Manuskript für Festschrift
Rissho University
October 1992

# The Laws of the Buddhist Sangha: An Early Juridical System in Indian Tradition

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It is a great privilege for me indeed that you have kindly invited me to represent the "Seminar für Indologie und Buddhismuskunde" of the "Georg-August-Universität" in Göttingen at the auspicious occasion of the 120th anniversary of Rissho, one of the world's leading centers of Buddhist studies. In this year, we have concluded an agreement of academic cooperation between our institutions. Now I have the honour to elaborate on a subject which forms part of the research activities in our institute, viz. on the laws of the Buddhist Sangha as an early legislative system in Indian tradition.

The Buddha established the Sangha as a community of monks and nuns in order to help them to reach enlightenment. Life in the Sangha was regulated under this very aspect. This point of view has been widely discussed in various studies of Buddhist monastic law. In the present report, however, I shall make an attempt to stress a generally neglected aspect of the legal heritages of Buddhism, viz. its importance as a system of law and its place in ancient Indian legal tradition.

Usually, only the Dharmasūtras, the Dharmaśāstras and the Kauṭalīya-Arthaśāstra are considered, if one speaks of sources of ancient Indian legal literature. However, despite the great number of detailed elaborations of numerous legal clauses in, for instance, the *Arthaśāstra*, we are not dealing here with law books in our sense of the word, that is, with a self-contained, consistent system, ensuring an independent dispensation of justice.

When we review the totality of the transmitted literary sources from Indian tradition we make the surprising discovery that an ancient Indian legal system has been handed down to us that reaches further into the past than the aforementioned law books, and that is also more "modern", or to be more exact, more advanced, according to our present-day conception of law, than all the remaining legal literature produced by ancient and mediaeval India. This is the law of the Buddhist Order of monks and nuns.

Buddhist monastic law is formulated in the *Vinayapiṭaka*, i. e. in the first part of the collection of canonical scriptures, and is supplemented by numerous commentarial works. It is, naturally, a special law for this Order only, and it was devised with the purpose of uniformally regulating the legal affairs of the members of the Buddhist Sangha. As in Hindu law, this legal system is legitimized by a religious source, which, however, is quite different from that legitimizing Hindu law: the sources maintain that all the essential regulations of the Buddhist legal system were enacted by the historical Buddha. The Buddha is thus both a religious teacher and a lawgiver. It was held that—in theory, if not in practice—this law code has remained valid without any changes throughout the centuries until today. It can be disputed whether this was really the intention of the Buddha. According to a, in my view, quite believable tradition, shortly before his death the Buddha had permitted the Sangha to repeal the so-called "minor rules". This tradition further relates that, shortly after the Buddha's death, the Sangha decided not to alter any of the rules enacted by the Buddha. The Sangha, in other words, relinquished its right to change the "minor rules".

Apart from the fact that a legitimation on a religious basis is postulated, Buddhist monastic law has little in common with Hindu law. The Buddhist monastic rules regulate the life within a community which has set for itself a purely religious goal, namely release from the cycle of rebirth and death. Such regulations must ensure that the members of this community can in fact devote themselves, as far as possible, to this goal. The procedures themselves are almost completely of a legal nature, and thus largely without direct reference to the way of liberation as taught by the Buddha. In assessing this legal system, the majority of modern readers of the *Vinayapiṭaka* have allowed themselves to be decieved by some of the stories which preceed the actual

regulation. These stories give accounts of the precedent which gave rise to the pronouncement of a rule and many of them contain sermons and religious instructions. While it is true that these stories form a part of the text, they are not a part of the legal system.

A further necessity resulting from the goal set for the Sangha is the strict avoidance of conflict with state and society. The monks are to behave decently and cause offence to none. No one who is in the service of the king or is in debt bondage may be accepted into the Sangha. An entire series of relevant regulations served to ensure that the Sangha would not run into conflicts with the secular powers and secular law. As is well known, communities of ascetics with their own internal regulations were quite common in ancient India. The conditions prevailing in society enabled such communities of ascetics to exist within the Hindu social order without coming into conflict with this. On the other hand, they were allowed to ignore the validity of this Hindu social order for the life within their own communities. The possibility to completely withdraw from social life as a *Sannyāsin* provided the social framework for such a situation.

Among the principles resulting from these circumstances belongs the separation of Sangha and state, even in predominantly Buddhist societies. In the course of history, however, this principle became increasingly disregarded. The holders of state authority naturally wanted to exert influence on the Buddhist communities. That, on the other hand, the Buddhist Order could become a powerful "state within a state" whose influence in some Theravāda countries occasionally was stronger than that of the secular powers, and that it could even—as in Tibet—become a state power itself, resulted from several factors, which I cannot go into here. Such a development certainly contradicts the spirit and, in part, the letter of the Vinaya. But this development is hardly known to have occurred in the Indian "motherland", even during those periods when Buddhism exerted considerable influence. One of the prerequisites of this development was the fact that, as will be explained later on, large domains of Sangha life were not regulated in the Vinaya because they were considered irrelevant for the life of the early Sangha.

The text of Buddhist legislation, i. e. the *Vinayapiṭka,* has been handed down in various recensions which deviate from one another in many details. These deviations result from the Buddha's order that his teachings were not to be codified in the form of a corpus of holy scriptures such as the Vedas, but rather that they be allowed to be freely transmitted in the relevant dialect of the people. Thus it is not at all surprising to find regional differences. It was not before the formative period of the various so-called schools (*nikāya*) that the texts were codified. The most consistent codification of the canon was carried out by the Theravādins.

The aforementioned textual differences concern no fundamental questions, but only relatively unimportant details. Moreover, the structure of all the versions of the Vinaya remains the same, and this may be said of all the legal clauses of basic importance as well. The legal clauses are embedded in such reports as mentioned, viz. in the stories preceeding the promulgation of a rule; these stories describe the event occasioning their proclamation by the Buddha, thereby legitimizing the particular regulation. Whereas it is quite obvious that these stories were being handed down quite freely during the period of purely oral transmission, the legal clauses themselves, as well as the legal formulas, were rather exactly formulated much earlier.

Every version of the *Vinayapiṭka* begins with the *Vinayavibhaṅga,* which contains the rules of the *Pāṭimokkha* (skt. *Prātimokṣa*), i. e. the confession formula, together with the introductory stories, and followed by commentaries on the particular rule and the discussion of special cases. Particularly here do we find legal principles which appear astonishingly modern. For example, a first offender is exempted from punishment according to the legal principle "nulla poena sine lege"; intentional acts are distinguished from acts of negligence; the perpetrator's unsoundness of mind as well as the assessment of the trial are regulated.

The legal acts of the Sangha, each of which must be carried out under the use of a prescribed text, are regulated in the *Khandhaka* (Sanskrit equivalent: *Vinayavastu*), the second section of the *Vinayapiṭaka.* These legal formulas (*kammavācā;* Skt. *karmavācanā*) provide the framework for the *Khandhaka* in a way similar to the Pāṭimokkha providing the framework for the *Vinayavibhaṅga.* Most versions of the *Vinayapiṭaka*

contain a third, evidently more recent section constituting both a sort of supplementary and complimentary work.

As early as in 1881, Hermann Oldenberg in his still up-to-date, classical treatment of early Buddhism, vigorously pointed out to what a great extent "the external regulations, which establish the spiritual customs and the ecclesiastical law of the life within this monastic community" follow firm legal norms.

It is quite surprising that later Buddhological research has almost completely neglected the investigation of the *Vinayapiṭaka* as a legal source, though it has made tremendous progress in nearly every other area since the appearance of the first edition of Oldenberg's *Buddha* 111 years ago. My search, three decades ago, for useful works on Buddhist monastic law, to be used in the context of the discussion on the interpretation of Aśoka's so-called schism edict, was unsuccessful. Only by referring to an interpretation taken directly from the source was I able, at that time, to clarify the meaning of the word *saṅgha* as a legal term. Despite the publication of several books on the subject in the meantime, André Bareau, thirty years later, in his most recent research report in the 1991-92 Collège de France yearbook, was still given cause to characterize this area as "generally much neglected in the west."

One of the most noticeable features of the *Vinayapiṭaka* is the almost complete absence of contradictions within this system. This is achieved, where necessary, by the provision of exceptions to the rules. There are practically no instances in the *Vinayapiṭka* of the Pāli school where contradictory rules appearing in different passages would result in inconsistencies in the Buddhist administration of justice. The corpus of texts was quite clearly subjected to a deliberate and systematic redaction.

Nonetheless, the traces of historical development have not been completely blurred. As early as in 1879, Oldenberg, in the introduction to his edition of the *Mahāvagga*, pointed out that two terms indicating categories of offences are used in the *Khandhaka* for violations against the stipulated conduct which do not appear in the *Pāṭimokkha*. These are, namely, *dukkaṭa* for a misdemeanour and *thullaccaya* for a serious offence. In this connection Oldenberg points out that knowledge of the *Pāṭimokkha* rules is

assumed throughout the *Khandhaka;* that, in other words, the construction of the complete system and the integration of the various stages of historical development within this system have been achieved. The *Pāṭimokkha,* which was completed earlier, was consulted extensively during the redaction of the *Khandhaka.*

The utilisation of this legal system necessitates knowledge of the entire Vinaya. This holds true, of course, for the interpretation of these texts as well; they must be understood as part of the complete context, and not as collections of isolated statements. It is, furthermore, necessary to refrain from reviewing the *Vinayapiṭaka* as a work that can be understood by simply reading it sentence to sentence. The majority of authors who have written secondary literature on this subject—that is, works which attempt to describe early Buddhist monastic jurisprudence—work with methodological theories which actually hinder a correct understanding of this legal system. Several authors attempted to reconstruct the historical development of the Buddhist monastic tradition without understanding or even recognizing that the system of rules is a closed system. The result is an unsystematic mixture of information taken from the texts and speculations yielding an indistinct picture. To give a characteristic example of such a treatment, I cite Sukumar Dutt's *Early Buddhist Monachism* (published in 1924). This handbook is today still often used and quoted. This holds true, in many respects, for most of the more recent works on the subject, which all follow more or less the same pattern of description.

Another group of authors work with a purely comparative method. They assume—with certain restrictions quite correctly—that the regulations common to all Vinaya recensions are original, or, at least, very old. In so doing, these authors, however, loose sight of the legal system which is found in the particular text and which must serve as the basis for a historical analysis.

An exception to this is the indigenous literature in Buddhist jurisprudence, i.e. works which are intended for the practical use of the Sangha. Such works are written in Sinhalese, Burmese or Thai. Only one large work of this type has been translated into a Western language; namely, *Vinayamukha,* written by Vajirañāṇa Varorasa (1860-1921), Sangharāja in Thailand. The Thai version, published in 1921, was translated into English in three volumes and published between 1969 and 1983.

In order to exemplify the necessity of understanding the regulations of the Vinaya as a complete system, I would like to return to the aforementioned interpretation of the so-called schism edict of Aśoka (see my paper, "Aśokas Schismenedikt und der Begriff Sanghabheda", *Wiener Zeitschrift für die Kunde Süd-und Ostasiens* 5, 1961, 18-52). In this inscription we read *saṃghe samag(g)e kaṭe, samghasi no lahiye bhede:* "The unity of the Order is (re)established. A schism within the Saṃgha cannot be tolerated", following Alsdorf's 1959 translation (*Kleine Schriften,* p. 416). Alsdorf, like other scholars prior to him, founded his interpretation of this passage solely on the accounts of Aśoka's Sangha reforms found in the Pāli chronicles, particularly the *Mahāvaṃsa.* Now, it is undoubtedly true that the inscription refers to the same monastic reform as that mentioned in the chronicles. However, Alsdorf overlooked the fact that the interpretation of the terms must be sought in sources other than the Pāli chronicles, which were composed a half millenium after the inscription. It is important to bear in mind that we are concerned here with one of the so-called Buddhist edicts; Aśoka is formulating an instruction to the Sangha. It is thus to be assumed that the king is applying legal terminology used by the Buddhists, particularly since he is laying down law in his edict, or, to be more precise, is effectuating and commanding the application of Buddhist law with the authority of the state.

We do find, in fact, the relevant terms and the rules in the Vinaya which underlie Aśoka's edict. We find the combination of the terms *saṅgha* and *samagga* in the rules for the carrying out of the *uposathakamma,* i. e. the regular confession ceremony. Concerning this, the Buddha said: *anujānāmi samaggānaṃ uposathakammaṃ,* "I order the confession ceremony for a complete (community of monks)" (*Mahāvagga* II. 5.1). Most Vinaya interpreters down to the present day have translated the word *anujānāmi* as "I permit", "I allow", both of which are incorrect in this context: it means "I order" here.

The text (*Mahāvagga* II. 5. 2) explains how *samagga* is to be understood: *anujānāmi... ettāvatā sāmaggī yāvatā ekāvāso.* The condition of completeness (of the Sangha) is therefore fulfilled when all the monks of one particular residential district (*āvāsa*) have assembled. Since, however, reservations of uncertainty may arise concerning the actual boundaries of a residential district, this legal term *āvāsa* is, by means of

another term, defined more precisely: *anujānāmi... sīmaṃ sammanitum*, "I order a boundary (*sīmā*) [for the residential district] to be established" (*Mahāvagga* II. 6. 1). *Sīmā* thus more closely defines *āvāsa* as is necessitated for the execution of legal procedures. *Āvāsa* is the term which, in its negative form *an-āvāsa*, "the place where there are no monks' dwellings", also appears in Aśoka's inscription. The word *sīmā* which normally means simply "boundary", acquires the special meaning here of the district from which all monks must assemble in full number in order to carry out a valid confession ceremony. In the case of several *āvāsas* being within one *sīmā*, a further regulation provides that all the monks of these *āvāsas* must assemble together in one place. Thus, *āvāsa* is to be taken here in its nontechnical sense of simply "monks' dwellings". This juxtaposition of technical and conventional word usages has led to considerable problems in the attempts to interpret the Vinaya. Thus, we can determine only within the given context whether, for example, *dhamma*, as it appears in the *Vinayapiṭaka*, means the teaching of the Buddha, i.e. the teaching of the path to liberation, or the law promulgated by the Buddha, i.e. the entirety of the Vinaya regulations, as the technical usage would have it.

The fundamental significance of the *sīmā* rules is shown by the fact that any legal act is valid only if executed within a validly established *sīmā*. This is of prime importance for the *upasampadā*, the ordination of the monk. The regulations concerning the *sīmā*, which do not appear until the second chapter of the *Mahāvagga*, are presupposed for the ordination proceedings, which are described in the first chapter. So here, too, the legal codex must be grasped as a whole and not be divided into parts to be applied in isolation. Starting from these presuppositions, Petra Kieffer-Pülz (in a Göttingen dissertation soon to be published, in an expanded form, under the auspices of the Waldschmidt-Stiftung) has investigated all the rules and references to rules concerning *sīmā* in the Theravādin Vinaya, the *Samantapāsādikā*, i. e. the classical commentary on the Vinaya, and the Mūlasarvāstivādin *Vinayavastu*, and has presented the Vinaya in this context as a self-contained legal system. A similar investigation into the other fundamental rule complexes would be requied for further research on the legal system of early Buddhism.

The early Buddhist Sangha thus possessed a self-contained, well-ordered system of

legislation, which, replacing the deceased Master, subsequently enjoyed the highest authority in the regulation of all legal questions. The textual historians would, however, contradict us here; for, as mentioned before, we find not only varying recensions of the *Vinayapiṭaka* among the several schools, but also traces of historical development within the texts. Nevertheless, I believe that comparative studies have advanced sufficient arguments showing both that the fundament of this system can be dated back to the earliest stages of Buddhism and that this fundament is the creation of a single man, namely, the historical Buddha, as Oldenberg has shown. The existing concepts were further expanded and defined during the early history of the Sangha. Rules contained in the Pāli Vinaya show to what extent perfectionism and theory were effected here. One such example is the *nādīparā sīmā,* lying on both sides of a river, both banks within the *sīmā* being connected by a bridge. The legal position could conceivably come into question when, in the course of a legal act of the Sangha, a boat carrying monks belonging to the same community floats through the area of the river which is within the *sīmā.* There is, of course, a ruling for such a case. In a ruling in another section of the text, it is established that a river as a whole does not constitute a *sīmā;* thus, the area of the river contained within the *nādīparā sīmā* does not belong to the *sīmā.* The travelling monks, then, do not endanger the validity of the legal act (P. Kieffer-Pülz, § 2. 4. 2). There are numerous such examples within the existing conceptual system of rules to exceptional cases, in part much more complicated than that just cited.

The system of legislation used by the early Buddhist Sangha is no less systematic than the admirable system of classical Indian grammar which has been codified in the work of Pāṇini, and its detailed study remains one of the great challenges of Buddhological research.

On the other hand, it is remarkable that new problems which could not yet have arisen in the days of the Buddha or in the period shortly after his demise are in principle not addressed in the *Vinayapiṭaka.* Thus, the term *nikāya* (actually "group") appears nowhere in the Vinaya. This term, unquestionably going back to an early period, has been the generally current term for the so-called schools of Buddhism at the time of the final formulation of the Vinaya recensions as we now have them, but it had

no place in a system of rules as promulgated by the Buddha himself. However, the members of these Nikāyas took great pains to regulate their affairs according to the general principles of the Vinaya. As long as they did this, the formation of such "groups" were *dhammika,* legitimate according to the Vinaya. Only when these rules were broken could a *saṃghabheda,* i. e. a schism in the Order, occur.

As indicated, numerous areas of law were left unprovided for. Such areas were covered by common law or by local law. Particularly were the majority of questions concerning the property of the Order. This type of dualistic legal system exists down to the present day. I described this system, as it exists in Sri Lanka and in Burma, in my monograph *Buddhismus, Staat und Gesellschaft,* in 1966 and 1967 respectively. The development of a hierarchy with Nāyakatheras, in Southeast Asia with a Sangharāja, etc., also belongs to the area of Buddhist common law. All of these developments alter nothing concerning the legal acts of the Sangha, which are stipulated in the Vinaya and are, down to the present day, carried out in accordance with the old rules, and they do not diminish the fundamental importance accorded the validity of the *sīmā,* within which the Sangha assembles. The legitimation of the Sangha in the unbroken succession of conferred ordinations, going back to the Buddha himself, is dependent on this. This holds true not only for the Theravāda tradition, but also for the monastic communities of the Tibetan Buddhism, for whom the Mūlasarvāstivādin version of the *Vinayapiṭaka* is valid.

It has frequently been claimed that the Buddhist Order was modelled after the legal priciples prevailing in the ancient Indian aristocratic republics. Some principles, such as the equality of all members of the Sangha or the rules for voting, seem indeed to take this ancient system as a model. Further deliberation in this respect seems to me to be pure speculation, since we possess only very little information on the structure of these ancient aristocratic republics. I have the impression, rather, that Buddhist monastic legislation was, with the exception of such basic principles, a new creation.

It is, furthermore, quite remarkable that the secular legal systems of the countries having Buddhism as a state religion have been little, if at all, influenced by Buddhist jurisprudence. Thus, traditional Burmese law is an adaptation of Hindu law, recorded in the Burmese versions of the *Dharmaśāstras.* The same holds true for the remaining

Buddhist countries of South East Asia; whereas common law was valid in Sri Lanka until superseded by "Roman Dutch Law" in the 17th century.

In recent times, Buddhist leaders saw in Buddhist jurisprudence a model for secular law, accentuating in particular the principle of equality. This has been stressed particularly by Bhimrao Ramji Ambedkar who is often apostrophized as the "father of the Indian constitution." For Ambedkar, Buddhist monastic law represents the educational model upon which the secular law of human society should be built. The constraints of repressive traditional socio-political systems, like the caste system in India must be completely removed. Ambedkar and other Buddhist leaders formulated the task of Buddhists in this world as their obligation to work for a better society based on the guide-lines as contained in the principles of Buddhist monastic law.[1)]

1) The author wishes to thank Mr. Glenn Wallis for translating the original German text into English.