

Buddhist Concept of Akushala Kamma and its Juridical Relevance

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Law in ancient India means the social order which through the ages has been regarded as an integral part of dharma which is very comprehensive and incorporates all human activities within its fold. Therefore, the legal provisions in which the modern practical jurists are concerned find no place during those days. Hence, ideas like crime and punishment find no place in Buddhist texts, or else if dealt, they are treated in them as peripheral subject. However it cannot be denied that all laws are enforceable rules of conducts, codified in time and space to prevent the society from infringement and maintain peace and harmony in it. Monastic codes are no exception to it.

Social and the ethical philosophy of Buddhism had significant impact upon the prevailing system which led to the modification and innovations. For example, Buddhism discarded the view that the birth decides the place of an individual in the caste hierarchy. This might have been largely instrumental in the evolution of the concept of the equality of justice. This also implies that the social position is no guarantee of any immunity from punishment.¹ The influence of Buddhism on crime and punishment is seen to an extent during the reign of Ashoka. The appointment of officers called Dhamma

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Mahamatras and duties assigned to them shows the effect Buddhism seems to have had on prevailing system of justice.²

The Buddhist text themselves bear evidence to the existence, though peripherally, of a judicial system. King being the best among the men³ was regarded as the fountain head of justice. It is also stated that some times the king delegated his judicial powers of voharikamahamatras to carry out the judicial functions. Though we do not get any information of the existence of a penal code as such, the king or the officials were not arbitrary in dispensing justice . They were controlled by the traditions and precedents. However, the Jatakas make references to writing of law . It is also laid that cases should be decided by observing the rules laid down in the book of law.

To the modern scholar crime is an anti- social act, a failure or refusal to live up to the standards of conduct deemed binding by the rest of the society, some act or omission in respect of which legal punishment may be inflicted on the person who is in default whether by acting or omitting to act.⁴ This definition while illustrating the complex nature of the subject indicates, also, the correlation of crime and punishment. The Buddhist concept of crime is also in agreement with the modern concept; though the terms used in the Buddhist text do not conform to it.

As this subject is treated on the non-technical and non legal level in the Nikayas, direct answers to the terms crime and punishment are not found in them directly. The terms used for them are also not in conformity with the legal sense of the term at present. Numerous terms such as 'accaya'⁶, vajja⁶ and 'aparadha'⁷ along with their derivatives occur to denote crime. Phrases like 'papakani kammani'⁸ (unethical deeds) are used to refer to criminal acts.

It should be born in mind that Buddhism by adopting this broad ethical standpoint has not completely overlooked the legal aspects of

existence of a living being, (ii) the awareness of the existence of such a living being, (iii) the intention of the killing, (iv) the efforts or the means employed for the killing and (v) the consequent death of the living being.

The intention is necessary but not sufficient to constitute an act of killing as the Vinaya rules point out, where intention is, but one's actions are instrumental in causing the death of the person, one may be guilty of an act of negligence but not of killing. These points are further elucidated in the Chakkavattisihanada sutta.¹³ It makes clear that not only the deliberate acts of breaking the accepted law but even individuals' feelings such as idle talks, wanton greed, and sexual perversion are also considered crimes, for these acts too, though not directly harming others, indirectly damage the fabrics of society's well-being and eventually bring about its complete ruin.

These ethical standpoints apart, Buddhism deals with the legal aspects of the problem of crime also. This is clear from the fact that though all crimes are categorized as ethically bad deeds, all such deeds are not considered legally punishable. Ethically bad deeds are subdivided into two categories: (i) those which have results in this very life (*Ditthadhammavedanaya vajja*) and (ii) those which have results in some future life (*samprayikavajja*). Contextual evidence indicates that the first category specially refers to the legally punishable crimes.¹⁴ The term, in the sense of the punishment and specifically in the sense of punishment of crime committed, is often found in the Nikayas. Thus Buddhism holds legal punishability as one of the factors that turn any ethically bad deed into crime. Nikayas give a long list of such criminal deeds and specific punishment for them.¹⁵ We are informed about the atrocious punishment in different Buddhist texts. But in view of the Buddhist attitude to the problem, the endorsement or the imposition of such punishment by the Buddha seems unlikely, as according to

the Buddhism the punishment was conceived by the society as a deterrent measure.¹⁶

At the same time the punishment was considered as compensatory also.¹⁷ While granting it a certain amount of efficacy as a deterrent measure, Buddhism does not consider it an effective corrective measure and as such it is not regarded as the solution to the problem of the crime. This is the Buddhist attitude to all types of punishment in relation of crime.

Firstly, it is illustrated in the Chakkavattisihanada sutta itself that deterrent punishment is not a fool proof method of preventing crime. Secondly, it is suggested that fear of punishment being the sole motive for the non-commissioning of crimes, it is not only ineffective where there is no such fear as when devices can be found to avoid punishment but it also does not conduce to the well being of the individual concerned and eventually to the progress of the society.

Buddhism regards punishment only as a half measure solution to the complex problem of crime. Knowing its somewhat effective deterrent nature, Buddhism does not completely denounce the use of punishment.¹⁸ It endorses the attempts made by the secular authorities to prevent crime and rehabilitate criminals, e.g. by providing them their individual and social needs. The Chakkavattiraja is expected to adopt effective safeguards against crime in his kingdom.¹⁹ In the kutadanta sutta it is said that before the ruler thinks of sacrifice to the gods, he should think of his duty to the people. Buddhism seems to be aware, also, of the fact that this criminally measure prepare grounds and religion to operate more effectively in solving the problem of crime.

Being highly ethical in purpose Buddhism, while aiming at the general well being of the individual and the society, by no means loses sights of its final spiritual ideal. Therefore, it aims at not mere

repression but at complete eradication of all causes that lead to unethical behaviors and commission of crimes.

According to Buddhism crimes are motivated by psychological tendencies like greed (lobha , tanha raga) hatred (Dosa, vyapadwa or patibha) and delusion (moha or avijja) which spring from ego – consciousness (asmimaba, ahankara, manimkara, mamanusaya). These tendencies are present in latent form in varying degrees in all people. When influenced by economic, environmental or any other force of circumstances, these latent tendencies come to the action and start leading the individual to criminality.

By going deep into the problem of crime Buddhism adopts a very, methodical treatment to eradicate the criminal tendencies in the individual. Primarily, it offers advice to counteract the more palpable causes that lead to criminality. Thus it praises living in suitable localities²⁰ (pattrupadesovasa) that conduces to ethical living extols association of sincere and wise friends (kalyanamitra), lays down a code of ethics for laymen to organize their lives.

Buddha teaches not only the negative aspects of none performances of unethical deeds but teaches also the positive aspects of performance of ethical deeds.²¹ This positive approach greatly helps eradicate unethical tendencies and develop in their places more wholesome once. Thus while establishing an individual in discipline (sila) a serious attempt is made to give him a through Buddhist training .(sikkha) which helps individual to eradicate gradually all unethical tendencies, even those that are latent and attain the final spiritual ideal.

References:

1. Majjhima Nikaya, PTS, II, p.88.
2. Asoka's Pillar Edict IV.