therefore the Buddha asked a former judicial officer who had become a monk: ‘For stealing how much would King Sēniya Bimbisāra have a thief flogged, imprisoned or banished?’²⁷² The former minister replied: ‘For a *pāda*, Sublime One, or its equivalent, or more.’²⁷³ However the Buddha when he made the law qualified it by adding that the monk's offence should be judged by the severity of the sentence the state would recommend if the monk were a layperson. So the state punishment became the “sentence standard” for the Sangha as well. It is well indicated in the wordings of the second *pārājikā*: “If a monk takes from village or wilderness by what is reckoned as theft, something not given that is of such a nature that kings arresting a thief for such a theft would flog, imprison, or banish him, saying ‘You are a robber, you are a fool, you are stupid, you are a thief,’ even so, a monk who takes something not given that is of such a nature is *pārājikā*, no longer in communion.”²⁷⁴

²⁷² “*Yo pana bhikkhu gāmā vā araṇṇā vā adinnaṃ theyyasaṅkhātāṃ ādiyeyya yathārūpe adinnādāne rājāno coraṃ gahetvā haneyyūṃ vā bandheyūṃ vā pabbājeyyūṃ vā coro'si bālo'si mūlho'si theno'si'ti; tathārūpaṃ bhikkhu adinnaṃ ādiyamāno ayampi pārājiko hoti asaṃvāso.*” I. B. Horner, *The Book of the Discipline, Vinaya*, 4:226; *Vinaya*, 3:226.

²⁷³ Ibid.

²⁷⁴ Ibid.

In the narration of events following the initial proclamation of the rule, some 150 incidents are reported in the *Vinaya*. Those are mostly around deciding the value of the thing involved and the manner of taking what is not given.²⁷⁵ When deciding whether the act comes under punitive stealing, the most important step in addition to the value of the thing involved is the mindset. The monk involved is always asked, “What was your attitude or intention?” Moreover it was asked if he thought he would take it before the owners see it. This also establishes thief-mindedness. However, the *pārājikā* offence is complete and the accused becomes punishable only if the value is over the “no punishment threshold” set by the government.

The other factors that constitute no punishment in the case of the second *pārājikā* are:

- Taking what one perceives as one’s own.
- Taking on trust.
- Taking temporarily.
- Taking what an animal has acquired.
- Taking ownerless, thrown away things.
- Taking from a ghost.²⁷⁶

These exceptions, implied in the 150 incidents, show us the significant emphasis given to the intention behind the acts. People would normally condemn these misdemeanors as crimes. Yet the Buddhist law looks at them with understanding and analyzes the intention to free monks from suffering any guilty feeling. Not looking at an act superficially and analyzing the psychological factors is also a special characteristic in Buddhist crime theory.

²⁷⁵ Bhante Varado, “Parajika 1: Structure of the Suttavibhanga,” [suttas.net](http://www.suttas.net/english/vinaya/patimokkha-analysis-and-explanation/appendix-18-pali-parajika-1-structure.php), accessed August, 12, 2016, <http://www.suttas.net/english/vinaya/patimokkha-analysis-and-explanation/appendix-18-pali-parajika-1-structure.php>.

²⁷⁶ Dhammakusala Thera, *The Vinaya Pitaka*, 3:181.

When approaching stealing from an ethical point of view, there is not much difference between laymen and the monks. Significant emphasis is given to intention as in the *kamma* theory. However, when viewed from the angle of punishment, the monks have institutional punishment while laymen are not given any punishment by religious authorities (monks). They only have karmic repercussions. Yet, they would face state law and get punished if caught and are proven to have committed the offence. In the Buddhist law, it is clear that when there is no criminal intention there is no case for punishment. Even then, certain “stealing,” such as hiding things that belong to a fellow monk to tease him, are also discouraged by making it a *pācittiya* (cleaning mind) offence.

The third *pārājikā* rule pertains to killing a human being.²⁷⁷ It is related to the first rule in the five precepts, refraining from killing. However, the *pārājikā* rule has certain distinctions as it had to be proclaimed in a legal fashion. The precept in *pañcasīla* (five precepts) includes all life, yet the Vinaya rule states only by killing a human being does a monk become *pārājikā*. According to the rule, if any monk intentionally deprives a human being of life, searches for an assassin, praises the advantages of death, or incites another to die, he commits a *pārājikā* offence. One important point is that according to this rule even a fetus is counted as human life. Therefore, even abortion will make a monk lose his monkhood. Still, killing an animal is not a *pārājikā* offence; it constitutes a *pācittiya* crime. Intentionally damaging a plant is also a *pācittiya* offence, which could be expiated by confession in a formal assembly.

²⁷⁷ Ibid., 73. "yo pana bhikkhu sañcicca manussaviggahaṃ jīvitā voropeyya, sattahāraṃ vāssa pariyeseyya, maraṇavaṇṇaṃ vā saṃvaṇṇayya, maraṇāya vā samādapeyya, " ambo purisa kiṃ tuyhiminā dujjīvitena mataṃ te jīvitā seyyo " ti, iti cittamano cittasiṅkappo anekapariyayena maraṇavaṇṇaṃ vā saṃvaṇṇayya, maraṇāya vā samādapeyya, ayampi pārājiko hoti asaṃvāso."

The fourth *pārājikā* is remotely related to the fourth precept in the *pamcasīla* (five precepts). "It is related to lying, yet it is a special kind of lying—rather a pretension. If a monk who has not achieved high spiritual attainment boastfully claims that he has eradicated defilements or asserts he has reached some realizations, knowing that he is uttering falsehood, he loses his monkhood, being *pārājikā* – defeated."²⁷⁸

Being asked or not being asked, a monk might assert to know what he doesn't; he might claim to see something he does not (for example, "I can see my previous lives," "I can see beings dwelling in other worlds,") or claim spiritual purity, which is specially connected to higher attainments ("I definitely got rid of desire"). In each of these cases he would become *pārājikā* (defeated), losing his status of a monk for life.

There are certain formal conditions laid out for completion of this crime of lying in relation to higher achievements. They are:

1. A monk may claim—in various ways—that he has attained any *jhāna* (developed mental stages) or one of the four stages of sanctification (*sōtāpatti*, *sakadāgāmi*, *anāgāmi*, *arahanta*) which he has not achieved.
2. A monk has the intention to boast (knowing well that he has not achieved what he is boasting) of.
3. A monk specifies that he is the one who achieved this attainment (if he indicates it an indirect and non-specific way, for instance: "The disciples of my teacher are the *arahantās*," he does not commit *pārājikā* offence).
4. The person whom the monk is addressing is a human being.
5. The person to whom the monk is communicating this, must immediately understand (if he or she understands it only a long time after, the monk does not commit the fourth *pārājikā*).²⁷⁹

Buddhists consider false claims are criminal as they are employed to attract offerings and respect by deceiving gullible devotees. Monks resorted to this kind of pretensions

²⁷⁸ Ibid., 91. "yo pana bhikkhu anabhijānaṃ uttariranussadhammaṃ attupanāyikaṃ alamariyañāṇadassanaṃ samudācareyya "iti jānāmi, iti passāmi" ti, tato aparena samayena samanuggāhīyamāno vā asamanuggāhīyamāno vā āpanno visuddhā pekkho evaṃ vadeyya "ajānamevaṃ āvuso avacaṃ jānāmi apassaṃ passāmi, tucchaṃ musā vilapi" nti aññatra adhimānā, āyapi, pārājiko hoti asaṃvāso."

²⁷⁹ Amaramoli, *The Vinaya Pitaka*, 3:82.

because the people of the day were easily impressed with achievement claims by mendicants and were tempted to offer various gifts to them. This is not only dishonesty but also deliberate, criminal cheating. It is exploiting the piety of innocent people who admire saintly people and their supreme achievements. So it is included in the worst category of crimes – *pārājikā* – and the punishment is the maximum possible, expulsion from the order. This is different from normal lying; it is a serious monastic crime.

The relation of *pārājikās* to *pañcasīla* ends at this. Out of the five precepts what is not related to the *pārājikās* is the fifth one – the precept on consuming alcohol. In ancient India the approach to alcohol was rather complicated. According to one *jātaka* story, it was a drink invented by a forest-dwelling hermit. It was believed that even gods enjoy consuming intoxicating drinks. In the Buddhist list of *akusala* (the Buddhist equivalent to sin in other religions), drinking alcohol is not included. This does not mean there is no problem in consuming liquor. Buddha has clearly indicated the ill-effects of drinking. According to the advice given to Sigāla, the consequences to drinking intoxicants are:

- 1) Loss of wealth,
- 2) Increase in quarrels,
- 3) Susceptibility to disease,
- 4) Evil reputation,
- 5) Shameless exposure of body,
- 6) Weakening of intellect may happen to individuals.²⁸⁰

Alcohol consumption does not make a monk lose his monkhood, yet it is considered an *āpatti* (failing in pure conduct) of the *pācittiya* category. It has to be confessed in a formal assembly of *sangha* and assurance has to be given that it will not be repeated in the future.

²⁸⁰ Ibid., 115.

There are several categories of *Āpatti* in the monastic Vinaya that are not agreed upon universally as crimes. Most of them only go contrary to pure conduct targets expected of a monk and have only religious significance. Therefore, they are not *pakati vājās* (naturally wrong) but *paññatti vājās* (wrong as there is a regulation against it) only. The following are the categories of monastic offences as given in the compendium of Vinaya rules called *Pātimokkha*. They are so arranged for reciting at fortnightly assemblies of *Sangha* where the monks who have committed any violation of them are to confess the errors and be reformed.

• <i>Samghādisēsa</i>	13
• <i>Aniyata</i>	2
• <i>Nissaggiya</i>	30
• <i>Pācittiya</i>	92
• <i>Pātidēsanīya</i>	4
• <i>Sēkhiyā</i>	75 ²⁸¹

Among these, *Saghādisēsa* category contains some sexual crimes that are wrong in general secular terms too. They are:

- 1) Touching a woman
- 2) Mannered conversation with a woman
- 3) Proposing sexual intercourse to a woman
- 4) Acting as a pimp
- 5) Making a false accusation of sexual crime to an innocent monk (8 – 9)²⁸²

All of these crimes carry the punishment of being under probation for a period and formally apologizing at a fortnight assembly of *Sangha*. After that the reformed monk will be reinstated with all monastic privileges a higher ordained monk is supposed to enjoy.

²⁸¹ Jotiya Dhirasekara, *Buddhist Monastic Discipline: A Study of Its Origin and Development in Relation to the Sutta and Vinaya Pitakas* (Colombo: Ministry of Higher Education, 1981), 77.

²⁸² “Sanghadisesa” [accesstoinight.org](https://www.nku.edu/~kenneyr/Buddhism/lib/modern/bmc/ch5.html), accessed June, 02, 2019, <https://www.nku.edu/~kenneyr/Buddhism/lib/modern/bmc/ch5.html>.

There are a few *pācittiya* offences as well that may be considered offences even under general law:

- Hiding things belonging to another monk (60)
- Concealing a serious offence like a *pārājikā* or *saṃghādisēsa* by another monk (64)
- Making false accusation of a *saṃghādisēsa* offence against another monk (76)
- Insulting a court decision (79)
- Entering king's chamber without permission (83)²⁸³

For the crimes defined in *Vinaya* there is a procedure to be followed before instituting any punishment. In the Buddhist *Vinaya* there is a section called *adhikarana* (disputes). It explains the nature of disputes likely to arise within the order of Buddhist monks. The four types of disputes are:

1. *Vivādādhikarana* (disputes on Dhamma and Vinaya)
2. *Anuvādādhikarana* (accusation by fellow members)
3. *Apattādhikarana* (offences against Vinaya rules)
4. *Kiccādhikarana* (disputes over procedural (in)accuracy of formal acts)²⁸⁴

Among these the criminal matters are classified in the third category. Regarding any of these, the court procedure is given as *adhikarana samatha* (settling procedure of legal issues). The court methodology is given in detail in *Cullavagga* IV, beginning with a sketch of the strategies, trailed by a point by point exchange of how to apply them to every one of the four sorts of issues. Actually, the seven *adhikarana samathās* ensure that equity is kept up all through the procedure and that the privileges of all gatherings are regarded and verified.

1. The primary procedural guidance is "sammukhā Vinaya," which signifies "within the sight of" what really expected is that the formal technique of the issue must be done within the sight of all gatherings concerned, not in absentia. This is of significance since it will ensure that the blamed is given a reasonable possibility for monitoring what

²⁸³ Amaramoli, *The Vinaya Pitaka*, 3:33-174.

²⁸⁴ *Ibid.*, 4:207.

happens there and has a privilege to shield himself. Sammukhā Vinaya perceives the rule that no punishments or disciplines ought to be forced on a guilty party in his nonattendance. On the off chance that this isn't consented to the demonstration is esteemed invalid.

The court consists of all members of the “commune” (*sīma*, the geographically defined administrative area where several monasteries are found) and all have to participate in the procedure. In other words, the minimum composition of the court is that every monk resident in the designated area (*sīma*) is either personally present or has sent their consent to the procedure. None of the monks in the meeting makes protest against having the matter settled by the group. Any protest made by any member of the group except the accused monk would invalidate the judgment, even if he only informs his protest to the monk sitting next to him.²⁸⁵

2. *Sativinaya* is the second procedural condition given on the mindfulness of the accused. This is the decision of honesty given in an allegation, in view of the way that the blamed recollects completely that he didn't submit the offense. This extraordinary decision is given just for a situation.

- The accused monk is pure and without offense.
- He is accused of an offense.
- He asks for the verdict claiming that he is aware that he had not committed that offence.
- The Community agrees to give him the verdict.
- It is in accordance with the Dhamma, the assembly of monks are in full attendance and competent to give it.²⁸⁶

²⁸⁵ Ibid., 2:73.

²⁸⁶ Ibid., 74.

Sativinaya is expected for the absolution of a guiltless priest who is erroneously blamed by malignant gatherings.²⁸⁷ Be that as it may, the editorial (*Samantapāsādikā*) keeps up this is relevant just to arahants.²⁸⁸

3. *Amūlhavevinaya* is a decision of past madness, which might be excused. This is likewise a decision of honesty given to a charged, in light of the way that the blamed was out for his mind when he submitted the offense being referred to as is exculpated of any duty regarding it. This, alongside *sativinaya*, as Dhīrasekara has appropriately watched, gives assurance against any conceivable unsuccessful labor of equity in the religious organization.²⁸⁹

Amūlhavevinaya is valid only if given to a monk who:

- 1) Does not remember what he did during the period he was insane;
- 2) He remembers, yet only as it were a dream
- 3) His insanity makes him argue that he has done a correct thing ("I act that way and so do you. It is allowable for me and allowable for you!")²⁹⁰

4. *Patiññātakarana* or accepting voluntary confession and instituting punishment on that.

According to this, a monk has to make an admission before he is given any punishment.

This refers to accepting confession by an accused before judges for instituting

punishment. However, the confession should match the offence that he is charged with.

Either way, no punishment should be given without an admission from the accused.

²⁸⁷ Ibid., 78.

²⁸⁸ Jayawirama Buddhaghōsa, *The Inspection of Discipline and the Vinaya Nidāna: Being a Translation and Edition of the Bahiraniḍāna of Buddhāsa's Samantapāsādikā, the Vinaya Commentary* (London: Pāli Text Society, 1986), 192.

²⁸⁹ Jotiya Dhirasekara, *Buddhist Monastic Discipline: A Study of Its Origin and Development in Relation to the Sutta and Vinaya Pitakas* (Colombo: Ministry of Higher Education, 1981), 123.

²⁹⁰ Santuttho Bhikkhu, "Navakovāda," *satinanda.de*, accessed June 02, 2019, <http://www.satinanda.de/sangha/navakovada.htm>.

5. Acting as per the lion's share, or *yebhuyyasikā*. This alludes to cases in which *bhikkhus* are unfit to settle a question collectively, even after all the best possible techniques are pursued. In cases, for example, these, choices can be made by greater part vote.

Such a vote is substantial just if:

- 1) The issue is not kidding.
- 2) The best possible strategy has just been pursued yet has neglected to accomplish an outcome.
- 3) Those who are agreeing with the Dhamma are in the greater part.
- 4) It is probably not going to separate the Community.
- 5) The Community present is by all accounts skillful to settle the debate
- 6) All the monks' present consent to take a vote.
- 7) There is no swindling at the casting a ballot methodology.
- 8) Each monk cast a ballot truly, with no dread.

However this procedure seems not applicable for a criminal case. This is mainly suitable for a case like *vivādādhikarana* (a dispute of two fractions arguing about something related to *dhamma* or *Vinaya*).

6. *Tassa papiyyasikā* or "acting in accordance with the accused's further misconduct" is a procedure adopted when a monk, not agreeing with the judgment, create a problem. It is virtually an act of condemnation carried out on a monk for corrupt, shameless and reprehensible behavior. It is also carried out on one who deliberately lies and attempts to evade a charge laid upon him.²⁹¹ This, in fact, acts as a safeguard for the dignity of the courts and is a preventive measure against a vociferous and unruly offender.

The act is applied on a monk:

- 1) Who is a maker of strife, quarrels, and dissension in the community;
- 2) Who is ignorant, full of offenses, and has not undergone the penalty for them; or
- 3) Lives in unsuitable association with lay people.

This act is specially aimed at a monk who has committed an offense that requires confession, but does not confess it until being formally interrogated.

²⁹¹ Amaramoli, *The Vinaya Pitaka*, 2:8.

- 4) The monk finally acknowledges the offense and confesses it.
- 5) The Community, then, carries out the act in accordance with the *Dhamma* and *Vinaya*.

When such a demonstration has been completed against a monk, he isn't permitted to go about as a preceptor or educator for another monk, nor is he to have a tenderfoot take care of him. He ought not to acknowledge approval to train nuns; regardless of whether approved, he ought not to instruct them. He should take most extreme consideration not to submit the offense for which he is being rebuffed, a comparable offense, or a more awful one. He ought not to censure the formal demonstration or the individuals who did it. He ought not blame others for offenses or take an interest effectively in any legal methodology. What's more, he ought not to squabble with different monks.

On the off chance that the monk who is so punished submits to every one of these principles, and the Community is fulfilled that he has conceded and lamented his deficiency, the demonstration will be revoked and he will be re-established to his previous status as an undeniable monk.

7. *Tinavatthāraka* or "Covering over as with grass" refers to situations in which two parties are charging each other of many shortcomings and if every case is to be investigated, it would be endless trouble. If they were to take cases with one another for their offenses, the only result would be greater divisiveness. In such a situation, it is advised that all the monks gather in one place to come to a settlement. One monk, representing his group, should make a motion, should obtain the consent of his group to make a formal confession for everyone. When both parties are ready for such group action, each one makes a blanket confession. However, this action will not cover the

major offences like *pārājikā* or *saṃghādisesa*. Disputes connected with lay people also are exempted from this procedure.

Although the Buddhist monastic law pertaining to crime is meant to be applied only to the monks, even after twenty-five centuries it has many features one might admire as very modern in outlook. Analysis of motive and intention shows the psychological maturity of Buddhist law. Freeing mentally unsound persons and those who had no volition in committing the offence from responsibility also is admirable. Buddhist judicial procedure insists on the presence of the accused at the time of hearing. It is also insistent on the admission of committing the act by the accused. These are indicative of respecting the fundamental rights of individuals to a great extent. The Buddhist law book records how each law developed step by step into the present form with relevant stories. They depict how much concern and care was taken by the Buddha in introducing rules. And the terms used are also carefully defined as in the modern law books. The most important thing is the interest in restorative procedure adopted. Except for the four *pārājikā* offences, every attempt is made to retain the wrongdoer within the Order and reform him and help him to attain highest spiritual position.

Conclusion:

In Buddhism, unlike in many other religions, the Law was not considered sacred and irrevocable. The Buddha changed, revised and improved the *Vinaya* laws whenever he thought it necessary. According to Theravada tradition, it was the Buddha who introduced laws to the Sangha, in contrast to the view of Oldenberg, who ascribes the development of monastic laws to *pātimokkha* assemblies.

The Buddha, however, did not seem to have thought that more laws could necessarily make monks moral. Voluntarily accepted moral practice (*sīla*) played a vital role in maintaining morality of monks, while law (*sikkhāpadās*) only strengthened it by adding corrective and punitive legal procedures. Only when the moral quality of the Order was threatened by some immature members, were the Laws considered necessary.

The lay people's voice played an important role in developing the monastic law. Expecting the monks to live a more civilized life than the mendicants of other Orders, the Buddhist laymen resorted to agitating against any degeneration of standards expected of the Buddhist monks. The Buddha would then legally ban such immoralities even though such low practices and lifestyles prevailed among some *samanās* outside Buddhism. Monks of the day were recommended to recite collected laws at the fortnightly assemblies and activate punishments, which were mostly reformatory except for *pārājikā* offences—the punishment for which was excommunication.

For laymen the Buddha recommended five precepts. They do not constitute laws proper as they do not make laymen religiously punishable. And the laws were not divine or spiritual either. The Buddhist monks were also not provided with any power of punishing laymen. The five precepts were never considered as commandments or laws proper. They are voluntary undertakings which the laymen agree to live by. Breaking precepts can be crimes in the eyes of state law, however. The concept of the universal king (*chakkavatti rājā*) presented in some Buddhist *suttas* mention that the five precepts were made universally agreed upon “international laws” by those idealized monarchs. This is indicative of the Buddhist sanctioning of five precepts as a suitable base even for a secular legal system.

Buddhism teaches that people who break five precepts accrue bad *kamma* (*akusala*) for which they will have the natural “punishment.” Therefore, even though they do not constitute laws proper in the secular sense, they may be taken as laws of a special kind as they have the punishments under *kamma*, which is a corollary to the natural law of dependent origination (*paticca samuppāda*).

Nevertheless, the five precepts assume real legal nature in the monastic context. In the ten precepts of a novice, they make the first five. And in the four *pārājikās* of higher ordained monks, all four, which have a close relationship with the five precepts, are made into strict laws, the breaking of which results in excommunication of the monk. The fifth precept has formed a confessional error.

The Buddha has stated that he introduced laws only when it was necessary. He has given ten reasons for introducing laws. He has also explained that growth in the number of members, abundance of gain, and increase in learning and long length of time make monks lacking in discipline. However, in the Buddhist law, a miscreant becomes punishable only after the act is criminalized by a law. And the Buddha would not introduce a law when no one has yet misbehaved. First offenders, therefore, are not punished. There are no retro-effective laws in the Buddhist *Vinaya*. There are two types of monastic offences, *loka vajjās* and *paññatti vajjās*. *Lōka vajjās* are naturally wrong acts, such as killing a man. *Paññatti vajjās* are acts that are wrong only as they are banned for members of the Order only. Under secular circumstances they are normal behaviors, such as is the case for human sexual behavior.

A special characteristic of the Buddhist law is the significant emphasis given to volition. Before making someone responsible for an act, it is necessary to find whether he

intended to commit the act. And if the accused was mad at the time, unconscious or sleeping, then there is no volition making the doer responsible for his mistake or rather criminal action.

The Buddhist *Vinaya* is presented in highly sophisticated manner. Every word in the law is carefully defined, leaving no room for misinterpretations. Case studies make the nature of acts clearer, allowing correct judgment. Exceptions are indicated through plenty of practical examples. The ingredients that constitute a crime are formally stated, and judicial procedure is also formulated to ensure that the rights of the accused are also taken care of. For instance, the case against him should be adjudicated in his presence and after reading the charge against him. There is much in the Theravāda Law and criminal procedure the modern law makers may find highly inspirational.

CHAPTER 5

Elimination of Crime: Theravāda Buddhist Perspectives.

It may not be incorrect to state that crime free society is the ideal of almost all religious teachers, social philosophers and peace loving citizens. In the words of Biplab Roy, a columnist of *The Avenue Mail*:

It is no doubt an expectation of the citizens to have a society free from all sort of violence taking shape of crimes in different shades. Crimes in whatever form happens have always adverse impact on the society. Man, cannot live alone. He lives in the society so that he may be taken care of from the oppression of the stronger. Crimes not only shake the very foundation of the rule of law but it leaves to mistrust in the mind of citizens at large on the rule of law also. Mistrust of the citizens on the rule of law weakens the basic fabric of good governance thereby leading the common men to take law and order in their hands to get rid of criminal activities and this thing happens only on being frustrated by the law implementing agency.²⁹²

Crime (Pāli: *Aparādha*) is the word even the Buddha used for what he could not approve in the behavior of monks. In criticizing the acts that he found as going against the norm (*sīla*), the Buddha used to proclaim, “*Ettha tāya aparaddham*” (Here you have committed a crime). This is the word used for crime in Sinhala, the language of Sri Lankan Sinhalese people as well.²⁹³

Even though it is a dream of people to have a crime-free society for them to live happily in, some writers think it is only a utopian concept. Utopia is a place “where there are no wars, no disease, no financial strife, and you had ample free time to play sport, create art or unwind on an idyllic sandy beach.”²⁹⁴ Such a place is only an ideal. In the

Buddhist *Aggañña Sutta*, there is a kind of utopia implied. According to the Buddhist

²⁹² Biplab Roy, “*Responsible man, irresponsible comment*,” *The Avenue Mail*, accessed Feb. 20, 2015, <https://www.avenuemail.in/opinion/columns/responsible-man-irresponsible-comment/73445/>.

²⁹³ For instance, the translation of the classic novel *Crime and Punishment* is titled in Sinhala as *Aparadhaya saha Danduvama*.

²⁹⁴ Professor Geller, “*Utopia*,” *mythology.net*, January 17, 2019, <https://mythology.net/others/concepts/utopia/>.

myth presented in that *sutta*, the earliest men (in this “age of the expanding universe”) were totally crime-free. Even in the Marxist pre-communist society, it is said, there was no crime.²⁹⁵ The Buddhist story of primordial society was also crime-free for a long time. According to the narration given in the *Aggañña Sutta*, the first crime occurred among those beings owing to greed.²⁹⁶ Before beings were driven by greed, society was totally crime free. However, in consequence to one being’s idea of stealing, an entire gamut of criminal activities commenced. (He actually wanted to save his crop and consume crops from another’s field.) This unusual act was emulated by others too and gave rise to a series of crimes. The *Aggañña Sutta* implies that imitation is an early characteristic of beings. As a matter of fact, sky, the travelling light, and self-luminous beings alighted on earth following the first being who did so. When that being tasted the earth, others followed it by eating tasty earth. When crimes like stealing, lying, killing, etc. began disturbing the peaceful life, people assembled to discuss the problem. They decided to appoint a ruler mainly to deal with crime. That was the beginning of law and punishment according to the Buddhist history of law. In fact, entrusting the responsibility of controlling crime to the state is further strengthened in the *Cakkavatti Sutta*. It states that the *Chakkavatti Rājā* or Universal King was expected to follow the elimination of crime.

Crime is considered evil by all societies and religions. All utopian ideals of a good society represent the general hope of people to have a crime-free context to life. However, despite the fact that people long for a peaceful society, crime has become a universal problem. In spite of the teachings of religions, scientific enlightenment and

²⁹⁵ Friedrich Engels, *The Origin of the Family, Private Property, and the State, in the Light of the Researches of Lewis H. Morgan* (New York: International Publishers, 1972), 342.

²⁹⁶ Davids and Carpenter, eds., *the Dīgha-Nikāya*, 3:88.

political sophistication, crime still prevails and keeps on increasing to the worry of all sensible people. Everywhere in the world there are crimes of different grades at different increase levels. Just a few societies have managed to bring the crime rate comparatively down, although not to a zero level. Therefore, everywhere in the world the governments and people are looking for ways at least to reduce the crime rate, as total elimination seems to be an almost impossible dream. The most accepted means of controlling crime is the enforcement of law.

According to a writer of the history of Law:

Whether we accept the fashionable, but in this regard wholly unsupported and irrational theory of evolution that would develop civilization from barbarism, barbarism from savagery, and the existence of savage men from a simian ancestry, or whether we adopt the more reasonable theory, sustained by the uniform tenor of all history, that barbarism and savagery are merely lapses from a primordial civilization, we find man at all times and under all circumstances, so far as we are informed by the records which he has left, living in society and regulating his conduct and transacting his affairs in subordination to some rules of law, more or less fixed, and recognized by him to be binding upon him, even though he has oftentimes been in rebellion against some of their provisions. There never has existed, and it is entirely safe to say that there never will exist, on this planet any organization of human society, any tribe or nation however rude, any aggregation of men however savage, that has not been more or less controlled by some recognized form of law.²⁹⁷

In other words, because a crime-free society is only an idea or a dream, people have settled for some law and authority. Authority is supposed to take care of controlling crime in an agreed geographical and political area. Law is the instrument for identifying and controlling crime by various effective means. And people across the world generally respect the law and agree to abide by it. This does not mean law is so effective that it may completely eliminate all crime. There are criminals who brutally break the law and commit various kinds of crime, making life difficult for peace-loving citizens. The

²⁹⁷ "History of Law," historyoflaw.info, accessed December 01, 2018, <http://www.historyoflaw.info/>.

solution sought by the governments all over the world is introducing punishments for the incidents of people coming into clash with law.

Being realistic about the prevalence of crime in society, Buddhism agrees with the idea that enforcement of law is a practical means of curbing crime. However, it does not seem to trust that law can completely eliminate crime from society. The poverty of law in achieving the goal of elimination of crime is affirmed in *Aggañña Sutta*²⁹⁸ and *Kūṭadanta Suttas*.²⁹⁹ As long as people are motivated by evil propensities, they will commit crimes of different natures. They will try to evade being caught by the law to avoid punishment. They may not agree with the law on the right or wrong nature of the crime. At heart, most of the criminals seem not to regret what they have done. They may look for loopholes in the law or try to conceal their wrong act and try to rationalize it as well. Criminals mostly consider it as heroic to commit a crime, evade arresting and punishment. This may be the reason that there is a belief that human beings are hardwired to sin.

It is claimed that human brain is hardwired to sin. Lust, gluttony, sloth, envy, pride, wrath and greed are identified as such hardwired original sins. It is also claimed that there is scientific evidence to prove this hypothesis.³⁰⁰ Even though Christians believe that man is created in the image and likeness of God, the story of Adam and Eve is used to argue for the hardwired theory. Perhaps they do not see the implied contradiction when we say that we are “inherently” sinful as it boils down to deny the goodness of God’s creation. To justify the claim of hardwired sins in man's brain,

²⁹⁸ Davids and Carpenter, eds., *the Dīgha Nikāya*, 3:80.

²⁹⁹ *Ibid.*, 1:127.

³⁰⁰ “We now have the technology to reveal the root of our darkest impulses, deep within our brains. And, says Andy Ridgway, the evidence is clear: nature wants us to be bad.” Andy Ridgway, “*The Human Brain: Hardwired to Sin*,” Immediate Media Company Limited, accessed September 13, 2018, <https://www.sciencefocus.com/the-human-body/the-human-brain-hardwired-to-sin/>.

sometimes St. Paul's experience is used: "I do not do what I want, but I do the very thing I hate. Now if I do what I do not want ... it is no longer I that do but sin that dwells in me ..." (Romans 7: 14-25).

It is obvious that if we admit that criminality is hardwired to the brains of men, we also have to admit that elimination of that trait from men is absolutely impossible. Hardwired criminality would permanently remain to guide the behavior of people. Therefore, we may not be justified in blaming criminals for their evil actions. They are made to behave so. Someone may criticize the lawmakers for making rules against the nature of men. And why should parents spend a colossal amount of money and effort in trying to instill good values in their children? Furthermore, if we combine this hardwire idea with the theory of creation it will be doubly difficult to maintain reformatory principles. If God created man with sin hardwired to his brain, how is it possible to blame any criminal? How, one may argue, is it wrong to act according to the way one is created to behave? How could he go against all the powerful Gods? No one will be able to make any criminal responsible for his action and charge him as committing sin is his nature.

These arguments, in fact, were raised by the Buddha in one of his previous lives, when he pretended to be a monkey hunter. In fact he had not killed a monkey, but managed to get the skin of a monkey from a devotee who offered him some monkey meat. When he had the monkey skin on his shoulders as a shawl, a minister of the king's court accused him of killing an animal. The Bodhisatta argued against those who accused him for killing a monkey by saying that he was not to be blamed or held responsible for the act of killing because he only acted according to the way he was

created by the creator God: “hardwired” to kill animals.³⁰¹ We are not supposed to blame “sinners” for not being moral and not engaging in meritorious work if he had no free will to choose out of alternatives such as doing and not doing. He is only a puppet in the hands of creator. Insisting him to do the impossible is against divine justice. The problem of freewill does not arise if we ascribe to the hardwired theory.

Buddhism, even though it always refers to greed (*lobha*), hatred (*doṣa*) and delusion (*mōha*) as the roots of human criminal behavior, does not contribute to the theory of hardwired brains. The Buddha has said that the defilements of human mind are not part and parcel of human personality but accumulated in consequence to exposure to the outside world as a result of interacting with sensual objects. That is why it is possible for human beings to purify themselves by removal of defilements. The means of elimination of crime suggested in Buddhism is the systematic moral training. The Buddha, during his forty-five years of his missionary career, attempted to convince people that criminal activities are ethically bad and *karmically* harmful for their spiritual success.

According to the Buddhist psychological analysis, any voluntary action is initiated in one’s mind. As Venerable Nyanaponika has rightly summed up, the Buddhist thesis is “Mind is the starting point, the focal point, and also, as the liberated mind of the saint, the culminating point.”³⁰² The Buddha has very clearly and emphatically stated: “The world is led around by mind. By mind it is dragged here and there. Mind is the one thing that has all under its control.”³⁰³ Therefore, rather than waiting to catch someone

³⁰¹ Jataka (Mahabōdhi Jātaka). Fausboll, *The Jātaka Together with Its Commentary, Being Tales of the Anterior Births of Gotama Buddha*, 5:241.

³⁰² Nyanaponika, Ven. *The Heart of Buddhist Meditation* (Colombo: Buddhist Culture Center, 1969), 21.

³⁰³ Lankānanda and Nānālōka, *Samyutta Nikāya*, 1:87.

committing a crime and then instituting a punishment on him, Buddhism focuses on infusing moral values and preventing crime. The procedure that Buddhism finds more effective than punishment is moral and psychological rather than legal. (However this does not mean Buddhism discourages legal procedure. It encourages all Buddhists to be law-abiding citizens.) And it is perfectly natural for Buddhism to believe that such preventive training would elevate human beings to noble spiritual heights. People with a calm, controlled and compassionate mindset, according to Buddhism, would not commit crimes even in secrecy.

There are many spiritual training programs taught in Buddhism that are of high relevance to reducing crime in society. Among them the most popular one is known as the three-fold training (*Ti-Sikkhā*). The three-fold training of *Sīla* (practicing moral precepts), *Samadhi* (training of mind) and *Panna* (wisdom) is recommended as a theoretically sound and sure means of creating a crime-free human individual. This program of training elevates a person to be morally perfect and advanced in wisdom. The minds of such saintly people develop a crime-free mentality. Unlike the mind of those people who refrain from crime owing to fear of punishment, the mind of a Buddhist who engages in the practice of ethical means will positively transform his personality to refrain from criminal behavior out of conviction. According to the Buddhist point of view, the moral orientation of a person with the aim of creating a non-criminal virtuous mindset is qualitatively superior to those just fearing punishment either by law or even kamma. A person who has not equipped himself with the ability to analyze an act with moral reasoning may keep on finding loopholes in the law to enjoy crime and evade punishment.

Buddhist moral training aims at making a person cultivate two “divine” qualities (*dēva dhamma*),³⁰⁴ i.e., *hiri* and *ottappa* (shame and fear of doing evil.)³⁰⁵ The commentator Buddhaghosa explained that *hiri* and *ottappa* are necessary in making a person virtuous.³⁰⁶ The concepts denoted by shame and fear in this context are described by the commentator Buddhaghosa as:

Shrinking or the irritation of the mind at the thought of immoral conduct is called *hiri* and *hiri* is a synonym for *lajjā* (shyness); trembling that takes place at the thought of the same immoral conduct is called *ottappa* and it is a synonym for fright (*ubbega*).³⁰⁷

This indicates cultivating a feeling of moral shame and moral fear which is the result of appealing to the three power-bases or “authorities” (*adhipateyyāni*). These three authorities strengthen the moral sense of a person to make him fear or feel shame in committing criminal or unwholesome activities.

The first “authority” (*adhipateyya*) people are supposed to refer to is none other than one’s own conscience identified with the term “self.”³⁰⁸ It, in a sense, makes a person aware of self-worth. A person who has some sense of morality generally hates to have a guilty feeling after doing something. So people are advised to think: “If I commit this bad action, my own conscience will blame me. How can I, do a vulgar thing like this?” Thinking thus on the ground of *attadhipateyya* (self as the standard), one needs to feel shame and refrain from criminal action.

³⁰⁴ They are also called white qualities (*sukka dhamma*) as they are wholesome (*kusala*) activities. Lankānanda and Nānāloka, *Anguttara Nikaya*, 4:51.

³⁰⁵ Fausboll, *The Jātaka Together with Its Commentary, Being Tales of the Anterior Births of Gotama Buddha*, 1:129.

³⁰⁶ Bhadantāchariya Buddhagosa, *Visuddhimagga*, translated by Bhikkhu Nānamoli (Colombo: Buddhist Publication Society, 1979), 8.

³⁰⁷ Ibid.

³⁰⁸ The self here does not mean metaphysical self, believed in by many Indian philosophers. It is the reflective noun frequently used in common parlance.

The second authority Buddhism encourages a person to appeal to is his reputation in the world (society). A person who has a sense of self-worth and has established a good name among people will be conscious of his social standing before committing an action. Here the appeal is made to the general characteristic of people to consider their good name or fame. People generally prefer to be famous rather than be notorious. The Pāli canon makes many references to religious teachers and Brahmins of India of the day with the adjective “*Sadhusammatō*” (known as a good man). Fame, just as today, was a cherished goal in India in those days too. Employing this psychological characteristic in a positive manner, the Jataka book has it that people may ponder: “There are in this world wise men possessed of miraculous powers, possessing the divine eye and the ability of knowing other people’s thoughts. They know from a distance or at close range what is going on in other’s minds and hence it does not suit me to harbor even an evil thought, for they will come to know it.”³⁰⁹ This authority is called “*Lōkadhipateyya*.”

The third appealing authority is Dhamma. For a Buddhist it implies the ethical teachings of the Buddha. Before committing an activity, one may examine reflectively to find out whether it goes against the Dhamma he has accepted as his spiritual guidance (*Dhammādhipateyya*). Dhamma is a word rich in several meanings, yet in this context it may be translated as norm, especially religious in nature. Religions teach that people should avoid evil, immoralities and base behavior as much as possible and cultivate good and meritorious conduct. Therefore, encouraging people to do some reflective thinking according to the religious teachings he has accepted and evaluate their behavior accordingly is also an effective way to create a crime-free community.

³⁰⁹ G. P. Malalasekara, *Encyclopedia of Buddhism*, 5:460.

A good example for moral thinking applied successfully against a highly tempting, immoral provocation is found in the *Jātaka* book. The story is called *Lōkavajja Jataka*. It illustrates how intelligent people should exercise their discriminative thinking along the lines of this three-pronged criteria.

The story begins with a description of deep friendship between a king and his chief minister. They were playmates during their childhood and educated together. When the prince, called Sivi, became the king, he appointed his friend Ahiparaka as the chief minister. Ahiparaka married an exceedingly beautiful girl called Ummādanti. According to the story, she is so beautiful that people could not take their eyes away when they saw her. It is said that many people went off their head for not being able to control their lust. One day King Sivi happens to see this beautiful woman on his occasional inspection rounds of the city. Strong lust rises in him, and wanting physical intimacy with her, he orders the officers to find out who she is. Discovering that she was his best friend's wife, the king is frustrated. He knows it was not proper to have lustful thoughts about his best friend's wife. Yet she is so attractive and his lust so strongly aroused that the king is not able to control his confusion and frustration and turns back immediately, cancelling his visit. His bodyguards sense the reason for his confusion but had to keep it a secret. The king directly goes to bed in his sleeping chambers and refrains from attending to royal duties and seeing people. Somehow the chief minister Ahiparaka is able to find out the reason why the king was feeling sad and emotionally unsound. His friendship with the king was so strong that he wants to visit the king and have a man-to-man talk on this shameful problem. However, to avoid his informant getting into trouble, he pretends that he found out the reason of the king's illness from a *Yakkha* (a demon). When he tells the

king, the immediate response of the king is, “Friend Ahiparaka, do even the deities know that I have been suffering foolishly owing to my infatuation for Ummādanti?” “Yes my lord,” replies Ahiparaka. The king thinks, “My vileness is known throughout the world,” and he feels ashamed. This, in fact brings some sense to the king.³¹⁰ Taking his stand in righteousness, he utters a stanza:

Fallen from grace no godhead shall I win,
And all the world will hear of my great sin,
Think too how great the grief of mind would be,
Shouldst thou no more thy Ummādanti see.³¹¹

Here we find how *lokādhīpateyya* (controlling sinful ideas thinking how the world would take it) and also *attādhīpateyya* (taking his own reputation as a controlling factor) comes to the king’s mind to distance himself from the crime of adultery. And he is also concerned of the pain his friend would have if his wife was no longer with him.

The minister Ahiparaka’s friendship was so intimate and deep that he tells the king that it would only be a secret between the two and there was no way anyone else would know. He begs the king to accept Ummādanti. The king responds that even if ordinary people may not know, the saints with divine eye and the demons may discover it. The stanza the king utters is:

The sinner thinks ‘No mortal man has been
A witness of my guilty deed,
Yet all he does will fall within the ken
Of ghostly beings and of holy men.’³¹²

³¹⁰ Fausboll, *The Jātaka Together with Its Commentary, Being Tales of the Anterior Births of Gotama Buddha*, 5:518.

³¹¹ Ibid.

³¹² Ibid.

Here the king argues that even though normal men may not see the crime, holy men with the divine eye and ghosts may see it. Thus, there could not be a secret. Here again we can notice how the criteria of *lokādhīpateyya* is applied.

Ahiparaka keeps insisting that as the king is their lord, there is nothing wrong with the fact that a king enjoys his slave woman. Not accepting his justification, the king states:

Who so shall wrong his neighbor nor repent
Saying "See here a lord omnipotent"
Will ne'er be found to live out half his days
And gods will view his conduct with dispraise.³¹³

Ahiparaka argues that any righteous man can accept a gift and it is not a reason to feel guilty. He even suggests that after fulfillment of his wish the king may return Ummādanti to him. Disagreeing, the king rejects the offer, bringing forth more *dhammādhīpateyya* arguments. He asks how he could enjoy someone despite other person's sorrow.

Who rids himself of pain at other's cost,
Rejoicing still though other's joy be lost,
Not he, but one that feels another's woe
As 'twere his own, true righteousness can know.³¹⁴

However, Ahiparaka is determined to help his friendly king to be happy and healthy by fulfilling his desire which has caused his frustration and agony. So he offers to divorce his beautiful wife, so the king could have her without feeling any guilt. Even at this incredible offer, the king is not moved from his moral stand. The king says: "I might destroy myself for fleshy appetite / Yet would I never dare by wrong destroy right."³¹⁵

³¹³ Ibid., 519.

³¹⁴ Ibid., 560.

³¹⁵ Ibid.

The king shows that people would blame Ahiparaka for divorcing his innocent wife for no reason.

If thou mine ancient, to thy detriment,
Shouldst put away thy wife, though innocent,
Thou wouldst, methinks, have heavy blame to bear,
And ne'er a single soul to speak thee fair.³¹⁶

Here again the king argues with *dhammādhīpateyya* and *lokādhīpateyya* in mind.

In case Ahiparaka divorces his wife for the sake of the king—allowing him to have intimacy with her—Ahiparaka is guilty of doing injustice to his wife. No one in the world would think his action is fair. Explaining thus, the king refuses the friendly offer of Ahiparaka. In response, Ahiparaka tells the king that he is ready to bear that blame for the king's pleasure. Still not being tempted, the king only thinks of his friend's plight and says:

He who esteem or blame regarded not
For praise or censure careth not a jot—
From him will glory and good fortune fly
As floods subside, leaving land high and dry.³¹⁷

Then Ahiparaka claims firmly that he is ready and willing to take all that for the sake of his beloved king. Yet the king states that he is not willing to have selfish pleasure at the cost of another's pain and goes on to explain norms of Dhamma to Ahiparaka at length. Emphasizing the value of a moral life, the king claims with high pride that he is a man of principles. This is how he rather boastfully affirms his stand in morality.

Whatever things of price amongst men esteemed good
Oxen and slaves and gold garments and sandalwood
Brood mares, rich treasure, jewels bright
And all that sun and moon watch over day and night
Not for all this would I injustice do
I amongst Sivas born, a leader true.³¹⁸

³¹⁶ Ibid.

³¹⁷ Ibid.

Ahiparaka was highly pleased at the king's regained self-control and praises him in glorious terms.³¹⁹ This story is illustrative of how the three *adhipateyyāni* (authoritative moral criteria) helps a person to refrain from crime and remain a good person.

The Buddhist concept of morality (*sīla*), in fact, is directly connected with controlling crime. The main crimes Buddhism has identified are killing, stealing, sexual offences and lying. The basic moral precepts are voluntary undertakings of refraining from committing these crimes. In fact, these are the main crimes even today. In a way this could be called an inward looking and psychological solution to crime. A person may first realize the social factors that make his life difficult. For instance, Buddhism makes people reflect on his basic hedonistic needs. One who sits for loving-kindness meditation begins with this exercise of pondering on his happiness goals. He reflects, "May I be well, happy and healthy. May no harm come to me. May I always meet with spiritual success"³²⁰ On the basis of these thoughts of self-love he may reflect on the universality of these characteristics. He will ponder how others share these feelings and hopes.

In this way, one generates awareness of the universal need for creating a crime-free society. He develops a mindset of non-violence (*ahimsa*). Comments Damien

Keown:

Buddhism is widely respected as one of the world's most ethical religions. At the heart of Buddhist ethics is the principle of non-harming (*ahimsa*), which manifests itself in the respect of life for which Buddhism is renowned. Buddhists have a scrupulous respect for all living creatures, whether human or animal, and regard the intentional destruction of life as a grave wrong. This philosophy has led many (though by no means all) Buddhists to become vegetarians and to adopt

³¹⁸ Ibid.

³¹⁹ Ibid., 519.

³²⁰ Elizabeth Scott, "How to Practice Loving Kindness Meditation," verywellmind.com, accessed June 02, 2019, <https://www.verywellmind.com/how-to-practice-loving-kindness-meditation-3144786>.

pacifism as a way of life. The principle of non-harming also takes on a positive role in the practical contribution made by Buddhist monks and laity in founding hospitals, hospices, schools, and charitable institutions of many kinds.³²¹

Keown adds, “Violence of any kind is abhorrent to most Buddhists.”³²² Having adopted the stand of non-violence through the line of thinking which is called the golden rule, Buddhist laymen and laywomen observe five precepts.

Accordingly the first of the five precepts make them promise to refrain from killing a living being who loves life (*jīvitam piyam*), wishes to live (*jīvitu kāmā*), does not want to die (*amaritu kāmā*), loves happiness (*sukha kāmā*), abhors suffering (*dukkha pātikkula*), and fears harassment (*daṇḍana bhītā*).³²³ This actually can be taken as the Buddhist moral means of controlling the crime of killing. This technique is called “making self the measure” (*attūpanāyika dhamma pariyāya*), called the golden rule in several systems.³²⁴ Sensitive and reasonable people, including humanists, will take this as sound reasoning and convince themselves of the immorality of killing. They may think of their social responsibility. As the *Samyutta Nikaya* puts it:

Here a noble disciple reflects thus: I like to live. I do not like to die. I desire happiness and dislike unhappiness. Suppose someone should kill me, since I like to live and do not like to die it would not be pleasing and delightful to me. Suppose I too should kill another who likes to live and does not like to die, who desires happiness and does not desire unhappiness it would not be pleasing and delightful to that other person as well. What is not pleasant and delightful to me is not pleasant to other person either. How could I inflict upon another that which is not pleasant and not delight to me? Having reflected in this manner, he, on his own, refrains from killing.³²⁵

³²¹ Damien Keown, *Buddhism: A Very Short Introduction* (United Kingdom: Oxford University Press, 2000), 7.

³²² Ibid.

³²³ Lankānanda and Nānālōka, *Majjhima Nikāya*, 1: 341.

³²⁴ G. P. Malalasekara, *Encyclopedia of Buddhism*, 5:158.

³²⁵ Lankānanda and Nānālōka, *Samyutta Nikāya*, 5:354.

This psycho-ethical reasoning is supposed to make a person first recognize his own fear of being killed, as he loves his life. Then he will reason that others also love their life. Buddhism asks how one who loves his life harms another person's life. As it is given in *Dhammapada*:

- All beings tremble before violence
- All fear death
- All love life
- See yourself in others
- Then whom can you hurt?
- What harm can you do?³²⁶

This, in fact, is addressing the psychological need of people to live a guilt-free life. Feeling guilty is not at all healthy for sensitive people. Feeling guilty could make a person neurotic.³²⁷ This is an attempt to help people internalize moral values and refrain from doing socially harmful acts by using the idea of guilty feelings positively.

Someone might still argue that the logic is not powerful and convincing enough to prevent a killer from killing others. In spite of his love for his own life he may not see others in his shoes. Some people suffer from an abnormal mentality described by psychologists as sadism and find pleasure by hurting others. Moreover, there are people who hate even themselves and get pleasure by harming or even killing themselves. In modern psychology there is a type of person identified as masochistic who get some satisfaction equal to sexual pleasure by hurt done to them by self or others.³²⁸ There are

³²⁶ Cianciosi, *The Meditative*, Translated by Byrom Quoted (Delhi: Leads Press, 2002), 205. *Dhammapada* verse 129.

³²⁷ Alma E. Guinness, *ABCs of the Human Mind: A Family Answer Book* (New York: Reader's Digest; 1990), 39.

³²⁸ J. W. Santroc, *Psychology* (New York: McGraw-Hill Companies, 2005), 27.

some serial killers who confess that they never feel any regret for crimes they have committed.³²⁹ How can, then, loving one's own life make one refrain from killing others?

If the love factor is not convincing enough, there is another means emphasized in Buddhist ethics to keep people away from committing criminal acts. It is based on the fear of karmic retribution. According to the doctrine of kamma, even if a criminal could somehow avoid punishment by law, the karmic consequences cannot be avoided. The *Dhammapada* has it: "Not in sky, not in the mid-ocean, nor in a mountain cave is found that place in the universe where abiding one may escape from the consequences of one's evil action."³³⁰ Kamma is one of the five natural laws (*niyāmās*) taught in Buddhism. As the intention of committing any criminal act has unskillful (*akusala*) motivation behind it and causes pain to the victim, it generates unwholesome *kamma*. It will bring unpleasant consequences either in this life itself or in a subsequent life.

There are plenty of stories in Buddhist literature illustrating karmic "penalties" criminals are given in consequence to their unwholesome actions. *Jātaka* and *Dhammapada* commentaries contain many examples. Buddhism maintains "what one sows that one reaps" (*Yādisaṃ vapatē bijaṃ – Tādisaṃ harate phalaṃ*).³³¹ In fact the Buddhist texts are very clear in their emphasis on ill effects of criminal activities. For example, the *Aṅguttara Nikaya* presents the following text:

- The taking of life when indulged in, developed, and pursued is something that leads to hell, to rebirth as a common animal, to the realm of the hungry shades. The slightest of all the results coming from the taking of life is that, when one becomes a human being, it leads to a short life span.

³²⁹ Akarsh Mehrotra, "20 Of The Most Notorious Serial Killers The World Has Ever Seen," scoopwhoop.com, accessed May, 08, 2016, <https://www.scoopwhoop.com/world/most-evil-serial-killers/#.vn2ciwz9s>.

³³⁰ Narada Thera, *Dhammapada* (Colombo: Sri Lanka, Culture Center, 1971), 205. Verse 127.

³³¹ Lankānanda and Nānalōka, *Samyutta Nikāya*, 5:227.

- The slightest of all the results coming from stealing is that, when one becomes a human being, it leads to the loss of one's wealth.
- The slightest of all the results coming from illicit sexual behavior is that, when one becomes a human being, it leads to rivalry and revenge.
- The slightest of all the results coming from telling lies is that, when one becomes a human being, it leads to being falsely accused.
- The slightest of all the results coming from divisive tale-bearing is that, when one becomes a human being, it leads to the breaking of one's friendships.
- The slightest of all the results coming from abusive speech is that, when one becomes a human being, it leads to unappealing sounds.
- The slightest of all the results coming from idle chatter is that, when one becomes a human being, it leads to words that aren't worth taking to heart.
- The drinking of fermented and distilled liquors when indulged in, developed, and pursued is something that leads to hell, to rebirth as a common animal, to the realm of the hungry shades. The slightest of all the results coming from drinking fermented and distilled liquors is that, when one becomes a human being, it leads to mental derangement.³³²

In another discourse the Buddha has given a comparative description of the way *akusala* (unwholesome, unskilled) actions lead to unpleasant repercussions and *kusala* (wholesome refraining from *akusala*) actions bring pleasant results. In summary form, the discourse presents the following points:

A person who kills living creatures (*panātipāti*) tends to be short lived, while a person who refrains from killing living creatures tends to be live long. A person who harms creatures (*sattānaṃ viheṭṭhakajātiko*) tends to be sickly while a person who refrains from harming creatures tends to be healthy. A person who is angry and irritable (*Kōdhano upāyāsabahulō*) tends to be ugly while a person who is not so tends to be beautiful.³³³

These are examples of the use of the warning on moral repercussions of criminal and evil action in order to discourage people from committing crime and encouraging them to practice better and have a positive attitude. The Buddha has said in the *Dhammapada* that while one who has done good non-criminal actions becomes happy both in this life and

³³² Lankānanda and Nānālōka, *Anguttara Nikaya*, 8:40.

³³³ Lankānanda and Nānālōka, *Majjhima Nikāya*, 3:203.

the next, the person who has lived a criminal life experiences suffering and unhappiness both here and hereafter.³³⁴

This kind of moral reasoning may also not be convincing for someone who does not believe in kamma and rebirth. In the Buddha's India, there were hardcore materialists who vehemently denied the concepts of kamma and rebirth. As a matter of fact, among the Samana (heterodox) teachers except Mahāvīra and the Buddha, all others were non-believers of Kamma. Modern ethical-cognitivists also, basing their arguments on empirical epistemology, may reject the validity of the concept of kamma. According to them, distinctively ethical judgments do not state facts: they are only evaluative utterances.³³⁵

However, when it comes to crime elimination, Buddhism is aware of such people as well. Therefore, Buddhism justifies crime-preventing moral principles in terms of mutuality of practical protection of basic human rights such as right to life and right to property, etc. Even if people can ignore or reject the religious metaphysical grounds of moral values such as rebirth and kamma, they still have to be concerned about self-protection in the social context in which they live.³³⁶ If everyone in a society lives without any sense of moral responsibility, no one would care for other people's rights or welfare. One never knows, in such a social context, when he/she would be killed, robbed, raped or cheated. In a value-free society no one would think of other man's welfare. There would be no moral ground for them to think so. If others act violently, every single person loses their safety. In other words to live securely in society, we have to obtain our

³³⁴ Narada Thera, *Dhammapada*, 15, Verse 15-16.

³³⁵ G. P. Malalasekara, *Encyclopedia of Buddhism*, 5:161.

³³⁶ Lankānanda and Nānāloka, *Anguttara Nikaya*, 8:39.

safety from others. Having this danger in view, Buddhism has introduced a way of thinking even a materialist could approve of. It is based on the individual's socio-environmental safety. Buddhism convinces people that one can enjoy safety of life, property, marital life, etc. only by providing others their safety. Thus it becomes a mutual give and take. By offering protection to others, one protects himself.³³⁷

Thus, observing the Buddhist fivefold precepts amounts to providing others the opportunity of living happily in a crime-free, safe society. When everybody offers everyone this assurance, crime could be virtually eliminated. Buddha, in fact, explains that observing the five precepts is a gift of freedom from fear, hatred and ill-will. In giving this freedom to limitless living beings, one receives for himself too, the gift of freedom from fear, hatred and ill-will.³³⁸ It is defined as a technique by which one obtains one's safety by offering safety to others (*Attānam rakkhantō param rakkhati, param rakkhantō attānam rakkhati*).³³⁹

The five precepts, as a matter of fact, instill several positive values in the practitioner's mind, which may be highly effective in elimination of crime. The first precept has respect for life, compassion, and good will as the foundation. The second precept will promote contentment, honesty, non-attachment and altruism. The third precept may effectively generate sensible restraint and mastery of senses, which may prevent sex crimes and foster love and respect. The fourth precept, which is on refraining from falsehood, promotes honesty and integrity essential for healthy communication. The fifth precept which insists on avoiding intoxicants, may benefit people by developing

³³⁷ Lankānanda and Nānāloka, *Anguttara Nikaya*, 4:246.

³³⁸ Ibid.

³³⁹ Ibid.

clarity of mind, mindfulness and wisdom. These values, if maintained by moral living will definitely contribute to elimination of crime.

Someone might still argue that the Buddhist five precepts and even the ten wholesome activities (*dasa kusala kamma*) given in the Buddha's discourses are only negative or prohibitive in form and only serve to make people inactive. Refraining from crime, actually, begins with rather negative affirmations of abstaining from wrongdoing. It is like saying "No" to crime a laudable step in the elimination of crime. Those refraining, in spite of their negative appearance, should not be taken as leaning toward inactivity. In Indian ethical language, negation of wrongdoing implies a positive action. *Ahimsā* (Non-violence) is a good example. Mahatma Gandhi's struggle against British imperialism was *ahimsā*, which included various non-violent activities, such as *Satyagraha* (peaceful strong protest). In many places, the Buddha himself has shown those apparently negative undertakings in the five precepts have positive implications. For instance, in the *Majjhima Nikāya*, the Buddha explains how those moral "negatives" denote positive lifestyles.

- Someone, abandoning the killing of living beings, becomes one who abstains from killing living beings; with rod and weapon laid aside, gentle and kindly, he abides compassion to all living beings.
- Abandoning the taking of what is not given, he becomes one who abstains from taking what is not given; he does not take as a thief another's chattels and property in the village or in the forest.
- Abandoning misconduct in sexual desires, he becomes one who abstains from misconduct in sexual desires: he does not have intercourse with such women as are protected by mother, father, (father and mother), brother, sister, relatives, as have a husband, as entail a penalty, and also those that are garlanded in token of betrothal.³⁴⁰

³⁴⁰ Trenckner and Chalmers, eds., *Majjhima Nikaya*, 1:285; *Majjhima Nikaya*, 3:47-52.

Having given thus the positive results of giving up first four evil actions, the Buddha then illustrates how refraining from the rest of the evil actions makes a person cultivate positive qualities in life.

- Here someone, abandoning false speech, becomes one who abstains from false speech: when summoned to a court or to a meeting or to his relatives' presence or to his guild or to the royal family's presence, and questioned as a witness thus, "So, good man, tell what you know," not knowing, he says "I do not know," or knowing, he says "I know," not seeing he says "I do not see," or seeing, he says "I see"; he does not in full awareness speak falsehood for his own ends or for another's ends or for some trifling worldly end.
- Abandoning malicious speech, he becomes one who abstains from malicious speech: as one who is neither a repeater elsewhere of what is heard here for the purpose of causing division from these, nor a repeater to these of what is heard elsewhere for the purpose of causing division from those, who is thus a re-uniter of the divided, a promoter of friendships, enjoying concord, rejoicing in concord, delighting in concord, he becomes a speaker of words that promote concord.
- Abandoning harsh speech, he becomes one who abstains from harsh speech: he becomes a speaker of words such as innocent, pleasing to the ear and lovable, as go to the heart, are civil, desired of many and dear to many.
- Abandoning gossip, he becomes one who abstains from gossip: as one who talks what is reasonable, definite, good, factual and related to *Dhamma*.
- Here someone is not covetous: he is not a coveter of another's chattels and property thus: "Oh, that what is another's were mine!" He has no mind of ill-will, with the intention of a mind unaffected by hate thus: "May these beings be free from enmity, affliction and anxiety, may they live happily!" He has right view, undistorted vision, thus: "There is what is given and what is offered and what is sacrificed, and there is fruit and ripening of good and bad kammās, and there is this world and the other world and mother and father and spontaneously (born) beings, and good and virtuous monks and brāhmins that have themselves realized by direct knowledge and declared this world and the other world."³⁴¹

In another *sutta*, Buddha shows that refraining from fivefold criminal behavior referred to in the five precepts promotes many admirable, positive qualities in a society. For instance, they make people pleasant and lovable to each other (*piyakarano*); make people respect and appreciate each other (*garukarano*); make people cooperate and work together (*samgahāya*); make people unanimous and non-argumentative (*avivadaya*);

³⁴¹ Ibid.

make people friendly (*sāmaggiyā*); make them united and happy together (*ekībhāvāya*).³⁴² The Buddha has also stated that keeping to the five precepts is an act of providing fearlessness and reduction of tension, anger and hatred.³⁴³ In fact any society becomes a place for enjoyable living if there is no crime. One needs not worry about the safety of life. One knows that everyone, as they consider life as sacred and valuable, would not deprive another of their precious life. This mutual respect means one may move anywhere anytime without any fear. In the same way, people see no danger to their property and married life too is happier. When people do not cheat, insult, or slander, they tend to respect such harmless and friendly people. When such understanding among people prevails, the above-mentioned evaluative statements of the Buddha seem to be highly appropriate to a society where people love each other for the peaceful, crime-free environment they are provided with.

In *Aṅguttara Nikāya Adhikarana Vagga*, the Buddha presents more reasons for people to prevent criminal activities. One reason is that when someone has committed a crime, he cannot avoid his own conscience blaming him for being immoral. From his childhood, most probably, he was taught that certain activities are unpleasant, immoral and criminal. Therefore he feels guilty having committed an act socially disapproved of, personally punitive and karmically unwholesome. Secondly, he will be looked down upon and disgraced by wise people. He will be not accepted in circles of good men. Thirdly, he will be known in society as a bad person and become infamous. No one would offer him friendship. A criminal will become an anathema to many people. Fourthly, at his deathbed also he will not be able to maintain mental composure. And

³⁴² Morris, eds., *The Aṅguttara Nikāya*, 3:289.

³⁴³ *Ibid.*, 4:246.

after death he will, as taught in almost every sensible religion, immediately be born in a place of suffering.³⁴⁴ In another place the Buddha adds two more reasons. He says the evil doer might incur loss of wealth in this life itself. And he also adds that he will not be able to attend public gatherings keeping his head up. He, owing to his guilty feeling, will suffer diffidence.³⁴⁵ Thus not limiting to repercussions one may have in another life, the Buddha has given psychological and sociological reasons to discourage people from adopting criminality. Here the Buddha is addressing intelligent and sensible people.

However, the Buddha was aware that these ideal moral means have their limitations. It is practically impossible to find a society where everyone is equally sensible or educated to be genuinely cooperative in eliminating crime. The reason is that the ultimate genesis of crime is rooted in the defiled minds of people. The Buddha has seen that unenlightened individuals live with greed, hatred and ignorance. Educating all of these people and infusing moral sensibility within them is a task impossible even to imagine. And the Buddha is only a human teacher of a religion based on empiricism, among many founders of religions. Thus, he knew his limitations in educating people morally. Therefore, as a practical philosopher, he had to recognize the practical need of punishment also as a means of approaching the problem of crime.

Punishment is necessarily connected with laws. Breaking a law makes an offender punishable. Deciding on the punishment is a matter for courts established by the government of the country. (During the time of the Buddha there were no religions who assumed the role of adjudicating and punishing lay people. There were, of course,

³⁴⁴ Lankānanda and Nānālōka, *Anguttara Nikaya*, 2:436. Adhikarana Vagga “*attapi attanam upavadati, Anuvicca vinnu garahanti, Papako kittisaddo abbhuggacchati, Sammulho kalam karoti, Duggatim vinipatam nirayam uppajjati.*”

³⁴⁵ Lankānanda and Nānālōka, *Digha Nikaya*, 3:236. “*Mahatim bhogam janim nigacchati, avisarado upasamkamati manku bhuto.*”

monastic laws and punishment within the religious systems. Buddhism had monastic Vinaya given by the Buddha and there was a system of punishment for grave offences too. However, the principles behind monastic punishment are different from the motives of state punishment.

Buddha had to view the punishments given by the state rather carefully, as the kings seem to have thought it was a sure means to reduce crime. As a matter of fact, the Buddhist narration relating to the beginning of law also recognizes that establishing law and order was something people did unanimously. According to the *Aggañña Sutta* it was the result of the original contract made between the mythical king (*Mahā Sammata*, the Great Elect) and the people that made citizens depend on the king for law and order.³⁴⁶ However the original punishments the people suggested to the king were limited to showing anger (*khiyitabbam*), censuring (*garahā*) and banishing (*pabbājeyya*). Even though physical hurt and killing were known among people before the contract, they did not think them to be appropriate as legally valid punishments. Perhaps the presenter of the Buddhist myth did not like to provide physical punishments and “anthropological” (or historical) justification, even indirectly.

Many dharma Sastra books compiled by Brahmanic scholars provide information on the type of laws that were in operation in India during the age of the Buddha. Among them, the most famous law book approved by the Brahmanic religion (Hinduism as it is known today), the Code of Manu given in his Dharma Sastra or (Mānava Dharma Sāstra), presents the traditional Indian view regarding the role of the king in punishing the criminals and the type of punishments employed to curb crime. According to it, the king has the right and duty of punishing those who compromise the public order. It is

³⁴⁶ Lankānanda and Nānālōka, *Dīgha Nikāya*, 3:80.

interesting to note that the punishment was called *daṇḍa*. It means club—probably the earliest weapon people used to harass others. The implication is that punishment implies incurring physical pain. Manu believed that the only way for a king to maintain order in the country was punishment. “Punishment or *daṇḍa*,” says Manu, “is created to help the king to perform his duty in the interest of his subjects.”³⁴⁷ If the king does not perform his duty of maintaining law and order, he adds, the law of the fish (*Matsya Nyaya*, the big fish devouring the small fish) will prevail in the kingdom.

Olivelle points out the Brahmanic texts acknowledge the existence of customary practices that were not written down. These include *deshadharmā*, practices specific to regions, *jātidharmā* or those of distinct communities and *kuladharmā*, those of distinct lineages or families.³⁴⁸ These seem to be the sources of law influenced the shaping of laws in *Dharmasāstras*.

Grero sums up the types of punishments recognized from the early stages of the criminal justice system into three types of punishments: 1) Retributive punishment; 2) Deterrent punishment; and 3) Preventive punishment.³⁴⁹

The concept of punishment given in *Dharmasāstrās*, including that of Manu, not surprisingly, was closely connected with the Brahmanic religion. For instance, even though the king was empowered fully to punish criminals, the decision as to whether any particular action constituted a crime was a matter for consultation with the Brahmins, since the concept of sin concurred very often with crime. Sin, almost always, constituted a crime. However, when the king punished a criminal for the crime committed, the corresponding sin was said to get expiated and in the next birth, the person involved

³⁴⁷ Robert Langat, *The Classical Law of India* (Berkeley: University of California, 1973), 386.

³⁴⁸ Patrick Olivelle, *Dharmasastras: The Law Codes of Ancient India*, 21.

³⁴⁹ Grero, *An Analysis of the Theravada Vinaya in the Light of Modern Legal Philosophy*, 125.

would be born in heaven as would other people who had performed good deeds. It is the king, however, who decided the gravity of the crime and nature of punishment to be given in proportion to it.

Manu in his Dharmasāstra describes four types of punishments: 1) admonition (*vak-danḍa*), 2) censure - punishment (*dhik-danḍa*), 3) fine (*shukla*), 4) physical punishment (*vadha-danḍa*). *Vak-danḍa* or admonition is the least severe among the four. Admonition is to be used first, and it might follow censure. Censure is a stronger reprimand than admonition. Reprimand and rebuff are the most minimal and least extreme of the disciplines. They neither exact physical agony nor loss of property. When utilizing reproach, a great man submitting his first offense ought to be asked: 'Is this your abhorrent activity.' Is it legitimate of you to carry on like this?' The fourth one, physical punishment is the most severe. The punishment may even be combined if the king decides so. Though Manu has limited the punishment into these four, later authors have added two more types of punishment: confiscation of property and public humiliation.³⁵⁰

The second sort of discipline, fine, is to be forced when harm is done to another. Be that as it may, there were discriminative varieties in working this discipline. At the point when a *Kshatriya*, a *Vaishya*, or a *Sudra* was not ready to pay the fine, the guilty party was made to perform difficult work. In case the offender could not perform even manual labor, he would be imprisoned. A *Brahmin*, however, was expected to pay the fine immediately; however, if he had any difficulty in doing so, he was allowed to pay in installments.³⁵¹

³⁵⁰ Sanjeev Nawar, "Manu Smriti and Punishment," agniveer.com, accessed June 03, 2019, <http://agniveer.com/manu-smriti-and-punishment/>.

³⁵¹ Ibid.

Information about the third type, imprisonment, is not very detailed. However, the prisons were placed near the main roads, allowing people to see how the culprits were suffering. They, most probably, thought of deterrence and also of further humiliating the offenders. It was the king who decided the nature of crime if committed, whether a person should be imprisoned and for how long. In addition to these punishments there were mutilation and death also as forms of severe punishments.³⁵² Even the Buddhist literature presents information on incidents in which tough and inhuman punishments were given in those days. The Buddhist story of *Kundalakēsā Bhikkhuṇī* refers to a case of a person being taken to the death grounds to be beheaded on the king's order being saved by a millionaire bribing the guards and making him his son-in-law. Later she became a *bhikkhuṇī* when her husband betrayed her trust.³⁵³

Mutilation of body parts is utilized when a guilty party has made wounds of the person in question. It was an average discipline in instances of burglary, theft, and infidelity as a method for making the criminal a guide to the open in light of the fact that the mangled body was a frightening sight. Mutilation was likewise used to keep the guilty party from rehashing the wrongdoing. The eight fundamental spots of mutilation were the organ, the paunch, the tongue, the two hands, the two feet, the eye, the nose and the two ears. Whipping, branding, censure, fine, banishment, confiscation of property also occurred. When it was found out that other punishments were not sufficient, the kings proclaimed death by cutting the head.³⁵⁴

³⁵² Ibid.

³⁵³ "The Story of Their Kundalakesi" nirvanapeace.com, accessed May 04, 2016, <https://www.nirvanapeace.com/english/buddhism-philosophy/the-life-of-buddha/640>.

³⁵⁴ "Crime and Punishment," weebly.com, accessed May, 04, 2016, <http://hinduismbitesize.weebly.com/crime-and-punishment.html>.

From an *ahimsa* (non-violent) point of view, it appears that punishment is also doing harm to criminals. Crimes are bad because they inflict harm to people. Then we come across the problem of justifying inflicting harm to the criminal. How can a criminally bad act of harm becomes good when it is done as a punishment? There are three types of justifications offered.³⁵⁵

The first justification is mainly based on utilitarian thinking. It is argued that punishment is done with the good intention of deterring others and protecting others from further injury by the culprit. It was believed, therefore, that the harm involved in punishment is outweighed by the greater good. Offenders are “incapacitated” with the good intention of preventing them repeating the crime. For instance, they are imprisoned for a period commensurate with the gravity of offence. In ancient India incapacitation of the criminal to prevent him from doing the act again had several forms. Putting the criminal to death, banishment, imprisonment or mutilation were some of the forms used in incapacitation. Manu, the classical Brahmin law writer, urges the king to cut off the offending limb of a thief to prevent them from stealing again. In the case of cutting off a limb it has a preventative effect and ensures that the same crime will not be committed again.³⁵⁶

Another justification offered is that the punishment will prevent or discourage crimes or unlawful behavior by deterrence. According to the *Mahābhārata*, the surest way of preventing people from engaging in crime is the fear of punishment by the king, in the afterlife, or by others in society. The offender seems to believe that the most

³⁵⁵ David R. Loy, “*Healing Justice: A Buddhist Perspective*,” zen-occidental.net, accessed January 4, 2016, <http://www.zen-occidental.net/articles1/loy2.html>.

³⁵⁶ Ramaprasad Das Gupta, *Crime and Punishment in Ancient India* (Calcutta: Book Company, 1930), 16.

effective way of deterring potential criminals from committing a crime is allowing them to view how the criminals suffer punishments. Manu recommends to the king, therefore, placing the prisoners near a high road during the punishing so people could see how the criminals are made to suffer and become disfigured. It may work as a deterrent and preventative.³⁵⁷

Punishment may reform the offender which is another justification. During the period in incarceration, the criminal may regret his crime and obtain some moral orientation. He will behave well when released from the prison. Somebody who oversteps the law ought to be rebuffed in a manner that improves his character and direct. The *Mahabharata*, for example, suggests the ruler change or right culprits by discipline.³⁵⁸

Restoration, obviously, is a perceived objective of Brahmin discipline. A criminal ought to be rebuffed in a manner that improves his character and direct and builds him up on the way of Dharma. The *Mahabharata* suggests the lord change or right crooks by discipline. Despite the fact that the accomplishment of this relies upon the nature of reformative projects accessible in detainment facilities, the goal is great.

The general opinion among many people is that some form of retribution is necessary for the criminal's anti-social behavior. Some argue that in any healthy society, indignation over the crime and criminal and thought of revenge and retaliation might arise; it has to be satisfied.³⁵⁹ The basis of this view seems the desire for vengeance. Even God's retribution is a version of this justification. The Buddhist *Kamma* also may appear

³⁵⁷ Ibid.,14-15

³⁵⁸ Ibid., 16-17

³⁵⁹ Grero, *An Analysis of the Theravada Vinaya in the Light of Modern Legal Philosophy* (Maradana: Karunaratne and Sons; 1996), 126.

as “retributive,” yet we have to note that *kamma* is a self-operative natural law and there is nothing that God, society, government or any supreme agent can do.

The Buddhist position in relation to punishments given by the state seems to be carefully calculated. Although the Buddha had very cordial relationships with the kings of the day, he was aware of the delicate nature of the problem. As the kings had absolute power in their domains they should not be made angry. As a result, even though the Buddha was frequently sought by the kings for advice, the Buddha had to understand the responsibilities the kings had and the power they enjoyed. Especially in the case of monks, the sympathy and support of the kings was very important. Perhaps it was the reason behind the Buddha’s exhortation to the monks that they should follow the rules of good kings. This however should not be interpreted to justify monks revolting against the bad kings. Buddha has not spoken against punishment of criminals by the state.

Buddhism recognizes two broad types of crimes, namely, *lōkavajja* (world-crimes, their blameworthiness is accepted by the world) and *paññattivajja* (blameworthy because of ordinance).³⁶⁰ The first category is what is universally agreed upon as crime owing to the fact that those acts harm people and deprive them of their natural/fundamental rights, such as the right to life, right to property, right to peaceful married life, right to knowing the truth and not to be deceived, and the right not to be harmed or disturbed by intoxicated people. The fivefold precepts recommended for lay people are related to these. In fact, these five could be taken as the core of the moral rules which are world-crimes. The first four of them even consist of the four non-committables (*cattāri akaranīyāni*) explained to candidates of higher ordination.³⁶¹ They are 1) should

³⁶⁰ T. W. Rhys Davids, *Milinda Panha* (Gloucestershire: The Clarendon Press, 1967), 266.

³⁶¹ Lankānanda and Nānālōka, *Vinaya Mahavagga*, 265.

never have sexual intercourse even with an animal; 2) should not be involved in stealing anything which is punitive by the state law; 3) no life –even of an insect – should be killed; 4) should not make false claims of any higher spiritual attainment (at least no boasting of an austere life).³⁶²

In addition to the karmic repercussions, the Buddha knew that kings may take harsh action against those who commit crimes. He did not condemn state punishments even though some forms of punishments were rather harsh. The Buddha not only declined to intervene in the steps taken by the kings to control crime by punishment—he consulted them when introducing monastic laws, especially the ones related to *lōkavajja* (world crimes). For instance, when introducing the *parājjikā* law against stealing, the Buddha consulted on what grounds the kings would take a man into custody for stealing and punish him, and the monastic regulation followed the same grounds. Among the four *parājjikā* in monastic law, except the one on sexual intercourse, all consist of universal crimes. In the five precepts, of course, not all sexual relationships are considered to constitute crimes. Only the illegal sexual activities are considered criminal. Having sex with an unwilling partner is violating natural justice as it goes against fundamental rights. Thus, these *lōkavajjās* are universally social, and therefore, serious matters for the state to be concerned with. It is therefore impossible for religion to intervene with state laws. As far as the state is concerned, they are secular matters. It is the duty of the state to control crime and allow people to live in peace. This fact is recognized in Buddhism as implied in the *Cakkavatti Sīhanāda Sutta*, where it is stated the control of crime is one of the four essential responsibilities of the king.³⁶³ However, when they are included as *parājjikā*

³⁶² Ibid.

³⁶³ Davids and Carpenter, eds., *The Dīgha Nikāya*, 3:58.

within the *pātimokkha sikkhā* of monastics (220 rules for monks), they become punitive institutionally as well.

What is punishment's place in the monastic administrative system? As we have already observed, there is no institutional punishment for laymen even if they break fivefold precepts. It is a matter for the government or—rather in the terms of Buddha's times—the king. However, it does not mean that there is no religious or moral significance in the five precepts. There are punishments naturally according to the law of kamma. Both laymen and monks are no exception to kamma. Therefore, for *lōkavajjā*, while laymen have only two types of punishment (karmic and governmental), the monks are punished by the natural karmic law, by the state law, and institutional law (*Vinaya*).

According to Buddhism, one commits a crime owing to impure motivation (*akusala cētanā*). As a religion aiming at moral perfection, Buddhist punishment has to have reforming the offender as the target. The three identified immoral motives, according to the Buddha's teachings are greed (*rāga*), hatred (*dōsa*) and delusion (*mōha*). If punishment does not contribute in any way to de-programming the criminal of the intentions backed by the above evil motives it cannot be accepted as a form of punishment approvable by Buddhism. Buddhism being a religion and philosophy presenting a system of virtue ethics – as Keown has analyzed –it will not approve another action driven by impure motives as a remedy for the crime done. For instance, when someone is caught stealing, a government might punish him by cutting his hand. It will inflict physical and mental pain. The owner of the item suffered may enjoy a cruel (and criminal) satisfaction of taking the revenge. But there is no guarantee at all that the person may be reformed. It does not convince him that virtue is more valuable than

crime, as the punishment also is a kind of harm to a person with the intention of revenge. It may possibly deter him from further stealing owing to fear of punishment, but it is likely that he might harden his criminal mind, being angered over the severe physical pain and having to live without a hand. For the Buddhists what is more important is the effect of the punishment on the offender's character than the retaliation aspect.³⁶⁴

A stanza in the *Dhammapada* sheds much light on the problem of identifying the Buddha's stand on inflicting pain on a criminal as a form of punishment. The stanza runs: "Conquer anger by love. Conquer evil by good. Conquer the greedy by generosity. Conquer the liar by truth."³⁶⁵ This seems to be a strong affirmation of the foundation of Buddhist ethics. These are the basic values the Buddha and his followers lived by and tried to promote in the world at large. The punishment, one may argue, depends on the gravity of one's offence although it differs from society to society. To justify the punishment, a systematic judiciary procedure is followed, the gravity of one's crime is measured and punishment is imposed accordingly. In some societies the law of equal retaliation (known as *lex talionis*), seems to be the norm of punishment ("an eye for an eye"). Death sentence for murder seems to stand on similar justification. This does not mean that every punishment stands on the same ground. For instance, administrators of prisons in politically advanced democratic countries consider how they might change the criminal's attitudes regarding life instead of imposing physical punishment.

In this way, Buddhist attitudes to punishing criminals is reformative rather than retaliatory. A Buddhist recognition of the motives that make someone commit a crime is

³⁶⁴ Damien Keown, *Buddhism: A Very Short Introduction* (Unite Kindom: Oxford University Press, 1996), 96.

³⁶⁵ "akkodhena jine kodham – Asadhun sadhuna jine
Jine kadariyam danena – Saccena alikavadinam"
Narada Thera, *Dhammapada* (Colombo: Culture Center. 1971), 395. Verse 223.

behind this healthy approach. An analysis of *Aggañña* and *Kuṭadanta sutta* will show us how the origin of crime is seen in the Buddhist “anthropological mythology.” As previously discussed, according to the *Aggañña sutta*, the first ever crime to occur on this earth in this era³⁶⁶ was stealing. When caught and pressed for admission, the thief did not confess. He lied. In consequence, physical harm and killing etc., emerged. According to the *Cakkavatti Sīhanāda sutta*³⁶⁷ and *Kūṭadanta sutta*,³⁶⁸ poverty was another cause of theft and violence. All the stories found in the Buddhist *suttas* imply that punishment was not an effective way of preventing crime. Even though the Buddha was not able to totally convince the state that punishment alone would solve the problem, he has created some convincing examples of reforming even a serial killer by compassion and re-education. The best example is how the Buddha encountered Aṅgulimāla, who had killed almost one thousand people.

When the Buddha came to know his criminal activities, he went to meet Aṅgulimāla. Aṅgulimāla thought that the Buddha’s finger would complete his finger garland project that was entrusted to him by his teacher who, in fact was misled by some students who hated him. So he chased after the Buddha having his sword in hand. Then the Buddha is said to have performed a miracle: Aṅgulimāla could not pass him even though he ran as fast as he could, while the Buddha was walking at a normal pace. Surprised at this unusual experience, *Aṅgulimāla* shouted, “Stop, monk! Stop, monk!” The Buddha responded: “*Aṅgulimāla*, I have stopped already. Now you stop.” Confused

³⁶⁶ According to Buddhist cosmology, the universe has two alternative eras – evolutionary (*vivatta kappa*) and involutionary (*samvatta kappa*). In involutionary eras, as the earth become uninhabitable and beings hibernate in subtle forms. When the earth returns gradually to the inhabitable stage they reappear first in the sky and owing to their greed settle down on earth. Davids and Carpenter, eds., *Dīgha Nikāya*, 3:80.

³⁶⁷ Davids and Carpenter, eds., *The Dīgha Nikāya*, 3:58.

³⁶⁸ *Ibid.*, 1:127.

by this answer, *Aṅgulimāla* asked, “How do you say that you have stopped while walking in such a way that I could not catch you even by running very fast? I have stopped. But what is the meaning of your strange statement that you have stopped?” The Buddha’s answer is in the following stanza:

I have completely stopped, Aṅgulimāla,
Every form of violence to all living beings;
Yet you haven’t restrained towards breathing life;
That is how I have stopped and you have not.³⁶⁹

Hearing this, Aṅgulimāla, a well-read young man, realized his own condition immediately and became a reformed person. He willingly accompanied the Buddha to his monastery and ended up becoming a monk.

After completely reforming the well-known serial killer whom everybody feared, the Buddha had the opportunity of introducing him to the king who had issued an order to kill Aṅgulimāla on the spot if found. Neither the king nor the people believed it was possible to reform a serial killer like him into a calm monk. Later the killer was made into an *arahant* (enlightened monk) to the amazement of everyone. The Buddha’s technique was not physically or mentally punishing him, but rather, re-educating him. At the school some of his colleagues planned to get him killed. The method the Buddha employed was moral reprogramming and the success stories of such encounters imply that the Buddhists approach is reformative and not retributive.

The most salutary effect of the reformation is that Aṅgulimāla Thero became a legend by one of his compassionate actions. Having noticed a woman undergoing excruciating pain, he performed an act of truth, the power of which is believed to have helped her to have a safe and painless delivery of her child. The blissful words he recited

³⁶⁹ Lankānanda and Nānālōka, *Majjhima Nikāya*, 2:518.

to help her are still being chanted by Theravada Buddhist monks to bless pregnant women, and people believe that those words constitute an eternally powerful *paritta* (a formula for chanting). The stanza the Buddha recited after reforming the Aṅgulimāla sums up the Buddhist religious view on criminals.

Who by his later goodness,
Checks the evil done before
Illumines this world as,
The moon emerging from clouds.³⁷⁰

The philosophy behind this brings reformation and the Buddhist concept of impermanence together. The message implied therein is that as everything is impermanent, a criminal's personality is also impermanent and therefore reformable. So even a criminal, if there is no prohibition from the state, may join the Order and start religious training. However, it all depends on the person's will as well. It is true that neither the Buddha nor an *arahant* can function as a redeemer and "purify" a person. Purity or otherwise is a personal choice and a personal responsibility. The Buddha has made it clear that no one can purify another person (*Suddhi asuddhi paccattam nañño aññam visōdhaye*).³⁷¹

It is agreed that a person may take on criminal behavior for one or more than one of these reasons: 1) chosen his own free choice, 2) propelled by the environment he is brought up in – for instance, a broken home, lack of education. 3) Seemingly the only option left for him that if he is unable to conform to society or 4) adapted in consequence to exposure to other criminals.

³⁷⁰ "Yassa papam katam kammam – Kusalena pithiyati
So imam lokam pabhaseti – Abbhamuttova chandima."
Narada Thera, *Dhammapada*, 183. Verse 173.

³⁷¹ *Ibid.*, 182, Verse 165.

Within the monastic context, too, the major crimes identified as *pārājikās* (defeatives) are connected to the crimes implied in the five precepts given for lay people. Murder, theft, sexual misconduct and falsehood constitute four *pārājikās*. These are related to the first (*panātipātā*), second (*adinnādānā*), third (*kāmēsu micchacārā*) and fourth (*musāvādā*) precepts respectively. There, of course, are some changes to comply with the philosophy of monastic training. These changes are introduced mainly because it is a part of a religious course of action leading to liberation from samsara. Morality (*sīla*) in the monastic context is intended to lead a person to mental calmness called (*samādhi*) and then to wisdom (*paññā*). It is more rigorous and directional than lay ethics. In fact when it comes to monastic training, the prefix *adhi* (higher) is added to the terms *sīla*, *samādhi* and *panna*. (Thus, the monk's training is called *adhisīla sikkhā*, *adhicitta sikkhā* and *adhipaññā sikkhā*.) Secondly, unlike lay discipline, the Buddha had to introduce remedial procedure against misbehaviors classified as *pārājikās* owing to the nature of training intended for monks. *Parājikā* offences make a monk totally defeated in his spiritual program and the remedial action involves sending him back to lay life. As this is a serious spiritual fall, some refinement to the rule was necessary. For instance, unlike the general rule of killing for lay devotees, only a killing of a human being (*manussa viggaha*) makes a monk defeated, making expulsion from the order the monastic punishment. The second one of the fivefold precepts, stealing, has no modifications. Any theft which the state law deems punishable constitutes a *pārājikā* offence.

Regarding the third precept, however, there is a widening of the scope. In the case of lay persons, the precept only covers the sexual misbehaviors (*kāmēsu micchacārā*) like rape, extramarital sex etc. Yet for the monks, every form of sexual conduct

(*abrahmacariyā*) is banal. However, certain deviant sexual behaviors are classified as second-grade crimes called *saṃghādisēsās*, punitive only by suspending membership of the miscreant in the Order temporarily. The miscreant monk has to live under probation for a specified period (six days) plus a period equal to the days he kept the act a secret without confessing at the fortnightly assembly of monks. During the probation period he is prevented from taking part in several monastic activities and some of his privileges are temporarily removed. After completing the period of probation he has to appear before an assembly of the Order and top up the process with an apology followed by an assurance that he would never commit the same offence in future.

Regarding the fourth offence of lying there is a special concern on false claims of spiritual achievements. If a monk claims that he has achieved any of the stages of enlightenment (even *jhāna*, rapture) he is considered defeated in monkhood. Other types of lying, however, are not considered serious. They only constitute a *pācittiya* offence remediable by a public apology at the group confessional assembly (*Pātimokkha Uddēsa*).

In addition to the Pāli words like *vajja* and *aparādha* commonly used for crimes, the term *āpatti* is used within monastic circles. This term is never used for offences committed by lay people. The first four *āpattis* (*pārājikā*) of monastic Vinaya, as discussed above, constitute *lōka vajja/pakati vajja* (accepted by world/wrong by nature) and subjected to state law and karmic law. *Paññatti vajjās* (wrong by ordinance) are normally not crimes if a layman commits them. Most of the *paññatti vajjās* are included in *pācittiya* category which are confessional.

This division of *lōka vajja* and *paññatti vajja* is made applicable to the ten *sāmanēra sikkhās* (rules for novices) as well. According to the *Khuddakapāṭha Commentary*, the first five of the ten novice-precepts are *pakati vajjas* (naturally criminal)—synonymous to *lōka vajja*—and the rest of the five are *paññatti vajjās*.³⁷² However, inclusion of the third precept of novices, which makes all kind of sexual conduct naturally criminal, without any qualification is problematic. One may argue as to how all sexual activities become *pakati vajja* (naturally wrong) when it is a biological necessity for reproduction of the mankind. It has to be a *paññatti vajja* as it is only wrong for monks including novices. Justification given for this in the Vinaya Commentary is “As it is committed with greedy mind, which is unskillful, it is naturally blameworthy.”³⁷³ This appears to be rather impractical and unrealistic commentarial opinion, as the argument cannot be accepted in lay contexts. According to canonical Vinaya, sexual intercourse is blameworthy only if done by a renouncing.

Another psychological aspect of the Buddhist theory of moral responsibility is participatory enjoyment (*sādiyanta*). In monastic terms, sexual intercourse is a crime that makes a monk subject for excommunication. However, if an enemy of a monk makes him have sex by force with threats and to save his life the monk has to do it there is no crime on the condition that he does not enjoy the act.³⁷⁴ This condition is called *asādiyanta* (non-enjoying). There is a story of a monk who was asleep and seeing his erected penis a woman inserted it into her sex organ and enjoyed until the monk had an ejection. The monk realized what had happened only when he awoke. He was remorseful wondering

³⁷² Lankānanda and Nānālōka, *Anguttara Nikaya*, 3:19.

³⁷³ Jayawicrama Buddhaghōsa, *The Inspection of Discipline and the Vinaya Nidāna: Being a Translation and Edition of the Bahiraniḍāna of Buddha's Samantapasādikā, the Vinaya Commentary* (London: Pāli Text Society, 1986), 271.

³⁷⁴ Jayawicrama Buddhaghōsa, *Vinaya*, vol. 3 (Londo: Pali Text Society, 1986), 38.

whether he had committed a *pārājikā* offence. However, the Buddha explained that as the monk did not know and did not enjoy it he was innocent and there was no *pārājikā*.³⁷⁵

There are some *saṃghādisēsa āpattis*, especially the ones related to sexual deviance, possible to constitute *lōka vajjās* as well. For example:

1. Engaging in physical contact with a woman devotee; for instance holding her hand, her hair or caressing her limbs.
2. Making lustful remarks to a woman, referring to her genitals or sexual intercourse
3. Requesting sexual favors from a woman, suggesting that she would benefit from having sex with the monk³⁷⁶

This kind of seductive behavior is not acceptable even in a nonreligious environment. In decent secular contexts those will make a person punishable. Thus, even though the monastic approach to crime is not exactly similar to the secular approach there are several parallels too. The differences, however, are more in relation to punishment as shown above. If a Buddhist monk or a nun has committed an offence of the *Samghādisēsa* group he will be subjected to probation for six days plus the period that he failed to confess the error. The offender will be fully reinstated to normal status when he appears at a confessionary assembly of twenty monks and informs them that he has completed his probation. The approach to punishment in monastic circles is almost always reformatory.

It is likely that one might ask what kind of reformation is intended in excommunicating a defeated member (one who is guilty of *pārājikā* offence). Does not it mean that he is condemned as a hopeless person? Will he never attain the goal of Buddhism – *Nibbāna*? There is no such deprivation of the opportunity of attaining *Nibbāna* for the person who has fallen into his own uncontrolled emotions. As Buddhism

³⁷⁵ Ibid.

³⁷⁶ Horner, "The Book of the Discipline: Vinaya Pitaka," msn, accessed June 2, 2019, <https://archive.org/details/bookofdiscipline10hornuoft>.

recognizes greed, hatred and ignorance are the reasons behind crime, the opportunity of uprooting those root causes and becoming purified is not deprived for him. However, his status as a monk cannot be maintained any longer in this life owing to his own weakness in being unable to refrain from sexual intercourse. Therefore he has to return back to lay life, where he can still practice the five precepts while enjoying the freedom to engage in sensual pleasures in a civilized way. If he sees his own folly and practices monastic training again, he will be allowed to join as a *Sāmanēra* – a novice. Discipline for a novice is simpler than it is for a higher ordained (*upasampanna*) monk. The person excommunicated for his inability to live by *adhisīla* (higher morality) may not find it difficult to live by novice precepts. Even if that is also found difficult, he may still live as a Buddhist lay person practicing five precepts.

Conclusion:

In our discussion we have noted that the Buddha was in praise of a crime-free society. He is reported to have happily reminisced that during the first twenty years, the Order was crime-free. He stated that the monks of those days made him happy (*ārādhayimsu vata maṃ tē bhikkhu cittaṃ*) by their behavior. When a monk went against the norm, he used to say, here you have committed a crime (*ettha tāya aparaddham*). Furthermore, in the *Aggañña Sutta*, he reports that in the dim distant past during the evolutionary period (present *vivatta kappa*), people, for a long time, had enjoyed a crime-free life. One might interpret this *sutta* as the Buddhist ideal projected onto a mythical past. That of course is the traditional technique of communicating values practiced in most religions. The nature of this rather mythological narration indicates that the Buddha (therefore Buddhism as well) was for a crime-free society. Therefore, one may rightly

expect Buddhism to present a study of reasons for criminal behavior and some techniques for elimination of crime.

Everywhere in the world the most trusted and tested method of elimination of crime is enforcing the law. Law enables the enforcing body to catch criminals and punish them after careful investigation. Buddhism does not deny that this is a highly effective method in the majority of cases, but it also maintains that hardcore criminals find ways to evade punishment (more so now, as the defense lawyers argue in many ways). A court procedure, even if it is handled by experts in law, has many flaws in it as well. For instance, the judge has to depend on evidence and the legal arguments brought to him. A case may be manipulated by sharp-witted lawyers, and even if the real criminals are found and sent to prison, it does not guarantee that they may not repeat the crimes. Even after being penalized, they might continue with a criminal mentality. Such reconvicted criminals were called “*Dhaja bandhaka coras*,” like IRCs today. Therefore, Buddhism proposes in addition to the punishment, ethical training as a more substantial and long-lasting solution.

Buddhist ethics propose a three-fold program *sikkha* (training) for both laymen and monks. At the same time, Buddhism proposes to cultivate the ethical attitudes of life through teachings like *hiri* and *ottappa* (ethical shame and fear).

There are several ethical instruments the Buddha proposed to instill non-criminal mental tendencies among his followers. One such effective technique is called *adhipateyyāni* or authorities. People can have three authorities governing their conduct, *atta* (self), *loka* (society) and *Dhamma* (moral norms).

Another moral concept that Buddhism proposes to employ in eliminating crime is making people adopt the philosophy of non-violence. It is based on getting into other living beings' shoes. Identifying the basic mental characteristics of living beings, one should consider them as like oneself to avoid harming others. The Buddhist five-fold precepts seemed to have this philosophy as the base. The *mettā bhāvanā* or loving-kindness meditation goes hand in hand with this practice. Avoiding any harm to others by living according to the five precepts one refrains from crime, and through loving kindness meditation as the next step of crime-free living, one radiates universal love to all living beings.

The philosophy of kamma seems to be a very powerful reason Buddhism offers for intelligent people to help them abstain from criminal activities. Kamma, as a corollary to dependent origination, teaches that every criminal act generates evil results in the saṃsāric (life-death-life continuum) context. This convinces that no crime goes without punishment even if someone manages to evade punishment by state law.

This however does not mean that the Buddha tried to do away with state punishment for crimes as effective way of elimination of crime. He did not interfere with state procedure against crime. He taught that even the monks should respect state law. However, as a religious teacher the Buddha mostly emphasized the beauty of ethical and psychological means of eliminating crime.

CHAPTER 6

Conclusion: Evaluation of Theravāda Buddhist Approach to Crime and Control of Crime

Almost every society today considers law as a crucial element in social control. Law mainly aims at defining, identifying, handling, controlling and eliminating (or at least minimizing) of crime. Crime, from the legal point of view, is committing an act prohibited by law. It is more definite than norms, mores or folkways, which are like agreed upon conventions.³⁷⁷ Unlike informal norms, laws are introduced with precise wording and the words are defined to give maximum accuracy and non-debatable, exact meanings. And laws also prescribe formal actions to be taken in case the laws are violated by the members of a group for whom the laws are made valid. Laws make certain actions illegal or criminal, making miscreants punishable. Punishments are given by formally appointed judicial bodies. All of this is for maintaining social order, without which interaction among people would be a real problem and expectations would be meaningless.³⁷⁸ Theravada Buddhism, in its sophisticated and practical approach, does not conflict with these normal secular ways of society.

Buddhism agrees that crime control is mainly a function of the state. It is the state that defines crime by the laws it promulgates, administers and enforces. Therefore an infinite variety of actions can be found criminalized in different states with different political climates. Governments may, therefore, have conflicting views on certain crimes owing to their political views, philosophies and religions.

³⁷⁷ Vander Zanden, *Sociology, The Core*, 145.

³⁷⁸ *Ibid.*, 131.

Every religious order also has laws and/or codes of ethics to maintain proper discipline among the followers. They have their own ways of designating crime. Moreover, religions also play a role in attempting to control crime. Even though legal handling of crime is generally a function of the state, every religion also has a positive interest in making society free of crime. Some religions even try to override state laws and punitive procedures by taking crime control function within their rather “political domains.” Moreover, religious orders (communities of priests and/or monks) also have laws to maintain proper discipline within the groups. Therefore religions have a role in identifying clerical “crimes” and attempting to control them. Some religious philosophies contain analytical discussions on causes and conditions of crime. Theravada Buddhism, too, contains a well-formed disciplinary program for their monks and nuns.

Not every law in religious bodies is necessarily based on moral ethical considerations alone. While many rules are based on moral considerations, some of them are purely administrative in nature. For instance, the Buddhist Vinaya contains rules governing the use of robes, manners of dining, proper use of dwellings and furniture, and also getting medicine and medical treatments by the Buddhist monks. Breaking such rules does not constitute crime proper since they do not come into conflict with state laws. However, just because the monastic administrative rules are not necessarily concerned with morals they are not to be regarded as value neutral either; they serve an important function in the context of particular religion and constitute a special kind of “morality.”³⁷⁹ For instance, in the Buddhist Vinaya certain actions are not “worldly

³⁷⁹ For instance, among the Ten Commandments some commandments are purely non-criminal in comparison to secular laws but breaking them is sin in religious terms.

crimes” (*Lokāvajja*) when taken out from the monastic context but constitute monks’ *sīla* and if broken constitute a “legal crime” (*Paññattivajja*).

When a violation of monastic law is detected the judicial procedure adopted may also be different from the procedure adopted by state against criminals. In the case of Buddhism, for instance, punishments have to be almost exclusively reformatory and compassionate; imprisonment, physical harm or death is not used as a punishment, even for a very serious crime. This does not, however, mean that Buddhism clashes with the state procedure of punishing crime. It only seems to hold that it is much better to eliminate the factors (causes) that cause people to be criminals rather than trying to eliminate criminals. *Suttās* such as *Mahānidāna*, *Aggañña*, *Cakkavatti Sihanāda* and *Kūṭadanta* explain the reasons for crime as poverty, greed, anger, bad company, etc. They also show that it is possible to control causes such as poverty with state intervention. In Buddhist countries, more often than not, the state has taken interest in getting possible influence from the Buddhist monastic Vinaya. With Buddhism the Buddhist legal system was also introduced to countries such as Sri Lanka, Thailand, Myanmar, China, Korea, Japan, Tibet and Mongolia. There was frequent consultation between the state and Buddhism in relation to law. Buddhist kingdoms almost always thought the monks, owing to possessing a highly systematic “legal” system, were in a position to provide effective guidance to lay people in making laws and becoming law-abiding people. It is true that the *Vinaya* had no direct authority over lay people in Buddhist countries like Sri Lanka, yet it was very influential in setting out proper standards for social conduct.³⁸⁰

³⁸⁰ Rebecca Redwood French and Mark A. Nathan, “Buddhism and Law in Sri Lanka,” in *Buddhism and Law*, ed. Sunil Gunasekara (Cambridge: Cambridge University Press, 2014), 117.

In theistic religions it is held that the originator of law is a supernatural agent (e.g., God), who either appeared to a prophet to reveal the laws or had an angel deliver them to a prophet, In Judaism, for instance, God directly communicates with Moses,³⁸¹ while in Islam Gibril (an angel) delivers law to Mohammad.³⁸² Punishments, according to such theologies, also could be either this-worldly (instituted by either the church or religious government) or other-worldly arrangement for judgment (at God's court) or both.

The case with Buddhism, however, is different, as Buddhism is a non-theistic religion.³⁸³ Not only in relation to state law which is normally made by human lawmakers, but also in relation to religious law, Buddhism has recognized a human origin for law. In the *Aggañña sutta*, where the Buddhist story of the origin of law is presented in a human context, we read of gradual deterioration of the peaceful life of early beings as the factor that necessitated legal remedies against criminal actions.³⁸⁴ Human beings get together and confer on suitable action to stop crime and decide to appoint an able person as the king who would take effective steps to eliminate crime.³⁸⁵ Thus, affirmation of the human origin of all laws is a special characteristic of Buddhist legal thought.

The Buddhist story of the origin of crime and law traces the appearance of the first crime mainly to the greed of the beings. As greed seems to be seen as a natural characteristic of the first beings appeared on earth (who are mentioned as arriving from long time "hibernation" in a fine divine form called *Ābhassara* Brahma world realm) some form of controlling desire had to be introduced.

³⁸¹ Charles S. Braden, *The World's Religions* (New York: Harpercolines Publisers, 2009), 169.

³⁸² *Ibid.*, 216.

³⁸³ H. Von Glasenapp, *Buddhism, A Non-theistic Religion* (London: George Braziller, 1970), 93.

³⁸⁴ Davids and Carpenter, eds., *The Dīgha Nikāya*, 3:80-98.

³⁸⁵ Jayatilleke, *Dhamma, Man and Law*, 65.

In the context of lay society, then, Buddhist legal philosophy is essentially based on ethical considerations. Controlling the immoral tendency of stealing was deemed necessary, and the responsibility for achieving it was entrusted to the king. Crimes are called “*Adhamma*”—immorality. The first attempts to control it consisted of peaceful negotiation. The criminals who were caught were admonished by people who caught them, but in vain. They were caught doing the same crime for the second time and a third time also. Only when this kind of handling was found ineffective did they appoint a king to handle crime in a formal way.

In addition to the *Aggañña sutta* there are few more *suttās* that deal with the problem of the origin of crime. *Kuṭadanta* and *Cakkavatti Sihanāda sutta*s focus on the poverty factor in causing crimes like thievery, burglary, and robbery. Some modern theories present poverty as the sole factor behind crime and blame the capitalist political structure as the reason why there is crime in society. For instance, Richard Quinney, a Marxist sociologist, argued

...much of the criminal behavior of ordinary people, or *predatory crime*—burglary, robbery, drug dealing, and hustling of various sorts—is “pursued out of the need to survive” in a capitalist social order. *Personal crime*—murder, assault, and rape—is “pursued by those who are already brutalized by the conditions of capitalism.” And then there are *crimes of resistance*, in which workers are engaged in sloppy work and clandestine acts of sabotage against employers.³⁸⁶

Even though Buddhism also has given enough emphasis to economic factors, the Buddhist stand is different from this kind of economic determinism. Buddhist analysis tends to focus on psychological factors as well rather than solely emphasizing the economic reasons. Buddhism recognizes that when the state neglects its duty of assisting the poor to come out of poverty, suffering people may take to robbing, plundering and

³⁸⁶ Vander Zanden, *Sociology, The Core*, 141.

rebellion. The psychology behind this is anger (*dōsa*). And the solution for this problem suggested in the Buddhist narrative is nothing but economic planning. Failing that necessary step, Buddhism maintains, nothing else will solve the problem of poverty and poverty-generated crime.

Buddhism, recognizing that there are multiple reasons for crime, explains the ill effects of crime and how destructive it could be for a peaceful life, thus emphasizing the necessity of moral behavior. This procedure shows the difference of the way Buddhism handles monastic miscreants from the way it approaches laymen's crime. Buddhism leaves the task of handling lay criminals to the state and does not interfere with punitive steps taken by the state. However, Buddhism explains that there are natural karmic consequences for the group of crimes called *lōka vajja* (natural crimes) implied in the five precepts. Even if the criminals could avoid state punishment, Buddhism claims that there is no way one may avoid karmic consequences. The *Dhammapada* states: "Not in the sky, nor in the mid-ocean, nor in a mountain cave, is found that place on earth where abiding one may escape from the consequences of one's evil deed."³⁸⁷

Buddhist monastic law, which regularizes the spiritual and institutional behavior of monks, was established by the Buddha according to the needs as they arose. He did not initially give any rules to the monks since they had a "feel" for good and bad actions. Buddha only made them aware of the right value for them. However when unapproved behaviors began to occur, the Buddha started introducing monastic law called Vinaya. It is a well-defined systematic code of law introduced by the Buddha by analyzing each

³⁸⁷ "Na antalikkhe na samudda majjhe, Na pabbatanam vivaram pavissa,
Na vijjati so jagatippadeso, Yatthatthito muncceyya papa kamma."
Narada Thera, *Dhammapada*, 58. Verse 127.

case and systematically arranging them for implementation. Rebecca Redwood French and Mark A. Nathan observe:

After hearing accounts from others and thoroughly investigating the “causes and conditions” surrounding a suspected transgression or moral lapse on the part of monks and nuns, the Buddha decided on cases as the highest spiritual and legal authority concerning what is good and true. On that basis, he is said to have created a substantial body of law for the community of monks and nuns, making Buddhist law in this sense quite unique among the major world religions.³⁸⁸

Rebecca Redwood French and Mark A. Nathan further observe, “The *Vinaya* is a set of canonical law texts containing rules, descriptions, case studies, definitions and punishments, and some ancillary material that was used to regulate Sangha.”³⁸⁹ As there are different schools and *yanas* (such as Mahayana, Vajrayana) in Buddhism, there are a few versions of *Vinaya* as well. Out of the many *Vinayās* of different traditions that existed in the history of Buddhism, six have been preserved in more or less complete form. Three of them *Pāli*, Chinese and Tibetan are found to be still in use by monastic communities in Asia. *Pāli Vinaya* is used by the Theravada Sangha of Sri Lanka, Myanmar, Thailand and several other lands where Theravada monks are engaged in community living. Mahayana monks who use Chinese as their “sacred” language have *Dharmaguptika Vinaya* (a sect which had their canon in Sanskrit), which is not very different from the *Pāli Theravada Vinaya*. What is available in Tibetan is the *Mūlasarvāstivāda Vinaya* found in the Tibetan language. Scholars are of the opinion that among these different versions there is more agreement than disagreement.³⁹⁰

The Buddha’s *Vinaya* or monastic law was established on ten religious principles called *dasa atthāvāsa* (tenfold benefits):

³⁸⁸ French and Nathan, *Buddhism and Law*, 9.

³⁸⁹ *Ibid.*, 8.

³⁹⁰ A. K. Warder, *Indian Buddhism* (Delhi: Motilal Banarsidass Publishers, 1970), 9.

1. For the well-being of the Community,
2. For the convenience of the Community,
3. In order to curb miscreants,
4. For the ease of well-behaved monks,
5. In order to restrain misbehavior in the present,
6. In order to check future misbehavior,
7. In order that those who have no faith (in this religion) may acquire faith,
8. In order that those who have faith may be further strengthened in their faith,
9. In order that the good Dhamma may last long and
10. For the promotion of discipline.³⁹¹

These ten-fold benefits listed by the Buddha are of extreme importance, as they contain the positive vision of the Buddha in relation to the Sangha. The Buddha seems to have had genuine compassion to the Sangha, as a compassionate and understanding master needs to have. The first two items show the physical comfort (*phāsutā*) and psychological contentment (*suṭṭhutā*). However, the psycho-physical comfort he wanted to be there in the Sangha was not given at the cost of good behavior. Good moral conduct was something that he always wanted from monks. He did not tolerate any misbehavior, for the obvious reasons that cultured life would definitely be a requirement for spiritual progress and that the lay people, when they observe the way monks control their senses and practice in a saintly manner, develop admiration towards them. The Buddha's statement, "In order that those who have no faith (in this religion) may acquire faith and in order that those who have faith may be further strengthened in their faith"³⁹² indicates this. As Buddhism does not have a Godhead in the center as a faith maintenance factor, it was up to the behavior of the Buddha and the monks to maintain the trust of lay supporters, only to be won through exemplary behavior. Thus it was of absolute importance to encourage good monks (*pesalānaṃ bhikkhūnaṃ anuggāya*) and discourage regressive monks (*dummaṅkunaṃ niggāya*).

³⁹¹ Amaramoli, *The Vinaya Pitaka*, 3:21.

³⁹² Lankananda and Nanaloka, *Anguttara Nikaya*, 8:57.

The Buddha hailed from a royal family and therefore, no doubt, he was familiar with the state laws and criminal procedure of the *Sakyan* oligarchy to which he belonged as a lay prince. It is possible to safely assume that the criminal laws in all sixteen states of sixth-century India were, more or less, similar to each other, as they were all guided by texts developed by learned Brahmins. (There, of course, were obvious differences regarding the political structure. In spite of such administrative differences, there was unanimity in relation to crime.) Knowledge of those legal procedures was definitely helpful to the Buddha in introducing the monastic laws for the monks and nuns and recommending legal procedure to be taken against monastic crimes. There were times the Buddha consulted the kings on how they applied legal procedure against certain crimes. That was to be more on the safe side so as not to clash with state laws. He used the thus obtained wisdom in introducing laws in the monastic Order too.³⁹³ Owing to the strong Brāhmanic influence, most of the Indian kings followed the laws given in *Dharmaśāstra* books compiled by Brahmins. However, the last authority in judicial procedure was, undoubtedly, the king.

The Buddha was the sole lawgiver for the Buddhist Sangha. This authority was never relegated to any other person. Monks used to bring forward to the Buddha the cases that they thought as unsuitable behaviors for monks in their community. After hearing such cases, the Buddha used to investigate the cases and decide on the appropriateness of the behavior. In this manner the Buddha continued to introduce new rules as the cases emerged. The compilation of these rules into a systematic compendium and methodically presenting them might have taken place with the development of fortnightly *upōsatha* meetings. Buddhist spirituality is not dependent on any divine authority and neither was

³⁹³ Lankānanda and Nānālōka, *Anguttara Nikaya*, 4:247.

the monastic law. It originated and developed in a solely human context and monks lived without any fear of a supernatural agent.

Regarding the five precepts given for lay people, the human element is also prominent. Living according to the precepts was a voluntary commitment. There was neither divine origin nor divine court one has to face for breaking the precepts. However, as breaking the precepts are *lōka vajjās* or *pakati vajjās* (worldly and natural crimes), two types of punishments are to be expected. The kings may punish the actions clashing with state laws. Even if one may escape the punishment by the state courts, the natural law of kamma will automatically follow the criminals and repercussions are to be expected.

The Buddha continued to keep the role of introducing Vinaya rules to himself until his *parinibbāna*. And he named no protégé to continue introducing further rules but gave the freedom to delete any small and minor rule the monks may find necessary to revise. Yet in the long history of Theravada there was no attempt to review and change any rules. When an attempt to change some rules was made by a revolting group, the *Therās* rejected it at the second council. Dissatisfied with their decision, revisionists left the camp and formed a sect called *Mahāsāṃghika*.

However, the judicial procedure was decentralized by the Buddha, allowing monastic communities to carry out investigating the confessed and complained cases and complete the punitive or restorative process according to the nature of the offence. This was done with the introduction of the *patimokkha uddesa* assemblies (fortnightly community meetings).

At his death bed the Buddha gave permission to the Sangha to revise minor rules as it might be necessary. Until his *parinibbana* (demise), the Buddha kept sole authority

of introducing Vinaya rules to himself. The reason why the Buddha kept the authority of legislation to himself is obvious. He was the founder of the Buddhist religion and the spiritual leader. He was the founder of Buddhist Sangha, and it was his responsibility, therefore, to introduce rules for the institutional health of the Order. There was no supernatural or extra human authority to appeal; only the human founder—the Buddha—was the sole authority to depend on in relation to religious matters.

The fact that he had the full authority of introducing and repealing laws was well demonstrated in the story of the twin miracle narrated in the *Dhammapada* commentary on stanza 181 of the *Dhammapada*. One *setthi* (millionaire) had an alms bowl turned out from a log of sandalwood and placed on top of a sixty-feet-long bamboo pole and proclaimed, “If anyone in this world is an *Arahant*, let him fly through the air and take this bowl” He made this declaration because there was a common belief in those days that *Arahants* or high achievers of spirituality should be able to perform miracles. Many non-Buddhist religious men tried to flatter the millionaire, claiming that they were *arahants* but did not like to show their ability to perform miracles for a small thing like an alms bowl. They tried to convince him that it was the duty of a wise and pious person like this *setthi* to offer the bowl to saints like them without asking for miracles. The millionaire, however, was adamant that the bowl would not be offered unless he was shown the power to perform miracles. No one was able to perform the expected feat, so the bowl was kept on the bamboo pole. The news spread far and people were confused over the genuineness of religious men. Having heard the news, the *Arahant* monk Pindola Bharadvaja was reported to have accepted the challenge, and he took the alms bowl

down, rising to the sky with his ability to perform miracles and making the Buddhists feeling elated.

When the Buddha came to know of the feat of Pindola Bharadvaja, he condemned the act and banned performing crowd-pleasing miracles with the aim of gaining fame and converting people to Buddhism. Having heard of this ban on performing miracles, the well-known six Samana leaders of the heterodox religions assumed that neither the Buddha, nor the Buddhist monks would perform miracles thereafter. So they went through the streets of the city proclaiming, “At the time the *setthi* challenged us to take the bowl down we did not perform miracle thinking that was not worth doing it just for a wooden bowl. But the disciples of the Master Gotama displayed their powers to the multitude just for the sake of an alms bowl. Master Gotama in his wisdom caused that bowl to be broken to pieces and laid down a precept forbidding his disciples to perform miracles. However, we will perform miracles now to show that we are superior to the Buddha if he accepts our challenge”³⁹⁴ Gullible people seemed to take their claim seriously and kept asking monks why the Buddha should not take the challenge.

Worried about the dilemma that the Buddha and his followers were in owing to the prohibition of miracles and the noisy challenge from the other religious dignitaries, King Bimbisāra asked the Buddha: “Venerable Sir, Now that the six Samana teachers keep on challenging you that they would perform miracles and Buddha is no match to them, what can the Venerable Master propose to do?” The Buddha responded: “If they would perform miracles, I do the same. I accept the challenge.” Then the King reminded the Buddha of his own prohibition of miracles. The Buddha responded: “I have not laid

³⁹⁴ “Amavathura,” subasa.lk, accessed June 02, 2019, <http://subasa.lk/pothgula/downloads/pdf/amawathura.pdf>.

down a proscriptive rule for myself; the precept was intended to apply only to my disciples” The king then asked, “Do you mean that the precept which you laid down was intended to apply to everyone else but you?” The Buddha stated that the person who establishes a law can have himself excepted. He explained it by providing a practical example with reference to the king’s mango grove. The king’s law prohibits anyone from entering the king’s mango garden and consuming mangoes. Yet that prohibition is not applicable to the king. Just as the king’s right to eat mangoes from his own garden is not affected by the king’s prohibition of anyone entering the garden and plucking mangoes, the Buddha’s own prohibition of performing miracles would not prevent him performing miracles. This reveals that the Buddha enjoyed the absolute authority in enacting monastic law³⁹⁵.

Treating the monastic code of rules – *Vinaya* – on par with secular law or comparing them is not considered suitable by some scholars. Observe Rebecca Redwood French and Mark A. Nathan:

Just as the prevailing notions of Buddhist monasticism have been built on faulty assumptions about the degree of separation between Sangha and lay society, so too have perceptions of Buddhism and law rested unsteady on the incommensurability of monastic law and secular law. The monastic-lay distinction has been interpreted as severely limiting the conclusions that can be drawn about the relationship of Buddhism to law. Some might go so far as to suggest that it precludes even the possibility of studying Buddhism and law, unless we are talking strictly about the *Vinaya* and the monastic setting.³⁹⁶

Having thus observed the how some scholars have created this unsound and rather discriminatory attitude to the Buddhist *Vinaya*, they comment further:

Most scholars of Buddhism recognize that the *Vinaya* is imbued with strongly legal characteristics and would agree that it can certainly be seen as a law code. Nevertheless, because this code and the legal practices or procedures associated

³⁹⁵ Ibid.

³⁹⁶ French and Nathan, *Buddhism and Law*, 8.

with it are portrayed as peripheral to the life of the laity, it is often considered tangential to the wider social ethics and secular legal norms that bear on their daily lives.³⁹⁷

However, in spite of different goal orientations, both the Vinaya and the secular law need to regularize the social life of monks and laymen respectively and therefore, legalizing and criminalizing of certain behaviors and also taking punitive and restorative actions seem to be equally necessary for both institutions. And scholars such as Grero have seen that the Buddhist Vinaya has much in common with a code of law. He even observes that some of the Vinaya rules could serve as a source of inspiration for those who wish to make certain beneficial changes in our prevailing legal systems.³⁹⁸ Rebecca Redwood French and Mark A. Nathan say:

...he [the Buddha] is said to have created a substantial body of law for the community of monks and nuns, making Buddhist law in this sense quite unique among the major world religions. A process of accommodation or adaptation to the legal, political, and social environments is plainly evident in the development of Vinaya, yet the existence of a complete law code gave the sangha sophisticated legal tools necessary to engage with lay society, political systems, and secular law wherever it became established.³⁹⁹

As the Buddha did not appoint any monk or nun as his successor to the leadership of the Order, the growth of the Buddhist law was virtually arrested with the *parinibbana* of the Buddha. So at the first council the participant seniors decided not to use even the permission given by the Buddha to revise minor rules if the monks were willing. They agreed on a very much conservative stand that the Sangha would neither revise any rule nor introduce new rules.⁴⁰⁰ Even though this stand is reported as having unanimous approval from the Sangha, it was challenged after 100 years of the first council. Those

³⁹⁷ Ibid.

³⁹⁸ Grero, *An Analysis of the Theravada Vinaya in the Light of Modern Legal Philosophy*, 141.

³⁹⁹ Rebecca Redwood French and Mark A. Nathan, *Buddhism and Law*, 9.

⁴⁰⁰ Lankānanda and Nānālōka, *Vinaya*, 2:288.

who adhered to this decision refused to allow a revision proposed by a group of monks called *Vajjīs*. The *Vajji* monks had made changes to ten rules not in the *pārājikā* or *saṃghādisēsa* category. Yet, in spite of the fact that the revisionists had even obtained the consent of lay devotees, the traditional “Seniors” (Theravādi) adhered to the stand taken at the first council. The ten issues were:

1. Carrying salt in a horn.
2. Extending lunchtime until two-inch shade after mid-day.
3. Accepting a second meal at a different village.
4. Performing *sanghakamma* to get approval later on.
5. Holding *uposatha* gatherings at various places within the same *sima* (boundary-marked locality).
6. Holding to customs continued traditionally.
7. Drinking buttermilk after midday.
8. Using seam-less sheets.
9. Drinking half-fermented toddy.
10. Accepting gold and silver

The main issue however, was the tenth point. Having the last rule agreed upon within their area, *Vajji* monks kept an alms bowl in the yard for lay people to put gold or silver money. At the end of the day the monks would count the heads and divide the day’s collection equally among them. A westerner⁴⁰¹ monk, *Yasa* by name, happened to visit and spend the day at a *Vajji* monastery. At the time money was divided, he refused to accept his share of money collected at the temple as he was a visitor. The monks of *Vesali* punished him by making him apologize to devotees (*patisārānīya kamma*) but he went on explaining to the devotees that he was right. Then the *Vēsāli* monks expelled him from the area (*Ukkhēpanīya kamma*). This resulted in a division of *Sangha* on the issue of revising the law. Revisionists formed a new branch of *Sangha*, calling themselves the majority of monks. The seniors remained calling themselves *therās* (elders); to others they were known as *Theravādins*.

⁴⁰¹ At that time the monks had already formed two groups – Westerners and Easterners.

For this reason, probably, even under pressing conditions, Theravādins were not supposed to revise any rule. Yet in Sri Lanka there was a time that Theravādins had to encounter practically difficult conditions. As with the time and space, socio-economic conditions had changed. Therefore without changing the original Vinaya texts they were pressed to arrive at compromises by compiling a compensatory text called *Pali Muttaka Vinaya* (Discipline not covered in Pāli).⁴⁰²

There are several versions of *Vinaya* other than Theravada. However, they all share a similar structure.

The Theravāda Vinaya codified in Pali, even though meant to be of limited application to the Sangha only, is an exemplary system of law. In other words, this twenty-five centuries old judiciary system seems to have been much ahead of its time.

Ananda Grero, a senior lawyer in Sri Lanka commented:

There is no doubt that all the Vinaya rules have been formulated on the basis of well-considered, realistic and meaningful objectives. Some of the Vinaya rules could serve as a source of inspiration for those who wish to make certain beneficial changes in our prevailing legal systems. In other words, the Vinaya rules could inspire one to make some useful re-adjustments or amendments in certain areas of the criminal justice system, which primarily stands for promoting a peaceful environment in society, so that any man or woman could pursue his or her interests, subject to the laws of land, without being unjustly interfered within their lawful rights.⁴⁰³

In fact when it comes to the physical punitive aspect of law, the Buddha leaves all such activities to secular law without creating any unpleasant situation. As explored earlier in this study, when considering lay discipline, even though the criminality of five precepts may be recognized, the legal handling of them is left to the state. Buddhism

⁴⁰² Anne M. Blackburn, "Looking for the Vinaya: Monastic Discipline in the Practical Canons of the Theravada," *Journal of the International Association of Buddhist Studies*, Volume 22, No. 2 (Cambridge: Cambridge University Press, 1999), 288.

⁴⁰³ Grero, *An Analysis of the Theravada Vinaya in the Light of Modern Legal Philosophy*, 341.

explains to laymen that there are karmic repercussions even if they avoid state law. Further, Buddhism explains the positive advantages of refraining from the criminal activities related to the five precepts. Thus, with regard to laymen's morality Buddhism takes a religio-philosophic stand and does not interfere with state rights of handling crime. Monastic "punishments" in relation to the monk's misdemeanors stand quite separate from the state rights of penalizing the criminals. They do not stand in the way of the state dealing with crimes committed by monks. And the Buddhist law precludes criminals joining monkhood to avoid state punishment.

The highest possible crimes a monk could commit are *pārājikā* offences. There are four *pārājikās*, viz.

- 1) Sexual intercourse (*Mēthuna dhamma*),
- 2) Stealing (*Adinnādānā*),
- 3) Killing a human being (*Manussa viggaha*),
- 4) Falsely claiming achievement of sanctity (*Uttarimanussa dhamma*).

The punishment for *pārājikā* offences is monastic "capital" punishment: excommunication, which means the offender will no longer be accepted as a monk. Then the government may take action against his crime. And the law of kamma will operate naturally in a samsaric context, except that neither the Buddha nor monks would institute any physical punishment. For the Buddhists he ceases to be a monk; as the crime he has committed is grave in nature, it is impossible to reinstate him as a monk.

The Buddhist Vinaya is very sophisticated in defining crimes while considering punitive and rehabilitative action. When it deals with *pārājikās* (the gravest crimes in monastic terms), for instance, every element of crime is taken into consideration before taking any punitive action. In relation to the *Manussa viggaha* (killing a human being) *pārājikā*, the rule not only covers the actual killing of a victim but also any monk who

incites someone for suicide is also considered *pārājikā* (defeated in monkhood). To include any such inciting of someone to kill himself the law is carefully worded:

Whosoever a monk intentionally deprives a human being of life, or should provide a weapon to be used in killing, or should praise the beauty of death, or should incite one to death telling “what is use of this evil difficult life? Death is better for you than living”, or deliberately, purposefully praise death in several persuasive and encouraging ways and facilitate the death in various ways he is deemed defeated and not to remain in communion.⁴⁰⁴

Comparing this with the penal code of Sri Lanka, Grero opines that intention is more clearly defined in Vinaya than the penal code.⁴⁰⁵ He also has stated “...we are of the view that our criminal law should follow methodical and clear-cut system adopted in the Vinaya in defining all such ingredients of a rule.”⁴⁰⁶

Sutta vibhangha or the section of Vinaya that presents *pātimokkha* rules is in a series of four steps. *Pātimokkha* is the compendium that sums up all proscriptive rules to be used as handbook and to be recited at fortnightly meeting (*upōsatha*) to invite the participants to confess their transgressions, if any. The *pātimokkha* of the monks is divided into eight sections, while the nuns’ *pātimokkha* has seven sections. The first seven sections of monks (six for the nuns) present proscriptions. The last section, common to both monks and nuns, contains seven judicial procedures for settling cases. The presentation of the rules is done on the basis of the gravity of crimes, not in historical sequence. The arrangement of the *Suttavibhangha* text also follows the same sequence adopted in the *pātimokka*. For instance, *pārājikā* offences, the most serious crimes to which the severest punishment—excommunication—is given, come first. Then comes

⁴⁰⁴ “Yo pana bhikkhu sancicca manussa viggaham jivitam vorapeyya, sathaharakam vassa pariyeseyya, marana vannam va samvanneyya, maranaya va samadapeyya, ‘Ambho purisa, kim tuyhimina papakena dujjivitena, matante jivita seyyo’ ti iti cittamano citta samkappo aneka pariyayena marana vannam va samvanneyya, maranaya va samadapeyya, ayampi parajiko hoti asamvaso,” Tatiya Parajika Sikkha. I. B. Horner, *Parajika Pali*, 180.

⁴⁰⁵ Grero, *An Analysis of the Theravada Vinaya in the Light of Modern Legal Philosophy*, 143.

⁴⁰⁶ *Ibid*, 145.

Samghādisēsa, which makes a monk liable for being sent for probation. Then follows the other groups of wrong doings, viz., *nissaggiya pācittiya* (entailing forfeiture and confession), *pācittiya* (entailing confession), *pāṭidēsanīya* (entailing acknowledgement), and *sekhiya* (trainings rules), for which the punishment is apology and assuring to the “courts” that he would not commit the offence again.⁴⁰⁷ There is group called *aniyata*, which only has two items that are confessional offences. As nuns do not have *aniyatās* they only have six groups in the crime. The story leading up to the rule (*nidāna*):

1. The rule (*patimokkha sikkhā*), which normally indicates the penalty incurred for breaking it.
2. Defining it word by word (*padabhājanīya*).
3. More stories reporting deviation from the rule and showing the gravity of such acts which should be considered for penalizing, acquitting or reprimanding.

In order to see how complete the systematic the formulation of *Vinaya* laws is and the way it encompasses all necessary aspects, let us observe how the first *pārājikā* is presented in *Sutta vibhaṅga*. In the *pārājikā Pāli*, the chapter on first *pārājikā* begins presenting the reason why the first *pārājikā* rule was introduced. It is a story of a monk called Sudinna having sexual intercourse in order to make his former wife pregnant on the insistence of his parents. When he was informed of this, the Buddha introduced the first *pārājikā* rule in simple form: “If any monk has sexual intercourse he becomes defeated and excommunicated.”⁴⁰⁸

Then one monk looking for a loophole in the rule enjoyed sex with a she-monkey trained specially for this deviant act. Monks who noticed this informed the Buddha of it. Then the Buddha had to strengthen the rule adding the words “even with an animal.”⁴⁰⁹

⁴⁰⁷ Ibid., 145-146.

⁴⁰⁸ “Yo pana Bhikkhu methunam dhammam patiseveyya parajiko hoti asamvaso.” I. B. Horner, *The Book of the Discipline: Vinaya Pitaka*, vol. 1 (London: The Pāli Text Society, 1982), 38.

⁴⁰⁹ Ibid., 40. “antamaso tiracchanagatayapi.”

The next step of improvement of the rule was when some Vajjiputtaka (belonging to the Vajji tribe) monks who broke the rule admitted that they had broken the rule while still remaining in the robes but now wish to get reformed and reinstated in higher ordination. The Buddha refused the request and said “if they disrobed and had sex they could have been forgiven and readmitted; but as they did it still being in the robes without admitting inability it was impossible to consider their request. So they were not readmitted as higher ordained monks.” Then the rule was reformulated by adding the close, “without discontinuing the training, still remaining in the robes.”⁴¹⁰

With this the first *pārājikā* rule developed into the present shape. The next step was providing detailed definitions of all terms. Every word is defined to rule out any possible misinterpretation and avoid ambiguity as in modern laws. For instance, terms like monk (*bhikkhu*), training (*sikkham*), and not disavowing training not declaring weakness (*sikkham apaccakkhāya dubbalyam anāvikatvā*) are defined at length, not leaving for any doubt.⁴¹¹ Indulging in sexual intercourse is even defined to include females of animals. Defeated (*pārājikā*) meant a monk indulging in sexual intercourse is not a true recluse, not a son of the Sākyans, therefore called one who is defeated.⁴¹² Sexual intercourse is clearly defined as a male organ being made to enter the female even for the length of a sesame seed. Females are described as three kinds: human women, non-human females, female animals. It also precludes sex with hermaphrodites, eunuchs etc. Three major forms of sexual indulgence – oral, vaginal and anal – are identified as defeating ways of sexual intercourse.

⁴¹⁰ Ibid., “sikkham appaccakkhaya dubbalyam anavikatva.”

⁴¹¹ Ibid., 46.

⁴¹² Ibid., 42.

After the finally formulated form of the law is stated and every word in the rule is well defined (*padabhājanīya*), the Vinaya text presents two additional sections called *Santhata bhanavara* and *Vinitavattu*. In the *santhata* section many possible imagined applications, violations and complicated issues are discussed. In the *Vinita vattu* section several case stories related to the rule are given with the solutions offered. Those incidents relating to the rule were brought to the Buddha. The judgments given by the Buddha make the application of the rule more precise, leaving no room for misinterpretations. In the process of hearing a case relevant to this kind of *pārājikā* offence, what is given as interpretations and examples in *santhata* and *Vinita* sections become very helpful.

Two notable characteristics emerge in the way *pārājikā* crimes are dealt with. One is that the first offender is exempted from legal punishment as there was no rule at the time he committed the offence. Buddhist monastic law states that when there is no law, there is no violation of law and therefore, for the first doer no charge (*ādikammikassa anāpatti*). The reasons given are 1) non-existence, 2) not knowing the consequences. From a legal viewpoint, this is a highly sophisticated and just approach to law enforcement. It is simple wisdom to hold that when there is no law, there is no crime.

One very important and commendable characteristic in the Buddhist criminological thought is its emphasis on the psychological aspect of crime. As the first stanza of *Dhammapada* states it is a Buddhist axiom that mind precedes every action. Mind is supreme and mind leads people.⁴¹³ In other words, Buddhism analyzes the intention behind the action. For instance, Buddhism speaks of killing as a crime if there

⁴¹³Narada Thera, *Dhammapada*, (Colombo: Culture Center 1971), 1. Verse 1, “Mano pubbangama dhamma – Mano settha manomaya.”

were an intention of killing. According to the Buddhist view, if there is no criminality in intention there is no criminality in action. According to Grero, intention and knowledge are defined more clearly in the Buddhist law than the modern Sri Lankan criminal law (Section 294 of the Penal Code).⁴¹⁴ The way Vinaya rules are promulgated shows that assessment of the state of mind of a monk or a nun is very important in ascertaining the nature and gravity of the action. It is because the Buddhist Vinaya as the other training programs such as meditation has the control and elimination of defilements from the mind as an important goal. There is no offence for one who does not know (*ajānantassa*). This stands in contrast with the Jain idea of crime. Jainism is well known for its non-violent ethics. It maintains that if any tiny creature were stamped upon while someone was walking, even if he did not know of it, he is responsible for the crime of killing. Even though there was no intention of killing, they argue, it was the walking man's responsibility to carefully observe if there were any tiny creature. Being careful not to kill is quite in harmony with Buddhism too, yet unintentional killing is no crime in Buddhism.

In another case a monk had a jewel hidden in his robe by a travelling companion to evade customs tax. As it happened in total ignorance and he would not approve such a thing if he knew it he was innocent and he did not commit *pārājikā* offence.⁴¹⁵ Once again a Buddhist monk allowed another monk to taste his begged food first without knowing that the food had been poisoned. The other monk died immediately. He was also

⁴¹⁴ Grero, *An Analysis of the Theravada Vinaya in the Light of Modern Legal Philosophy*, 144.

⁴¹⁵ I. B. Horner, *Vinaya*, 3:62,

judged and the verdict was that he was not responsible for the crime.⁴¹⁶ There are many stories in the *pārājikā pali* like this.

When a person is suffering from a mental turbulence (whom people call “mad person,” *ummattaka*) he is likely to lose moral sense and commit a crime. Being under such medical condition, whatever he commits does not constitute a crime. Mentally confused persons should not be treated as someone who has complete moral control. He, therefore, has to be treated as someone who has no intention of doing the wrong action that he had done. His action has to be called *acittaka* (unintentional), for which he is not fully responsible.⁴¹⁷ The commentary explains: “Where one commits an offence only when one is with *citta* that is *sacittaka*; where one commits an offence when one is without *citta* that is *acittaka*.”⁴¹⁸ Among the seven *adhikarana samathās* there is a specific procedure the judges have to take called *amūlha Vinaya* (condition of sanity). This procedure compels ascertaining that the accused was not mentally sick at the time of committing the crime to hold him morally responsible for it.

Buddhist law is flexible and compassionate. It does not make judges jump into conclusions *prima facie*. If the nature of a case presented necessitates consulting expert opinion the judges are requested do so. A good example for this is the case of Kumara *Kassapa Mātā Bhikkhunī*. When it was found out that this *Bhikkhunī*, who was a married woman before her ordination, became pregnant, the Buddha consulted Visakha, a knowledgeable lay devotee to examine her and report to rule out the possibility of her having broken of any monastic rule. She found out that the *Bhikkhunī*'s morality was

⁴¹⁶ Ibid, 80.

⁴¹⁷ I. B. Horner, *Vinaya*, 5:125 and 207.

⁴¹⁸ Birabal Sarma, *Vinaya Commentary* (Samanta Pasadika Vinayatthakatha) (Nalanda: Nava Nalanda Maha Viharaya, 1964), 270.

intact and it was a pregnancy that was caused before she joined the Order. She ordained in the Order without knowing that she was pregnant at that time. Thus calling for expert evidence is a positive feature of Buddhist criminological practice.

Buddhist punitive procedure is non-retaliatory and reformatory in approach. The only punishment one might call apparently destructive is what is given for *pārājikā* offences. However, it is an offence of maximum gravity which goes completely against the goal of monastic training. That is why it is terminologically called *pārājikā* (defeat) and therefore reformation has a limit. The punishment, therefore, is excommunication. Yet we need to note that it does not mean complete condemnation of the person as having no more hope. Even though he may not qualify for another opportunity of higher ordination, he can still practice the Buddhist path of purification as a layman or a novice.⁴¹⁹ There is no physical punishment or any kind of torture. The next group of crimes, *Samghādisēsa*, are reformatory and the only punitive procedure is sending the offenders for probation (*parivāsa*). During the period of probation the monk is made to feel the gravity of his offence and behave apologetically and remorsefully. He will promise in an assembly of not less than twenty monks not to commit the same crime again. All the rest of the offences are forgiven at a confessional meeting. The confession follows a promise to get reformed and refrain from committing it again. This shows that maximum interest is taken in reformation and forgiving, not at retribution. Even the highest punishment leaves an alternative program open for those accused of the worst crimes within a monastic climate.

However, there exists rather an unusual procedure in the monastic criminal process to prevent false accusations against innocent people. In the modern court practice

⁴¹⁹ I. B. Horner, *The Book of the Discipline: Vinaya Piṭaka*, 1:42.

if somebody tries to get someone else a punishment by falsely accusing him, the judge will punish him for his falsehood (or trying to mislead courts). The Buddhist monastic procedure adopted by the Buddha himself was not as simple as that. Even simple lying is strongly discouraged in Buddhist monastic discipline. At all fortnightly confessional meetings (*upōsatha*), the preparatory remarks given by the chair monk contains strong condemnation of falsehood. Therefore someone who gives false evidence is considered criminal and deserving of stern treatment. One good example from the Buddha's time is the story of Venerable *Dabba Mallaputta*. One *Bhikkhuṇī* called *Mettiya* made a complaint against Venerable *Dabba Mallaputta*, claiming that he had sex with her. It was found out that it was a false allegation and the monk was acquitted. However the Buddha who functioned as the judge ordered *Bhikkhuṇī* *Mettiya* to be excommunicated. It was done not on the charge of making false accusations, but by taking her own confession of sexual intercourse (*tassa paṭiñña*) as asking for punishment.⁴²⁰ Someone might find this decision is not right as it is not the way to punish someone giving false evidence before the courts. However in the eyes of the Sangha this is much more serious offence than giving false evidence. It is making a false confession to make an innocent person partner to a major offence that if proven, qualifies him to be condemned and excommunicated. Therefore the punishment to such a serious offence has to be a strong warning against people who try to make false claims to tarnish the image of an innocent and blameless people.

Theravada seems to show special interest in the inviolable authority of courts. The Theravada law insists that it is nothing but the law that makes someone punishable, not the personal Sangha who applies the law to a case. Therefore criminals or offenders

⁴²⁰ Ibid., 2:74; 3:158.

should not blame the court procedure or the judges (*kammaṃ na garahītabbāṃ Kammikā na garahītabbā*) which is in this case the Sangha who assemble in the confession hall (*sīmā*). There, of course, is no formal appealing system left by early Sangha, yet as the highest body today is Sangha and as the case is heard by the Sangha, there is no supreme body above the Sangha to appeal to. That is the reason why all the lawsuits are taken case by case collectively by the Sangha. And the Sangha is a group of judges; no single monk gets involved as an individual judge. Therefore, no one should criticize the judges (*kammikā*); nor is the judgment (*kammaṃ*) to be blamed (*na garahītabbā*) for actions which were carried out in the name of law. Actually, therefore, there is no need for an appeal court. Complete law and the essential conditions of legal procedure are recited verbatim at the open court. Thus law and legal process is kept above all individualities and no personality of judges or jurists or anyone related to judicial procedure is supposed to be subject to insult.

Conclusion:

In our discussion so far we have seen many modern and sophisticated features of the Theravada Buddhist approach to crime and control of crime. From the defining of crime to the punishment, some parallels may be noticed. Sociologists, for instance, defined crime is an act that is prohibited by law. An act is considered criminal, if the state concerned has illegalized (criminalized) it. Anthropologists, tracing the history of laws to social norms, claim that people create norms on the basis of their own views of acceptable and non-acceptable behavior, thinking that what stands to harm and deprive them of their personal rights is “criminal.” Even before the laws were made, people

wanted to punish the miscreants. It was noted that there are close parallels in Buddhism to these views.

Theravada Buddhist myth on the origin of law, crime and punishment, presented two millennia before the modern theories, seems to anticipate this anthropological theory. According to the Buddhist discourses laws and crimes are interrelated. Buddhist story states that the first crime was stealing and other major crimes like abusing, lying, killing, etc. followed one after other, which necessitated a lawmaker who could punish criminals.

As detailed, Buddhism recognizes secular or universally acceptable crimes as *lōkavajja* and monastic misbehavior as *paññatti vajja*. Arresting, prosecuting and punishing *lōkavajjās* is left for the state and therefore, neither the Buddha nor monks are involved in that procedure. However, Buddhism maintains that even if a criminal manages to avoid state punishment there is a natural moral process called the law of *kamma*, which brings punishment for crimes people commit. Buddhism does not claim any “Buddhist” involvement in this “natural program” and holds this simply as a universal phenomenon. Sociologists or criminologists do not contribute to such theories as they are beyond scientific verification. However, even though they do not speak of *karmic* repercussions one experiences after death, psychologists agree that those who break ethical norms suffer guilty feelings in this life.⁴²¹ After all, many criminals may feel guilty after committing crime.

Some of the major reasons for crime and criminal behavior identified by concerned social thinkers and criminologists include shortcomings of educational systems, financial difficulties, unsuccessful marriage, abuse of male supremacy through cultural and religious beliefs, and even domestic violence. Psychologists have focused on

⁴²¹ Alma E. Guinness, *ABC's of the Human Mind*, 232.

mental factors while sociologists and political thinkers focus on socio-economic factors. Disbelief, faithlessness and insensitivity to ethical considerations are thought of as central reasons by religious dignitaries.

The factors need to come together for a crime to occur are: desire or motivation, skills and tools and an opportunity. These three, more or less, reflected in the Buddhist analysis of crime as well. For instance in the Buddhist analysis of five moral precepts recommended for crime free living, it is indicated that the desire or motivation, use of skills and tools and the actual committing of the crime have to be there for the completion of a crime.

It is agreed that a person may take on criminal behavior due to one or more than one of these reasons:

- 1) Chosen of his own free choice,
- 2) Propelled by the environment he is brought up in – for instance, a broken home, lack of education.
- 3) Seemingly the only option left for him if he is unable to conform to society or
- 4) Adopted in consequence to exposure to other criminals.

The Buddhist analysis of the reasons for crime, as with any other problem, follows the technique of dependent origination. It is one more or less similar to the way criminologists are conducting their research for finding the reasons why people resort to crime. In several discourses of the Buddha we find explanations relating to the reasons for criminal behavior along with concrete examples as to how crime and criminal behaviors were resorted to in past societies and the ways the political advisors of the time guided the leaders on how the problem could be addressed.

The Buddhist approach to the problem of crime and punishment is mainly ethical, both in a religious and philosophical sense. The Buddha has, in fact, given certain ethical

guidelines that a Buddhist practitioner may use in deciding whether his action is ethical or otherwise.

1. Is this action beneficial or harmful?
2. Is it meritorious or de-meritorious?
3. Is this right or wrong?
4. Will knowledgeable people condemn this or would they praise it?
5. Will the consequences be unpleasant?

If one gets ethically positive answers to these questions he is free of a criminal mind. His actions will be ethically justifiable.⁴²²

Buddhism has offered a very useful typology based on social ethics which could be used in analyzing crimes psychologically. Buddhist definition of *akusala* (unwholesome actions) are good examples. It identifies the harmful motives behind crimes and offers an effective meditational technique employable in rehabilitation of criminals and crime control.

For monastic indiscipline which does not constitute a crime in lay terms there is an “in-house” punishment procedure. Those punishments are reformatory and not destructive. No physical punishment of whatever is applied to any monastic criminal behavior.

The Buddhist five precepts is an identification of essential type of crimes and the motivation of followers to refrain from crimes. The way it is presented and the evaluative discourses make it practicable universally without referring to the Buddha. Justification for the moral philosophy behind the precepts is made in terms of social well-being.

Some of the major reasons for crime and criminal behavior identified by concerned social thinkers and criminologists include shortcomings of educational systems, financial difficulties, unsuccessful marriage, abuse of male supremacy through

⁴²² Lankānanda and Nānālōka, *Anguttara Nikaya*, 1:336.

cultural and religious beliefs, and even domestic violence. Psychologists have focused on mental factors while sociologists and political thinkers focus on socio-economic factors. Disbelief, faithlessness and insensitivity to ethical considerations are thought of as central reasons by religious dignitaries.

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