

KEYNOTE SPEECH

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Dhamma and Vinaya – Liberation and Organisation- Some Reflections on the Basis and the Limits of Buddhist Jurisprudence

This paper explores the interface between the teaching of the Buddha, the Dhamma, and the code of discipline established by the Buddha for his monastic followers, the Vinaya. The rationale for this manner of treating the subject is the understanding that the monastic life and consequently, the code of discipline that governs the day-to-day life of the monastic members, both male and female, bhikkhu and bhikkhuni, find its basis in the Dhamma. Although one may tend to think that the Vinaya has its own life, the actual fact is that it makes total sense only in the context of the Dhamma within which the former could find the meaning of its existence. Any discussion on the Buddhist jurisprudence is not only meaningless, but also impossible without reference to the Dhamma. This may explain why K.N. Jayatilleke, in discussing the principles of International Law in Buddhist Doctrine, spent considerable space, the first three chapters out of the total five chapters, to discuss such themes as: origins of Buddhism and the relevance of Buddhist Epistemology, Buddhist theory of reality, and ethics for law.

In Buddhism, Dhamma and Vinaya, theory and practice, so to say, are inseparable for the clear reason that one without the other is incomplete. In the discourses of the Buddha, we find this character manifested universally. This is affirmed by a story found in the Vinaya Pitaka that the Buddha did not impose disciplinary rules during the first twenty years of the Sāsana (*Samantapasadika-Vinayatthakatha*). What this means is that there was no any particular need for the Buddha to impose rules because there were no instances that necessitated such imposition of rules. It is said that, during this period, the monastic disciples of the Buddha simply behaved according to the Dhamma. There was no need for Vinaya, - Vinaya in the sense of a codified system of rules.

In this context it is important to understand the term ‘*dhamma-vinaya*’ as often found in such contexts as “*imasmim dhammavinaye*”, literally meaning ‘teaching and

discipline’, but implying the system of religious life characterised by teaching and practice, namely, *Sāsana*. This means that although Vinaya in the sense of discipline or practice is part and parcel of the system, Vinaya in the sense of a codified system of law came later.

The nature of the relation between the Dhamma and the Vinaya may be further analysed with reference to the background story of the first *Pārājika* offence committed by the bhikkhu called Sudinna. His offence was that he engaged in sexual intercourse with a woman whom in this case happened to be his former wife. Since there were no Vinaya rules established by this time, technically, he was not guilty of any offence (for one cannot violate a non-existent rule). However, when the incident was reported to the Buddha, the remarks he made rebuking him, namely, “foolish man, when I have detailed in so many ways the disadvantages of pleasures, how did you do this?” (*Vinaya Parajika-Pali*) indicate that although there was not a specific law prohibiting sexual intercourse, the monastic followers of the Buddha were expected to know that such behaviour was totally against the primary purpose of renunciation. It is clear that the Buddha was here referring to the Dhamma.

Since the Dhamma was not a system of law, there was no any punishment for those who behaved in ways that went against the Dhamma. Punishment requires a law, which in turn, requires a system of punishment for violators of the law. Good to note in this context, the difference between *sikkhā* and *sikkhāpada* highlighted by scholars such as Jotiya Dhirasekera (Ref. *Buddhist Monastic Discipline*, 1981).

The organisation need for Vinaya is exemplified in most of the major rules such as the first *pārājika* offence referred to above: sexual intercourse, a grave offence in the monastic Vinaya, but not for the lay people. Gratification of senses, including sexual intercourse, not being a ‘sin’ in the teaching of the Buddha, the specific disciplinary rule imposed on the monastic life basically makes sense in the context of safeguarding the integrity of the Sangha organisation, or the *Sāsana*.

In addition to the specific soteriological context of Vinaya rules, this also highlights that the jurisdiction of the Vinaya is only for the monastics, not for all the followers of the Buddha, in particular, householders.

There are ten considerations listed in the Vinaya (*Parajika-pali*) as the goals to be achieved from establishing rules. These considerations highlight that Vinaya is meant to serve both organisational and soteriological aspects of the monastic system. Although the organisational purposes were primary, still the Buddha did not take rules in the literal sense: (Ref. Story of the bhikkhu who complained that he cannot observe 150 rules. *Anguttara-nikaya* I p. 231). The well-known distinction found in the Dhamma between virtue or being virtuous (*sila/silavā*) and being ‘obsessed by virtue’ (*silabbata-parāmāsa*) has a direct bearing on this attitude.

The scholars like K. N. Jayatilleke have shown that the Buddhist Vinaya comprises a very advanced system of law and jurisprudence (*The Principles of International Law in Buddhist Doctrine*, A.W. Sijthoff, Leyden, extracts from the “Receuil des Cours”, Volume II, 1967). Jayatilleke further affirmed this way of understanding the Buddhist Vinaya when he said:

An examination of the Buddhist principles of law, including international law, in the light of its philosophy is, therefore, relevant to a jurisprudence which has to face the legal needs of the contemporary world... (Ibid. p.448.)