

SOME OBSERVATIONS ON THE RELATIONSHIP
BETWEEN THE KING AND THE BUDDHIST
ORDER IN ANCIENT INDIA

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Ancient India encompassed a collection of groups, such as villages, guilds, castes and religious orders, each of which was more or less autonomous in its own sphere.[1] It was the duty of the king to maintain the order of society by compelling each group to adhere to its internal law. In this article I discuss the duty of the king to enforce the laws of heretical sects such as the Buddhist Order of Monks (Saṅgha). The Saṅgha had its own system of internal law (Vinaya)[2], devised to enable it to remain as independent as possible of state or kingly power. The purpose of this article is to discuss the actual ambit of the relationship between the king and Saṅgha.

Role of Kingship in Ancient India

I focus particularly on the period 600 BC to 1200 A.D., which covers the rise of Buddhism in North India to its decline with the Muslim invasion. During this period the Vinaya[3] was compiled as well as the law-books Dharmaśāstra - Science of Righteousness).[4] Where later sources such as inscriptions are cited in this article I claim that such evidence supports presumably long-existing practices.

The Aryans who invaded North India in the second millennium BC imposed upon the indigenous population an intellectual system of law contained in their sacred texts. To the ancient Indian mind, law and religion are inextricably connected. The Dharmaśāstra contains a mass of material which we would call religious, philosophical, psychological and so on. An analysis of these texts shows that their authors were above all concerned to teach members of the higher castes their ācāra, or religious custom, along with practices of an expiatory and purificatory character. They touch law properly speaking only in an indirect and accessory manner, whether in connection with institutions having a bearing on ācāra, or in connection with the duties of the king.[5]

Lingat calls our attention to the essential question of the exact significance of these texts. They have the

apparent characteristics of law-giving. I say 'apparent' because, if the rules which they extol appear to have been borrowed from custom, their method nonetheless implies a selection, always and exclusively consisting of advice which they give in order to secure that superior order of things which it is their mission to proclaim, but which it can never be their business to impose.[6]

The conception of law in ancient India was that of a body of precepts accepted as suitable for the guidance of human action. The Dharmaśāstra contains no rules of law which must be followed by judges on pain of illegality, but only precepts.[7] Little is known about how the Dharmaśāstra was administered in practice before the days of European rule. There is little evidence on how regularly the advice of the Dharmaśāstra and Arthaśāstra[8] texts were actually followed. In many cases where inferior courts such as a family or caste tribunal were involved, custom will have been sufficiently clear as to render comparison with the Dharmaśāstra unnecessary.[9]

Luckily, we do have some relevant material (it is possible that more may become available). The evidence we have indicates what documents were invoked in some part of India at a given time; we can never be sure how representative any particular indication may have been. From inscriptions it is clear that the Dharmaśāstra was not used in isolation but alongside other traditions where necessary. Where principles clashed, Brahmins[10] solved problems with a mixture of śāstric, religious and architectural written sources.[11]

Central to the Dharmaśāstra was the conception of kingship with its detailed functions and duties. To understand the relationship between the Saṅgha and the state in ancient India it is necessary to outline briefly the main ingredients of the Indian doctrine of kingship (Rājadharmā) as understood by the Brahminical theory of society.[12]

Kingship was regarded as an institution necessary for the maintenance of the social order. Here we meet one of the dogmas of ancient Indian thought: in a society without a king it is the "logic of the fish" (i.e., the law of the jungle) which is law. Therefore, the gods instituted the royal function, giving him who is invested with the power of command the mission to protect all creatures and give them security.[13] The idea of protecting or sustaining the people was central.[14] "All creatures live happily in the world if they are protected by kings like children are protected by their parents." [15]

The king must provide not only security from invasion but also security of the order of society, the right way of life for all classes and ages.[16] Each member of society has his own particular duties and obligations to perform. "Better is one's own law though imperfectly carried out than the law of another carried out perfectly." [17] All duties are interdependent and as each person promotes his own dharma, [1]) he promotes the dharma of his caste and ultimately that of society.

If a group tried to break away from its established place in society, this would cut across caste lines and endanger the social and economic security of the country. It was the king's duty to restrain them. The king was, thus, a medium through which various groups maintained their balance. Inden[19] observes that the king as symbol of the entire Hindu community possessed coercive power to maintain the proper relationships in the caste system and thereby played an essential part in maintaining social order. This kingly power was in fact essential to a caste society: to maintain equilibrium, which caste cannot dispense with, detailed interventions and adjustments were required. An inherent characteristic was assumed to have an eternal meaning and purpose and on that basis the king's power to impose restraints was rationalised.[20]

Although the customs of the Brahmin caste were taken as the norm it is clear that the king was expected to respect and if necessary to enforce the law of groups outside the range of the sacred texts.[21] As regards the customary law of religious groups, the king showed great tolerance.[22] Various texts [23] prescribe that the king should guard the distinctive usages of heretical sects. For instance Nārada states that the king should uphold the conventions of heretical sects, traders, guilds and other groups and that whatever traditional usages, activities, modes of attendance and means of maintenance were peculiar to them should be permitted to them by the king without introducing any change.[24] Manu[25] specifically mentions that the king should support the laws of the Saṅgha. It follows, says Dutt [26], that the conventional laws of the Buddhist monk community enjoyed state recognition and were to that extent part of the civil law, infringement of which was punishable by sovereign authority. The Buddhist Saṅgha thus came to be recognised as one of the constituent communities in the body politic. Kings were expected to patronise the Saṅgha and certainly the Buddhist teachings (dharma).[27]

There is no doubt that certain texts present a sterner treatment of heretics and the like. For example Manu[28] provides that the

king should banish from his capital gamblers, dancers, heretics, sellers of spirituous liquor, etc. Kane[29] says these passages are explainable in various ways; they may for instance refer to an age when the schismatic tensions caused by Jains and Buddhists and followers of the Veda ran high. Anyway, says Kane,[30] they do not negate the requirements of Nārada, Brhaspati and others, that the king (though of a different persuasion) was to enforce among heretics their own usages. As Kane concludes, "It can be said without any fear of contradiction that at least from the 4th century A.D. onwards the policy of the State in India was to protect all religions but interfere with none." [31]

In regard to corporations[32] such as guilds, castes, villages, temples and religious orders it was the duty of the king to enforce by adequate penal measures the due respect for compacts. From the time of Manu the texts speak of "violation of compact" or "non-performance of agreement", (hereinafter we refer to both of these as violation of compacts). [33] A "compact" was an agreement entered into by individual members of an association. "When (the people of) a village or province execute a deed of mutual agreement, (the purpose of) which is not opposed to the interests of the king, and in accordance with sacred law, it is designated as a deed of agreement." [34]

The king was bound to insist on compacts being respected, even if, in dealing with communities of heretics for example, the rules would be in contradiction with the precepts of the Dharmaśāstra[35]. Yājñavalkya[36] expressly lays it down as the duty of the king to "guard the distinctive usages and conventions of guilds (artisans), traders, heretical sects and bands of soldiers". According to Brhaspati, "A compact formed among villagers, companies (of artisans), and associations is (called) an agreement; such (an agreement) must be observed both in times of distress and for acts of piety." [37] The first type is illustrated by compacts for the collective prevention of danger from robbers and thieves. [38] The second type is illustrated by a written agreement for the construction of a house of assembly, of a shed for accommodating travellers with water, a temple, a pool, or a garden. Also mentioned is relief to helpless or poor people, the performance of sacrificial acts, a common path, or defence. [39] It would thus appear that the "compacts" concerned refer not merely to the fundamental agreement (if any) on which an association rests, its basis or constitution, but also to temporary and minor contracts.

Regarding the formalities of proving such a compact we are told that mutual agreement was established by ordeal, by a written

stipulation or by umpires.[40] Kātyāyana is more demanding in that he declares "that statutes (sthiti) of the corporations of merchants, artisans, Brahmins, etc. cannot be proved (in court) except by written documents, not by ordeals or by witnesses." [41] Kātyāyana also prescribes that regulations (Vyavasthās) established by the consent of the inhabitants of a region or a country should be consigned to writing and sealed with the royal seal.[42] This was obviously intended to facilitate proof and preclude forgery.[43]

The texts[44] make it clear that whenever a dispute arose between members of a corporation the king had a duty to inquire into and ascertain its rules and enforce the rules if those rules were not hostile to his policies. The king could, therefore, call for the best evidence of what the rules were, and in so doing (i) assist in their definition, (ii) strengthen, weaken or manipulate them by the way in which he decided to (a) enforce, or (b) not enforce, or (c) conditionally enforce them. Further, corporations will have organised themselves in the knowledge that their decisions, if legitimate in the state's eyes, would be ultimately valid and binding. This must have had some effect on their methods. Our experience of Indian castes under British and subsequently independent India's rule corroborates the suggestion that an autonomous institution, which may be called upon to justify its proceedings in a state court, will tend to arrange its affairs in such a way as to avoid conflicts with the state and loss of face for the institutions' leaders for the time being.[45]

The Legal Independence of the Saṅgha

In the sixth century B.C. the Buddha established an order of monks with its own system of internal law (Vinaya).[46] The Saṅgha was established as a mutual-benefit organisation serving primarily its own members.[47] The early Buddhist Saṅgha was thus a non-political body with purely religious aims.[48]

The Buddha conceived that the two authorities, state and Saṅgha, had distinct functions which did not overlap. The Buddha attempted to create a system of law for the Saṅgha which was sufficiently self-enclosed and therefore self-sufficient to prevent entanglements with the state.[49] Inevitably there was contact. The Buddha advised kings and ministers on political questions,[50] kings patronised the Saṅgha,[51] and the state found it necessary to prevent the Saṅgha being a refuge for people guilty of state crime.[52]

In the famous so-called purge of the Saṅgha by king Aśoka [53] (B.C. 269-232), for example, it is striking that Aśoka did not take part in the actual proceedings.[54] The reason for this is not hard to see. It is a fundamental principle underlying the Vinaya that every formal act must be done according to strict rules. Formal observances such as Upasampada (ordination), Uposatha (fortnightly confession) or Kathina (distribution of robes) require a complete assembly of the whole Saṅgha. It is a basic premise of the Vinaya that a layman could take no part in such proceedings. The Vinaya in fact excludes certain people such as one who is suspended, a schismatic or one belonging to a different communion, from even making up the necessary quorum.[55] Although there can be no doubt that Aśoka was the prime instigator of the purge, he sat behind a screen or curtain to symbolize the fact that constitutionally the king could play no role in the formal act of exclusion of monks from the Saṅgha. The king had no jurisdiction to annul a monk's renunciation of the world. The king also had no power to determine doctrine and no power to intervene in matters of Vinaya, which were entirely domestic to the Saṅgha. The Saṅgha's certificate of what the Vinaya said would be accepted by the king.[56] The king thus had no jurisdiction to intervene in the Saṅgha's internal affairs. If, however, the Saṅgha failed to adhere to its own law, then the king might intervene to see that it did so.

One aspect of the Saṅgha's independence needs to be noted here. King Bimbisāra (whose reign was contemporary with the Buddha) granted immunities to the Saṅgha. We read in one case of a debtor who had "gone forth" among the monks. His creditors wanted him back but some said:

Do not, masters, speak thus, for it is decreed by King Seniya Bimbisāra of Magadha: 'There is nothing to do against those who go forth among the recluses, sons of Sakyans. Well preached is dhamma, let them fare the Brahma-faring for making an utter end of ill.' However 'people ... spread it about, saying: 'These recluses, sons of Sakyans are safe and secure; there is nothing to do against them. But how can they let a debtor go forth?'[57]

Accordingly the Buddha made a rule that a debtor should not be admitted into the Saṅgha. [58] We also read of this (abortive) "immunity" of Bimbisāra's in the story of a thief who had escaped from jail and had joined the Saṅgha. The Buddha had likewise decreed that henceforth such persons should not join the Saṅgha. [59]

Here we have evidence of immunities allegedly given to protect the Saṅgha from unnecessary interference. Given our present

sources it is impossible to know the actual matters covered by these immunities granted by Bimbisāra and presumably continued by other kings. In later times the king granted immunities by way of charter to religious groups and others.[60] But regardless of the extent of the immunity granted by Bimbisāra, the Buddha (perhaps under pressure of popular opinion or of the king) decreed that debtors and thieves should not be admitted to the Saṅgha. Finally, consistent with the objective of isolating the Saṅgha from civil society the Buddha ruled that monks or nuns were not allowed to make a complaint in a court of law.[61] The motive, I suggest, is independent of the undoubted fact that the state's penalties (flogging, branding, mutilating, etc.) would violate the monks' obligation not to inflict injury on a living being.

The Saṅgha's Reliance on State Law

I now wish to show how the Saṅgha relied on the state for some of its legal needs. Unlike some civil corporations, the Saṅgha never received a danda (right to punish) by way of delegation from the king. The Saṅgha was thus dependent on the criminal law[62] of the state. I will illustrate this by comparing how the Buddhist Vinaya dealt with the problem of theft with the Dharmaśāstra treatment of the matter. It was important for the king to retain the right to prosecute thieves, as this represented one of the important bases of state power. Numerous sources testify to the widespread existence of bands of robbers[63] which must have presented at all times a threat to state power. Nārada in fact exhorts the king to make the local community responsible for theft:

He on whose ground a robbery has been committed, must trace the thieves to the best of his power, or else he must make good what has been stolen, unless the footmarks can be traced from that ground (into another man's ground).[64]

The Dharmaśāstra treatment of the definition of theft is fairly crude.[65] Kātyāyana[66] for instance, describes theft as "depriving a man of his wealth, either clandestinely or openly and either by night or by day." [67] The Buddhist treatment of theft is found in Pārājika 2.[68] The introductory story tells us how one Dhaniya took pieces of wood belonging to the king. When this was reported to the Buddha, the Buddha enquired from a former minister of justice who was sitting nearby what the value of a stolen object must be before King Bimbisāra would flog, banish or imprison the thief. The former minister of justice replied, "a pāda".[69] The Buddha thereupon set forth the following rule of training:

Whatever monk should by means of theft take from a village or from the jungle what has not been given to him in such manner of taking as kings, catching a thief in the act of stealing, would flog or imprison him or banish him saying "You are a robber, you are foolish, you are wrong, you are a thief" - even so a monk, taking what is not given to him, he is one who is defeated, he is not in communion.[70]

The Buddhist treatment of theft has thus two tiers. Firstly, there must be an act of theft "in such manner of taking as kings, catching a thief in the act of stealing would flog him or imprison him or banish him, saying 'You are a robber, you are foolish, you are wrong, you are a thief'." [71] Here we have the unique case of the Saṅgha incorporating the state law, whatever it may be.[72] The second tier of the treatment of theft concerns the sanction and is completely different in conception from the treatment in the Dharmaśāstra. The reason for this is not hard to find, for the secular law is concerned with state power (Dandanīti) and the capture of thieves. The Vinaya is concerned with expelling from the Saṅgha monks with gross acquisitive habits unconstructive to the spiritual life, and of course with keeping peace with the king by refusing to harbor thieves.

Upon exclusion a defrocked monk would be back under the control of state law, with its injunctions on how thieves should be dealt with. The clear definition of theft in Pārājika 2 [73] also indirectly clarified the position regarding would-be novices who were thieves. If the state regarded their sinful acts as a theft they would be excluded from joining the Saṅgha. The Buddha left to the king the definition of theft, which was outside the intention and scope of the Vinaya. Thus, the Saṅgha presupposed the king's activity to check these offences. In fact the king was enjoined to maintain a jurisdiction over these two crimes by both Brahminical [74] and Buddhist texts. [75]

The State's Enforcement of the Vinaya

I have already observed that the Brahminical notion of kingship required that the king enforce the laws of all the various corporations which made up the state. Examination of the legal activities of temples [76], villages [77], guilds [78] and castes [79] shows that the king concerned himself with the affairs of such corporations. The king intervened to solve disputes, resolve cases of misappropriation and deal with cases in which temple officials or servants had not adhered to their duty. [80] Inherent to the king's role as protector was his right to

supervise penances [81], hear appeals [82], maintain control over criminal law actions [83] and enforce the rules of heretical sects [84].

In enforcing the laws of particular corporations royal agents participated in all sorts of local decisions.[85] The king exercised at a local level both investigative and judicial powers. Furthermore the king's officials enforced the king's injunctions and decisions on the corporation.[86] For instance as regards the Saṅgha we have the order addressed to the Saṅgha by the king postponing the Rains retreat.[87] When the matter was reported to the Buddha, he prescribed that monks obey kings in such matters.[88]

In outlining the reason why the king interfered with the affairs of corporations such as temples, villages, guilds and castes, I have a definite purpose in mind. I contend that we cannot understand the proper relationship between the king and the Saṅgha, and by extension Hindu Law and Buddhist Law, until we understand the relationship between the king and all the main corporations found in ancient India under the protection of the king. It is my basic hypothesis that due to the peculiarity of the concept of Indian kinship, the king would take the same attitude towards any one of the corporations as regards the enforcement of its laws. Therefore by discussing the way the king supervised the various corporations I have examined I contend I have been able to gain insight into the way the king must have supervised the laws of the Saṅgha.

Based on the observations of the corporations I have examined, I conclude that the king exercised control over the Saṅgha on the following grounds. Firstly, the king would intervene where motivated by the need to maintain law and order which affected public security.[89] One can well imagine the king intervening in the Saṅgha's affairs where national security was at risk. In this regard we must mention the sweeping powers described by Nārada[90] and the long list of activities which extend beyond what we would call criminal law.[91]

Secondly I have shown above that it was the king's duty (Rajadharma) to compel his subjects to maintain their respective compacts. The oldest material we have enjoins the king to enforce the conventions of communities, societies, groups and Saṅghas. [92] The word Saṅgha refers in this connection as much to commercial as to political or religious associations. Later commentators recognise that amongst Saṅghas is the Buddhist Saṅgha. [93] The Prātimokṣa Sūtra of the Mūlsarvāstivādins (Introduction V.4b)[94] treats the Pātimokkha as a code of such

conventions: "this great treaty consists of articles of precepts for the monks which are like a guild of merchants." As we have seen the Pātimokkha was regarded as the compact of the Saṅgha. Thus the king could intervene into the Saṅgha affairs where a problem of compliance with the Pātimokkha appeared to be intractable.

Thirdly the king could interfere in cases of misappropriation or where temple officials or servants had not adhered to their duty. The king could supervise penances where they had not been performed, or hear an appeal where appropriate. And finally, he could if necessary enforce Saṅgha decisions such as the act of Pabbājaniyakamma[95], where the Saṅgha passes an act of banishment against a particular monk from a locality. We may assume that the king would if necessary have enforced such a decision.

Regarding disputes between the Saṅgha and laymen we can make certain inferences from Mahavagga VI.39.1 where a rule is laid down for the settlement of agricultural questions between the Saṅgha and outsiders. We are told:

Now at that time seeds belonging to an Order were sown on ground belonging to an individual, and seeds belonging to an individual were sown on ground belonging to an Order. They told this matter to the Lord. He said: "When, monks, seeds belonging to an Order are sown on ground belonging to an individual, having given back a portion, (the rest) may be made use of. When seeds belonging to an individual are sown on ground belonging to an Order, having given back a portion, (the rest) may be made use of." [96]

A rule like this would be inoperative if the king could not be asked to enforce the decision of the Saṅgha. Presumably the king would be asked to solve disputes between the Saṅgha and the layman if the latter did not observe the Vinaya.

The King's Supervision of Entry into the Saṅgha

Finally, I consider how the king could restrict entry into the Saṅgha. In general, admission was open to everyone regardless of caste or sex. It was for this very reason that a new disciplinary system had to be invented. In some cases the reasons for excluding a would-be novice had to do with a physical defect (cripples, eunuchs, or hermaphrodites) which would make the rigorous life of the monk impossible or would create a scandal. However, when we examine certain of the rules regarding entry into the Saṅgha we can see that, in effect, the state itself

would not suffer the entry into the Saṅgha of certain persons as novices.

Such grounds of exclusion can be divided into two groups. The first includes persons who had certain liabilities that fell outside the Saṅgha's jurisdiction: debtors[97], slaves[98], or members of the king's service[99] could not join the Saṅgha. These rules were discreetly amended in deference to the convenience of kings. For instance, when the king of Magadha complained about the ordination of soldiers, the Buddha changed the rules so as to require the king's consent to the ordination of a soldier.[100] Also debarred from admission to the Saṅgha were those who had committed an offence which was in theory[101] subject to the king's criminal jurisdiction. Such offences listed in the Mahāvagga are matricide[102], patricide[103], murder[104] and theft[105]. In all cases we are told that such persons should not be ordained, and if ordained should be expelled. We may add that the idea of excluding novices with civic and criminal liabilities also allowed the Buddha to ensure that the autonomy of the Saṅgha was not weakened by the king or other interested parties bringing actions to recover people or property.[106]

It is interesting to compare how the state in ancient India restricted entry into the Saṅgha with the situation in other Asian Buddhist countries. In China the state restricted entry into the Saṅgha by instituting examinations, issuing registration certificates, restricting the size of the Saṅgha and on one occasion by setting a minimum age of forty for monks and fifty for nuns.[107] Indian kings did not restrict the Saṅgha in this way but dealt with the problem of false monks through the concept of Rājadharmā, which required them to purify the Saṅgha of improper elements.[108]

The second category of excluded would-be-novices consisted of persons who had been punished by mutilation. The Dharmaśāstra prescribed corporal punishment [109], mutilation [110] and branding [111]. The Mahāvagga prohibits entry of novices who had been scourged as punishment [112], who had the emblem of a thief [113] or had been branded [114]. The Samantapāsādikā (circa AD 428) says [115] that the Saṅgha is not permitted to admit recluses who bear on their bodies marks of whips and sticks. But if they have recovered and bear no traces of such marks, they may be admitted. Criminals branded with lettermarks should not be admitted; if the marks are healed they may be admitted. I think the grounds for excluding people who had suffered mutilation are significant. These people should be excluded if for no other reason, because the Saṅgha should not even be suspected of harboring persons guilty of state crimes. [116]

Conclusion

In discussing the relationship between the king and the Saṅgha in ancient India we are handicapped by the lack of sufficient knowledge of how Dharmaśāstra was used in practice. However on the supposition that Dharmaśāstra sources do indicate actual practices I contend the following.

The Saṅgha had its own body of law independent of the state. The Buddha in fact deliberately created rules or amended rules so as to cut down on possible confrontation with the king's power and interests. Nevertheless, the Saṅgha was dependent on the state for some of its legal needs. The Saṅgha thus relied on the criminal law of the state, it being not so much difficult or superfluous for the religious community to provide its own criminal sanction as inconsistent with its nature. The Saṅgha was also subject to the control of the king on a number of grounds. The most important of these grounds were that the state could restrict entry and that where there was unresolved conflict the king would interfere to force the monks to adhere to their Vinaya.

Notes

1. J.D.M. Derrett, Religion, Law and the State in India, London, Faber, 1968, p.188.
2. See note 46.
3. It seems to satisfy most lines of scholarship to suppose that the Vinaya was in existence by 350 BC, a century or so after the demise of the Buddha. The traditional assumption is that the Vinaya was finally complete when it was committed to writing in Ceylon (circa 29-17 BC), M.V. 33.100. See footnote 46.
4. It is generally agreed that the Dharmasūtras of Gautama, Baudhāyana, Vasiṣṭha, and Āpastamba were composed between the 6th and 2nd century BC. Of the Dharmaśāstras, Manu received its final form in the 2nd-3rd century AD. Other important Dharmaśāstras are those of Yajñavalkya (AD 1-200), Nārada and Kātyāyana (both 6th century AD). (Hereinafter in the term "Dharmaśāstra", I include the Dharmasūtra).

On dating these texts see J.D.M. Derrett, Dharmaśāstra and Juridical Literature part IV. A History of Indian Literature, Wiesbaden, Harrassowitz, 1973, pp. 26-31; R. Lingat,

The Classical Law of India, London, University of California Press, 1973, pp. 123-132 and K.H.D., vol. 1.

Jaina material might represent a more accurate reflection of the sixth century because Mahāvira, the founder of Jainism, predated the Buddha. See S.B. Deo, "The History of Jaina monachism from inscriptions and literature," B.D.C.R.I. 16, 1954-5, p. 66. At that time there may also have been germs of early Arthaśāstra material (see F. Wilhelm, Politische Polemiken im Staatslehrbuch des Kaṭīliya, Wiesbaden, Harrassowitz, 1960). Finally the Vinaya with its reflection of an influence from tribal assemblies is a more representative text of the time.

5. R. Lingat, *op.cit.*, p.71.
6. *Ibid*, pp. 71-72.
7. J.D.M. Derrett, *op.cit.*, p.3.
8. Any material in Kaṭīliya's Arthaśāstra is of particular interest as it may stem from the Maurya period (c.322-183 BC), and at any rate reflects a time when Buddhism was very young.
9. J.D.M. Derrett, Religion, Law and the State in India, London, Faber and Faber, 1968, p.161.
10. The priest caste; see *infra* note 16.
11. J.D.M. Derrett, "Two inscriptions concerning the status of Kammālas and the application of the Dharmaśāstra", E.C.M.H.L., vol.1, pp.86-110, and "Modes of Sannyāsins and the reform of a South Indian Matha carried out in 1584," *ibid.*, pp.111-118. For epigraphic evidence of the influence of Dharmaśāstra see K.V. Rangaswami Aiyangar, Some Aspects of Ancient Indian Polity, Madras, 1935, appendix VIII.
12. There is an extensive literature on kings who were Buddhists or who were influenced by Buddhist considerations. See references for instance in S.J. Tambiah, World Conqueror, World Renouncer, Cambridge, Cambridge University Press, 1976, and E. Sarkisyanz, Buddhist Backgrounds of the Burmese Revolution, The Hague, Nijhoff, 1965.
13. R. Lingat, *op.cit.*, p.207.
14. J. Gonda, Ancient Indian Kingship from the Religious Point of View, Leiden, E.J. Brill, 1966, p.2.
15. Mahābhārata 12.64.29, trans. J. Gonda, in *op.cit.* p.3. See also J.D.M. Derrett, "Bhū-bharaṇa, bhū-pālana, bhū-bhojana: An Indian conundrum," E.C.M.H.L., vol.1, pp.33-49.
16. The term varṇāśrama-dharma encompasses the idea of caste duties, of acting according to the obligations of one's own caste and not interfering with or confusing those of other castes. It couples these duties with those of the four stages of life (āśrama).

The term varṇa means literally color or outward appearance but is usually taken to mean the four classes of men and

- their traditional duties. The traditional duties of Brahmin are the teaching and study of the Vedas, sacrificing for his own benefit and the benefit of others, giving and accepting gifts; those of Kṣatriyas are protection of the people, bestowing gifts, offering sacrifices and study of the Vedas; those of Vaiśyas are tending cattle, bestowing gifts, offering sacrifices and study of the Vedas, trading, lending money and cultivating the land; and the one duty of the Sūdras is to serve the other three varṇas without ill feeling. See Manu 1.88-91.
17. The Bhagavadgītā 3.35, trans. S. Radhakrishnan, p.146.
 18. Code of Conduct, see K.H.D. 2.2.
 19. R. Inden, Marriage and Rank in Bengali Culture, Berkeley, University of California Press, 1976, pp.51-53.
 20. J.D.M. Derrett, "Social and political thought and institutions," in A.L. Basham (ed.), A Cultural History of India, Oxford, Clarendon Press, 1975, p.138.
 21. See R. Lingat, *op.cit.* p.195; J.D.M. Derrett "The concept of duty in ancient Indian jurisprudence: the problem of ascertainment," in W.D. O'Flaherty and J.D.M. Derrett (ed.), The Concept of Duty in South Asia, Vikas, 1978, p.37.
 22. See D.C. Sircar, Studies in the Religious Life of Ancient and Mediaeval India, Delhi, Motilal Banarsidass, 1971, pp. 185-6. As examples of religious tolerance see Kane's list of donations by kings of gifts to sects other than their own, K.H.D. 2.388, n.928a. The Bhagavadgītā, 23-25, proclaims that those devotees of other gods worship Kṛṣṇa himself, though in an irregular way.
 23. See note 44.
 24. Nārada 10.1-3, trans K.H.D. 3.882.
 25. VIII.219 with commentary of Medhātithi.
 26. S. Dutt, Early Buddhist Monachism, London, Asian Publishing House, p.144.
 27. V.P.1. 180, B.D. 4.237. See H.W. Bailey, "A Kharoṣṭrī Inscription of Seṇavarama, King of Oḍi", J.R.A.S., 1980, 1, pp.21-29.
 28. IX.225. See also Gautama IX.17; Kauṭilya 5.2.37; 2.36.5; 2.4.23; 3.20.16.
 29. K.H.D. 3.883.
 30. Ibid.
 31. Ibid.
 32. For a discussion of the sanskrit terms, which are sometimes variously used, see K.H.D. 2.66-69.
 33. See generally K.H.D. 3, 486-89; N.C. Sen-Gupta, Evolution of Ancient Indian Law, Calcutta, Sen-Gupta Trust, 1953, pp.259-64; U.N. Goshal, "On the working of village assemblies, economic guilds, religious congregations and other

- assemblies during the Gupta period," J.R.A.S. (Bengal), 1959, pp. 177-82.
34. Brhaspati VIII.9., trans. J. Jolly, S.B.E., vol. 33, p.305; see also J.D.M. Derrett, "Rulers and ruled in India," E.C.M.H.L., vol.1, 61-2, 68, 71, and "Suretyship in India; the classical law and its aftermath," ibid., p.233.
35. See R. Lingat, op.cit., p.227; Yājñavalkya 2.195.
36. 2.192, trans. M. Dutt. See also Nārada 10.1-7. Viṣṇu V.167-8 says he who abstracts the assets of gaṇa (traders) and he who violates their established rule shall also be banished. Nanda-paṇḍita glosses "assets of the gaṇa" by property settled by the king, etc., on a group of Brahmins. See Nanda-paṇḍita commentary on Viṣṇu, ed. V. Kṛṣṇamācāryā.
37. Brhaspati XVII.5., trans. J. Jolly, S.B.E., vol. 33, p.153. See also Manu VIII.219-221 op.cit. with the commentator Bhārucci trans. J.D.M. Derrett, vol. 2, p. 160.
38. Brhaspati, XVII.6. ibid.
39. XVII.11-12, trans. J. Jolly, ibid.
40. XVII, 7. ibid.
41. Verse 48, trans. R. Lingat, op.cit. p. 227.
42. Verse 48, trans. R. Lingat, ibid.
43. Inscription EI 8.82-83 records the custom of registering agreements at the town hall. An instructive example of the workings of a compact is found in a North Arcot inscription of 1258 A.D. Three sons who had been a party to a compact left the group and joined an opposing party. This was considered a crime against the crown and also betrayal of the country. Accordingly all the representatives of the territory and all the castes met and the assembly decided that the defectors should be given an opportunity to return to the parental party. This reconciliatory move was however rejected. Accordingly the defectors were declared traitors to king and country. See R. Nagaswamy, Studies in Ancient Tamil Law and Society, Government of Tamilnadu, 1978, pp. 79-81.
44. See Yājñavalkya 2.186; Kātyāyana 40-51; Manu VIII 41 with Medhātithi; Kautilaya 2.7.2, 3.7.40; K.H.D. 3.860, 862.
45. See K. Gnanambal, Religious Institutions and Caste Panchayats in South India, Calcutta, Government Press 1973. I am grateful to Professor J.D.M. Derrett for this observation.
46. There exist several versions of this disciplinary code. The Pāli canon of the Theravāda School is complete and is the most accessible, hence in this article I will make principal reference to it. The Pāli version was first edited by H. Oldenburg, The Vinaya Piṭakum, London, Williams and Norgate, 1879-1883, and most recently translated by I.B. Horner as The Book of the Discipline, London, PTS, 1938--1966. For a bibliography on Vinaya in Sanskrit see A Yayama,

- A Systematic Survey of Buddhist Sanskrit Literature, Wiesbaden, Steiner, 1979.
47. Other functions of the Saṅgha are discussed by Hans-Dieter Evers, "The Buddhist Saṅgha in Ceylon and Thailand," Sociologue, 18, 1968, pp.20-35; T. Ling, The Buddha, London, Temple Smith, 1973, pp.135-140.
 48. See H. Bechert, "Buddhism and mass politics in Burma and Ceylon," in D.E. Smith (ed.), Religion and Political Modernisation, London, Yale University Press, 1974, p. 148.
 49. See M. Voyce, "The communal discipline of the Buddhist order of monks: the 'sanction' of the Vinaya Piṭaka," American Journal of Jurisprudence, 29, 1984, pp.123-150; H. Bechert, "Saṅgha, state, society, 'nation': persistence of traditions in 'post-traditional' Buddhist societies," Daedalus, No. 1, 1973, p. 89.
 50. Dīgha Nikāya 2.72; Samyutta Nikāya 1.68.
 51. H.W. Bailey, op.cit., Aśoka (c.BC 269-232) gave generously. See note 22 and V.P. 1.180, B.D. 4.2.37.
 52. See notes 98-111.
 53. For Aśoka's schism-edicts see E. Hultzsch, Corpus Inscriptionum Indicarum, vol. 1, Oxford, Clarendon Press, 1925, pp. 159-164. The literature on the so-called schism edicts is considerable. See H. Bechert, "Aśoka's 'Schismenedikt' und der Begriff Saṅghabheda," W.Z.K.S.O. 5, 1961, pp. 18-52; L. Alsdorf, "Aśoka's Schismen-Edikt und das Dritte Konzil," Indo-Iranian Journal, 3, 1959, pp.161-174; M. Voyce "The King's enforcement of the Vinaya Piṭaka: the purification of the Saṅgha under Aśoka," Zeitschrift für Religions-und Geistesgeschichte, 37, 1985, pp.38-51.
 54. While the Pāli texts portray Aśoka in an obvious and instrumental role it is also clear that Aśoka put himself in a subsidiary role to that of Tissa when it came to actually deciding who was heretical and who not. This is illustrated by the fact that the king seated himself behind a curtain (MV 5.268) or enclosed in a screen (S.M.P. 1.60-61). Aśoka is thus painstakingly trying not to assume clerical powers and to limit his interference to the necessary minimum.
 55. V.P. 1.320, B.D. 4.458.
 56. See Brhaspati 1.74, and Jimutavāhana, Vyavahāra-Mātrikā, 281.
 57. V.P. 1.76, trans. B.D. 4.95.
 58. Ibid.
 59. V.P. 1.74, B.D. 1.93. We also read of an immunity given by King Pasenadi of Kosala: see V.P. 4.225, B.D. 3.182.
 60. We are referring here to rights granted by way of charter to groups such as South Indian Brahmins. See note 77.
 61. V.P. 4.223, B.D.3.177. A monk was not allowed to eat a king's elephant or horse: V.P. 1.219, B.D. 4.299.

62. The matters which the king could take up suo motu are wider than what in English law are called "pleas of the Crown". Usually a question was taken up on royal order when it was felt that the gravity of the question transcended communal authority or the authority of the provincial governor, or was of such importance as to affect a caste or class spread over more than one division. Note the wide variety of matters referred to in the Prakīrnaka (miscellaneous) section in Manu VIII.4-7. See also Kātyāyana 947-52; Brhaspati 2.5-7. See J.D.M. Derrett, "Some features of public law in Smṛti Sources," A.L.B. 42, 1978, pp.1-31; R. Lingat, op.cit., p. 223; S. Krishnaswami Aiyangar, "Social legislation under Hindu governments," Q.J.M.S., 6, 1915, pp.41-51; L. Rocher, "Ancient Hindu Criminal Law," J.O.I., 24, 1954-55, pp.15-34.
63. Jātaka 503 speaks of a village of robbers. See also Kauṭilya 4.6 and 4.8.
64. Nārada, Appendix Verse 16, trans. J. Jolly, op.cit., p. 225. See also XIV.24, and Yājñavalkya, 2.275, in M. Dutt's edition.
65. K.H.D. 3.519-525.
66. Sl. 810, trans. P.V. Kane, op.cit., p. 287.
67. See J.D.M. Derrett, "Adattādānam: valuable Buddhist casuistry," Indologica Taurinensia, 7, 1979, pp. 181-194.
68. V.P. 3.41, B.D. 1.64.
69. I.e. a quarter of a Kṛṣapana; the Vinaya tells us that at that time a pāda was worth five maṣakas.
70. Pārājika 2, trans. Miss I.B. Horner, B.D. 1.73.
71. Pārājika 2.
72. See J. Dhirasekera, Buddhist Monastic Discipline, unpublished Ph.D. thesis, Peradeniya, 1964, p. 195.
73. A monk was not guilty of theft unless the following conditions were satisfied: (a) the thing removed must belong to others and there must be an awareness that it does not belong to oneself; (b) there must be no awareness that it has been handed over on trust; (c) there must be no awareness that it has been handed over for temporary use; (d) the thing must have some value; (e) there must be an actual removal of the thing from its place which consists of (i) taking away a thing by force, (ii) carrying it away, (iii) lifting it up, (iv) taking a mis-step with it, (v) removing it from its original place, and (vi) transferring it elsewhere, according to a previously determined plan. See the Pārājika offence V.P. 2 41-61, B.D. 1.64-115 and Shan-Chien-p'i-p'o-sha; Introduction xxiii - xxvi and pp. 219-285. See also P.C. Bagchi, "The story of Dhanika, the potter's son, as told in the different Vinayas," B.C. Law

- Volume, part one, Calcutta, The Indian Research Institute, pp. 419-435.
74. Manu IX.263-267; Yājñavalkya 2.269-273 (M. Dutt's edition).
75. Dīgha Nikāya, 3.61 and 75 and the Kulavaka Jātaka, Jātaka no.31. See B. Jayawardhana, "Buddhism and the problem of crime," in Vesak no. 2509/1965, 39-48. R.N. Mehta, "Crime and punishment in the Jātakas," I.H.Q. 12, 1936, pp.432-44; A.S. Altekar, A History of Village Communities in Western India, Bombay, Oxford University Press, 1927, pp. 34-53.
76. See G.W. Spencer, "Royal initiative under Rajaraja I," I.E.S.H.R., 7, 1960, pp. 431-42, and "Religious networks and royal influence in eleventh century South India," J.E.S.H.O., 12, 1969, pp.42-56; M. Voyce, "The control of the king over temples in ancient India," Archiv Orientalní, 51, 1983, pp. 310-326.
77. In the case of South Indian villages inscriptions indicate that such villages could confiscate land, impose taxes, impose fines and punishments, impose forced labor, create and maintain irrigation systems, excommunicate members and even exercise jurisdiction over criminal law cases as serious as homicide.
- Inscription evidence concerning South Indian village assemblies (Sabhā) indicates the king would interfere in village affairs for a variety of reasons. For instance a king might create or renew the Sabhā's charter (E.I. 15.77), alter dues payable on land (M.R.E. 188/1919), order villages to act as servants (S.I.I. 2 Nos 69 and 70 pp 312 and 328). In the famous Uttaramerūr inscription the king intervened specifically to enforce a change in the constitution of the Sabhā. See K.A. Nilakanti Sastri, Studies in Cola History and Administration, Madras, University Press, 1932, chapters 3-6.
78. See Yājñavalkya 2.195; Manu VIII.41, VIII.219 with the commentary of Bhāruci, trans. J.D.M. Derrett, vol.2, 103-104.
79. The king was exhorted to maintain the social order of the castes (see note 16). Like the Buddhist Saṅgha, the various castes relied upon the state to enforce their laws (see Narada 17.1-7; Brhaspati 17.20). All matters of caste law were under the jurisdiction of the king and were, if necessary, enforced by him. We must not forget that villages, guilds and temples in most cases comprehended some kind of caste association. See H. Fukazawa, "State and caste system (Jāti) in the eighteenth century Maratha Kingdom," Hitotubashi Journal of Economics, 9, 1961, pp. 32-44 and see K. Gnanambal, Religious Institutions and Caste Panchayats in South India, Calcutta, Government of India, 1973.
80. See notes 76-79.

81. Nārada XVIII.3. and Kātyāyana 949. See R. Lingat, *op.cit.*, pp. 232-237; J.D.M. Derrett, "The king's role relative to penance and a text of Yama," in R. Nagaswamy (ed), *South Indian Studies*, vol.2, Madras, Society for Archaeological Research, 1979, pp. 1-7.
82. See Nārada 1.7; J.D.M. Derrett, "Tīrita and Anuśiṣṭa a propos of Manu 9.233," *Z.D.M.G.*, 1976, pp.312-318; R. Lingat, *op.cit.*, p. 232.
83. I am referring to action by the king suo motu found in the prakīrṇaka. See note 62.
84. Yājñavalkya 2.192. Nārada 10.1.3 Manu VIII.219 with the commentator Medhātithi.
85. See notes 76-79.
86. See G.W. Spencer, *op.cit.*; A. Appadurai, "Kings, sects and temples in South India, 1350-1700 A.D.," in B. Stein (ed.), *South Indian Temples*, Delhi, Vikas, 1978, pp. 49-50.
87. V.P. 1.138, B.D. 4.185.
88. V.T. 1.301.
89. There are examples from South India of interference by the king in the affairs of the Sabhā to protect his general security. See M.R.E. 393 of 1918 for interference in the case of treason. See also T.V. Mahalingam, *South Indian Polity*, Madras, University Press, 1955, p.201.
90. 10.1-7 with the commentators Mitra-Miśra (*Vīramitrodaya*, 43--431) and Asahāya (ed. J. Jolly, pp.163-164). See also R.C. Majumdar, *Corporative Life in Ancient India*, Calcutta, Firma K.L. Mukhopadhyay, 1969, p.57.
91. See note 62.
92. Kauṭilya 111.10.45. See the Aśokan schism edicts in E. Hultzsch, *op.cit.*
93. Medhātithi on Manu VIII.219; Vijñaneśvara, Mitākṣara on Yājñavalkya 2.192.
94. A.C. Banerjee, Prātimokṣa-sūtra Mūlasarvāstivāda, the relevant verse goes: *esa bhikṣu-vaniggrāmaḥ śikṣā - paṇya - mahā - panah*. See the same verse translated by C.S. Prebish in *Buddhist Monastic Discipline*, London, Pennsylvania State Press, 1975, p. 43. V.P. 2.9, B.D. 5.14.
95. V.P. 2.9, B.D. 5.14.
96. V.P. 1.250, B.D. 4.347.
97. V.P. 1.76., B.D. 4.95. See V.P. 4.225, B.D. 3.182, where we read how a Licchavi protested to the king that he had jurisdiction over his adulteress wife who had run off with his precious belongings. The Buddha thereupon made a rule that no nun should be ordained who was a thief meriting death, without having obtained permission from a king, an Order, a group, a guild, or a company. Trans. I.B. Horner B.D. 3.183. See the questions that should be asked of nuns

- to see if they were fit for ordination: V.P. 2.271; B.D. 5.375.
98. V.P. 176, B.D. 4.95-6.
99. V.P. 173, B.D. 4.91-92.
100. Ibid.
101. Manu VIII.335, VIII.344-6, IX.263-7; Yājñavalkya 1.358, 1.338, 2.269-273.
102. V.P. I.88; B.D. 4.112.
103. V.P. I.88; B.D. 4.112.
104. V.P. I.89; B.D. 4.112-3.
105. V.P. I.86; B.D. 4.110; V.P. I.74; B.D. 4.93; V.P.I. 307; B.D.4.439. it is difficult to reconcile this rule with the admission of Aṅgulimāla, the infamous robber, to the Saṅgha (see Therīgāthā, verse 866-869). As the Buddha uses an early form of ordination ehi bhikkhu pabbajja (come monk) we might suppose this ordination was at a time when the Buddha was not so concerned with appeasing kings. Alternatively Aṅgulimāla's spiritual potential was much in advance of ordinary thieves. S.B.Deo shows identical rules amongst Jains; see his Jaina Monastic Jurisprudence, Banares, Jaina Cultural Research, 1960, p. 4.
106. There is an example of the Jain Saṅgha being involved in a legal action when a mother filed a suit against Jain monks for ordaining her child. See J.C. Jain, Life in Ancient India as Depicted in the Jain Canon, Bombay, New Book Company, 1947, p.65.
107. See C.O. Hucker, The Traditional State in Ming Times, Tuscon, University of Arizona Press, 1961, pp. 28-29; K.Ch'en, "The sale of monk certificates during the Sung Dynasty," Harvard Theological Review, 49, no.4, 1956, p. 307-27.
108. As in the case of Aśoka: see note 53. For a purification by the king in Ceylon under the reign of Dhammaceti, see I.A. 22, 1893, pp.11-17, 29-53, 85-89, 150-159, 206-213, 236-243, 274-275 and N. Ratnapala, The Katikavatas Laws of the Buddhist order of Ceylon, München, 1971.
109. Kātyāyana 783; Viṣṇu V.105.
110. Kātyāyana 822, Manu VIII.322, 325, 367, IX. 276-77; Apastamba 11.10. 27.14; Yājñavalkya 11.302 (excision of tongue); Gautama. XII.2 (castration).
111. Dakṣa VII.34 prescribes branding for an apostate from mendicancy; Baudhāyana 1.10.18 prescribes respectively branding on the forehead with a sign of a headless trunk, a female part, a jackal, or a sign of a tavern for slaying a Brahmin, violating his Guru's bed, or drinking spiritous liquor; Viṣṇu V.3-7 prescribes branding with a figure of a headless corpse on the forehead for murdering a Brahmin and with the flag of a seller of spiritous liquor for drinking

spirits; Yājñavalkya 2.203 prescribes branding on the head for using false dice and at 2.297 (M. Dutt Dharmaśāstra ed.) branding on the forehead with a triangle-shaped figure like a female organ for intercourse with an untouchable. See Rājatarāṇī VI.108-12 (king branded on a Brahmin's forehead the mark of a dog's foot). See K.H.D. 3.401-404. Two of the punishments for an apostate from Brahminical asceticism are becoming the king's slave and being branded on the forehead. See Nārada V.27, 35; Viṣṇu V.152; Yājñavalkya 2.186; Dakṣa VII.34.

112. V.P. 1.75, B.D. 4.95.

113. V.P. 1.74, B.D. 4.93.

114. V.P. 1.76, B.D. 4.95.

115. 998-9.

116. There are, however, some suggestions that the physical malformation itself may have been the ground for exclusion. Thus there are several references to mendicants who participated in extreme asceticism and mutilation. For instance in an inscription dated A.D. 1162 we have a reference to nagnabhagna beggars. Such a term suggests a mutilated or maimed ascetic, probably an Ajīvika, who we know submitted themselves to painful initiation ceremonies. E.C. 7. Shi 102; A.L. Basham, "Harṣa of Kasmir and the iconoclast ascetics," in Studies in Honour of L.D. Barnett, London, S.O.A.S., 1948, p. 691.

ABBREVIATIONS

- A.L.B. Adyar Library Bulletin.
B.D. Book of The Discipline (ed. I.B. Horner).
B.D.C.R.I. Bulletin of the Deccan College Research Institute.
E.C. Epigraphia Carnatica.
E.C.M.H.L. Essays in Classical and Modern Hindu Law by J.D.M. Derrett, Leiden, E.J. Brill, 1976-78.
E.I. Epigraphia Indica.
I.A. Indian Antiquary.
I.H.Q. Indian Historical Quarterly.
I.E.S.H.R. Indian Economic and Social History Review.
J.O.I. Journal of the Oriental Institute.
J.R.A.S. Journal of the Royal Asiatic Society.
J.E.S.H.O. Journal of the Economic and Social History of the Orient.
K.H.D. P.V. Kane, History of Dharmasāstra, Vols. 1-5, Poona, Bhandarkar Oriental Research Institute, 1950.
M.R.E. Annual Reports on South Indian Epigraphy.
M.V. Mahāvamsa.
P.T.S. Pāli Text Society.
Q.J.M.S. Quarterly Journal of the Mythic Society.
S.B.B. Sacred Books of the Buddhists.
S.B.E. Sacred Books of the East.
S.I.I. South Indian Inscriptions.
S.M.P. Samantapāsādikā.
V.P. Vinaya Piṭaka (ed. H. Oldenberg).
V.T. Vinaya Texts, parts 1, 2 and 3 (vols. 13, 17 and 20, S.B.E.).
W.Z.K.S.O. Wiener Zeitschrift für die Kunde Süd- und Ostasiens.
Z.D.M.G. Zeitschrift der Deutschen Morgenländischen Gesellschaft.

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