

**A CRITICAL STUDY OF THE CONCEPT OF PUNISHMENT IN EARLY
BUDDHISM**

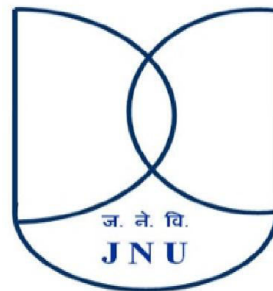
Dissertation submitted to Jawaharlal Nehru University

in partial fulfilment of the requirements

for the award of the degree of

Master of Philosophy

HINA CHANDNA



Centre for Philosophy

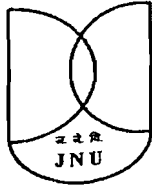
School of Social Sciences

Jawaharlal Nehru University

New Delhi, 110067

INDIA

2016



जवाहरलाल नेहरु विश्वविद्यालय JAWAHARLAL NEHRU UNIVERSITY
 सामाजिक विज्ञान संस्थान SCHOOL OF SOCIAL SCIENCES
 दर्शन शास्त्र केंद्र CENTRE FOR PHILOSOPHY
 नई दिल्ली - ११००६७ NEW DELHI - 110067

DATE
 25-07-2016

CERTIFICATE

This is to certify that the dissertation entitled "A Critical Study of the Concept of Punishment in Early Buddhism" submitted by Hina Chandna, in partial fulfilment of the requirements for the award of the degree of Master of Philosophy of Jawaharlal Nehru University is her original work. It is further certify that the dissertation has not been submitted in part or in full to any other university or elsewhere to obtain any other degree.

The dissertation may be placed before the Examiner for evaluation.

Chairperson

Centre for Philosophy

School of Social Science

Jawaharlal Nehru University

New Delhi- 110067

Chairperson
 Centre for Philosophy
 School of Social Sciences
 Jawaharlal Nehru University
 New Delhi- 110067

Supervisor

Centre for Philosophy

School of Social Science

Jawaharlal Nehru University

New Delhi- 110067

SUPERVISOR
 Centre for Philosophy
 School of Social Sciences
 Jawaharlal Nehru University
 New Delhi-110067

DECLARATION

I, Hina Chandna, do hereby declare that the dissertation entitled “**A Critical Study of the Concept of Punishment in Early Buddhism**” submitted in partial fulfilment of the requirements for the award of the **degree of Master of Philosophy of Jawaharlal Nehru University**, is my original work. The dissertation has not been submitted in part or in full to any other university or elsewhere to obtain any degree.

Date: 25-07-2016

Place: New Delhi

Hina Chandna

Hina Chandna

Centre for Philosophy

School of Social Science

Jawaharlal Nehru University

New Delhi: 110067

Dedication

Dedicated to my
Teachers, Family and Friends

Table of Content

Acknowledgement.....	
	Page
Introduction.....	1-4
Chapter I: An Outline: Buddhist Ethics	5
I. Survey of Buddhist Literature on Ethics	
II. Basic Principles of Buddhism	
III. Buddhist Theories of Punishment	
IV. ‘Conduct’: <i>Good or Bad</i>	
V. Two central Buddhist precepts: Non-Violence and Compassion	
Chapter II: Buddhist Notion of Punishment	22
I. <i>Vinaya Piṭaka</i>	
II. Violence and Capital Punishment	
III. Buddha on Violence	
Chapter III: Buddhist Theory of <i>Karmic</i> Justice	40
I. Nonviolence and Human Action	
II. An Outline: The Law of <i>Kamma</i>	
III. <i>Kammic</i> Justice	

Chapter IV: Theorizing Buddhist Notion of Punishment **55**

- I. Different Approaches Adopted Historically towards Punishing the Offenders**
- II. Modern Theories of Punishments**
- III. Situating Buddhist Theory of Punishment**

Conclusion **70**

General Bibliography

Acknowledgements

I feel fortunate to have received the kindness and support from several people during the research and writing thesis. Expressing my sincere thanks to all in this limited space is impossible. However, my sincere gratitude will not be accomplished without mentioning some names.

First and foremost I want to express my profound and sincere gratitude to my supervisor, Dr. Ajay Verma. I am greatly indebted to him and he is invaluable to me. I acknowledge with gratitude the affection and encouragement received from him. He was very generous with his time for guidance, suggestions, and ideas. His guidance and advice helped me throughout my research and writing of this dissertation, which made my M.Phil. experience productive and stimulating. Thank you Sir.

I am deeply grateful to Dr. Pragati Sahani for her detailed and constructive suggestion. I am also thankful to Dr. Devasia Antony for his kind advice and encouragement. I would also like to thank the faculty members of Centre for Philosophy for their insightful comments and suggestions during my synopsis presentation.

My sincere thanks would not be a fulfilment unless I extend my heartfelt gratitude to my beloved parents, Mr. Arun Chandna and Mrs. Madhu Chandna for their blessings, and I am grateful to my elder sister Himani Chandna and my niece Shanvi, for their kind support.

I am highly indebted to the librarian and the staff at Central Library of J.N.U and Central Library of Delhi University, for their kind cooperation and support.

I am also indebted to the University Grants Commission (UGC) for the financial assistance. Without their financial help, it would have been very difficult to bear financial expenses.

I am also grateful to all the staff of the Centre for Philosophy, Jawaharlal Nehru University.

I have had the privilege of receiving help from circle of friends. This is a happy moment to remember friends of good substance. I extend sincere thanks to my friends, Sukanya, Arundhati, Shailja Chawla, Ekta Bhati and Nani Obey.

My sincere thanks to Himani Chandna for the editorial support.

Last but not the least, my heartfelt thanks to my friends, Shivani Kalakoti and Rahul Chawla, who were always there to encourage and support me, in all possible manners throughout the work.

J.N.U., New Delhi

Hina Chandna

Introduction

In my dissertation, “A Critical Study of the Concept of Punishment in Early Buddhism”, I intend, to study and examine the idea of punishment as expounded especially in Pāli Buddhist literature¹. My aim, in this study, is to understand the need and the nature of punishment, mainly from the Buddhist perspective. Buddhists have a philosophical position which includes a ‘soteriological’² programme to offer. If there is a soteriological programme that means, they have a clear idea of ‘liberation’ and ‘well-being’ which in turn requires that they have a certain notion of ethics. Having an ethical system inevitably involves having a notion of ‘right’ and ‘wrong’. The ‘wrong’ committed in the community where people live together, demands for the formulation of certain principles of redressing the wrong which is tantamount to having ‘a certain notion of *punishment*’.

Indian Schools of thought are divided on various basis, including- the authority of the *Vedas* (orthodox or non-orthodox – *āstika* or *nāstika*)³, the principle of Causality (*satkāryavāda*, *asatkāryavāda* etc.)⁴, or *Śramaṇa* and *Bhramaṇas* traditions⁵. Buddhism comes under *Śramaṇa* tradition, which means- ‘to work’, and to work diligently, for the attainment of salvation. *Śarmanas* stayed in the Buddhist *viharas*, where Buddhist disciples lived and worked together for their individual salvation. The community of the seekers, where they lived collectively is called *saṃgha*. In order to maintain the discipline within the *saṃgha*, certain rules and regulations were

¹My primary focus will be on Pāli Buddhist texts, namely, *VinayaText*, *Dhammapada* and *Dīghanikāya*.

²Buddhists, including Theravadins, Mahayanists and Vajrayanists, strongly emphasize on the notion of liberation from the *samsara*, and its sufferings, ignorance and cycle of birth and rebirth. The liberation attained is in order to achieve *nirvana*, enlightenment.

³Indian Schools of thought are divided on the basis of the authority of the Vedas. Those who accepts their authority are orthodox, *āstika*, while those who rejects their authority are heterodox, *nāstika*. Buddhism rejects the Vedic authority, hence, it is a heterodox school.

⁴Indian Schools of thought, too distinguish themselves from each other on the basis of the principles of causality they accept, whether the effect pre-existed in the cause, viz. *satkāryavada*, or the effect does not pre-existed in the cause, viz. *Asatkāryavada*, or the effect is entirely a new entity unrelated with the cause and so on.

⁵*Śramaṇa* and *Brahmaṇa* distinction cropped up and grew into the prominence at the time of Mahavira (Jainism) and Buddha (Buddhism). *Śramaṇa* was a religious movement, separate from Vedic practices (*Brahmaṇa*).

formulated by the Buddha, on the basis of which- punishments and rewards were advanced. This included a very clear idea of redressing the wrong by punishing the wrongdoer. However, it is *ironical*, that a school, whose basic foundation is laid on the principles of nonviolence, compassion, love, clearly states a ‘concept of punishment’ in their tradition. The rules put forward are well-established. This *seems* to be in conflict with some of the basic precepts admitted by them. This leads to a gap between the basic ethical precepts and their concept of penalizing, and here, I shall carefully examine this gap in my study.

The first and the foremost problematic of the study is to address the question related to the contradiction between the Buddhists penal practices and their basic principles. There is a gap between the basic principles of Buddhism (non-violence, unconditional love, unfathomable compassion and affection towards each other), vis-à-vis ‘the notion of punishment’ (a sort of nonviolence) as accepted by them. Some thinkers consider the principle of non-violence (the first precept) as the core teaching of Buddhism.⁶ Why then a school, with high regards for human values, advocates ‘punishment’, even in its violent forms? There are instances in the early texts where an offender is punished by the community (instances of death penalty can be cited), and an external force is inflicted on him. I will try to locate whether the Buddha himself advocated and accepted such punishments in the order or not. There arises a need to raise the question from the ethical standpoint- Is it ethical to punish or even to award the other human being with the superlative of the possible punishments, including life imprisonment and death penalty?

For this purpose, there are several Buddhist texts where we come across the instances of punishment. The foremost and most important text for maintaining discipline within the community, is their rule book, *Vinaya* text. All the rules mentioned in the *Vinaya* text were made by the Buddha himself, after some incident or crime committed in the *samgha*. In this text, both, ethical and legal subjects are analyzed in a detailed manner. The first section of the *Vinaya*, is *Sutta-vibhanga*, which consists of complete rules of disciplines and training for monks and nuns. There are 227 rules for Monks, while for Nuns, 311 rules are laid. It is one of the three *Pitakas*

⁶ Keown, Damien, *Buddhism: A Very Short Introduction*, p. 10.

(*tripiṭaka*)⁷, namely, *Sutta Piṭaka*, *Vinaya Piṭaka* and *Abhidhamma Piṭaka*. In the Buddhist literature, there are quite a few instances of punishment awarded for different wrongs committed by the bhikkhus in the *saṅgha*. Such incidents throw light on numerous practices adopted by them, including, the highest punishment possible, i.e., judgement of Death Penalty advocated to the offenders by the Kings, who themselves were of Buddhist faith. I, through my study, want to question *the need of punishment* in the Buddhist community, which otherwise is a community based on compassion, with strong faith and belief in the principle of ‘non-violence’. It also practice and endorse the unconditional love (*karuṇā*) and tenderness towards all.

The second problem with which I will be dealing is that, there is a great emphasis in the Buddhist texts on the concept of *kamma*⁸. Under this, the punishment awarded to the evildoer is afflicted either in his present lifetime or may be in his future life. But here arises a difficulty, i.e., if there is a natural moral law of *kamma* already operative in the world, then why is there a need to punish (in the politico-legal sense). So, in this regard, it becomes a problem to explicate the form of punishment which *Vinaya* text is suggesting and how one can accommodate that ‘notion of punishment’ within the Buddhist framework. Apart from the idea of punishment in Buddhism, which is based on the ‘direct observation’ of wrongdoing and its evaluation (as discussed in *Vinaya* text), the early Buddhism also focus on the kinds of punishment which are operative at the ‘metaphysical level’. This involves resorting to their certain theory of *kamma*. According to which certain *kammas* result in certain *bad* or *good* consequences depending upon the nature of *kammas* at the transcendental *kammic* level, without any direct involvement of the *saṅgha*. The punishment received by a wrongdoer here, is a response of the nature and is distinct from the use of external human force. However, according to some Buddhist texts, the punishment of this kind can be harsh, where a person may be reborn in a ‘state of deprivation’⁹, where she is born as ugly, weak,

⁷The *Tripiṭaka* (Sanskrit for "three baskets"; "*Tipitika*" in Pāli) is the earliest collections of Buddhist scripture. There are several versions, the oldest and most complete of which is called the Pāli Canon because it is in the Pāli language.

⁸ *Kamma* is a Pāli term, used for the Sanskrit term "*Karma*".

⁹"Cula-kamma vibhanga Sutta: The Shorter Exposition of Kamma", *The Middle Length Discourses of the Buddha*, p. 1055.

poor, so on and so forth. The law of *Kamma* represents a metaphysical dimension of punishment, while other theories of punishments, as broadly stated in the *Vinaya* text, are empirical and direct.

The third part of the problematic of this study is to address the issues and discussions related to the various types of punishments advanced by the Buddhists for maintaining love and harmony in the society. The fundamental question that encompasses this part of the problematic is: From Buddhist point view, I shall ponder- whether the affliction of punishment is always ‘negative’? The term ‘punishment’, suggests external force afflicted on a person to delimit one’s freedom, in this sense, it seems to be a negative exercise. In my study, I shall examine whether this idea of punishment can be seen in the positive light. The main purpose of this exercise is to foster the diverse interpretations of the concept of penalizing.

In my endeavour, I shall look upon the Buddhist conception of punishment contrasting it with their general ethical stance. The effort will be to address the conception of punishment as found in the Pāli Buddhist literature. For the purpose of my study, I would mainly be using three Buddhist texts, namely, *Vinaya Text* (the Buddhist rule book), *Dhammapada* and *Dīgha-nikāya*. Apart from these texts, I will also engage with other Buddhist works, such as *Majjhima-nikāya*, *Saṃyutta-nikāya*, and *Aṅguttara-nikāya*. My main focus on Buddhism will be limited to the practice of punishments adopted by them during the times of the Buddha.

Chapter 1

An Outline: Buddhist Ethics

Buddhist ethics hold a significant position in moral philosophy. It not only preaches the complete abstinence from killing and causing harm, but also endorses the practice of unconditional love towards each and every creature. In this chapter, I will mainly focus on the basic Buddhist tenets and their sources in Buddhist literature. I shall go on discussing their foundational teachings, including, four noble truths, its relation to suffering in the world, their theory of *kamma* (*karma* in Sanskrit), five moral precepts (*pañca-sīla*), compassion (*karuṇā*) and non-violence, Buddhist theory of perfection (ten *pāramīs*), noble eight-fold path, their concept of punishments, and importance of human *conduct*. The main aim of the Buddhists' teachings is to attain *nibbāna*, which is their ultimate goal. I would wish to begin my study by taking into consideration the Buddhist sources which will provide us with the basics of their morality.

1. Survey of Buddhist Literature on Ethics

Three Buddhist canons, namely, *Vinaya Piṭaka*, *Sutta Piṭaka* and *Abhidhamma Piṭaka*, commonly known as the *tripiṭaka*, are magnum opuses of Buddhist literature. *The Basket of Discourses (Sutta-piṭaka)* contains the discourses delivered by the Buddha to his disciples on various occasions. *The Basket of Discipline (Vinaya-piṭaka)* provides the elucidation of the corrective rules prescribed by the Buddha to his male and female monastic disciples, and the procedure which is to be followed while conducting their monastic activities. *The Basket of Higher Doctrines (Abhidhamma- piṭaka)* contains the analysis of the *Dhamma* in scholarly detailed

manner. *Sutta-piṭaka* has been divided into five *nikāyas*. *Digha-nikāya*, which contains 32 long discourses of the Buddha. *Majjhima-nikāya*, which comprises of 152 middle length discourses. *Samyutta-nikāya*, which holds 2889 long, middle and short discourses, different length for different topics. *Aṅguttara-nikāya*, which contains 2308 discourses which are arranged in ascending order on the basis of the matter it holds, beginning from single aspect and ascending to that which comprises of eleven aspects. The *Khuddaka-nikāya*, is a collection of “short-discourses”. *The Basket of Discipline (Vinaya-piṭaka)*, has been divided into five books: *Parajika-pāli*, *Pacittiya-pāli*, *Cullavagga-pāli*, *Mahavagga-pāli* and *Parivara-pāli*. *The Basket of Higher Doctrines (Abhidhamma-piṭaka)* is organized into seven books, namely, *Dhamma Saṅgaṇi-pakarana*, *Vibhaṅga-pakarana*, *Kathāvatthu-pakarana*, *Puggala-paññatti-pakarana*, *Dhatukathā-pakarana*, *Yamaka-pakarana*, *paṭṭhāna-pakarana*. The core teachings of the Buddha are preserved in these *piṭakas* in pāli language.

However, these texts do not put forward a systematic discussion of moral policies or philosophical ethics in the Buddhist era. But they do provide us a huge source for the reconstruction of a coherent ethical system. In these *piṭakas*, the use of such ethical terminology can be traced, in terms of which all aspects of human life and behaviour can be evaluated.¹⁰ Early literature can be interpreted as something, which provides us theoretical, evaluative as well as prescriptive statements. It, too, aims at providing us with certain guidelines in order to streamline our behavior and actions which ultimately direct us towards attaining specific goal in life. The statements which the literature provides, are prescriptive in the sense, that, they prescribe certain modes of behaviour, which must be adopted in order to achieve an end, which is supreme- the summon bonum. Summon bonum, according to pāli sutta is *nibbāna* (salvation). For all Buddhists, *nibbāna* is the highest goal, which all rational beings ought to achieve. Buddha, himself valued *nibbāna* as the highest goal which is to be realized, *nibbānam paramam vadanti buddhā*¹¹. It is conceived as a state of moral perfection and purification, as mentioned in one of the *tripiṭakas*, in *Samyuttanikaya* of *Sutta-piṭaka*.¹² *Nibbāna* is a pure and wholesome state, which is also defined

¹⁰ P. D. Premasiri, “Ethics of the Theravada Buddhist Tradition”, retrieved on 2015/11/04.

¹¹ Sukumar Dutt, *Early Buddhist Monachism: 600 BC - 100 BC*. P. viii

¹² *Yo kho avuso ragakkayo dosakkayo mohakkhayo idam vuccati nibbananti*. *Samyuttanikaya* (PTS) vol.4. p. 251.

in the *sutta* as elimination of impure and unwholesome attributes, such as lust, greed, hatred and delusion. Every human being is endowed with the capacity to attain Buddhahood.

2. Basic Principles of Buddhism-

One of the basic and the most foundational teaching of Buddhism is their four noble truths. The world according to the Buddha, is full of *dukkha* (suffering), and it is the common factor with which we all are dealing. He explained the **Four Noble Truths** (pāli- *cattāri ariyasaccāni*), in which the most dominant and central issue is *dukkha*, the four noble truths are as follows – *first*, the truth of suffering (*Dukkha*), *second*, the Truth of the Cause of Suffering (*Samudāya*), *third*, the Truth of the Cessation of Suffering (*Nirodha*), and *fourth*, the Truth of the Path to End Suffering (*Magga*)¹³. Ajahn Sucitto explains them as-

The four noble truths are about “suffering,” how it arises, how it ceases, and a way to bring around that ceasing. These occupy the center of the Buddha’s teaching, because they already are central to human experience. Everyone knows the feeling of lack or loss in their lives: this is what the Buddha called *dukkha*, often translated as “suffering,” but covering a whole range of meanings.¹⁴

The idea of ‘suffering’ as discussed in noble truths is based on the doctrine of *kamma* (Sanskrit- *karma*, while in pāli it is called *kamma*) and ignorance. Ignorance is the root of all evil things (*ye keci akusalā dhammā sabbe te avijjāmūlakā*). The hardships and adversities that we face in our human life are the results of evil actions which we have performed earlier in the present life or in the past lives. Actions which are erroneous, foster bad *kamma* while actions which are noble, produce good *kamma*. The *kamma*, which is performed, is determined as good or bad on the basis of one’s intent or will. If one is intended to harm the other, then the *kamma* undergone is corrupt and if one is intended to help the other, then the *kamma* undergone is commendable. It is supposed

¹³ *The Long Discourses of the Buddha (A Translation of the Digha Nikāya)*, p. 25.

¹⁴ Ajahn Sucitto (2010), *Turning the Wheel of Truth: Commentary on the Buddha's First Teaching*. P.122.

to teach one not to act in a certain way or else one would have to suffer the consequences. If a nun is found guilty of her ill-deed, then *saṃgha* is bound to punish her for her evil act. The degree of punishment depends upon the degree of wrong-done. Not only the metaphysical law operating naturally (law of *kamma*) punishes the wrongdoer, but also the *saṃgha* punishes the sinner. This points to another major factor which directly contributes to the result of our *kammas*, is our *conduct*. The *conduct* can either be good or bad, based on our intent and actions. However, I will discuss this in a broader manner in the later section of the chapter.

Human actions have been given a lot of importance in Buddhism as it comes under the *Śramaṇa* tradition, which means- ‘to work’, and to work diligently, for the attainment of salvation. An “action” can be seen as its central concept. Buddhism being an orthodox as well as an atheistic tradition, condemns the outlook that human experiences are determined by the will of the supreme God. The materialistic as well as nihilistic views are rejected by the Buddha, as they both, in a way, ignore the importance of the quality human actions. For Buddhists, the fruits which we reap are based on the good or evil actions performed by us. The actions which are undertaken by us, must not cause harm to the other human beings, therefore one must not indulge in activities such as lying, killing, etc. The moral principles are grounded in the elementary precepts of non-violence and compassion. “In the vehicle of hearers (*hīnayāna*) the main essence is not to harm others... non-violence or not harming is the root.”¹⁵ The basic foundation of Buddhism is laid on the principle of non-harming, non-killing, non-injury, so on and so forth. They have a great emphasis on the sanctity of life, including human life, animals, and even vegetation. An important aspect of Buddhist morality is that it aims at complete refrainment from that *which is not good* or *which is bad*.¹⁶ Abstinence from impure attributes such as lust, anger, greed, malice, doubt, pride, spite, love of pleasure etc., is suggested by Buddhists, “Desire and hatred, fear and folly: He who breaks the law through these, Loses all his fair repute Like the moon at waning-time. Desire and hatred, fear and folly, He who never yields to these Grows in goodness and repute Like the moon at waxing-time.”¹⁷ The conduct which is ‘good’ have a great importance in Buddhist ethics, which

¹⁵ Tenzin Gyatso, *Opening the Eye of New Awareness*, pp. 19-20.

¹⁶ In general sense, they can be interpreted as two ways of saying the same thing- *which is not good* or *which is bad*, but when applied to Buddhist model, then these two can be seen as pointing towards two different ethical precepts, *which is not good* suggests- the practice which is not compassionate, while *which is bad* suggests- those practices which are harmful, violent, so on and so forth.

¹⁷ *The Long Discourses of the Buddha (A Translation of the Digha Nikāya)*, 1995. p. 462.

comprises- self-restraint from the violent acts and deeds, including, killing, lying, taking intoxicants etc. *Lying* can be seen as violent to someone's feelings, unless and until the intention is *good*, the lie is *wrong*, bad and harmful. "Brethren, when I knew not, I said that I knew; when I saw not, I said I saw, telling a fruitless falsehood; than unless he so speak through undue confidence, he too has fallen into defeat, he is no longer in communion."¹⁸ Not only in Buddhist practices but in almost each and every morality, lying is an exercise which must be avoided. The below mentioned are Buddhist principles of moral ethics which aim at condemning those conducts which produce *bad* in the society, they are applicable to all sentient beings.

2.1. Five moral precepts (*pañca-sīla*)

Pañca-sīla as practiced by Buddhists, mainly focuses on preaching us to refrain from deeds which might harm the other. The five are as follows: 1. Harming living things, 2. Taking what is not given, 3. Sexual misconduct, 4. Lying or gossip, 5. Taking intoxicating substances, e.g. Drugs or drink.¹⁹ The initial precept emphasizes on refraining from causing injury or harm to any living creatures. This practice of nonviolence is to the extent, where they abstain from harming even the lowest insect. *Non-violence* is their core and central teaching. This precept reflects their nonviolent attitude towards each and every living being. Some of the Buddhist groups have also adopted a complete resistance from the activities which might cause damage to any kind of life, ranging from humans to lower organisms. For Instance: Professions, which involve destruction or damage to the life, even to the lowest creatures, are against the Buddhist conception. Such objectionable professions from which they should refrain, include- soldier, police officer or even farmer. These five principles were advocated by Buddhist not exclusively for monks and nuns but for all human beings. They can be located in a statement of the duties of laymen as mentioned in *Aṅguttara-nikāya*. "Monks, a lay follower should not engage in five types of business, business in weapons, business in human beings, business in meat, business in intoxicants, and business in poison."²⁰ However, they are not found as 'clearly stated five principles' in the most ancient

¹⁸ *Sacred Books of the East: Vinaya Texts*, Vol XIII, P. 4.

¹⁹ Paul D. Numrich, "Posting Five Percepts: A Buddhist Perspective on Ethics in Health Care", pp. 9-11.

²⁰ <http://www.accesstoinight.org/tipitaka/an/an05/an05.177.than.html>, retrieved on 2016/05/10.

manual of discipline. In *Tevijja Sutta*²¹, these five precepts are mentioned as ‘Little Rules of Conduct’, however, sometimes the fourth rule is omitted in them. By advancing these precepts among others (non-Buddhists), Buddhists aimed at the *good* of all, establishing love and harmony among them, thereby marginalizing the scope of violence amongst sentient beings. At the same time, they put forth the principles that were limited to Buddhists, which are that of “perfection” (*pāramī*). There are various qualities and when they are perfected that lead one to achieve “Buddhahood”.

2.2. Buddhist Theory of “Perfection”-

The list of the ten qualities which need to be perfected in order to attain Buddhahood are as follows:

1. Perfection of Giving (*Dāna pāramī*)
2. Perfection of Morality (*Sīla pāramī*)
3. Perfection of Renunciation (*Nekkhamma pāramī*)
4. Perfection of Discerning Wisdom (*Paññā pāramī*)
5. Perfection of Energy (*Viriya pāramī*)
6. Perfection of Patience (*Khanti pāramī*)
7. Perfection of Truthfulness (*Sacca pāramī*)
8. Perfection of Determination (*Adhiṭṭhāna pāramī*)
9. Perfection of Loving Kindness (*Mettā pāramī*)
10. Perfection of Equanimity (*Upekkhā pāramī*)²²

These qualities form an interlinked chain, where one leads to another. This series of ten qualities is closely tied to the attainment of the Buddhahood. Unlike, *pañcasīla*, which are for all human beings, *pāramīs* are limited in their application to those who believes that they possess the potential to achieve the Buddhahood and the goal of their lives is attainment of *nibbāna*. The first *pāramī*, *dāna*, talks about the perfection of *giving*. When we give something to others without expectation

²¹ *Buddhist Suttas*, 1881. Trans. by T. W. Rhys Davids, ed. by F. Max Müller Oxford. Vol. XI, P. 190.

²² The Buddhist Society, <http://www.thebuddhistsociety.org/page/paramis-paramitas>, retrieved on 2015/10/25.

of getting anything in its return, this act of ours is stimulated by our will to share, help or “give” and not directed by greed. When sharing is motivated by greed, then, “giving” intrinsically holds the desire of getting something in return. This quality can be perfected only when the mental divide between “I” and “you” is annihilated. Perfection of giving, in the sense, frees man from clinging, attachment, possession etc. When one is devoid of them, she saves herself from falling back into the vicious cycle of death and rebirth and comes one step closer to achievement of *summon bonum* (*nibbāna*). The second *pāramī, sīla*, leads us towards the achievement of moral purity of thought, words and deeds. When the behaviour of an individual is guided by ethical principles, a person leads to an ethical life by giving up on acts which are immoral. An individual practicing the perfection of morality, will lead a life devoid of ill-deeds, degrading others, lying, using harsh words. Such conduct must be avoided, which are bound to hurt the sentiments of others. Our acts, in order to be called moral, must be confined within the ethical limits. The third *pāramī, nekkhama*, aims at giving up material objects, as well as earthly desires. It suggests us to renounce whatever binds us to this materialistic world and the sufferings associated with it. The life which is lived must be full of purity, and free from lust and craving. The practice of ‘renunciation’ is associated with ‘right intention’, which is one of eightfold noble path. The next *pāramī, paññā*, is closely associated with perfection of understanding, the perfection of discernment, perfection of cognitive activity, the perfection of know-how, so on and so forth. By the attainment of wisdom, one is able to get rid of afflictions. The perfection of wisdom forms the basis for acquiring the enlightenment. The fifth *pāramī, viriya*, where putting effort does not imply physical effort but it refers to the strength of character. Making the right determination to overcome unskillful mental factors. The sixth *pāramī, khanti*, talks about tolerance, endurance and composure. The main purpose of *khanti* is to practice patience towards other human beings. It embraces “forgiveness” to the greatest extent. The next *pāramī*, which is a pāli word called *sacca*, can be translated as “real” or “true”. No strength is greater than the strength of righteousness.²³ The eighth, is *adhiṭṭhāna*, can be interpreted as decision, resolution, self-determination and resolute determination. The way to attain *nibbāna* is not easy, strong determination and will are required to get rid of obstacles coming and hindering us from achieving the same. The ninth quality that needs to be perfected is *mettā*, *mettā* is love without attachment. Buddhist who practices loving kindness, will always relish peace as she carries no ill-will towards other sentient beings. One who

²³ Upadhyaya, K.N. *Early Buddhism and the Bhagavad Gita*, P. 535.

practices *mettā*, has learnt unconditional love towards entire humanity. The last *pāramī* is *upekkhā*, it is evenness of mind, unshakeable freedom of mind. A pure mental state which springs by following the ascetic way as prescribed by Buddhists. This virtue is produced in the path to achieve *nibbāna*.

When these above discussed qualities are perfected, a monk moves towards attaining the Buddhahood. “The attainment of Buddhahood with all its superhuman attributes (e.g. omniscience) is the result or consequence of the vast accumulation of merit during the exercise of *pāramis* in anterior births”²⁴. The actions performed, are parameters on the basis of which our future is ascertained. Our past *kammas* are reflected in our present, and serves as a basis of happiness or unhappiness. Early Buddhism also set forth a *concept of punishments* systematically, where penalties are given by the *saṅgha* to monks and nuns who break the rules. It holds a long discourse which discusses the basic conducts, *good* or *bad*, as accepted by the *saṅgha* (a community). Buddhist principles, as acknowledged by them are ethical precepts. These precepts aim at maintaining peace and harmony within the society. These principles are not rules as such, rather they are ‘principles of training’. They are undertaken in the practice by intelligence where individuals are free to choose them. However, if a nun commits an act which is bad, *saṅgha* comes forward and punishes her for her unjustifiable behaviour. The punishment awarded is based on the prescribed rules as fixed by the Buddha.

3. Buddhist Theories of Punishment-

The *Vinaya Piṭaka* is the book which provides us with the Buddhist notion of punishments. The text is aimed at regulating and controlling the behaviour of monks and nuns within the community. It is a rule book, in which rules are more or less based on the basic precepts of Buddhism. The guidelines established during the time of the Buddha, later were formed code of conduct, known

²⁴ Reginald Stephen Copleston, *Buddhism, Primitive and Present, in Magadha and in Ceylon*. P. 98.

as *Pātimokkha*.²⁵ The *pātimokkha* code of conduct is a way that leads the members of the *samgha* to live a righteous life and to maintain spiritual purity and harmony in the communion. As mentioned in the ‘Wrong Livelihood’ of *Aṅguttara Nikāya*- “These five trades, O monks, should not be taken up by a lay follower: trading with weapons, trading in living beings, trading in meat, trading in intoxicants, trading in poison.” It explains “trading in living beings” (*sattavaṇijjā*) as the selling of human beings, i.e. slave trade; this may be too narrow and to have a macro look at this, we should probably include in this category the raising of livestock for slaughter. One should neither engage in these trades oneself nor should one encourage others to do so. Abstention from these wrong occupations come under the domain of *right livelihood*, the fifth factor of the Noble Eightfold Path.²⁶ By advancing such passages, Buddhists tried to advocate the idea of *right conduct* as opposed to the idea of *wrong conduct*. Non-harming, can be seen as synonymous to *good conduct*. The conduct which is *good*, neither harms nor produce *bad*, rather it is *good* in nature and produces- love, compassion, kindness and giving, selflessness and generosity. But if the actions performed are motivated by acts which involves anger, pride, hatred, jealousy, envy, violence, etc., the conduct is *wrong* as conflicting to *good* or *right*. *Bad* conduct reaps bad *kammas*, while *good* conduct earns good *kammas*, which consequently forms the basis of happiness or unhappiness in the future life. What is important for an action to be judged as morally *good* or *bad* is not the result but the intention, with which the action was undertaken. It is not only about the outer consequence but the inner will or motive as well. In Buddhism, it is pointed out that each action, whether meritorious or demeritorious has got some inner roots. Demeritorious actions are rooted in three unwholesome states of mind, namely, lust, attachment, hatred or delusion, which are known as ‘*akusala-mūla*’ (roots of demeritorious actions), while those actions which are meritorious, are called ‘*kusala-mūla*’ (roots of meritorious actions).²⁷ The actions performed, is needed to be inquired by the performer whether they were motivated by *akusala-mūla* or *kusala-mūla*, thereby determining whether they were *good* or *evil*. This process of introspection and self-reflection plays a significant role. Our mind is seen as a mirror, which reflects to us our *self* and

²⁵ There are different interpretations regarding the meaning of the word *pātimokkha* (Sanskrit: *prātimokṣa*). According to one interpretation “it is the beginning, it is the face (*mukhaṃ*), it is the principal (*pāmukhaṃ*) of good qualities; therefore, it is called ‘*pātimokkhaṃ*’. W.Pachow, *A Comparative Study of the Prātimokṣa*, p. 228.

²⁶ *Aṅguttara Nikāya*, (1970). trans. by Nyanaponika Thera & Bhikkhu Bodhi, p.13.

²⁷ Upadhyaya, K.N., 1971. *Early Buddhism and the Bhagavad Gita*, p. 437-438.

by this we analyze our own intent. The conversation between Buddha and Rāhula is based on this context, where Buddha says-

“What do you think, Rāhula, for what purpose is a mirror?”

“For the purpose of reflecting (*paccavekkhaṇattho*), Lord.”

“Similarly, Rāhula, having reflected thoroughly should bodily action be done,... verbal action be done,... mental action be done... If Rāhula, when reflecting you realize: ‘This bodily action of mine, that I am desirous of doing would lead my own obstruction or harm (*byābādhāya*) or to the obstruction or harm of the others or to that of both’- demeritorious is this bodily action, entailing suffering and productive pain. If on the other hand, Rāhula, when reflecting you realize: ‘this bodily action that I am desirous of doing would be conducive neither to the obstruction or harm of myself, nor to that of the others nor to that of both’- meritorious is this bodily action, entailing joy and productive happiness.’ Such bodily action, Rāhula, you should perform.”²⁸

It is important to engage in self-analysis, bad actions lead to deteriorate the quality of our life. However, such conducts are not only taken care by the natural law of justice called *kamma* theory but also by the *saṅgha*. As we have discussed earlier as well, that if one is found guilty of her wrong conduct, then she has to go through scoldings and punishment, and even damnation. If the one is found guilt-ridden of violating the rule, then she is bound to be punished accordingly. For greater degree of wrong-done, the punishment is of higher degree and vice versa. For instance, taking someone’s life is one of the biggest evil act which is highly condemned by the *saṅgha*, ‘Whatsoever, Bhikkhu shall knowingly deprive of life a human being, or shall seek out an assassin against a human being, or shall utter the praises of death, or incite another to self-destruction, saying, “Ho! My friend! What good do you get from this sinful, wretched, life? death is better to thee than life!” If so thinking, and with such an aim, he or she by various argument utter the praises of death, or incite another to self-destruction, one too is fallen into defeat, and is no longer in communion.’²⁹ It is important to notice here that for violation of any rule, there is a punishment designed by the *saṅgha*. The conduct which is bad, is punishable at two different levels, first, punishment by the *saṅgha*, and second, punishment through *kamma* theory. But it seems to be

²⁸ *The Middle Length Discourses of the Buddha*, A New Translation of The Majjhima Nikāya. p. 524.

²⁹ *Sacred Books of the East: Vinaya Texts*, Vol XIII, P. 4.

confusing, as if natural law of justice is operative at the metaphysical level, then why is there any need of punishments on empirical level? This will be discussed in an extensive manner in the later chapter. The Buddhist concept of good or bad conduct is based on the theory of *kamma*, according to which we are trapped in the vicious cycle of birth and rebirth. The right conduct is a path that leads us to achieve the highest goal for which we all are striving, is *nibbāna*.

4. ‘Conduct’: *Good or Bad-*

The conduct can either be *good* or *bad*. The conduct, which is good repels the bad *kammas*. The main aim of the teachings of Buddhism is the attainment of Buddhahood by practicing good virtues and avoiding bad deeds. In order to purify one’s conduct, Buddhist theory of the **noble eightfold path** seems to hold a significant position. The path that must be followed in order to attain the highest *good*, which in Buddhism is *nibbāna*, is called noble path (*ariyamagga*). The eight fold paths are as follows- right view (*sammā diṭṭhi*), right thought (*sammā saṅkappa*), right speech (*sammā vācā*), right action (*sammā kamanta*), right livelihood (*sammā-ājīva*), right effort (*sammā vāyāma*), right mindfulness (*sammāsatī*), and right concentration (*sammāsamādhi*).³⁰ These eightfold paths according to the Buddha are the middle way (*majjhimā paṭipadā*). Buddha in *Dhammacakkappavattana Sutta* pointed out: “the two extremes, monks, are not to be followed. What are the two? To give oneself up to indulgence in sensual pleasures (*kāmesu kāmasūkhallikānuyoga*), which is base, common, vulgar, unholy and unprofitable; or to give oneself up to self-mortification (*attakilamathānuyoga*), which is painful, unholy and unprofitable. Avoiding both these extremes, the Tathāgata has shown the Middle path, which is to make for insight and knowledge, to lead to peace, discernment, enlightenment or *Nibbāna*. What, monks, is that Middle Path? It is the very same Noble Eightfold Path (*ayam eva ariyo aṭṭaṅgiko maggo*).”³¹ This middle path of Buddhism is somehow similar to Aristotle’s Golden mean. In Aristotle’s theory, the middle path is said to be followed. It avoids both extremes, one of excess and the other

³⁰ *The Long Discourses of the Buddha (A Translation of the Digha Nikāya)*, p. 25.

³¹ Upadhyaya, K.N. *Early Buddhism and the Bhagavad Gita*. P.425.

of deficiency. In boarder manner, both advances the middle path by evading the extremes. The eight fold noble path assists one to follow the *majjhimā paṭipadā*. Having a view which is right, reveals to us the real nature of the objects.

When one comes to realize the impermanent nature of this world and its objects, one can be said to have the right view, this marks the beginning of the holy life of an individual. Buddha said, “when, monks, the monk sees the impermanent corporeal, feeling, perception, volitions and consciousness as impermanent (subject to suffering and without a self) in that case he is possessed of the right view” (*sā’ssa hoti sammādiṭṭhi*)³². When a disciple comes to know about the real and corporeal nature of earthly objects, she gets alienated. When she feels alienated, she loses the attachment towards them. In other words, she gets detached from them, by which she is freed, and then, eventually she becomes aware about her being free. “... Seeing rightly one is detached. With the destruction of lust, passion is destroyed and with the destruction of passion, lust is destroyed. With the destruction of lust and passion, the mind is said to be perfectly freed.”³³ Buddha tried showing through various instances the empirical evidence and not metaphysical or theological, how sufferings arise due to the momentary nature of earthly objects. However, by proper self-control and correct understanding, one can rise above the world full of sufferings. But the belief that the worldly objects are permanent or blissful, is a wrong view (*micchā diṭṭhi*) against the right view (*sammā diṭṭhi*). The right view forms the basis of Buddhist ethics, the Buddha tried to explain it more clearly by saying, “It is, monks, the knowledge of suffering, the knowledge of the origin of suffering, the knowledge of the cessation of suffering, and the knowledge of the way of practice leading to the cessation of suffering. This is called Right View.”³⁴ If one is possessed of the view, which is correct, then one’s actions will also be in line to the same. When the actions performed are right and one is aware about its righteous roots, then he or she is possessed with a view which is *right*.³⁵ If we now consider the actions which are righteous and unrighteous, then, it can be seen that greed (*lobha*), hatred (*dosa*) and delusion (*moha*) are the roots of all unrighteous actions, while

³² *Saṃyutta-nikāya*. Ed. By L. Feer. Vol III. P.51.

³³ *Saṃyutta-nikāya*. Ed. By L. Feer. Vol. IV. P.142.

³⁴ *The Long Discourses of the Buddha (A Translation of the Digha Nikāya)*, 1995. Trans. by Maurice Walshe, Wisdom Publications: Boston, p. 348.

³⁵ *The Middle Length Discourses of the Buddha, A New Translation of The Majjhima Nikāya*. P. 75.

their opposites form the basis of actions which are righteous. As per Buddhism, every action has a cause, therefore the acts whether righteous or unrighteous has a root, here we will discuss the respective roots of the bodily, verbal and mental actions³⁶--

(A) Unrighteous bodily actions:-

1. Destruction of Life
2. Stealing
3. Sexual Misconduct

(A) Righteous bodily actions:-

1. To abstain from destruction of life
2. To abstain from stealing
3. To abstain from sexual misconduct

(B) Unrighteous verbal actions:-

1. Speaking falsehood
2. Slandering
3. Speaking harsh words
4. Talking frivolously

(B) Righteous verbal actions:-

1. To abstain from speaking falsehood
2. To abstain from slandering
3. To abstain from speaking harsh words
4. To abstain from talking frivolous

(C) Unrighteous mental actions

1. Covetousness
2. Ill-will
3. Wrong view

(C) Righteous mental actions

1. Absence of covetousness
2. Absence of ill-will
3. Correct view

It can be easily noticed here that the principles and ethics of Buddhism are based on the very empirical grounds and not on any extraneous faculties, such as metaphysical or theological. What is *good* in nature, abstains from harming the other. “Whosoever destroy a living creature, and speaks untruth, takes what is not given in the world, and goes to another’s wife, and whatever man applies himself to drinking liquor and intoxicants, that person digs up his own root here in this very world. Thus know, o man, that evil characteristics are uncontrolled. May lust and the unlawful

³⁶ Upadhyaya, K.N. *Early Buddhism and the Bhagavad Gita*, P. 413.

not deliver you over to misery for a long time.”³⁷ It is certain that the evil-doer will be punished, may be in the harshest manner possible. What other compassionate beings can do for the offender, (or ignorant) is- to acknowledge her about the consequences of her actions. Unlike other religious practices, Buddhism have no concept of a divine God. However, “the natural law of *kamma* operating universally and independently is thought sufficient to explain the fact of moral retribution in the universe.”³⁸ Every action counts and one suffers or enjoys accordingly.

5. Two central Buddhist precepts: Non-Violence and Compassion

The righteous actions form the basis of the conduct which is good or right, and the otherwise (unrighteous actions), form the basis of wrong conduct. The Buddhist notion of *good conduct*, splits in two different dimensions. These two are complimentary to each other, one teaches an individual to refrain from violent deeds, while the other aims at cultivating boundless love and affection among each other. *Non-violence* and *compassion* are two sides of the same coin. They both alter the *conduct* of an individual, and helps one to achieve Buddhahood. “In Buddhism it is not merely a negative virtue confined to mere desistance from killing but it is a definitely positive virtue implying loving-kindness to all creatures.”³⁹ Non-violence deals with refrainment, in this sense it is negative, while compassion is a positive term. The conduct, which is good, must be guided by the principle of compassion. The Buddha says, “One should conquer anger by non-anger, one should conquer bad by good; one should conquer miserliness by giving, and one speaking falsehood by truth.”⁴⁰ This practice of compassion, is applied to both, the others and oneself, which arise within and cannot be forced from outside. As per the Buddhist concept of ‘*Brahma-vihāra*’, a follower is required to emit boundless love or friendliness (*mettā*) towards all

³⁷ Glenn Wallis. 2007, *The Dhammapada: Verses on the Way*, P. 37.

³⁸ Ibid. P. 414.

³⁹ Upadhyaya, K.N., *Early Buddhism and the Bhagavad Gita*, p. 535.

⁴⁰ *The Word of the Doctrine (Dhammapada)*, 2000. Trans. by K.R. Norman. P.34.

creatures, compassion (*karuṇā*) for those in distress, rejoicing (*muditā*) with those who are justly happy and acting with equanimity and impartiality (*upekkhā*) towards all human beings.⁴¹

The Buddha declared: “The savor of grief is not grief, but compassion.”⁴² Compassion is a practice and the endorsement of the unconditional love (*karuṇā*) and tenderness towards all creatures. It generally means to have empathy with those who are suffering. Buddha, in his teachings has been seen as placing little *love* above the vast gifts.⁴³ The mendicant who cultivates loving-kindness in his heart, without enmity and without malice, and by destruction of the corruptions attains even in this life by his own insight the realization of the corruptionless emancipation of the mind, the emancipation of knowledge, he, Kassapa, is rightly called a *Brahman* and a *Śamaṇa*.⁴⁴ However, this unfathomable compassion towards all sentient beings involves detachment from them as well. Here, the term *detachment* seems to distort the motion which was created by ‘boundless love’. This word “detachment” is ambiguous. In simple understanding, detachment suggests aloofness and withdrawal from the world. This hints that one is detached from the world. But this implies that one who is detached from the society and others, have no concern for them, as she is away from them. What does Buddhist mean by *detachment*? *Detachment* in *Pāli* can be bifurcated into two- *viveka* and *virāga*. *Viveka* can be translated into English as separation or aloofness. It implies physical withdrawal. *Virāga* literally means the absence of *rāga*, absence of lust, desire, craving for existence. It suggests detachment from material goods as well as sense pleasures. In the first sutta of *Majjhima Nikāya*, the *Mulapariyaya Sutta*, the Buddha said that the one who is freed from all defilements is the perfect saint (*araham khīṇasavo*), she has realized the true nature of every material object in all respects (*sabbaṃ sabbato abhiññāya*). She finds no delight in this world and therefore is detached from each and every earthly object (*sabbaṃ na maññati, sabbasmiṃ na maññati, sabbato na maññati, sabbaṃ me ti na maññati*). Now it is clear to the some extent that what kind of aloofness Buddhists are talking about. This aloofness, the suffering of this kind is coeval with the empirical world. *Nibbāna* is the

⁴¹ *The Middle Length Discourses of the Buddha*, A New Translation of The Majjhima Nikāya. p. 1181.

⁴² Ven. Thanissaro, Bhikku, *Dhammapada, A Translation*. P. 13.

⁴³ Reginald Stephen Copleston, *Buddhism, Primitive and Present, in Magadha and in Ceylon*, p. 100.

⁴⁴ *The Long Discourses of the Buddha (A Translation of the Digha Nikāya)*, P. 154.

state of the *extinction of suffering* and Buddha himself refrains from advancing any speculative description of it. Absolute detachment and consequent release from suffering is not possible so long as one does not abandon this subtle clinging to the 'I' or selfhood (*attavādupādāna*), because lust, attachment or clinging is the very root of suffering.⁴⁵ When one is detached from her very own self, sufferings which were there due to the attachment with impermanent worldly object vanishes. One becomes utmost tolerant, calm, compassionate, sorted and focused. The focus of ascetic life is only one, which is the attainment of the highest goal. With achievement of which all differences are diluted, the impermanency of this changing world becomes clear.

Conclusion

However, it is true that Buddhism can be considered as one of the most well-structured ethical system. But the irony which arises after evaluating its basic principles is that, if they have a well rooted ethical system in which love and compassion are central, then why do they put forward their penalizing practices along with the ethical model? Is it fine to award someone with mental or physical pain as Buddhists completely refrains from harming any human being? Some of the Buddhist suttas state the instances of punishments which were harsh and unacceptable if we consider the Buddhist parameters.

In the next chapter, I shall endeavour upon the same and ponder upon the notion of punishments as expounded by the Buddha. Are there any instances of the highest form of punishment, such as Death Penalty in Buddhist literature? By reflecting upon them, I might come in the position to understand whether the basic Buddhist precepts of non-violence and compassion

⁴⁵ *Chanddjaṃ dukkhaṃ*, Saṃyutta Nikāya.I. 22; or, *chando hi mūlaṃ dukkhassā'ti*, Saṃyutta Nikāya. IV. 330 and *pañcupādānakkandhā chandamūlakā'ti*, Saṃyutta Nikāya. III. 10. As cited in Upadhyaya, K.N., *Early Buddhism and the Bhagavad Gita*. p. 411.

go hand in hand with their idea of punishments or not. For this purpose, I will have to study the Buddhist theory of punishments in more detailed manner.

Chapter 2

Buddhist Notion of Punishment

In this chapter, I wish to carry forward the discussion on the Buddhist theory of Punishments. I had already engaged briefly, with the same, in the previous chapter. Here, I shall ponder upon the rules and practices as mentioned in their rule book, viz. *Vinaya Piṭaka*, in a profound manner. Buddhists have a well organised account of the rules and guidelines for the purpose of awarding *Punishments*. The rules established during the time of the Buddha, were later formed code of conduct, known as *Pātimokkha* (Sanskrit: *prātimokṣa*).⁴⁶ The *pātimokkha* code of conduct can be seen as a way that helps the members of the *saṅgha* to lead a blameless and guilt-free life and thereby upholding the spiritual purity and harmony in the communion.

The punishments and rewards were given on the basis of rules propounded by the Buddha, in order to maintain the discipline within the *saṅgha*. After his death, these rules were compiled together by the disciples of the Buddha. The text, addressed as their “rule book”, is popularly known as *Vinaya* text. It endorses a very clear idea of redressing the wrong by punishing the wrongdoer. However, it is *ironical*, that a school, whose basic foundation is laid on the principles of *non-violence, compassion, loving kindness*, propound its theory of punishment. This *seems* to be in conflict with some of the basic precepts admitted by them. This gap between the basic ethical precepts and the theory of punishments as advanced by them, needs to be examined carefully. Amongst these, I will also try to locate the position of Buddhists on the matters of extreme violence and killings, such as Death Penalty, etc. In order to understand this, we need to take a look into the texts where we come across the instances of punishments, *Vinaya* text, *Dīgha-nikāya*, *Jātaka* tales,

⁴⁶ There are different interpretations regarding the meaning of the word *pātimokkha* (Sanskrit: *prātimokṣa*). According to one interpretation “it is the beginning, it is the face (*mukhaṃ*), it is the principal (*pāmukhaṃ*) of good qualities; therefore, it is called ‘*pātimokkhaṃ*’. W.Pachow, *A Comparative Study of the Prātimokṣa*, p. 228.

etc. For this purpose, let us first focus on *Vinaya Piṭaka*, it represents the systematic and well-structured theory of rules and regulations as found in the Buddhist literature.

1. *Vinaya Piṭaka*

The foremost and most important text for upholding discipline within the community, is their rule book, *Vinaya Piṭaka*. All the rules mentioned in it were formulated by the Buddha, after some incident or crime committed in the *saṃgha*. In this text, both, ethical and legal subjects are analyzed in a detailed manner. The first section of the *Vinaya*, is *Sutta-vibhaṅga*, which consists of complete rules of disciplines and training for monks and nuns. There are 227 rules for Monks, while for Nuns, 311 rules are laid. Early Buddhists hold a long discourse which focuses on the basic *conducts*, *good* or *bad*, as accepted by the *saṃgha* (“*Conduct*” as I have discussed in the first chapter). This text basically aims at regulating and controlling the behavior of monks and nuns within the *saṃgha*. All these rules are more or less based on the basic precepts of Buddhism. It emphasizes on all the rules, including punishments like exemption from the *saṃgha*, confessions by the offender etc., established by the Buddha himself. These principles were set when any violation was perpetrated within the *saṃgha*. Where individuals live collectively, there arises a need of punitive measures whenever rules of the community or the *saṃgha* are violated. In order to safeguard the individuals and to maintain discipline in the society, punishments are advanced. The *pātimokkha* as mentioned in *Vinaya* Text are based on the nature of the ‘wrong’ committed by monks and nuns (*Bhikkhu-pātimokkha* and *Bhikkhuni-pātimokkha*). For instance,

“Whatsoever Bhikkhu shall take, from village or from wood, anything not given- what men call ‘theft’ - in such manner of taking as Kings would seize the thief for, and slay, or bind, or banish him, saying, ‘Thou art a thief, thou art a stupid, thou art a fool, thou art dishonest,’ - Bhikkhu who in that manner takes the thing not given, he, too, has fallen into defeat, he is no longer in communion.”⁴⁷

⁴⁷ *The Vinaya Texts*, vol. XIII, p. 4.

Whosoever indulges in activities such as robbery, is bound to get punished either by the *saṅgha* or by the King. If a nun or monk is found guilty of stealing or taking something which was not given to them, then they would no longer be a member of the Buddhist society, *saṅgha* would banish or exempt them.

Various kinds of punishments were introduced during the era of the Buddha. The above mentioned is an example of punishment against ‘stealing’. *Vinaya piṭaka* is divided into following books: 1) *Pārājika*, 2) *Pācittiya*, 3) *Mahāvagga*, 4) *Kullavagga*, 5) *Parivāra-vagga*. The first two are collectively called *Sutta-vibhaṅga*, and the third and fourth are called the *Khandhkas* together⁴⁸. The rules established during the lifetime of the Buddha, were later transformed into a code of conduct known as the *pātimokkha*⁴⁹. It was classified into eight sections. This categorization was based on the nature of the offences. There are different interpretations regarding the meaning of the word *pātimokkha* (Sanskrit: *prātimoksa*). According to one interpretation “it is the beginning, it is the face (*mukhaṃ*), it is the principal (*pāmukham*) of good qualities; therefore, it is called ‘*pātimokkham*’⁵⁰. This interpretation may help us in our discussion. There are disputes with respect to the number of the rules in different traditions of Buddhism. The numbers of rules range from 227 to 263 for monks and 290 to 480 for nuns. The division of the *pātimokkha* is as follows:

- i. *Pārājika* (defeat)
- ii. *Saṅghādisesa* (requiring suspension)⁵¹
- iii. *Aniyatas* (indeterminate rules)⁵²
- iv. *Nissaggiya Pācittiya* (requiring forfeiture)
- v. *Pācittiya* (requiring repentance)
- vi. *Pātiesaniīya* (requiring confession)
- vii. *Sekhiyā* (concerning training)

⁴⁸ *The Vinaya Texts*, trans. T.W Rhys Davids, and Hermann Oldenberg, p. ix (introduction).

⁴⁹ W. Pachow, *A Comparative Study of the Prātimokṣa*, p. 228.

⁵⁰ *Ibid*, p. 4.

⁵¹ *The Vinaya Texts*, trans. T.W Rhys Davids, and Hermann Oldenberg, P. 14. (If a community of bhikkhus forming a body of less than twenty, even by one, reinstates the bhikkhu, he will not be reinstated and even the community will be blameworthy.)

⁵² W. Pachow, *A Comparative Study of the Prātimokṣa*, P. 228.

viii. *Adhikarana-samathas* (setting of cases)⁵³

Pārājika is the first section of the *pātimokkha*. It includes four offences: a.) Sexual offence, b.) stealing, c.) taking life, d.) false claims of superhuman powers. These are the most serious crimes so the punishment is also severe- the expulsion from the order. In Buddhism expulsion from the order is viewed as the biggest punishment. *Sanghādisesa*, are thirteen great offences- of these the first five are connected with uncleanness; the next two belong to the offence of ‘taking life’. It is insisted that if the huts are erected for monks’ use, care should be taken that animals may not be inconvenienced or unintentionally killed. Hence, clear space must be left around such structures to avoid danger to the animals. The remaining six are against faults which come under the head of ‘falsehood’, such a deliberate lying, slander, obstinate false teaching, causing division, and so on. It includes a procedure of punishment: a.) if any of these offences is committed; one has to remain in probation for as many days as she consciously hides the sin, b.) a penance of six further days, c.) then an official pardon, d.) reinstatement ceremony by a body of twenty Bhikkhus⁵⁴. The third division of *pātimokkha*, called “*Aniyata*” deal with mistakes linked with the first ‘Condition of Defeat’. They are concerned with a Bhikkhu who sits with a woman in an open place, or with one who sits with a woman in a concealed place.” Punishment may be similar to the offences related to *pārājika*, *sanghādesesa* or *Pācittiya*⁵⁵. The next group, which is *Nissaggiya Pācittiya*, deals with the special observances of the community, the use of robe, bowls and rags, etc., asks the monks to refrain from the use of some medicines as well as from the possession of gold and silver. Now, the next is *Pācittiya* rule, it contains 92 rules, out of which five are directed against taking life. For instance, Digging is forbidden to the monks as lest worms should not be killed. There is only one rule which deals with theft, it is against picking up and keeping a jewel. Nearby 20 rules are built around the offences which are sexual in nature. Out of 92, ten rules are against- lying, slandering or against the pretensions to supernatural powers. *Pātidēsaniīya* are concerned with the situations under which a bhikkhu receives his food. Violation of these rules requires confessions by the offender. *Sekhiyā* contains seventy five rules, which are concerned with the daily life of the *saṃgha*

⁵³ Ibid, p. 228.

⁵⁴ *The Vinaya Texts*, trans. T.W Rhys Davids, and Hermann Oldenberg, p. 14. If a community of bhikkhus forming a body of less than twenty, even by one, reinstates the bhikkhu, he will not be reinstated and even the community will be blameworthy.

⁵⁵ W. Pachow, *A Comparative Study of the Prātimokṣa*, p. 228.

members. It includes training for eating, dressing, sitting, walking and so forth. These rules are to be observed and require no specific punishment. *Adhikarana-samathas*, seven rules are concerned with the settlement of cases. Thus, they are matters of proceedings⁵⁶. All these rules were made by the Buddha when their need aroused. In order to combat crimes and offences breeding within the *samgha*, rules were formulated and amended further. In *Vinaya Piṭaka*, they offer stories which help us in understanding these punishing practices with more clarity.

Now, I will be focusing on some cases of these rules specifically the *Pārājika and Pācittiya* rules.

The *Pārājika and the Pācittiya* rules-

The *Pārājika* and the *Pācittiya* rules together, are called the *sutta-vibhaṅga*. The *sutta-vibhaṅga* section of the *Vinaya* states each rule with a story; each story leads up to the rule. The penalty is also stated. Afterwards it elaborates each word of the rule established. Then, in order to make the rule clear, it offers other stories and explanations. The rules are very clearly listed with illustrations. But the sequence is not always the same. *Sutta-vibhaṅga* explains all rules, followed by a commentary upon them⁵⁷. This section opens with the *pārājika* (defeat) rules. The first story starts with the Buddha's teaching on the contemplation of the impure as a stage of meditation. Then the Buddha departed for half-month in solitary. The monks in the process of contemplation, thought that their bodies are a hindrance in their way. Thus, they decided that to end this body is the best way. So they went to *Migalandika*, a sham recluse and asked him to deprive them of life, and in return they offered their robes and bowls to him. He killed them and in the process became remorseful. Then *Māra* (devil) appeared and said that in fact he was doing right by "bringing across those who had not yet crossed"⁵⁸ then *Migalandika* killed a large number of monks up to sixty on a single day. After returning from the half-month seclusion, the Buddha inquired about the decreased number of the monks. When he learned that what has happened, he set forth a rule on prohibition on taking life. Whatever monk should intentionally deprive a human being of life,

⁵⁶ Ibid.

⁵⁷ *Vinaya Texts*, trans. T.W Rhys Davids, and Hermann Oldenberg, p. xv (introduction).

⁵⁸ *The Book of Discipline (Vinayapitaka)*, part 1 and 2, trans. I.B. Horner, p. 118.

or should look about so as to be his knife-bringer, he is also one who is defeated, he is not in the communion.⁵⁹ This is the first rule of the section. It states that the offence of taking life is, in no way acceptable in the *samgha*. Even if the victims themselves are asking for it. As here *Migalandika* deprived other monks of their lives because they asked him to do so and offered him their robes and bowls as an inducement for his help. The role of the “knife-bringer” is especially condemned in the rule. After this first formulation of the rule another story is mentioned that leads to the expansion of the rule to include also the incitement to death. In this story a group of six wicked monks became enamored of the wife of an ill –layman. They praised the beauty of death to him in order to make him weaken his attachment to life and get him out of the way⁶⁰. As result he began to eat foods that were not good for his health, and he died. When this matter reached the Buddha, he admonished the monks and expelled them from the communion. Then he expanded the rule concerned with taking life.

Whatever monk should intentionally deprive a human being of life or should look about so as to be his knife bringer, or should praise beauty of death or insight (anyone) to death, saying “hullo there, my man, of what use to you is this evil, difficult life? Death is better for you than life” or who should deliberately and purposefully in various ways praise the beauty of death or should insight anyone to death: he also is one who is defeated, he is not in communion.⁶¹

Here, the way in which this precept is modified after a related incident, it shows how similar the modern set up and the Buddhist arrangement of punishment are. Buddhist theories in this sense are highly evolved, they kept unfolding from time to time as per the growing needs of the society (*samgha*). Similarly, in the modern theories also, the laws are modified from time to time according to the changing situations. This can be regarded as a retributive theory as here the offender is given punishment as she deserves it. But it also aims at deterrence, because this rule is set forth to prevent future cases of such crimes. Afterwards there is an explanation of each word of the rule that what it means, such clarity reduces the chance of ambiguity. At the end of the explanation, *Vinaya* clarifies the cases where the law is not applicable. It says the people who are insane, or where the

⁵⁹ Ibid, P. 123.

⁶⁰ Damien Keown, “Attitudes to Euthanasia in the Vinaya and Commentary”, p. 264.

⁶¹ *The Book of Discipline (Vinayapitaka)*, part 1 and 2, trans. I.B. Horner, pp. 125-126.

act is unintentional, there is no offence of defeat⁶². This presents a well systematized theory, which takes care of almost each and every aspect of an individual's right as well as that of the community.

The next couple of stories are based on the "intention" of the offender. As we have already discussed about an importance of person's *intent* while performing an action in previous chapter, I would repeat the same here too for better insight as it forms the basis of deciding the punishment of her offence. Once a monk going for alms, sat on a chair. On that chair a little boy was lying concealed in a rag. Monk, unknowingly sat on him by which the boy was killed. But this case is not as straight as earlier ones was. Monk killed the boy *unintentionally*, there is no offence of defeat but the offence is of wrong doing and for that he is required to repent⁶³. Around that time a monk was repairing a seat in the kitchen inside a house, he took hold of a pestle, the pestles were high up, a pestle falling down hit the head of a boy hard and he died. The Buddha inquired the monk about what was he thinking, he replied that he did not intended to do that. Buddha said there is no offence because this death was not intentional.⁶⁴ In this case the death was accidental, therefore no offence because one cannot be held responsible for accidental death. These examples show that there is a strand of consequentialism in Buddhist ethics. Because the decision here, is depending upon the result of the action. Consequentialist theory is concerned with the results which benefit the society at large. There is also a case of a terminally ill monk. In this story a group of monks suggest the ill monk that death is better for him. They do this out of compassion. But there is an offence involving expulsion from the communion⁶⁵. This suggests that to make death one's aim even out of confessions is a wrong-doing⁶⁶. This story is an example of the consequentialist theory. Regarding the penalty of the offences, W. Pachow states in the preface of his book, "A Comparative Study of the *Prātimoksa*" that:

If anyone should violate a particular precept, certain penalty or punishment would be imposed on the guilty individual. Depending on the nature of the offence the punishment may be light or severe. Being a

⁶² Ibid, p. 136.

⁶³ Ibid, pp. 137-138.

⁶⁴ Ibid, p. 138.

⁶⁵ Ibid, p. 123.

⁶⁶ Damien Keown, "Attitudes to Euthanasia in the Vinaya and Commentary", p. 266.

religion of compassion, expulsion is the worst sentence an offender would ever receive. In comparison to normal secular chastisement, the Buddhist way is very mild and humane.⁶⁷

Till now, the kind of punishments which Buddhists seems to have endorse are humane and more of a therapeutic in nature. Let us now study further before drawing any conclusion. I would like to move to the next section, which is *Pācittiya*. This section is concerned with minor or less serious crimes. These rules deal with the speech, behavior, alms, dressing and so forth. The first story is about telling a conscious lie. Hatthaka, a monk, talking with person of other sects, having acknowledged denied and having denied acknowledged. He told a conscious lie. When Buddha learned of this, he inquired him about it. He admonished him and sets forth the rule, “In telling a conscious lie, there is an offence of expiation”⁶⁸. Next story is about speech. In this story a group of monks insulted other monks, they scornfully laughed at them about birth, name, clan and so forth. When this matter reached the Buddha, he rebuked the monks and narrated the story of an ox and a Brahmin. In this story he showed that bad words can result in bad fruits and good words will result in good fruits, thus set forth a rule about speech that “in insulting speech there is an offence of expiation”⁶⁹. Another story is about a group of monks who were cutting trees in order to make dwellings for them. In a certain tree a devata was living, he asked a monk not to cut down the tree, but the monk did not take notice and cut down the tree and in order he stroked the arm of the devata son. When Buddha learned of this he sent that devata to a solitary in certain place. And the questions the monks and formulated a rule that “for destruction of vegetable growth there is an offence of expiation”.⁷⁰ As the matters knocked Buddha’s ears, he took no time to make new rules or amend the older ones.

All these stories of *Pācittiya* section shows that any offence even a minor one, will not be pardoned. One has to repent for his or her offences. These rules are concerned with daily behavior of the *saṅgha* members, there is a distinction between *paññatti -vagga* and *lokavagga*. Former is prohibited by the *Vinaya* only, later is considered immoral by the society at large⁷¹. So these rules

⁶⁷ W. Pachow, *A Comparative Study of the Prātimokṣa*, p. ix (preface).

⁶⁸ *The Book of Discipline (Vinayapitaka)*, part 1 and 2, trans. I.B. Horner, p. 166.

⁶⁹ *Ibid*, p. 173.

⁷⁰ *Ibid*, p. 227.

⁷¹ Damien Keown, “Attitudes to Euthanasia in the Vinaya and Commentary”, p. 262.

are somehow peculiar to the *samgha* but they surely have a moral value outside of the *samgha* as well. Both the sections on defeat and expiation show that how *Vinaya* is presenting an alternative theory of punishment. Though the punishments are not entirely based on any one kind of theory but decision of the penalty depends on the context of the crime. Sometimes it seems to be a consequentialist theory and sometimes it seems to a virtue ethics theory. As some decisions are taken on the basis of the “result” of the action and some other decisions are taken on the “intention” of the agent.

This discussion of the *Vinaya* shows that *Vinaya* is a very important text with a respect to the Buddhist ethics. Because in the *Vinaya*, both the moral and the legal matters are discussed and thus analyzed in a detailed manner. Damien Keown also says that *Vinaya* is a parallel of the Western moral philosophy.

The casuistry employed suggests parallels with western moral philosophy which often uses scenarios and hypothetical cases in an attempt to extract moral principles from different practical contexts⁷².

Though the rules are in the context of the *samgha* but it surely have fundamental moral values. The *Vinaya* not only deals with general principles of punishment but it also deals with controversial issues of punishment such as the issues of euthanasia and suicide. It should be taken into considerations that though the *Vinaya* is an early literature and is not as developed as modern theories of punishment. But we cannot ignore that being a text of early times, it still holds a great importance as it expresses not only the different theory of punishments but also can be looked as a root text for these modern theories. In the root of the modern theories of punishment is the thought of ‘human rights’ that each individual have a right of his or her own. Is there a basis of human rights in the traditional Buddhism? Damien Keown in his paper on ‘Human Rights’ argues that human rights is related to the human nature in the Buddhist tradition.⁷³ It is evident that Buddhism not only have respect for the human nature but also for the nature at large, and in that way it may be asserted that in Buddhist tradition the theories of punishment are inherited as a

⁷²Damien Keown, “Attitudes to Euthanasia in the Vinaya and Commentary”, p. 269.

⁷³ Damien Keown, “Are there ‘Human Rights’ in Buddhism?” *Journal of Buddhist Ethics*, vol. 2 (1995) p. 21.

response to the respect of the nature. Thus, the Buddhist system of punishment is relevant and holds extreme importance for being the early spring of humanitarian theories.

Khandhaka, which is the second book of the *Theravadin Vinaya Piṭakas* after *Sutta-vibhaṅga*, is divided into two sections. The first division is called *Mahāvagga*, and the other is *Cullavagga*. *Mahāvagga* contains the stories of enlightenment of the Buddha as well as of his great disciples. It also includes rules of *Uposatha* days. *Mahāvagga* consists of ten chapters, in which the second chapter deals with the practice of reciting *Pātimokkha*. Whereas, *Cullavagga*, which is the second section of *Khandhaka*, is divided into twelve chapters. It contains accounts of first and second Buddhist councils and establishment of the community of Buddhist nuns. This section also focuses on the rules which are directed towards addressing the offences of *saṃgha*. It puts forward the procedure to be followed while dealing with badly behaved monks and the complex issues, including those monks who were already on trial and commits further offence. The fifth book of the *Vinaya*, is *Parivāra-vagga*. It basically tries to recapitulate what has already been discussed in the previous sections. This book also tries to summarize and reclassify the rules as mentioned in previous books.

The *pātimokkha*, which is a very significant practice for monks, is mentioned and explained in almost all five books of *Vinaya*. It used to be and still is recited every half-month in the assembly within a certain defined area of bhikkhus, so that they may confess their sins and purify themselves if they had committed a transgression of the rules mentioned⁷⁴. The smallest number of the gathering is four while those who were due to some reason unable to attend it, have to send by a proxy the assurance of her having kept the rules. The *pātimokkha* manual was recited from memory by some chosen monk, audibly and carefully, the rest solemnly promising attention and undertaking to disclose any breach of the rule of which they might have been guilty. These kinds of punishments are mild and can be viewed as reformatory and therapeutic in nature. However, there is a disagreement among Buddhists as to whether or not Buddhism forbids even the higher form of punishments, like the death penalty. In the Buddhist literature, there are several instances

⁷⁴ Ibid, P. 4.

of punishment awarded for different wrongs committed by the bhikkhus in the *samgha*, principle behind which would correspond to some or the other of these above mentioned theories. Such incidents throw light on numerous practices adopted by them, including, the highest punishment possible, i.e., judgement of Death Penalty advocated to the offenders by the Kings, who practiced Buddhist faith. Let us closely study their stand on the higher forms of violence (killings etc.) and punishments, like, Death Penalty.

2. Violence and Death Penalty-

Buddhism places great emphasis on the sanctity of life. The first of the Five Precepts (*pañca-sīla*) is to abstain from the destruction of life. Chapter 10 of the *Dhammapada* states: Everyone fears punishment; everyone fears death, just as you do. Therefore do not kill or cause to kill. Everyone fears punishment; everyone loves life, as you do. Therefore do not kill or cause to kill.⁷⁵ Though the Buddhist perspective on death penalty is not clear. There are few instances which propound the view that killings were done by the monks, for example, in a *Jātaka* story, a *Bodhisattva* kills someone to save another person's life, because of which *Bodhi* was no longer able to achieve enlightenment in that particular life. For the act of killing, *Bodhisattva* had to undergo the chastisement, because of which he got deprived from the attainment of *nibbāna* for thousands of years. Apart from *Jātaka* tales, there are other Buddhist texts, which put forward the examples of human killings. It gives an instance of Death Penalty. In *Cakka-vattisihanada Sutta* (The Discourse on the Lion-roar of the Wheel-turner) of *Dīgha-nikāya*, a King, in order to set an example for the rest of the society, gives death penalty to a thief.⁷⁶ Here, the penalty given to the offender is more of a deterrent kind and have less to do with vengeance. King believed that if his subjects will witness the execution of an offender, they will never think of committing the same in the future. This seems to be in consonance with the deterrent theory of punishment⁷⁷ and not the retributive kind. The retributive type of punishment advocates the idea of *equal* punishment, as said by

⁷⁵*Dhammapada- A Translation*, trans. By Thanissaro Bhikkhu, Ven.

http://www.buddhanet.net/pdf_file/damapada.pdf, Retrieved on 2015/07/16.

⁷⁶ *The long Discourse of the Buddha: A Translation of the Dīgha Nikāya*, trans. M. Walshe, p. 399.

⁷⁷*Ibid*, P. 399.

Hammurabi in 1875, “an eye for an eye, a tooth for a tooth”. Although, the deterrent form of punishment is designed to avoid future crimes. It basically aims at setting an example by punishing the offender by which potential criminal is terrorized. But this failed to provide much help as the crime rate increased. The offenders started using sharp weapons for the purpose of robbery and indulged in further violent practices. It did not stop here, when they were caught and took to the King, the offenders lied (even when they were fully aware of falsehood). Later, the King had to repent over his judgements of killing.

One of the defining scholars of Buddhism (Mahāyanist), Nagārjuna, wrote to a King: “Especially generate compassion for those whose ill deeds are horrible.” Punishment should be carried out with compassion, “not through hatred nor desire for wealth,” or for retribution, since retribution is another name for revenge; “revenge” implies the action is done with anger, and therefore would burden the executioner with hatred and its resultant poor *karma*.⁷⁸ In other words, compassion can be viewed as a medicine used for the treatment of an offender. An act of hatred, if answered with hatred leads to further unrest in the society, what can fight animosity according to them is, unconditional love and compassion.

In one of the *Jātakas*, it has also been pointed out that in certain cases “a Bodhisatta may destroy life”, especially where there is a fault in his horoscope. At one place the Bodhisatta indulged in “killing deer and pig, and eating the flesh broiled,” then with others chased a thief and kicked and cuffed him.” There are some instances as well where the Bodhisatta selling meat for a coin can be seen. Moreover, paradoxes arise when the Bodhisatta is born as a carnivorous animal and has to kill not only for himself, but also for his herd and in fact, in such cases the Bodhisatta specializes in killing and hunting techniques. Here, I would like to quote an example of a King who ordered human killings and how these practices impacted his son, Temiya. A tale of Temiya, a mute prince (in Temiya Jātaka)-

⁷⁸ <http://www.faithstreet.com/onfaith/2011/10/26/a-buddhist-perspective-on-the-death-penalty/10373#>, retrieved on 2016/05/22.

“Temiya was an extremely sensitive child. One day when he was playing with his father, the King. The King is then called upon to judge four robbers. The King sentenced the first to be whipped a thousand times, the second to be imprisoned in chains, the third to be killed by a spear, and the fourth to be impaled. Overcome by the *kammic* consequences of his father's actions and fearing what would become of him if he did the same after succeeding to the throne, Temiya who was only a month old, refused to speak for the next sixteen years. Finally, Temiya solved his dilemma by becoming a recluse and converting the royal household and many others.”⁷⁹

This story can be seen as providing us with a parallel story to that of the Buddha himself. He, too, renounced his luxurious life of palace and went to woods in the search of truth. What disturbed Temiya, was violence. In *Matakabhatta Jātaka*, the Bodhisatta thinking about killers, expresses a desire: “if people were only aware that penalty would be birth unto sorrow, living beings would stop taking life. Sorrow is indeed killer’s lot.”⁸⁰ By this we remain stuck in the dilemma, whether killing, especially killing other human beings, was ever acceptable under some conditions or not to the Buddhists. In the *Dhammapada*, we find the following verses:

“Whoever harms with violence, those who are gentle and innocent, to one of these ten states that person quickly descends: he would beget severe suffering; deprivation and fracturing of the body; or grave illness, too; mental imbalance; trouble from the government; cruel slander; loss of relatives; or obstruction of property.”⁸¹

However, the contradiction arise when the focus is shifted to the practice of flesh-eating in early times and the position of the Buddha on this matter. The biggest question in this regard is - whether the Buddha died because of eating a poisonous mushroom or a piece of “pork”, remains unanswered. As per Pāli *Tipiṭaka*, the Buddha never put a ban on the consumption of flesh, a monk or a nun is permitted to take “whatever has been put in his or her alms bowl.”⁸² Buddha was

⁷⁹ Damein P. Horigan, “A BUDDHIST PERSPECTIVE ON THE DEATH PENALTY OF COMPASSION AND CAPITAL PUNISHMENT”. P.281.

⁸⁰ *Jātaka*. i. P. 168.

⁸¹ Glenn Wallis. 2007, *The Dhammapada: Verses on the Way*, P. 30.

⁸² *Origin and Nature of Ancient Indian Buddhism*, P. 66.

strongly convinced that purity did not depend upon food, but on restraint over such bodily, mental and moral conduct as could defile a man. Pāli based Buddhism allowed monks to eat flesh with following exceptions:

- a. In three situations meat may not be consumed by a monk- if he has (a) seen, (b) heard or (c) suspected that the meat has been especially acquired for him by killing an animal. In other words, at the time of accepting cooked-meat if a monk has no reason to think that the animal whose flesh he is accepting was not killed on purpose for him, then the monk can accept it.⁸³ This rule is called the Rule of *Tikoṭiparisuddha* (Pure in Three Ways). Pāli Buddhism did not see any sin being committed by meat-eating monks as long as they followed the Rule of *Tikoṭiparisuddha*, even if the meat that they happened to eat has been acquired by somebody by deliberately killing an animal to feed them.⁸⁴
- b. Use of raw meat was not allowed,⁸⁵ except in case of sickness when “raw flesh and blood could be used.”⁸⁶ The cooking and eating of the remains of the kills of lions, tigers, hyenas and wolves are allowed by the Buddha to be eaten by the monks.⁸⁷ The Buddha also allowed the use of the fat of bears, fish, alligators, swine, asses, if received at the right time to be partaken of with oil.⁸⁸ Indeed, fish and meat are mentioned among delicate foods (*pānitabhojanīya*) which a monk who is ill is allowed to eat.⁸⁹
- c. The meat of the following ten beings, i.e., man, elephant, horse, dog, snake, lion, tiger, leopard, bear and hyena is forbidden to be eaten by the monks due to a variety of reasons involved in their eating.⁹⁰

⁸³ *The Book of Middle Length Sayings*, ii. P. 33.

⁸⁴ *Jātaka*. ii. P. 182.

⁸⁵ *Dīgha Nikāya*. ii. P.5.

⁸⁶ *Sacred Books of the East*, xvii, <http://sacred-texts.com/bud/sbe17/sbe17023.htm> , retrieved on 2016/07/21.

⁸⁷ *The Book of the Discipline*, I, p. 98.

⁸⁸ *Sacred Books of the East*, vii, <http://sacred-texts.com/hin/sbe07/index.htm> , retrieved on 2016/07/21.

⁸⁹ *Pātimokkha*, Pācittiya Dhamma, p. 33.

⁹⁰ *Sacred Books of the East*, xvii. <http://sacred-texts.com/bud/sbe17/sbe17023.htm> , retrieved on 2016/07/21.

The Rule of *Tikoṭiparisuddha* restricts monks from directly killing animals for meat. The slaughter of animals by the monks was highly criticized and condemned. However, it is extremely critical to accept that the Buddha himself allowed eating flesh. If this is taken to be true, it can be concluded that he was not against the indirect killings for the purpose of food.

However, these instances miss the mark to establish the Buddha's position with regard to Death penalty as such. It is clear that few Kings or other monks killed and failed to follow their own basic precept of refraining from killing, or even injuring. But what is more important is to understand the position of the Buddha. Has he himself ever made such rule or advocated death penalty in response to any heinous crime or not? In order to enquire the same, let us investigate the Buddha's position on the violence, and therefore on death penalty.

3. Buddha's Position on 'Violence'

In order to understand the perspective of the Buddha on death penalty or extreme violence, I would like to quote the instance from *Jātaka*, where Buddha discourages the violence as well as the need of war (mass killing). War initiates killings which results in huge bloodshed. The Buddhist attitude towards war is well indicated in the *Mahāsīlava jātaka* where Buddha narrating the story of his own previous life describes how he, as a King of Benares, was attacked by the King of Kosala and how he even amidst the most provocative situation remained firmly established in non-violence and peace, and ultimately succeeded in changing the heart of the enemy by sheer force of love and won over the violence by compassion.⁹¹ By this it can be noted that he was reluctant towards violence, which involves killings. Human life is precious and compassion alone is enough to win over each battle.

⁹¹ *Jātaka*, I. 261-267.

The Buddha considered it impossible for a disinterested and enlightened man to commit moral sins. According to him in no circumstance can a truly detached and disinterested man resort to violence. Of the nine moral vices which a truly detached person is considered incapable of doing (*abhabbo so nava thānāni ajjhācaritum*, *Dīgha-nikāya*. III. 133.), the deliberate destruction of the life of a living creature (*sañcicca pāṇam jīvītā voropetum*, *Dīgha-nikāya*. III. 133.) is counted as the first. The enlightened one is said to be incapable of doing such a bodily, verbal and mental action, which is morally wrong or deprecated by recluses, Brahmins and the wise. Buddha altogether precludes the possibility of war and killing of other human beings without attachment, passion or desire.

According to the Buddha, “all living beings are not to be harmed”, he strongly recommended the condemnation of death and destruction.⁹² Buddhism practices complete refrainment from causing harm, even to the tiniest life, such as “seeds” (*bījagāma bhūtagāma*).⁹³ For Buddha, “making onslaught on creatures, being cruel, bloody-handed, intent on injury or killing, and without mercy on living creatures... is conducive to shortness of life span.”⁹⁴ Occupations which involves bloodshed or cruelty are called *kurūrakammantā*, they must be avoided. A cattle-butcher suffers for “many hundred thousands of years in purgatory.”⁹⁵ Some of the *kammic* results, which a person brings upon herself by committing injury to a life are “suffering in an unpleasant state for a long period, and rebirth in some lower form of being. If born again as person, she may be infirm, ugly, unpopular, cowardly, divested of compassion, subject to disease, dejected and mournful, separated from the company of loved ones, and unable to attain to ripe age.”⁹⁶ Moreover, according to the third rule of *Tikoṭiparisuddha*, eating flesh of a man (human being) was not permissible for the Buddha. Therefore, it was not allowed to kill a human being, even indirect mode of killing was also not acceptable.

⁹² Sarao K.T.S, *Origin and Nature of Ancient Indian Buddhism*, Pp. 61-62.

⁹³ *Ibid*, p. 63.

⁹⁴ *The Book of Middle Length Sayings*. iii, P. 250.

⁹⁵ *The Book of Gradual Sayings*, ii. P. 223.

⁹⁶ *The Book of Gradual Sayings*, iii. P. 273.

Conclusion

Broadly, we can say that the death penalty entails killing and therefore requires breaking the first Precept, which is non-killing, non-injury etc. It is incompatible and inconsistent with Buddhist ethics, their social as well as legal philosophy. But at the same time, it is very difficult to say that the Buddha was completely against the practice of inflicting pain as some instances suggests that he, himself, exempted flesh eating for the monks. Buddhism does allow ending the life of another in exception when it is done in “self-defense”, and the argument could be made that, sometimes, death penalty could be viewed as a society’s attempt at self-defense. But when there are other means available to prevent a person from injuring others, such as imprisonment, it would seem that the less lethal and less violent option should be favored.⁹⁷ From this it can be simply established that he was not completely against indirect killings. However, to draw such conclusion that the Buddha was at peace with the activities engaged in killing, would be an absurdity. The Buddha was a peace-lover and hence he never advocated rules which indulge others in direct killings. The most of the part of the *Piṭakas* states that the Buddha was utterly against harming human beings. He neither himself, nor let others to commit such crimes. “Non-killing” is the first precept and the Buddha always tried to perform actions within its realm. As long as we try to bring out his position on death penalty, it can be seen that he neither killed any human being, nor let or allowed other monks to commit such high degree offence. He, throughout tried to reconcile issues which arise within the community, with love and compassion.

Those who are supporters and inflictors of death penalty, are bound to suffer. The suffering they will experience, will be of the metaphysical order. They will undergo the *kammic* effects of killing. Therefore, they deserve our compassion. Buddha taught that our actions are influenced by

⁹⁷ <http://www.faithstreet.com/onfaith/2011/10/26/a-buddhist-perspective-on-the-death-penalty/10373#>, retrieved on 2016/05/22.

causes and conditions; similarly our minds are poisoned by ignorance, attachment and hatred. When our minds are influenced by hatred, at that moment, we are not able to control ourselves. The Buddha taught followers to return acts of evil with acts of compassion, which further contradicts the death penalty. Buddhists perceive any intense punishment as harmful not only to the recipient, but to the executioner as well.⁹⁸ Now, the chief contradiction that arises in this Buddhist theory of punishment as seen in Pāli *Piṭakas* is that- if there already exists a metaphysical “*law of kamma*” for providing justice, then why is there any need for the society to interfere and punish at the empirical level. Does this indicates that Buddhists’ faith in *kammic justice* is less?

In order to understand the above, lets now focus on the Buddhist theory of *kammic justice* in our next chapter. Here, I will also try to bring out the need for providing *justice* at empirical level and focus how these punishments of two different realm (empirical and metaphysical) are compatible with each other, as per Buddhist perspective.

⁹⁸ <http://people.opposingviews.com/buddhism-death-penalty-mercy-punishment-5619.html>, retrieved on 2016/05/21.

Chapter 3

Buddhist Theory of *Kammic* Justice

In this chapter, I will discuss the Buddhist theory of ‘*Kammic* justice’. The concept of punishment based on the *Kamma* theory, is talked over in much detail in the Buddhist philosophy. The punishment, in this regard, can be seen as a response of the nature, towards the offenders for the ill-deeds committed by them. It represents a metaphysical dimension of the concept of ‘punishment’, as propounded by Buddhists, on the basis of which, the rewards and punishments are received in the present or in the future lives. Does this metaphysical aspect of punishment go hand in hand with empirical notion of punishment (as discussed in much detail in the previous chapter)? I will also try to resolve the difficulties aroused at the elementary level due to the apparent conflict between the two different dimensions of punishing as accepted by Buddhists.

In order to understand the Buddhist theory of *kammic* justice, let us first analyze the Buddhist law of *kamma*. In Buddhism, the term *kamma* refers to *samsāric* actions. The actions performed must be undertaken by the good or holy intention to foster good *kammas*. But if it is performed to harm others (killing, injuring, harming etc.) then it results in anguish. “Abandon anger, be done with conceit, get beyond every fetter. When for name and form you have no attachment- have nothing at all- no sufferings, no stress, invade”⁹⁹ (*Dhammapada*, Verse 221), poor *kamma* and attachment invite misery. The suffering leads to unhappiness and despair, this can be clearly understood by the twelve *nidānas* of dependent origination. I shall also discuss the theory of dependent origination to explain the link between the suffering, attachment and the wicked *kammas*.

⁹⁹ Ven Thanissaro, Bhikkhu. *Dhammapada A Translation*, p. 82.

1. Nonviolence and Human Action-

As per the fundamental Buddhist principle of altruism, generosity and non-killing, the idea that sufferers should take revenge from those who caused harm to them is not accepted in Buddhism. Even uttering the harsh words is highly condemned, “Speak harshly to no one, or the words will be thrown right back at you. Contentious talk is painful, for you get struck by rods in return”¹⁰⁰. The seven virtues includes the refrainment from hurtful words. It guides seekers to abstain from confusing speech (*musāvāda*), malicious speech (*pisuṇavāca*), harsh speech (*pharusavācā*) and frivolous talk (*samphappalāpa*).¹⁰¹ The concept of vengeance and retribution is constantly discouraged. In *Khantivāda Jātaka*, there is an instance quoted, where, in a previous life of the Buddha, a king instructed his man, an executioner, to chop off the Buddha's hands, feet, ears and nose. Despite the ruthless treatment by the King, Buddha did not feel angry or wish any evil on him. By this tale, he tried to highlight importance of absolute compassion and selflessness required to uproot the passion. Where passion and craving is believed by Buddhists to be the root cause of suffering. The first moral precept in Buddhism is self-refrainment from killing, and therefore violent thoughts and actions are contrary to what Buddhists endorse. Therefore, Buddhists very clearly rejected those actions which produce unhappiness and misery, “Having surveyed all directions with the mind, you did not discover anything dearer than the self. Similarly, the individual self is dear to others. Therefore, one who is desirous of oneself should not hurt others.”¹⁰² Ironically, some nations where Buddhism has widespread political and cultural influence, including Thailand and Sri Lanka, employ capital punishment and have fought bloody wars both in recent times and centuries past.

¹⁰⁰ Ven Thanissaro, Bhikkhu. *Dhammapada A Translation*. P. 59.

¹⁰¹ Kalupahana, David. *Ethics in Early Buddhism*, pp. 73-74.

¹⁰². *Ibid*, P. 59.

By putting forward the teachings on nonviolence, Buddhism could be construed as taking an indifferent stand towards the misconducts that most chunk of the society feel should warrant direct, punishment. This apparent passiveness adopted by the Buddhists can be elucidated by the concepts of *kamma* and rebirth. Buddhists believe that ultimately, punishment is dictated by a *natural order* in which a person's immoral action, either of the present life or that of the succeeding one, will be punished metaphysically. The Buddha never held himself back while cautioning his admirers regarding the *kammic* circumstances that lead to the natural manifestation of punishments. As remarked in the *Dhammapada*, which is an anthology of verses, that how the one who inflicts violence on unarmed people will bear the consequences like going mad or the death of loved ones.¹⁰³ These penalties are supposed to be carried out by the natural processes of the universe, neither victims, nor authority (society) or anyone else inflicts them on a wrong-doer. What works here is, the natural course of justice for implementing punishments on those who committed actions which were evil, “a fool doing evil deeds does not know (this). The stupid man is burned by his own deeds, like one burned by fire.”¹⁰⁴ The law of *kamma* brings all the evil actions undertaken back to the doer, it ensures to maintain the balance between the right as well as the wrong actions. However, if a person tries to evaluate her each and every action, she is bound as it is incommensurable to the human intellect. But it would be incorrect to say that it is some godly affair. Rather, it's a natural phenomenon. Let us now discuss the law of *kamma* in a more extensive manner.

2. An Outline: The Law of *Kamma*

Each and every Indian school of thought accepts the doctrine of *karma*¹⁰⁵, except one, which is “materialist” school, *Cārṇāka*. The *karma* theory is basically linked with the doctrine of cause and effect. The cause is an “action” performed while effect is associated with its “result”. However, this result is not immediate, the time span of the effect is not necessarily limited to one life. The

¹⁰³ *The Dhammapada- The Buddha's Path of Wisdom*, (1996) Trans. by Acharya Buddharakkhita.

<http://www.accesstoinight.org/tipitaka/kn/dhp/dhp.10.budd.html>, retrieved on 2016/05/06.

¹⁰⁴ Ven Thanissaro, Bhikkhu. *Dhammapada A Translation*, p. 20.

¹⁰⁵ Most of the Indian Schools of thought calls this doctrine as theory of *Karma*, however in Pāli it is called “*Kamma*”.

effects and the results of one's acts are spread over several births. Most of the schools believe that according to the transmigration of the soul, when one dies, what actually dies is the body while the soul takes the shape of another body. But, according to Buddhism, there exists no eternal and immutable soul as such. Then, it becomes difficult for us to understand the effects of our actions spread over different lives. The transmigration of souls, very commonly supposed to be a fundamental part of Buddhism, has never been found mentioned at all, or even referred to, in the Pāli *Piṭakas*. The Buddha never taught the transmigration of souls. What he did teach would be better understood, if we retain the same word transmigration, as the transmigration of character. But in order to apprehend in Buddhist perspective, it would be more simplified and accurate to drop the word transmigration altogether, and to call its doctrine *the doctrine of kamma*. The Buddha held that after the death of any being, whether human or not, there survive nothing at all, not even one's soul, but that being's "*kamma*", the result, that is, of its mental and bodily actions.¹⁰⁶ The Buddha in this way established a new identity that, what makes two beings to be the same- is not the soul but "*kamma*".

Kamma, for simple understanding can be understood as an "action" performed by an individual. However, *kamma* is not such narrow term as action is. It is an all-encompassing term as it not only involves the bodily action, but verbal as well as mental deeds. But why do we give so much of the importance to human actions? The reason for this may be two-fold, firstly, to look out whether the consequences of an action produces *happiness* or leads to the *suffering*. Secondly, to recognize and held someone accountable for the action performed. The Buddhist doctrine of *kamma* gives much weight to both the "action" as well as its "consequences". Although, much importance is given to the motive, or the intent behind the action undertaken. Those actions which result in *happiness* are called *kuśala-kamma*, while those results in *unhappiness* are called *akuśala-karma*. The Buddha, is sometimes called as "*kammavāda*" or "*kiriyavāda*" as he stressed the doctrine of *kamma* to the greatest extent. *Kammavāda* refers to the one who holds the view of *kamma*, while *kiriyavāda* means the promulgator of the consequence of *kamma*.¹⁰⁷ What

¹⁰⁶ T.W. Rhys Davids, 1972, *Indian Buddhism*. Pp. 91-92.

¹⁰⁷ An Epitome of Rational Dhamma, <https://dhivanthomasjones.wordpress.com/category/buddhism/page/2/>, retrieved on 2016/05/02.

determines our future is our *kamma* and that is the reason why the Buddha is more concerned about it.

As per an account of the doctrine of *kamma* mentioned in the *Mahākammavibhaṅga-sutta*, the Buddha refers to four kinds of persons. Rebirth of an individual is majorly based on the actions and *kamma* undertaken in the previous life or lives. Her next birth entirely depends upon her evil or good deeds performed in the present life. The four kinds of persons are-

1. One who has performed evil actions and is reborn in an evil state, in hell.
2. One who has performed evil actions and is reborn in a good state, in heaven.
3. One who has performed good actions and is reborn in a good state, in heaven.
4. One who has performed good actions and is reborn in an evil state, in hell. (*Samyutta-nikāya*, iii, pp. 209-210)¹⁰⁸

Among these four points, number two and four seems to pose a problem for the theory of *kamma*. It appears to be problematic because it contradicts our basic understanding of the theory of *kamma*. However, the relation here between the action and the consequences appears to be missing. If one has performed some evil actions, but she is reborn in the heaven, then also according to the Buddhists, it would be incorrect to conclude that the theory of *kamma* is invalid. For them, one random instance fails to provide account for a person's whole life. She might have attained the "right view" before her death or might have performed several good acts in her past. She might have done more *good* than *bad*. It is also possible that the wrong-doer bears all the ill-effects in the present life only (*diṭṭhe va dhamme*), so that no baggage for the future life remains. This provides a scope for a person who had done evil in the past life to attain *nibbāna* in the present life. *Anguttara-nikāya* states,

A certain person has not properly cultivated his body, behavior, thought and intelligence, is inferior and insignificant and his life is short and miserable; of such a person... even a trifling evil action done leads him to hell. In the case of a person who has a proper culture of the body, behavior, thought and

¹⁰⁸ Kalupahana, David. *Ethics in Early Buddhism*, p. 101.

intelligence, who is superior and not insignificant, and who is endowed with long life, the consequence of a similar evil action are to be experienced in this very life, and sometimes may not appear at all.¹⁰⁹

However, it can be noticed that the consequence of an action only does not determine its rightness or wrongness. There are many other above mentioned factors involved. To what we call a “good *kamma*” has quite a lot to do with “intent”, the “will” which provoked the particular action. The result of our *kamma* is not simple, rather very complex as it takes an account of one’s whole life into the consideration, in which a few bad or good *kammas* fail to decide one’s fate. “Intention”, by which an action was undertaken is primary. In the *Nibbedhika sutta* of *Aṅguttara Nikāya*, the Buddha said, “Intention I tell you, is *kamma*. Intending, one does *kamma* by way of body, speech and intellect.”¹¹⁰ Poor intentions leads to poor *kamma*, while those who have performed bad *kamma* are bound to reap evil results. What determines the action as good or bad, is not the result, rather the quality of intention. Good *kamma* aims at generating merit (*puñña*), whereas the bad *kamma* is described as generating demerit (*apuñña*). If the root of the action performed is influenced by greed, anger or hatred, then the fruit of the action would be demeritorious. If an intention behind the action performed is based on the “benevolence”, then the fruit received would be meritorious. The metaphysical law of punishing takes its own course of time to penalize the individual in its own way. Rewards and punishments are received in the future, according to the *kamma* performed or accumulated in past lives. It can be called- *kammic* justice, natural universal law for punishing and rewarding.

3. *Kammic* Justice

Unlike religions that provide guiding principles on punishment as stated in the scripture, Buddhism addresses the idea from a more abstract standpoint. Buddhists do not believe in a God that will punish those who commit sins, for them, there exists no God. *Kamma*, in a sense, can be seen as a result of freewill. One has been endowed with the freewill, because of which she is an author of her own actions. Therefore, the same person is liable for all her ill-deeds as well as an enjoyer of

¹⁰⁹ Kalupahana, David. *Buddhist Philosophy: A Historical Analysis*, p. 48.

¹¹⁰ *Nibbedhika sutta*, trans. by Thanissaro Bikkhu,

<http://www.accesstosight.org/tipitaka/an/an06/an06.063.than.html> , retrieved on 2016/05/06.

good-deeds. Instead, the Buddhist believes in *kamma*, or the notion that every action has a consequence, holds that punishment comes as a natural result of hurtful acts.¹¹¹ In the *Upajjhātana Sutta* of *Aṅguttara-nikāya*, the Buddha states: I am the owner of my *kamma*. I inherit my *kamma*. I am born of my *kamma*. I am related to my *kamma*. I live supported by my *kamma*. Whatever *kamma* I create, whether good or evil that I shall inherit.¹¹² An individual herself is an author of her happiness or sadness, “An evil deed left undone is better, for an evil deed causes suffering later. A good deed done is better, for doing it does not cause suffering.”¹¹³

Negative actions such as killing lead to rebirths in the lower states such as hell, and virtuous actions lead to rebirth in the heaven or other higher realms. To be born as a human is difficult, *Dhammapada* also states the same, “Hard is the gain of human; hard is the life of mortals; hard is the hearing of the good teaching and hard is the arising of enlightened ones.” However, birth as a human does not ensure that an individual will be endowed with a blessed life. As mentioned in *Cūllakummavibhaṅga Sutta*, if one is born as a human (in a higher realm, after performing good *kamma*), one is equipped with physical beauty, influence, intelligence and so on and so forth. However, if one had performed non-virtuous actions, one is born as ugly, poor, unlucky human, in short she is born in the state of deprivation. According to the Buddha, one cannot avoid the consequences of the *kammic* actions if they have been committed (AN. 5. 292). The deeds which are once done, can’t be undone. *Aṅguttara Nikāya* also states that the *kammic* results can be experience either in the present life (*dittadhammik*) or in future lives (*samparayika*).¹¹⁴ The former one is immediate and direct. However, the latter one is indirect, which helps in proving by birth disabilities and inequalities pertaining within the society. Five heinous actions (*anantarika-kamma*), which results in poor *kamma* in the future or future lives are: these *kamma* leads to the rebirth of a person who had committed ill-deeds, in hell. As per *Vinaya Piṭaka*, the five acts are as follows, Matricide, Patricide, killing an *Arhat*, Intentional shedding of a Buddha’s blood, Causing schism in the *saṃgha*. However, the *Vinaya* is more concerned for the *saṃgha*, the rules which it

¹¹¹ <http://people.opposingviews.com/buddhist-beliefs-punishment-8072.html> retrieved on 06/07/2015.

¹¹² *Aṅguttara Nikāya*, 2005. <http://www.accesstoinight.org/tipitaka/an/>, retrieved on 2016/05/06.

¹¹³ Cf. *Dhammapada*, Verse No. 314. *Akataṃ dukkataṃ seyyo pacchā tapati dukkataṃ, kammaṃ ca sukataṃ seyyo yaṃ katvā nānutappati*. Ven Thanissaro, Bhikkhu. *Dhammapada A Translation*, p. 105.

¹¹⁴ *Aṅguttara-nikāya*, ed. By R. Morris and E. Hardy. Vol. 5. P. 292.

states concentrate on the monastic life. It puts forward the rules and punishments for monks, which can be called Monastic Punishment.

3.1. Monastic Punishment

While the Buddha did not elucidate a detailed system of punishment for societies, he did provide broad guidelines for punishing monastics who break the *Vinaya* code of discipline (as extensively discussed in the second chapter). Uttered and accepted completely within a monastic framework, punishments of this kind included censure, or guidelines that limit certain types of speech and behavior, demotion, or the stripping of seniority, suspension, and in extreme cases, banishment from the monastery. Expulsion is reserved only for those monastics who commit blatant crimes and, especially those, who will not accept by themselves. Even in the case of expulsion, monastics are given the occasion to again become a part of the monastery if at some point in the future they accept their folly and reconcile with the *samgha*. However, these punishments were limited to the *samgha* and monks, but their theory of *kamma* is applicable to each and every individual. The Buddha advised monks and nuns to shed passion and aversion, “Practice *jhana*, monks, and don’t take your mind roaming in sensual strands. Don’t swallow- heedless- the ball of iron flame. Don’t burn and complain: ‘This is pain’.”¹¹⁵ To refrain from that which is not good is the first step towards the attainment of highest bliss.

3.2. *Kammic* theory of Punishment

One who has done bad act, she is bound to suffer. The suffering is the chief principle around which the whole theory of *kamma* revolves. The second noble truth explains that there is a suffering in the world. Suffering is *samsāra*, whereas the cessation of suffering is *Nibbāna*. The third noble truth talks about the cessation of suffering. Everything in this universe is dependent or in relation with the other, “depending on the cause, the effect arises”. The Buddha identified the law of dependent origination (*Paṭiccasamuppāda* or *Pratityasamutpada*) with the *Dhamma*, “He who sees
the *Paṭiccasamuppāda* sees
the *Dhamma*;

¹¹⁵ Ven Thanissaro, Bhikkhu. *Dhammapada A Translation*, P. 120.

He who sees the *Dhamma* sees the *Paṭiccasamuppāda*.¹¹⁶ It is a chain of twelve *nidānas* starting with Ignorance which results into further sufferings.

1. Ignorance (*avidyā*)
2. Impressions of Kammic forces (*samskāra*)
3. Initial consciousness of the embryo (*viññāna*)
4. Psycho-physical organism (*nāma-rūpa*)
5. Six sense-organs including mind (*ṣaḍāyatana*)
6. Sense-object-contact (*śparśha*)
7. Sense-experience (*vedanā*)
8. Thirst for sense-enjoyment (*trṣṇā*)
9. Clinging to this enjoyment (*upādāna*)
10. Will to be born (*bhava*)
11. Birth or rebirth (*jāti*)
12. Old age and death (*jarā-maraṇa*)

The first and second belongs to the previous life, ignorance and impressions of *kammic* forces can be seen as the reasons behind rebirth. If one rises above the ignorance and attain a right view, she gets rid of this vicious cycle of birth and rebirth. “A wise man would blow away his own impurity, gradually, little by little, at every opportunity, as a smith blows away the impurity of silver”.¹¹⁷ A right viewed person attains the enlightenment and realizes *nibbāna* by rising above impurities of the empirical world. The last two *nidānas*, ‘birth or rebirth’ and ‘old age-death’ belongs to the future life. When one stuck in the same chain and fails to achieve right view, she is reborn. From ‘initial consciousness of the embryo’ to ‘Will to be born’, are that of the present life. Sufferings continue when one does not realize the impermanent nature of the empirical world and confines herself away from developing the right view. When one remains incapable to develop right vision

¹¹⁶ *Majjhima Nikaya*, Vol. I, Translated by David Williams. p.190.

¹¹⁷ Glenn Wallis. 2007, *The Dhammapada: Verses on the Way*. P. 36.

and fails to wipe out ignorance, he continues to suffer. The suffering is this cycle of death and rebirth. If one goes on to commit same errs, bad deeds, so on and so forth, she reaps its rewards as well. The reward comes as a natural response of the universe, of which there is no escape route.

3.3. Metaphysical Theory of Punishment

In Buddhism, there are several instances of punishments which are based on the ‘law of *karma*’ (whose fruits ripen either in the present birth or in the next birth). In Buddhist tradition, the theories of punishment are inherited as a response to the respect of nature. *Majjhima Nikāya* which consists of thousands of *suttas*, comprises a *sutta* called *Cūla Kamma Vibhaṅga Sutta*. This *sutta* tries to explain the inequalities prevailing throughout the world. According to it, what decides our fate is an ‘action’, or *kamma* performed. If an action undertaken is ‘good’ or ‘right’, one, in the next birth is born as beautiful, wealthy, healthy, smart, powerful etc. But if an action performed is ‘bad’ or ‘wrong’, one will go penalized. The punishment of this kind has nothing to do with imprisonment in the sense of legal philosophy (or those punishments we have already studied in the previous chapter, which are the rules as mentioned in the *Vinayapiṭaka*). Instead, this sort of chastisement to a person will result in a form of sickly, ugly, short, weak etc. in her next birth. The sinners will be punished in her next life, by being born in ‘the state of deprivation’¹¹⁸. The below quoted passage is taken from the *Cūla Kamma Vibhaṅga Sutta*, where it aims at explaining the financial inequalities which results due to the bad or good *kammas* of previous lives.

"Here, student, some man or woman does not give food, drink, clothing, carriages, garlands, scents, unguents, beds, dwelling, and lamps to recluses or *brahmins*. Because of performing and undertaking such action...he reappears in a state of deprivation... But if instead he comes back to the human state, then wherever he is reborn he is poor. This is the way, student, that leads to poverty, namely, one does not give food...and lamps to recluses or *brahmins*.

But here, student, some man or woman gives food...and lamps to recluses or *brahmins*. Because of performing and undertaking such action... he reappears in a happy destination... But if instead he comes

¹¹⁸ “Cula-kamma vibhanga Sutta: The Shorter Exposition of Kamma”, *The Middle Length Discourses of the Buddha, A New Translation of the Majjhima Nikāya*, trans. by Bhikkhu Nanamoli and Bhikkhu Bodhi, p. 1055.

back to the human state, then wherever he is reborn he is wealthy. This is the way, student, that leads to wealth, namely, one gives food... and lamps to recluses or *brahmins*.”¹¹⁹

These sorts of notions mentioned in Buddhist texts deals with another dimension of punishments, diverse from punishment as discussed in the Rule Book, where *samgha* punishes the wrongdoer. These punishments are different from direct and empirical form of penalizing. They are of metaphysical and transcendental kind, which are indirect. However, here, it can be observed that their basic nature is more of a ‘deterrent’ kind, which also tries to reform wrongdoers in a way. It suggests to change the paths and refrain from killings and inflicting injuries to the other. The one who understands the text, may attempt to abide by the sayings of the Buddha. Hence, their chances of getting involved in harmful activities may get reduced.

Deterrent theory of punishment is discussed in much detail in modern times, it also attempts to curb the forthcoming occurrence of crime in the society. This kind of punishment is based on the utilitarian philosophy, it suggests that the punishment should be intended to deter future criminal behavior. Buddhist texts teach us to abstain from killing and indulging in practices which leads to the infliction of the harm upon other creatures. The final chapter of the *Dhammapada* (Chapter 26), states "Him I call a *brahmin* who has put aside weapons and renounced violence toward all creatures. He neither kills nor helps others to kill".¹²⁰ These sentences are interpreted by many Buddhists (especially in the West) as an injunction against supporting any legal measure which might lead to the death penalty. A society which abstain from harming or killing the other, will indubitably become a harmonious one. The Buddha said, in this regard, “A man is not noble because he injures living beings. He is called noble because he does not injure living beings, that is, he has compassion for all living beings”.¹²¹ *Kamma* theory not only guides one to refrain from ill-deeds, but also pushes the same person to practice ultimate love and compassion towards all beings.

¹¹⁹ Ibid., Pp. 1055-1056.

¹²⁰ *Dhammapada- A Translation*, trans. By Thanissaro Bhikkhu, http://www.buddhanet.net/pdf_file/damapada.pdf, Retrieved on 2015/07/16.

¹²¹ *The Word of the Doctrine (Dhammapada)*, trans. by K.R. Norman, p.40.

The law of *kamma* and its course of punishing is self-conclusive. If it is so, then why the Buddha himself, propounded a well systematized set of rules for punishing a wrong-doer within the *samgha*? This metaphysical notion of chastisement is compatible with empirical theory of punishment or not? These both thoughts seem to be working on the same problem of maintaining discipline within the community, therefore this exercise of advancing punishments, in order to reach desired ends (harmonious society), needs to be justified. *Kamma*, the law of cause and effect, is definite and not subject to the inequities and arbitrariness of any legal system. As such, the death penalty is unnecessary, because the person who violates the law by committing murder will definitely bear the horrible, irreversible *kammic* consequences. The *kammic* justice keeps account of each and every action, it is almost impossible to escape from its result.

3.4. Hell & Rebirth

If one who has done violent or ill deeds, without valuing other sentient beings, is reborn in the hell. “He goes to hell, the one who asserts what didn’t take place, as does the one who, having done, says, ‘I didn’t’. Both- low-acting people- there become equal: after death, in the world beyond”.¹²² If she has detested the natural human instinct of loving and caring each other, she in her next birth will be born in the state of deprivation, “Just as sharp-bladed grass, if wrongly held, wounds the very hand that holds it- the contemplative life, if wrongly grasped, drags you down to hell”.¹²³ Buddhists do believe in 31 planes of existence, the lowermost of them is a “hell”, it is demarcated by horrendous pain and terrible suffering. According to this, it is believed that those who commit the nastiest offences, they are reborn in hell, but even more common actions are thought to potentially cause rebirths that could be viewed as a sort of hell. For example, someone who oversees the slaughter of thousands of chickens in her lifetime could be reborn as a chicken in the slaughterhouse. In *Paṇḍara- Jātaka*, an ascetic stressed snake king- *Paṇḍara*, to reveal the secret wherein his strength lies and betrays him to his enemy, the garuḍa-king. After ascetic forced *Paṇḍara* for three days in a row by winning his confidence, gets to know their secret. But later, he

¹²² Ven Thanissaro, Bhikkhu. *Dhammapada A Translation*, p. 104.

¹²³ Ibid. p. 105.

disclosed the same to the garuḍa, by means of this secret garuḍa triumph over the snake, but through pity sets him free. The snake invokes a curse on the ascetic as he was not able to keep his secret. And because of this, the wicked ascetic's head was split into seven pieces and he was swallowed up by the earth to be reborn in hell.¹²⁴ Even for those who end up in hell, however, *kammic* punishments are temporary and Buddhism never gives up on individuals no matter how horrifying their actions may be. Hurtful deeds born of ignorance result in punishment, but no sentient being is considered inherently evil or hopeless. When negative *kamma* has been resolved in hell or other planes, a fresh life in a higher plane is possible.

4. Why to Punish at all?

In the *Bhaddāli Sutta*, the Buddha explains how punishments should be sanctioned on a case-by-case basis that takes the best interests of individual offenders into account.¹²⁵ The function of punishment is to instruct and rehabilitate, never to gain retribution. In other words, punishments do not make the offender “pay” for her crime. Justice is interpreted in the context of the first noble truth, suffering and punishments implemented in the way that causes the least amount of pain, stress and conflict for the offender and the community at large.

4.1. Redressing the wrong-

Now when we talk about the Buddhist doctrine of punishment (as mentioned in *Vinaya Piṭaka*), there arises a problem. The problem of conflict between basic Buddhist ethical precepts and their acceptance of the theories of punishment. They seem to be in contradiction with each other. However, it can be argued that the punishments which Buddhists endorse are more inclined towards the reformatory perspective. The theories as expounded by the Buddha are therapeutic in

¹²⁴ *The Jātaka*, 2005. (Vol. V.) Ed. By. Cowell, E.B. trans. by. Francis, H.T. Pp. 42- 48.

¹²⁵ *The Middle Length Discourses of the Buddha, A New Translation of the Majjhima Nikaya*. Pp. 547-548.

nature. Therapeutic in the sense, which lead an individual to reflect over what she has done. This realization must be within the framework of society (this seems to resolve the apparent contradiction between the empirical and metaphysical theory of punishments), where compassion is the central binding principle. Compassion generally means to have empathy with those who are suffering. So, if any kind of punishment which can make the wrongdoer realize this general precept of compassion (which is a Buddhist idea) should be considered to be overall in consonance with the principle of *karuṇā*. Punishment, here, can also be viewed as a tool for transforming the life of criminals, thereby aiding them to reach a fuller individual within themselves. Through the imposition of punishment upon a person, she may come to realize her folly. If a person ones had done wrong, she should deter from doing it again, punishment helps one to realize this. “If a person does evil, he shouldn’t do it again and again, shouldn’t develop a penchant for it. To accumulate evil brings pain. If a person makes merit, he should do it again and again, should develop a penchant for it. To accumulate merit brings ease.”¹²⁶ Habit of repeating the same act which earlier produced misery is a work of fool, and the fool is punished by her own deeds which is the result of her own ignorance.

The main point which I have noticed here is that ‘the idea of punishment’ as enacted by Buddhists seems to be in conflict with the idea of compassion, nonviolence, etc., because we have always negatively defined the term- ‘Punishment’. However, the punishment, if undergone with a realization, with the consideration that it is for the overall betterment of the wrongdoer herself, then the notion of punishment is explicated in a new light, where it does not seem to be in conflict with other central ethical Buddhist notions, like compassion, unconditional love, nonviolence etc. Some mild forms of punishments as advocated in the *Vinaya* text, like expulsion of the offender from the *saṅgha*, repentance, confessions etc., probably could be understood in this light, but there are a few references in *Dīgha-nikāya* and *Jātaka* Tales, which refer to death penalties being awarded to some offenders by certain rulers who themselves advocated Buddhist faith. But as the stories proceed, it can be noticed that those Kings, who advocated death penalties were surrounded by unhappiness. Due to the King’s cruel judgement of punishment by death, Temiya, his only son went mute. No cruelty goes unnoticed by the law of *kamma*, therefore, one must act wisely.

¹²⁶ Ven Thanissaro, Bhikkhu. *Dhammapada A Translation* (1997). Buddha Dharma Education Association Inc. P. 54.

Conclusion

The *kammic* theory of justice as explained by the Buddha, seems to fall in line with their empirical concept of punishments. It tries to answer some of the complex problems, such as by birth deformities, financial inequalities, difference in mental abilities etc., which otherwise remain unanswered. However, this doctrine of *kamma* cannot be proven to be correct as such. The main aim of *kammic* theory, as per my understanding, is to alter the human conducts and actions, so to marginalize the possibility of misconduct within the society. Similar to the above thought, said the Buddha, “According to the seed that is sown, so is the fruit you reap. The door of good will gather good result. The door of evil reaps evil result. If you plant a good seed well, then you will enjoy the good fruits.”¹²⁷ In order to reap good result, one must perform actions which are good in nature. One must restrain her bodily actions, speech and bears a controlled mind. This will lead one to get rid of her sufferings.

I, in order to understand the Buddhists theory of *kammic* punishment in an elaborate manner, would try to theorize Buddhist notion of punishment. I shall also attempt to situate these punishments (Buddhist) with other historical theories of punishment adopted in the west approximately around the rise of Buddhism.

¹²⁷ <http://truthfortheworld.org/buddhism>, retrieved on 2016/05/06.

Chapter 4

Theorizing Buddhist Notion of Punishment

In the present chapter, I shall theorize the Buddhist notion of punishment. Here, I will be discussing the different approaches adopted towards punishing the wrong, historically. Most of the practices not only allowed killing, but also involved a high degree of torture and torment. I shall try to understand its need and impact on evil-doers as well as on the society. In later sections, I will discuss the modern theories of punishment and thereby will attempt to situate the Buddhist idea of punishment accordingly.

1. Different Approaches Adopted Historically Towards Punishing the Offenders

Most of the countries lacked tolerance towards the crimes in the past. As per their historical accounts on punishments, many of the practices adopted by them can be termed as “brutal” as well as “immoral”. I would take up historical accounts of a few of them, including China, Britain, and India, etc. The death rewarding practices show-case an extremely inhumane stance espoused by most of them. They, not only supported this idea of punishment but also applied the same to even those offenders who have committed minor crimes (I will be discussing a few of them in first sub-sections). Death penalty which is a high order punishment, if needed to be advanced, then it should be done carefully and selectively. However, in the past, no line between the major and minor crimes was drawn. Apart from this, earlier they paid no heed to the exceptional cases, such as children and disabled who committed thefts, robberies, etc.

1.1. Capital-Punishment- Its Cruel History

In the past, there were no fixed crime and delinquency as such for which Capital Punishment was rewarded. Although some instances can be cited from the past which exhibit the judgement of the highest punishment for the minor offences. The first ever “death sentence” was recorded in Egypt, which occurred in 16th Century BC.¹²⁸ In this case the wrongdoer was accused of magic, and he was ordered to take his own life. During that time, a wrong-doer was generally slayed with an ax. In the 7th Century BC, the Draconian Code of Athens made death- the penalty for each misconduct committed¹²⁹, and ignored the difference between the major and the minor offences. Somewhere around the 5th Century BC, the Roman Law of the Twelve Tablets¹³⁰ organized the need for endorsement of the death penalty. Here, the verdict of death penalty was different for nobility, freemen and slaves. It was punishment for offences ranging from the petty misconducts, such as the publication of slanders and discourteous songs, the cutting or grazing of crops planted by a farmer, cheating by a patron of her client, to major misconducts which include- slaying, or murder a freeman or parricides deliberately. The death rewarding practices during that period were mostly brutal and required to perform- *crucifixion, sinking at sea, execution by burning, stoning* or beating till one dies, and piercing practices to kill the condemned known as *impalement* (which was often used by Nero). The Romans had an inquisitive punishment for the murder of a parent, in which the offender was immersed deep in the water by being put in a sack, together with a dog, a fowl, a viper and an ape.¹³¹ The punishments of this kind were cruel enough, but it was for the first time when they differentiated penalizing practices on the basis of the degree of crime occurred. Earlier, there was no line of distinction between major and minor crimes, punishments were alike for lying and for murder. However, the major share of the punishments given were immoral and unethical.

¹²⁸Gary P. Gershman, *Death Penalty on Trial: A Handbook with Cases, Laws, and Documents*. P. 16.

¹²⁹ Randall G. Shelden, *Our Punitive Society: Race, Class, Gender and Punishment in America*, p. 104.

¹³⁰ It was an important event in the history of Rome because it was for the first time when the major codification of law was engraved on twelve bronze tablets. *Ibid.* p. 104.

¹³¹ John Laurence, *A History of Capital Punishment*, pp. 1-3.

One of the most dishonorable death execution in BC was executed around 399 BC, when the great Greek philosopher Socrates was ordered by the state to drink poison (hemlock) for teaching his students the logic, “**reductio ad absurdum**”.¹³² According to the state, the bone of contention was that by teaching this logic to his students, Socrates was trying to corrupt the youth, therefore, he deserved death. The notorious killing of history befallen around 29 AD, where Jesus Christ was crucified outside Jerusalem. He was nailed to the wooden cross till he died. Almost 300 years later, when the Emperor Constantine converted into a Christian, he ordered the abolition of brutal death penalties as well as he eradicated the practice of crucifixion in the Roman Empire.

China too had very inhumane history in this regard. The whole point of legalism as it, from time to time, dominated Chinese law, was cruel and unusual punishment. As Li Si wrote 2,200 years ago: “Only an intelligent ruler is capable of applying heavy punishments to light offenses. If light offenses carry heavy punishments, one can imagine what will be done against a serious offense. Thus, the people will not dare to break the laws.”¹³³ In China, till today, the crimes like human trafficking and cases of corruption are also punishable and deserves the death penalty.

Britain influenced the other colonies and occupies a huge section of history of rewarding death penalty. Approximately around 450 BC, the death penalty was mostly imposed by pushing the offender into a quagmire. With the time, the offender hanged from the gallows, and it was the most common execution technique adopted around 10th century. As the time passed, with the change in the thinking, killing practices changed too. William the Conqueror, diverged by the old method of taking life. He discouraged the practice of taking life, providing the exception in the war situation. William ordered that no individual should be executed for any wrongdoing. However, he accepted other penalizing practices which were less cruel than death penalty. In the middle ages, the method of executing the death penalties was accompanied by the idea torment. Often the punishments didn't vary according to the degree of crime. For instance, under the rule of Edward I, two gatekeepers were killed by advancement of the death penalty, just because they

¹³² Michael Kronenwetter, *Capital Punishment: A Reference Handbook*, p. 71.

¹³³ <http://www.duhaime.org/LawMuseum/LawArticle-367/Crime-and-Punishment-in-Ancient-China.aspx>, retrieved on 2016/05/10.

failed to shut the city gates in time and due to which the accused murderer escaped. There are several records of the thousands of killings ordered by the state, one of them can be quoted as occurred under the supremacy of Henry VIII, and approximately 72,000 people were put to the death. The new penalty approved by the state was ‘boiling to death’ in 1531, and the records reflect that some people were boiled in the steaming hot water for up to two hours before death swept them away.

In Britain, the number of capital offenses were at the rising spree till 1700, when 222 crimes were codified to be punishable by death.¹³⁴ However, the judges opted not to punish the offender when the penalty for the crime was much higher while the crime looked dwarf in its comparison. The major shift came around 1823, when five laws were passed, which ordered the exemption of nearby a hundred criminalities from the capital punishment. Between the years 1832 to 1837, several capital offenses were denied death penalty. Meanwhile, there was an unsuccessful attempt made in 1840 to eradicate all capital punishments. Although, since then, a lot of capital punishments have been abolished, not only in Britain but throughout the whole Europe.¹³⁵ Earlier, they had no vision or they offered no scope of “reformation” but with the time, their theory of punishment evolved. While most of the European nations adopted a stand against human killings, some of them retain the practice of death penalty even today.

Arthaśāstra is an ancient Indian text, written around the 2nd century BCE and 3rd century CE. The main concerns with which it deals are statecraft, economic policy and military strategy. It had great influence on the rulers and Kings of its time. The chapter four of *Arthaśāstra* discusses the *Vārta* and *Daṇḍanīti*. What as per *Arthaśāstra* constitute *Vārta*, are agriculture, cattle-breeding and trade and that which treats of *Daṇḍa* is the law of punishment or science of government, *Daṇḍanīti*. It is a means to make acquisitions, to keep them safe, to improve them

¹³⁴ Laurence, John, *A History of Capital Punishment*, pp. 9-14.

¹³⁵ Ibid.

and fair distribution of the profits of improvisation among those who are worthy. In this regard, Kautilya has also discussed the need of punishment in the society.

“Hence,” says my teacher, “whoever is desirous of the progress of the world shall ever hold the sceptre raised (*udyatadaṇḍa*). Never can there be a better instrument than the sceptre to bring people under control.” “No,” says Kautilya; for whoever imposes severe punishment becomes repulsive to the people; while he who awards mild punishment becomes contemptible. But whoever imposes Kautilya's *Arthashastra* 13 punishment as deserved becomes respectable. For punishment (*Daṇḍa*) when awarded with due consideration, makes the people devoted to righteousness and to works productive of wealth and enjoyment; while punishment, when ill-awarded under the influence of greed and anger or owing to ignorance, excites fury even among hermits and ascetics dwelling in forests, not to speak of householders. But when the law of punishment is kept in abeyance, it gives rise to such disorder as is implied in the proverb of fishes (*matsyanyayamudbhavayati*); for in the absence of a magistrate (*Daṇḍadharabhava*), the strong will swallow the weak; but under his protection, the weak resist the strong.”¹³⁶

By this, it can be understood that Kautilya was not in the favor of advancing brutal punishment. Rather, he tried endorsing the path of righteousness, what was more important for him was the adoption of right path by the evil-doers. For him, it was equally important to punish the offender so to keep an equality and maintain the harmony within the society. Major ancient Indian texts marginalize the scope of harsh practices of punishment, including *Arthaśāstra* and *Manu Smriti*. However, it is not true that the Kings and rulers of that time didn't award death penalties, but Brahmins were mostly never subject to the death penalty throughout the Indian history while they were banished. However, death sentence for the Brahmins on murder charge was not totally unknown. The *Mrechakatika* records that Charudatta, a Brahmana convicted of assassination of Vasanta sena, a courtesan, was sentenced to death.¹³⁷ During the rule of Mughals in India, several cruel practices were endorsed. Crushing by the elephant was not the sole method used by the Mughals, in the Mughal sultanate of Delhi, elephants were also skilled to chop criminals to pieces, for this purpose the pointed blades were fitted to their tusks. Many brutal executions have taken place under the Mughal rulers, including, Shah Jahan, Humanyu, Sultan, etc.

¹³⁶ *Arthaśāstra*, pp. 12-13.

¹³⁷ Death Sentence: An Overview, http://shodhganga.inflibnet.ac.in/bitstream/10603/12841/9/09_chapter%203.pdf, retrieved on 2016/07/05.

“Akbar permitted to the governors of provincial regions to award death punishment without his permission in 1582. Earlier, when Akbar acted as a judge in court, the guilty was given death penalty only when the order had been issued for the third time... The case of a criminal deserving death was referred to the king through a special messenger and the punishment was executed only on receipt of his confirmation. The method of punishment was to get the criminals trampled under the feet of elephants. Emperor Shah Jahan kept an official with several baskets full of poisonous snakes for punishing the guilty.”¹³⁸

Hindu and Muslim rulers punished tax evaders and enemy soldiers by executing them alike, by crushing them “under the feet of elephants”.¹³⁹ In *Manu Smriti*, which was written around AD 200, execution of the offender is prescribed by elephants for a few felonies. For instance, in the cases concerned with the theft of property, “the king should have any thieves caught in connection with its disappearance executed by an elephant.”¹⁴⁰ For example, in 1305, the Sultan of Delhi turned the deaths of Mongol prisoners into public entertainment by having them crushed by elephants.¹⁴¹ However, in most of the early Indian scripts, killing had been considered as unjust practice, unless and until the offence done comes under the prohibited category. Though, the list of prohibitions changed with every ruler and with the course of time. For instance, Brahmins were never subject to death penalty but the execution of few of them are also recorded in the past.

1.2. Various Historical Methods Adopted to End Life

Several ruthless and cruel methods were adopted by various countries in the past. However, most of them have despised them with the time and only a few nations still practices them. Historical methods of killing embraced severe penalties like, Breaking Wheel, Boiling to death, Flaying, Stoning or Lapidation, Slow slicing (Lingchi), Disembowelment (evisceration), Crucifixion, Impalement, Crushing, Execution by Burning, Dismemberment, Sawing, Scaphism, Necklacing.

¹³⁸ Shaikh Musak Rajjak , “Justice and Punishment during Mughal Empire (Based on Foreign Travelogues)”, *International Journal of Science and Research (IJSR)*, <http://www.ijsr.net/archive/v3i12/UIVCMTQxMDQ3.pdf>, retrieved on 2016/05/19.

¹³⁹ Allsen, Thomas T. 2006. *The Royal Hunt in Eurasian History*, p. 156.

¹⁴⁰ Olivelle, Patrick (trans). *The Law Code of Manu*, p. 125.

¹⁴¹ Jack Weatherford, *Genghis Khan and the Making of the Modern World*, p.116

These practices were cruel and aimed at taking the lives of sentient beings, even for misdemeanours, the crimes which can be considered as minor. There was no right proportion between the degree of misconduct and the degree of punishment required to satisfy it. The stance which most of the countries have adopted seems to be unjust and demanded huge interference. With the changing time, many Kings tried to shun off the endorsement of the death penalty, but none of them succeeded in negating it forever. A few nations do practice the same even today, they not only practice death penalty, but also the cruel practices which involve torture, mental torment and huge anguish on the part of the offender.

2. Modern Theories of Punishments

There are broadly three most popular modern theories of punishment as discussed in traditional western view, namely, Retributive, Deterrence, and Reformative.

Retributive is oldest form of justification for punishment where criminals ought to suffer. The moral justification of punishment is not vengeance, but desert. Immanuel Kant argues that retribution is not just a necessary condition for punishment, but also a sufficient one. Punishment is an end in itself. "If an offender has committed murder, he must die. In this case, no possible substitute can satisfy justice. For there is no parallel between death and even the most miserable life, so that there is no equality of crime and retribution unless the perpetrator is judicially put to death"¹⁴², said Immanuel Kant. In order to provide defense for Death Penalty, retributive theory can be put forward. Retributive theory of punishment tries to maintain the equal balance between the evil-done by the offender and the punishment given in its return to the offender by the state. For example: if a person robbed by the use of her hands, the state will snatch out her hands, so that the offender, even willfully, becomes unfit to commit the same crime again. If someone has done cruel to the other, then she deserves no less than what she did to the other. This stance supports the argument for awarding death penalty to those who themselves indulged in killing practices.

¹⁴² Louis P. Pojman, *The Death Penalty: For and Against*, p. 29.

Apart from retribution, many supporters of death penalty have taken the help of Utilitarian theory to provide a strong argument. Now, let us try to understand the utilitarian position, what is primary for utilitarians, is the principle of “greater happiness for the greater number”. This theory tries to evaluate every action on the basis of happiness it produces. From this point of view, when we look at those offenders who committed crimes, thereby producing unhappiness within the society deserve to be punished. Providing an offender with punishment will- a.) Prevent the criminals from developing penchant for the same crime (punishing helps to avert the offender from committing the same in the future), or b.) Prevent other potential criminals, thereby marginalize crimes within the society. They both will contribute in maintaining peace and enhance *happiness*, where happiness is the goal. It would contribute to the maintenance of the greater balance of the happiness within the society. However, these arguments fail to advance concrete support to the practice of the death penalty. It is difficult to prove that the less cruel practice such as life imprisonment would not contribute to the happiness in society. The arguments coming from utilitarian position are making factual claims but they also lack factual evidences of deterring would-be wrongdoers. In short, we can say, that the notion of retribution seems to be on a slippery slope and its on-ground value can't be established.

Deterrence is designed not to take revenge, but to discourage the future offenders. There are two basic types of deterrence- general and specific. **General deterrence** is designed to deter crime in the general population. Thus, the state's punishment of offenders serves as an example for others in the general population who have not yet participated in criminal events. Cases include the application of the death penalty and the role of corporal punishment. **Specific deterrence** is designed—by the nature of the proscribed sanctions—to deter only the individual offender from committing that crime in the hereafter. A drunk driver, for instance, would be deterred from drinking and driving because of her past experience which was unpleasant, where she was caught by the police and her driving license was taken away or her car was seized.¹⁴³ This theory of punishment can be seen as dissuading the possible offenders. It suggests and encourages potential

¹⁴³ <https://marisluste.files.wordpress.com/2010/11/deterrence-theory.pdf>, retrieved on 2015/08/2015.

perpetrators to eschew from killing and such hurtful activities. Due to the fear of punishment, one might adhere by the code of law.

Reformative approach tries to reform the criminal. It aims at making citizen a better person, ethically and morally. Modern penologists believe that criminals are patients and they need to be treated. The reformative aspect of punishment offers a therapeutic dimension to it. The punishment here, is a method or a tool for reforming a person who has done some acts, which resulted in causing harm to the other members of society. Reformation is not a novel theory, it has got a lot of prominence in early Buddhist literature too. For Instance: In *Dhammapada*, a monk named Channa had the habit of scolding and using indecent language while making conversation with his fellow monks. Buddha, on his own death's eve, instructed Thera Ananda (another monk) to impose *Brahma*-punishment (*Brahmadanda*) over Channa. The punishment led to complete isolation- as everyone stopped talking to him. This resulted in self-revolution of Channa – where he ultimately changed his ways and became a well-mannered monk. It reflects that an affliction of punishment can transform a person who earlier had committed several misdeeds.¹⁴⁴ Here the reformative aspect of human nature is shown to weigh out the darkness advanced by her sins.

In the modern world, many penologists have been discussing the impact of the death penalty on the offender as well as the society. Almost throughout history, countries where Buddhism has been the official religion, which have included most of the Far East and Indochina, have exercised the death penalty. Only the Emperor Saga of Japan in 818 abolished the practice of the death penalty. In general, Buddhist groups in secular countries such as Japan, Korea and Taiwan tend to take anti-death penalty stance while those in Thailand, Sri Lanka and Bhutan where Buddhism has strong political influence, are in the favor of the death penalty. Almost every Buddhist group, however, opposes the use of the death penalty as a means of revenge. Most of the modern thinkers, too, admit that punishing the offender for the sake of reprisal is not a correct practice to be adopted, C.S. Lewis mentioned in his article, *The Humanitarian Theory of Punishment*, that to penalize a human because he deserves it, and as a great deal as he merits, is

¹⁴⁴ http://What-Buddha-Said.net/Canon/Sutta/KN/Dhammapada.Verse_78.story.htm, retrieved on 2012/10/24.

mere revenge, and, therefore, barbarous and immoral.¹⁴⁵ Therefore, the modern world as well advocates and endorses the punishment, but not as brutal as to end someone's life. There are number of arguments offered against awarding capital punishment to deter others from committing certain high order crimes. When the death penalty is imposed on an offender, her chance of improving and an opportunity of her feeling genuine remorse, is denied. Similarly, in modern context, the more heed is paid to the reformatory aspect of it, and various techniques are advocated to 'treat' the offenders. Some of the popular modern techniques adopted to heal criminals are rehabilitation, meditation, targeting the changeable characteristics of them which are directly linked to offending tendencies, such as drug use, and poor anger management, and swearing in the name of family (Family therapy) etc.¹⁴⁶ By undergoing these practices, a person (who is a wrongdoer) may revise her actions, repent upon them and could possibly lead a better life. Due to the reformist approach involving self-realization, many modern penologists have been supporting the same. Albert Camus, who was a French philosopher, supported this aspect of punishment. According to him, human being is an ever evolving entity. One's past acts must not hinder in her becoming a better and prosperous person in the future. The death penalty is merely a means for the state to dispose of those whom it saw as irremediable as mentioned by him in essay, *Reflections on the Guillotine* (1957)¹⁴⁷. Reformatory and Rehabilitative aspect of punishment has come into the focus in the recent times, where an offender is treated less as a 'criminal' and more as an 'ill' person, who needs to be treated or "cured". The stance adopted by the present penologists is more of a reformatory kind.

3. Situating Buddhist Theory of Punishment

Buddhism, back from the early times, clearly states its rules and punishments for those who commit ill-deeds. However, it neither recommends, nor supports the brutal form of punishments (as I have already discussed the Buddhists' punishing practices in previous chapters). Especially

¹⁴⁵ C. S. Lewis, "The Humanitarian Theory of Punishment", *AMCAP JOURNAL*, VOL. 13, No.1, p. 147.

¹⁴⁶ http://www.children.gov.on.ca/htdocs/English/topics/youthandthelaw/roots/volume5/preventing05_rehabilitation_strategies.aspx, Retrieved on 2015/08/20.

¹⁴⁷ Camus, Albert. (1963), "Reflection on the Guillotine", *Resistance, Rebellion and Death*, pp. 131-179.

those brutal methods as adopted by several countries in the past, including burning, boiling to the death, stoning, execution by crushing under the elephant's feet were highly condemned as per Buddhist view. However, there is a Buddhist tale which shows how the Buddha's compassion and charm stopped a mad elephant from attacking him. The Buddha, without even touching or using force on the elephant who was intoxicated by his enemy cousin brother, Devadatta, appeased it. "Buddha's love and compassion was so strong and powerful that the elephant could feel it. Just a few steps before it was about to charge into the Buddha, it stopped in its path and calmed down. It then trotted towards the Buddha and respectfully bow its head. Buddha stroked the elephant's trunk and comforted it with soft and kind words. The elephant was totally tamed."¹⁴⁸ Through this theory, Buddhists tried to explain the importance and significance of their doctrine of love and compassion. It is not only applicable to humans, but all living creatures. Every living being can understand the language of love. It is no solution- to harm or take the life of another and prove oneself to be superior from others, "Whoever does not injure with violence, creatures desiring happiness, seeking his own happiness he gains happiness when he has passed away."¹⁴⁹ One is bound to attain happiness if they perform good *kammas* and refrain from inflicting pain. What is important for that is love and harmony and therefore, the realization of one's wrong deeds. Similarly, the main focus of theravadins has always been directed towards the reformation of the wrongdoer.

The highest form of punishment as supported by the Buddha (according to the *Vinaya* text) was exemption of an offender from the *sangha*. It advocated banishment rather than assassinating the individual. Human life has always been given high value, which deserves a chance to evolve and reform. Its dishonor, or disrespect has got no place in the tradition. The Buddha, himself had strongly disbelieved in the idea of causing any harm to someone's life. When causing injury is held to be unjust, then it is understood that neither killing the other, nor taking one's own life is exempted. Even the role of the "knife-bringer" is condemned in the rule. A tale can be cited because of which the Buddha stretched the rule and included the provocation to death as an offence. According to the story, a group of half a dozen wicked monks became captivated to the beauty of the wife of an ill man. Monks applauded the beauty of death to layman in order to weaken

¹⁴⁸ <https://buddhiststories.wordpress.com/2012/11/05/taming-the-mad-elephant/>, retrieved on 2016/05/10.

¹⁴⁹ *The Word of the Doctrine (Dhammapada)*, trans. by K.R. Norman, P. 20.

his love to life and get him out of the way.¹⁵⁰ As its result, the layman began to take meals which were not good for his health, because of this he eventually passed away. When the Buddha got to know this, he rebuked the monks and ejected them from the *samgha*. Then he expanded the rule associated with taking a life. Whoever monk knowingly deprives a human being of life or should look about so as to be his knife bringer, or should praise the beauty of death or insight (anyone) to death or who should deliberately and purposefully in various ways praise the beauty of death or should insight anyone to death: he is also the one who is defeated, therefore is not in communion.¹⁵¹ Here the way this precept is modified after a related incident, it shows how similar the modern set up and the Buddhist set up of punishment are. Buddhists from the very beginning proposed different punishments depending upon the degrees of crime committed. They even have different consideration for exceptional cases, like, children involved in crimes and for those who are mentally unstable etc.

As in the modern theories, laws are modified from time to time according to the changing situations, this can be regarded as both a retributive theory and a deterrent one, as here the offender is given punishment as she deserves the punishment. But it also aims at deterrence, because this rule is set forth to prevent future cases of such crimes. However, the nature of the punishment as mentioned in *Vinaya* text is also of a reformatory kind, it allows and gives a chance to lead a better livelihood. Death penalty, even for the crime of a high degree is unacceptable. According to the *kammic* theory of justice, what can punish as well as reform the offender, is not penalties like death but the law of *kamma* itself. When one's bad deeds will come back to the same person, she would repent and reform her ways. The term 'punishment', suggests external force afflicted on a person to delimit one's freedom, in this sense, it seems to be a negative exercise. But, punishment in the positive perspective can be seen as a "medicine", which may treat or repair the offenders by reforming them. "Inhumane treatment of an offender does not solve their misdeeds or those of humanity in general - the best approach to an offender is reformatory rather than punitive".¹⁵² In comparison to other theories of punishments, Buddhist theory of punishment is very mild. It must have inspired a lot of Kings and rulers of its time to give high regards to human life, to deal with

¹⁵⁰ Keown, Damien, "Attitudes to Euthanasia in the Vinaya and Commentary", *Journal of Buddhist Ethics* 6, p. 264.

¹⁵¹ *The Book of Discipline (Vinaya Pitaka)*, part 1 and 2, trans. I.B. Horner, pp. 125-126.

¹⁵² <http://www.bbc.co.uk/religion/religions/buddhism/buddhistethics/capitalpunishment.shtml>, retrieved on 2016/06/20.

them with love and compassion. Not only harsh punishing practices such as death penalty, but also treasuring the lives of others attribute a lot to the society, as well as to an individual. The most famous example of this is that of King Ashoka. He, after the destruction of Kalinga felt remorseful, the greater degree of sorrow and regret followed when Ashoka gave a thought that the friends and families of the deceased would suffer greatly.¹⁵³ Mass killings involved during the time of Kalinga war disheartened the King Ashoka, a day after the war he went to see the burnt houses and corpses. This war impacted a lot on him, and he embraced Buddhism and became a supporter of Buddhist thought. It is also said that he adopted vegetarianism after becoming a Buddhist and only vegetarian meals were served in his palace. He was highly inspired by the this belief system that he not only practiced it by himself, but even sent missionaries, including his son and daughter, to other states and countries to spread Buddhism across the world.

Those Buddhists who support death penalty talk about the help it provides in prevention of crimes. The future offender may worry and abstain from doing evil deeds because of the threat of death penalty, by this more violence and bloodshed can be curbed. However, most of the Buddhists support banishment rather than execution. As according to them, capital punishment can never be approved as right because taking someone's life can never be justified. All beings are sentient and naturally possess the Buddha-nature, therefore they all are endowed with ability to attain the Buddhahood, and become an enlightened soul. The argument they raise against capital punishment is that- treasuring of lives of those who failed to treasure others' lives is an act of great courage, which is spiritual courage. This kind of courage have sprung out of the highest form of compassion. Trevor Ling said, "It is worth noting that there is no support for punishment or a penal attitude in Buddhist social ethics- no cutting off the hand that steals, no capital punishment, no stoning of woman accused of adultery, no criminal asylums. This lack of support for punitive laws is understandable in view of the Buddhist analysis of the human condition, which entails the idea that the only effective punishment is that which we inflict upon ourselves- sooner or later."¹⁵⁴ No external force or agent can reform or change the perpetrator, but only oneself. The change has to come from within, what is required is self-revolutionizing. Realization of those actions which were not good, is an important factor which ultimately leads to change. When one realizes his or

¹⁵³ Smith, Vincent A, 1901. *Asoka - the Buddhist Emperor of India*. Rulers of India series. p. 130.
¹⁵⁴ 20. *Ethical Issues in Six Religious Traditions*, 1996. Ed. by Clive Lawton, Peggy Morgan. P. 94.

her errors, one develops right view, therefore she attains the goal of life and set herself free from the vicious cycle of birth and death. “By faith, and by virtuous conduct, and by energy, by concentration, and by discernment of the doctrine, endowed with knowledge and good conduct, mindful, you will abandon this not-insignificant suffering”¹⁵⁵, ones the Buddhahood is attained, the empirical sufferings are abandoned.

The practice of meditation was adopted by them in in order to overcome one’s desires and reflection upon one’s deeds. According to the Buddhists, meditation is impossible for a person who lacks wisdom. Wisdom is impossible for a person who does not meditate. They are interlinked, as meditation helps one to acquire true knowledge. A person who both meditates and possesses wisdom is close to *nibbāna*. There are two types of meditational practices in Theravada tradition, where first deals with ‘calming the mind’ and the second deals with insightfulness of the mind. As far as reformative aspect is concerned, meditation would help the offender to calm his mind, and later to reflect over her actions.

Conclusion

As per the measures accepted throughout the world before and after the rise of Buddhism suggests that the penalty of death was not something alien to the society. Almost every part of the world practiced it, even in its cruelest forms. There is nothing wrong in terming the historical methods of punishing as brutal and dreadful. Buddhism, can be seen as opposite to other historical punitive practices. Its approach, philosophy, moral and ethical precepts were entirely based on different lines. The Buddhist theory of punishment has very little similarity with other historical approaches adopted towards penalizing.

¹⁵⁵ Ven. Thanissaro, Bhikku, *Dhammapada, A Translation*, p. 21.

Earlier, most of the punishing practices were retributive in nature. Executing the offender, even for misdemeanours was acceptable. Retribution is an oldest theory of punishment, but with the time, the scope of the same punishment was expanded. So, the death penalty was not only given to harm the offender, but also to warn other potential offenders. Here, the similarity between the historical forms of punishment and Buddhist practices can be noticed. Both of them aimed at deterring potential wrongdoers. Although, the essence of approaches adopted by both the traditions towards deterring and terrorizing the ill-doers were of great difference. Death penalty had no place in Buddhism as such, deterrence practices dealt with banishment, confessions, and repentance, these practices invited more anguish. One was banished for her evil-acts, not for the sake of retribution rather for the sake of her reform. The main aim of reforming in Buddhism, was to make one realize the true nature of the world and its objects, which leads to the development of right view. When one suffers, she gets to know that suffering is the problem with which we each and every empirical being is dealing, therefore it is important to develop right view and cultivate compassion towards each other and mend our conducts accordingly. When one succeeds and realize her mistake, she might develop the urge to confess for the wrong-deeds which she had committed in the past. For this purpose, she may go back to the *samgha*, repent and confess for her misconducts and become a nun again. By this, she may continue her practice for the attainment of the goal which is supreme, *nibbāna*, with other Boddhisattvas.

Conclusion

The Buddha had stated very clearly that the world is full of “*dukkha*” (suffering), and in order to free oneself from it, an individual needs to follow the right path and attain *nibbāna* (liberation). The path which is to be followed must be in consonance with the basic precepts as discussed by the Buddha extensively. Non-violence and compassion are two foundational principles of Buddhism. The actions which are undertaken, must not cause harm to other human beings, therefore one must not indulge in activities such as lying, killing, etc. The basic foundation of Buddhism is laid on the principle of non-harming, non-killing, non-injury, so on and so forth. They put a great emphasis upon the sacredness of life, for them all living beings, including human, animals, and even vegetation are sacrosent. An important aspect of Buddhist morality is that it aims at complete refrainment from that *which is bad*. Basically, they suggest to abstinence from impure attributes such as desire, fury, greediness, hatred, arrogance, spite, etc.

Non-violence and *compassion* are two sides of the same coin. They both alter the *conduct* of an individual, and help one to realize the *nibbāna*. In Buddhism non-violence is not only seen as a negative virtue restricted to abstinence from slaying but it is certainly a positive virtue implying loving-kindness and benevolence towards all creatures.¹⁵⁶ Non-violence deals with refrainment, in this sense it is negative, while compassion is a positive term. The conduct, which is good, must be guided by the principle of compassion. As per Buddhist concept of ‘*Brahma-vihāra*’, a follower practices boundless love or friendliness towards all other creatures, compassion for those who are unhappy, rejoice with those who are happy and acting with composure and impartiality towards all human beings.¹⁵⁷ The Buddha declared: “Hatred never cease by hatred in this world. By love alone they cease. This is an eternal law.”¹⁵⁸ Compassion is a practice and the

¹⁵⁶ Upadhyaya, K.N., *Early Buddhism and the Bhagavad Gita*, p. 535.

¹⁵⁷ *The Middle Length Discourses of the Buddha*, A New Translation of The Majjhima-nikāya. p. 38.

¹⁵⁸ Upadhyaya, K.N., *Early Buddhism and the Bhagavad Gita*, P. 535.

endorsement of the unconditional love (*karuṇā*) and tenderness towards all creatures. In simple language, it means to have empathy with those who are suffering.

It is quite challenging to accommodate any *theory of Punishment* with such principles which advocate complete abstinence from harming (non-violence) as well as endorse profound love and affection towards other beings. But Buddhists have put forward their doctrine of punishment clearly in *Vinaya* text. However, they too, provide us with many instances of several kinds of punishments in other Buddhist texts also, but *Vinaya* is the primary text, it is their disciplinary rule book. Here, arises a first and the foremost problematic of my study related to the contradiction between the Buddhists penal practices and their basic principles.

Conflict between the Buddhist Penal Practices and Basic Precepts

There is a gap between the basic principles of Buddhism, vis-à-vis ‘the notion of punishment’ as adopted by them. Some thinkers consider the principle of *non-violence* as the core teaching of Buddhism.¹⁵⁹ The first precept of Buddhism is non-killing. But after an extensive and detailed reading of significant Buddhist texts, including *Vinaya Piṭakas*, *Dhammapada*, *Dīgha-nikāya* where the Buddhist approach towards punishing is discussed, the apparent contradiction seems to be reduced to elementary level in most of the instances. The punishments which are imposed as per *Vinaya* text include, expulsion from the *samgha*, banishment, confessions to be made in front of other monks and nuns, repentance for the misconduct, some of the rules are concerning training, and settling of the case. The most severe of these punishments is expulsion from the *samgha*.

In general use, the term “punishment” suggests coercion and harm. But it is not such when applied to a wrong-doer within the Buddhist framework. For instance, when one commits demeritorious act, she is punished by the *samgha*. This punishment is advanced not to detach,

¹⁵⁹ Keown, Damien, *Buddhism: A Very Short Introduction*, p. 10.

eliminate or harm the other, unlike western historical practices as I have discussed in the fourth chapter of my dissertation. Rather, these punishments aim to make the offender realize her ill acts through the suffering which she has inflicted upon the others in a society. When the lawbreaker herself undergoes the similar feeling of suffering, she gets to know how each member of the *samgha* is dealing with it, therefore she develops the need of compassion towards other beings. Despite the fact that the wrong-doer has inflicted harm and led to unrest within the society, her execution under any circumstance will not benefit the society as per Buddhist approach. In spite of executing, they attempt to reform and value the lives of those who have failed to value the lives of others sentient beings is an act of *spiritual courage*.¹⁶⁰ Each individual is an essential human asset of the social order and she deserves a space to improve and evolve. As Buddhist texts suggest, each individual is endowed with the capability to attain the Buddhahood. She might perform immoral actions in her present life but it does not deny her possibility of improving. One might attain right view in future lives. Therefore, the principles of non-violence and compassion are not exclusive to the saints or kind hearted beings, but they can also be practiced by those who performed ill-acts in their past. As per Buddhists, when one gets to know the real nature of impermanent objects, one is bound to develop the right view and espouse their basic precepts of non-violence and compassion. Following the right path by developing the right view leads one to attain *nibbāna*, which according to the Buddha is the highest goal of human life.

Buddhist Approach as Therapeutic

Penalties as endorsed by Buddhists are more focused on betterment of the perpetrator. Killing the other or even taking the life of oneself is prohibited by the Buddha himself. As per Buddhist view, it is certain that the supporters and inflictors of death penalty, will suffer. The suffering which they will have to undergo, will be of transcendental nature. They will experience the *kammic* effects of killing. Therefore, they deserve our compassion and empathy. Buddha taught that our actions are influenced by causes and conditions; similarly our minds are poisoned by ignorance, attachment and hatred. When our minds are overcome by hatred, at that moment, we are unable to control

¹⁶⁰ Damein P. Horigan, “Of Compassion and Capital Punishment: A Buddhist Perspective on the Death Penalty”, *The American Journal of Jurisprudence*, P. 275.

ourselves, our actions, so on and so forth. The Buddha gave high importance to the practice of meditation, it helps one to attain right view and true knowledge. He also taught his followers to return acts of evil with acts of compassion, which if expanded, oppose the idea of awarding death penalty. Buddhists perceive any extreme punishment as harmful not only to the recipient, but to the executioner as well.¹⁶¹ It is also suggested here that the practices which involve violence fail to produce good for any individual.

In my research, I have seen that the punishments which Buddhists put forward are more focused on the reformatory aspect. The theories as expounded by the Buddha are therapeutic and remedial in nature. Therapeutic in the sense, these punishments prompt a person to reflect over what she has done. This realization that one had performed demeritorious acts in the past, must be within the framework of society, where compassion is the central binding principle. Compassion generally means to have empathy with those who are suffering. So, if any kind of punishment which can make the wrongdoer realize this general precept of compassion (which is a Buddhist idea) should be considered to be overall in consonance with the principle of *karuṇā*. Punishment, here, can also be viewed as an instrument used for changing the life of evil-doers, thereby helping them to attain a fuller individual within themselves. “If a person does evil, he shouldn’t do it again and again, shouldn’t develop a penchant for it. To accumulate evil brings pain. If a person makes merit, he should do it again and again, should develop a penchant for it. To accumulate merit brings ease.”¹⁶² Through the imposition of punishment upon a person, she may come to realize her misconducts and ignorance. If a person once does some wrong, she should deter from doing it again, punishment helps one to realize this.

The point which I have noticed here is that ‘the idea of punishment’ seems to be in conflict with the idea of compassion, nonviolence, etc., because we have always seen the term ‘Punishment’ in a bad light (negative light). However, the punishment, if undergone with a realization, with the consideration that it is for the overall betterment of the wrongdoer herself, then the notion of punishment can be explicated in a new light, where it does not seem to be in

¹⁶¹ <http://people.opposingviews.com/buddhism-death-penalty-mercy-punishment-5619.html>, retrieved on 2016/05/21.

¹⁶² Ven Thanissaro, Bhikkhu. *Dhammapada A Translation* (1997). P. 54.

conflict with other central ethical Buddhist notions, like compassion, unconditional love, nonviolence etc. Some mild forms of punishments as stated in the *Vinaya* text, like expulsion of the offender from the *samgha*, repentance, confessions etc., probably could be understood in this light, but there are certain punishments, like death penalty being awarded to some offenders. There are stories in *Jātaka* tale and *Dīgha-nikāya*, which not only provide us with accounts of death penalties being awarded, but at the same time, they caution us with the consequences of killing. In *Cakkavatti Sihanāda Sutta*, the King repented for his judgements regarding taking lives of offenders. Similarly, in the *Jātaka*, the King's only son went mute when he witnessed the thief's execution.

The instances of death penalty need to be spared greater attention. According to the Buddhist theory, taking somebody's life cannot be pardoned. There are some instances of death penalties and violent practice in Buddhist texts, but the Buddha himself had neither accepted nor supported human killings or violent punishing practices. These instances were put forward to show both, the layman and monks, the ill consequences of taking someone's life. Moreover, the Buddha very clearly, opposed violence. When he taught the noble eightfold path, he openly condemned killing or even inflicting harm to any living being. He aimed at encouraging mindfulness and reflection as right action. In *Dhammapada* as well, it is stated that every human being has a fear of death, therefore, one must neither indulge himself in killing, nor let others kill. Although, the stand of the Buddha is unclear with regard to flesh eating, therefore, it is difficult to arrive at any conclusion regarding animal killings (as seen in the second chapter). In order to arrive at any conclusion, a separate study focused on the same issue is required. Let us move on to the final problem of the study.

Are Metaphysical and Empirical Laws of Punishment Compatible with Each Other?

The chief contradiction that arises regarding the Buddhist theory of punishment as seen in Pāli *Piṭakas* is that- if there already exists a metaphysical *law of kamma* for providing justice, then why is there any need for the society to interfere and punish at the empirical level. Does this indicates

that Buddhists' faith in *kammic* justice is not absolute? Here, I should try to understand the need for providing *justice* at empirical level and focus how these punishments of two different realms (empirical and metaphysical) are compatible with each other, as per Buddhist perspective. The *kamma* theory tries to answer some complex questions, such as by birth deformities, financial inequalities, difference in mental abilities etc., which otherwise remain unanswered. However, this doctrine of *kamma* cannot be proven to be true as such. What is central to this theory is "human action". The main aim of *kammic* theory, as per my understanding, is to alter the human conducts and actions, so as to marginalize the possibility of misconducts within the society. According to the Buddha, the *kamma* theory can be understood with the example of the relation between the seed sown and the fruit reaped, the seed that you sow, so is the fruit you reap. The door of good will gather good result. The door of evil reaps evil result. If you plant a good seed well (if you perform good actions), then you will enjoy the good fruits (then you will receive good rewards).¹⁶³ This is not something unique to the *kamma* theory, as it can be seen as a consequential model in a narrow sense, where the goodness of the action is determined by its result and the task is undertaken in order to get good result. But it is not true, as *kamma* theory gives more importance to the *actions* undertaken, where virtuous deeds are celebrated. If we do not think about the result of our actions, rather focus on our conduct then also we will be able to lead a virtuous life. A life that would keep away negativity and encourage positivity, it would bind the society with compassion and harmony. So, if an individual living in the *samgha* commits ill-deeds, then it is the duty of other nuns and monks, who out of compassion tries to educate the ignorant one by discouraging her corrupt acts and if needed, by punishing her. This penalization would have two benefits, one for the society and other of the individual (offender). It will help in maintaining the harmonious atmosphere within the *samgha* and it will also reform the offender by discouraging her to continue evil-acts and earn good *kammas* in this current life. By this, her good *kammas* might surpass her evil acts, therefore, she too can attain the enlightenment in her present life itself. But, if she fails to change herself and continue with her acts which are bad in nature, then she will be punished by getting born in hell (state of deprivation) in her next birth, "some are born in a (human) womb; evil doers are reborn in hell; those with a good rebirth go to heaven; those with *āsavas* gain *nibbāna*."¹⁶⁴

¹⁶³ <http://truthfortheworld.org/buddhism>, retrieved on 2016/05/06.

Finally, it can be concluded that the Buddhists have tried to provide a systematic discussion on their concept of punishment without violating their determination towards basic ethical principles. Most of their penalizing practices (as majorly discussed in *Vinaya text*) goes hand in hand with their basic precepts, but the practice of death penalty cannot be accepted within the Buddhist framework. The Buddha was completely against human killing, for him, compassion is the greatest weapon to treat both misdemeanours and felonies. However, then also he set forth the rules to punish the perpetrators which, at hand, can provide justice and drive ignorant ones to develop *right knowledge* and follow *right path* in order to attain liberation. Buddhist system of punishment is “*reformative*” in its approach. During the rise of the Buddhism, other predominant practices throughout the world were extremely cruel and horrendous (as I have discussed in chapter four). Most of the historical western punishing practices involved killings, which were *retributive* in nature, where criminals ought to suffer but some of them also took *deterrent* stance. However, Buddhism presented a model in early times, which is embraced by more and more modern penologists as well as countries in the present times, viz. *reformative* theory.

¹⁶⁴ *The Word of the Doctrine (Dhammapada)*, trans. by K.R. Norman. P. 19.

Bibliography

Primary Sources

- *Aṅguttara-nikāya*, (1970). Trans. by Nyanaponika Thera & Bhikkhu Bodhi, Sri Lanka: The Wheel Publication, Buddhist Publication Society.
- *Aṅguttara-nikāya*, (1979). Ed. by R. Morris and E. Hardy. Vol. 5. London: PTS.
- *Dhammapada- A Translation*. (1997), trans. by Thanissaro Bhikkhu, Ven., Massachusetts: Dhamma Dana Publications.
- *Dīgha-nikāya* (1890-1911), ed. by T.W. Rhys Davids and J.E. Carpenter, 3 Vols. London: Pāli Text Society.
- *The Book of Discipline (Vinaya Piṭaka)*, part 1 and 2, (1969) trans. I.B. Horner, London: Pāli Text Society
- *The Book of Middle Length Sayings*, trans. I.B. Horner, 3 vols., London: PTS. 1954-59.
- *The Book of Gradual Sayings*, trans. F.L. Woodward: vol. I, II, London: PTS, 1955-70.
- *The Connected Discourses of the Buddha: A New Translation of the Saṃyutta-nikāya*, (2000), trans. by Bhikkhu Bodhi, Boston: Wisdom Publications.
- *The Dhammapada- The Buddha's Path of Wisdom*, (1996). Trans. by Acharya Buddhārakkhita. Kandy: Buddhist Publication Society.
- *The Jātaka*, 1907, trans. by E.B. Cowell & W. H. D. Rouse, vol. 6, Cambridge: The Cambridge University Press.
- *The Jātakas*, ed. V. Fausböll, 7 vols., London: Trubner and Co. 1877-1897.

- *The Jātaka*, 2005. (Vol. V.) Ed. By. Cowell, E.B. Trans. by. Francis, H.T. Motilal Banarsidass Publishers Private Limited, Delhi.

- *The Long Discourse of the Buddha: A Translation of the Dīgha-nikāya*, (1987), trans. by M. Walshe, Boston: Wisdom Publication.

- *The Middle Length Discourses of the Buddha*, A New Translation of The Majjhima-nikāya. (1995). Trans. by Bhikkhu Ñāṇamoli and Bhikkhu Bodhi. Sri Lanka: Buddhist Publication Society.

- *The Vinaya Texts*, vol. XIII, (1965), trans. by T.W. Rhys Davids & Hermann Oldenbergand, ed. by F. Max Muller, reprint, Delhi: Motilal Banarsidass.

- *The Word of the Doctrine (Dhammapada)*, 2000, trans. by K.R. Norman. The Pali Text Society: Oxford

- Upadhyaya, K.N., (1971). *Early Buddhism and the Bhagavad Gita*, New Delhi: Motilal Banarsidass Publisher.

Secondary Sources

- Allsen, Thomas T. 2006. *The Royal Hunt in Eurasian History*. University of Pennsylvania Press.

- *Buddhist Suttas*, 1881. Trans. by T. W. Rhys Davids, ed. by F. Max Müller Oxford. Vol. XI of *The Sacred Books of the East*, The Clarendon Press: UK

- Copleston, Reginald Stephen. 1995. *Buddhism, Primitive and Present, in Magadha and in Ceylon*. Asian Educational Services: New Delhi.

- Davids, T.W. Rhys. 1972, *Indian Buddhism*, Rachna Prakashan, Allahabad.

- *Ethical Issues in Six Religious Traditions*, 1996. Ed. by Clive Lawton, Peggy Morgan. Edinburgh University Press.
- Gary P. Gershman, 2005. *Death Penalty on Trial: A Handbook with Cases, Laws, and Documents*. Oxford, England
- Kronenwetter, Michael. *Capital Punishment: A Reference Handbook* (Santa Barbara, CA: ABC-CLIO, Inc., 1993).
- Kalupahana, David. *Ethics in Early Buddhism*, 2008. Motilal Banarsidass Publishers: Delhi
- Kalupahana, David. *Buddhist Philosophy: A Historical Analysis*, 1976. University of Hawaii Press: Honolulu.
- Keown, Damien, (1996), *Buddhism: A Very Short Introduction*, New York: Oxford University Press.
- Laurence, John, *A History of Capital Punishment* (N.Y.: The Citadel Press, 1960).
- Olivelle, Patrick (trans). 2004. *The Law Code of Manu*. Oxford University Press.
- Pachow, W., (2007). *A Comparative Study of Pratimoksa*, Delhi: Motilal Banarsidass
- *Pojman, Louis P. and Reiman, Jeffrey. 1998. The Death Penalty: For and Against, Rowman & Littlefield Publishers, INC.: New York.*
- Shelden, Randall G., 2010. *Our Punitive Society: Race, Class, Gender and Punishment in America*, Waveland Press
- Sunito, Ajahn (2010), *Turning the Wheel of Truth: Commentary on the Buddha's First Teaching*, Shambhala Publications.

- Sarao, K.T.S, *Origin and Nature of Ancient Indian Buddhism*, Munshiram Manoharlal Publishers Pvt. Ltd. 2010.
- *Sacred Books of the East: Vinaya Texts*, Vol XIII, 1995. Ed. By F. Max Müller, Trans. by T.W. Rhys Davids and Hermann Oldenberg, Low Price Publications: New Delhi.
- Smith, Vincent A. (1901). *Asoka - the Buddhist Emperor of India*. Rulers of India series. Oxford at the Clarendon Press.
- Sharma, Gokulesh, (2008), *An Introduction to Legal Theories*, New Delhi: Deep & Deep Publications Pvt. Ltd.
- Tenzin Gyatso, *Opening the Eye of New Awareness*, Wisdom, London, 1985.
- W. Pachow, *A Comparative Study of the Prātimokṣa*, (Delhi: Motilal Banarsidass, 2007).
- Wallis, Glenn. 2007, *The Dhammapada: Verses on the Way*, Random House Publishing Group.
- Weatherford, Jack. 2004, *Genghis Khan and the Making of the Modern World*, Crown Publishers: New York.

Articles

- “Cula-Kamma Vibhanga Sutta: The Shorter Exposition of Kamma”, *The Middle Length Discourses of the Buddha, A New Translation of the Majjhima Nikāya*, trans. by Bhikkhu Nanamoli and Bhikkhu Bodhi
- Camus, Albert. (1963), “Reflection on the Guillotine”, *Resistance, Rebellion and Death*, trans. by Justin O’Brein. The Modern Library, New York, pp. 131-179.
- Horigan, Damein P., “A BUDDHIST PERSPECTIVE ON THE DEATH PENALTY OF COMPASSION AND CAPITAL PUNISHMENT”, *The American Journal of Jurisprudence*, Volume 41(1996). P.271-288

- Keown, Damien, “Are there ‘Human Rights’ in Buddhism?”, *Journal of Buddhist Ethics*, Vol. 2 (1995), pp. 3-27.
- Keown, Damien, “Attitudes to Euthanasia in the *Vinaya* and Commentary”, *Journal of Buddhist ethics*, Vol. 6 (1999), pp. 260-270.
- Lewis, C. S., “The Humanitarian Theory of Punishment”, *AMCAP JOURNAL*, Vol. 13, No. 1-(1987). Pp. 147- 153.
- Numrich, Paul D. “Posting Five Percepts: A Buddhist Perspective on Ethics in Health Care”, *The Park Ridge Center Bulletin* (1999), pp. 9-11.
- Vajiragnana, Rev., "Justice in Buddhism," *Vesak Sirisara* (unpaginated version from the Electronic Buddhist Archive), (1992).
- Williams, David M. (1974). "The Translation and Interpretation of the Twelve Terms in the Paticcasamuppada". *Numen* (BRILL Academic) **21** (1): 35.

Webliography

- *Arthasāstra*, trans. by R. Shamasastri. http://www.lib.cmb.ac.lk/wp-content/uploads/2014/01/Arthashastra_of_Chanakya_-_English.pdf, as retrieved on 2016/04/12.
- An Epitome of Rational Dhamma, <https://dhivanthomasjones.wordpress.com/category/buddhism/page/2/>, retrieved on 2016/05/02.
- *Aṅguttara Nikāya*, 2005. <http://www.accesstoinight.org/tipitaka/an/>, retrieved on 2016/05/06.
- Deterrence Theory, <https://marisluste.files.wordpress.com/2010/11/deterrence-theory.pdf>, retrieved on 2015/08/20.

- Theories of Punishment, <http://law.jrank.org/pages/9576/Punishment-THEORIES-PUNISHMENT.html>, retrieved on 2015/08/08.
- Albert Camus, <http://plato.stanford.edu/entries/camus/>, retrieved on 2015/08/20.
- United Nations High Commission for Human Rights Resolution, E/CN.4/1997/12 (April 3, 1997). <http://www.un.org/en/terrorism/pdfs/2/G9712841.pdf>, Retrieved on 2015/07/10.
- Dhammapada, http://What-Buddha-Said.net/Canon/Sutta/KN/Dhammapada.Verse_78.story.htm, retrieved on 2012/10/24.
- Rehabilitation Practices, http://www.children.gov.on.ca/htdocs/English/topics/youthandthelaw/roots/volume5/prev-enting05_rehabilitation_strategies.aspx, retrieved on 2015/08/20.
- Capital Punishment in Buddhism, <http://www.bbc.co.uk/religion/religions/buddhism/buddhistethics/capitalpunishment.shtml>, retrieved on 2016/06/20.
- Jātaka Tale, <https://buddhiststories.wordpress.com/2012/11/05/taming-the-mad-elephant/>, retrieved on 2016/05/10.
- Death Penalty, <http://www.faithstreet.com/onfaith/2011/10/26/a-buddhist-perspective-on-the-death-penalty/10373#>, retrieved on 2016/05/22.
- Death Penalty, <http://people.opposingviews.com/buddhism-death-penalty-mercy-punishment-5619.html>, retrieved on 2016/05/21.
- Tipitaka, <http://www.accesstoinight.org/tipitaka/kn/dhp/dhp.10.budd.html>, retrieved on 2016/05/06.
- Buddhist Punishments, <http://people.opposingviews.com/buddhist-beliefs-punishment-8072.html>, retrieved on 2015/07/06.
- Buddhism, <http://truthfortheworld.org/buddhism>, retrieved on 2016/05/06.

- *Nibbedhika sutta*, trans. by Thanissaro Bikkhu, <http://www.accesstoinsight.org/tipitaka/an/an06/an06.063.than.html> , retrieved on 2016/05/06.
- P. D. Premasiri, “Ethics of the Theravada Buddhist Tradition”, <http://www.profpremasiri.com/Papers/PDF/3.%20Ethics%20of%20the%20Theravada.pdf> , retrieved on 2015/11/04.
- Crime and Punishments in China, <http://www.duhaime.org/LawMuseum/LawArticle-367/Crime-and-Punishment-in-Ancient-China.aspx>, retrieved on 2016/05/10.