

# Law and Legal Philosophy in Buddhism

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## 1. Introduction

Buddhism is based on the teachings of Siddhartha Gautama, who is known as Buddha. The main goal of Buddhism is to reach *nirvana*. The Buddhist beliefs are called dhamma (Sanskrit = Dharma). *Dhamma* has many definitions like teachings, truth and the elements of experience. *Nirvana* is emancipation from suffering. It is also detachment from desire. The basic doctrines of Buddhism include the four noble truths: existence is suffering (*dukkha*); suffering has a cause, namely craving and attachment (*trishna*); there is a cessation from suffering which is *Nirvana*. The way to the cessation of suffering is the eightfold path of right views, right resolve, right speech, right action, right livelihood, right effort, right mindfulness, and right concentration. Therefore, this article tries to explore the interactions and overlapping between Buddhist traditions and the legal domain. This is the study of law relating to the Buddhist Philosophy on social and normative dynamics. The relationship between Buddhism and law are highly depends upon the meaning conferred to each individual term. Narrow religious approaches to Buddhism and strict definitions of law allow for little interaction, whereas visions encompassing the ethical and sociopolitical dimensions of both elements grant a richer area of intersection. However, to show the conceptual density of the Buddhist *Vinaya* often translated as 'law' is the core motive of this article. There are thousands of books on Christianity and its relationship to the rules of the Bible, Canonical law and Christian legal

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systems, on Jewish law, the Torah, the Talmud and the history of Judaism, on Sharia's and the role of Islamic law in different Middle Eastern countries, on Hindu law and its relationship to the politics of Asia, but writing on Buddhist law and the effects of Buddhism on legal systems is recently beginning to be explored.

There are at least four ways in which Buddhism interacts with law.<sup>1</sup> First, Buddhism itself incorporates a monastic law code, the *Vinaya*, and special disciplinary procedures for the monastic population. This code has been analyzed extensively and functions as a template for secular rules. Second, some regions have created Buddhist states following the example of Asoka, an early Buddhist political leader. Sri Lanka, Bhutan, and Thailand are current examples. Third, Buddhism has been a significant social force in shaping the cultural attitudes toward law and the legal system in many Asian countries that are not Buddhist states. The time period and the local context from which Buddhism was exported to the country, as well as the local context into which it has been adopted, are all important factors. Fourth, when the local population reasons through the lens of Buddhism, the legal system can be significantly affected. The form of reasoning and the backdrop of the *vinaya* rules, as well as the foundational principles of Buddhism, such as *Karma* (Action), *Anitya* (Impermanence), causation, factorial reasoning, and right action, can all strongly affect a legal system.

## 1.2 Introduction of Philosophy

Philosophy, (from Greek, by way of Latin, *Philosophia*, "love of wisdom") means the rational, abstract and methodical consideration of reality as a whole or of fundamental dimensions of human existence and experience. Philosophical inquiry is a central element in the intellectual history of many civilizations.<sup>2</sup> Philosophy can be defined as a domain of knowledge or enquiry that attempts to answer fundamental questions about ideas, concepts, objects and their relationships.<sup>3</sup> A Philosophy is a comprehensive system of ideas about human nature and the nature of reality we live in. It is a guide for life because the issues it addresses are basic and pervasive, deterring the course we take in life and how we treat other people. Therefore, the study of fundamental nature of existence, knowledge, values, reason, mind and

<sup>1</sup> Rebecca French. "Law and Buddhism". *Encyclopedia of Buddhism*. Volume One A-L. Robert E. Buswell, Jr., Editor in Chief, Macmillan Reference USA, New York, 459, (2004).

<sup>2</sup> "Philosophy". *Encyclopedia Britannica*. <https://www.britannica.com/topic-browse/Philosophy>. (Accessed 4 July 2019).

<sup>3</sup> DR YUBARAJ SANGROULA, JURISPRUDENCE: THE PHILOSOPHY OF LAW (3<sup>rd</sup> print), Lex & Juris Publication Pvt. Ltd. Bhaktapur, Nepal, 18, (2018).

language is called philosophy. Literally, the term “philosophy” means, “love of wisdom.” In a broad sense, philosophy is an activity that people undertake when they seek to understand fundamental truths about themselves, the world in which they live, and their relationships to the world and to each other. The study of philosophy is perpetually engaged in asking, answering, and arguing for their answers to life’s most basic questions. To make such a pursuit more systematic academic philosophy is traditionally divided into major areas of study.<sup>4</sup>

**Metaphysics** (the theory of reality): At its core the study of metaphysics is the study of the nature of reality, of what exists in the world, what it is like, and how it is ordered. In metaphysics philosophers wrestle with such questions as:

- Is there a God?
- What is truth?
- What is a person? What makes a person the same through time?
- Is the world strictly composed of matter?
- Do people have minds? If so, how is the mind related to the body?
- Do people have free wills?
- What is it for one event to cause another?

**Epistemology** (the theory of knowledge): Epistemology is the study of knowledge. It is primarily concerned with what we can know about the world and how we can know it. Typical questions of concern in epistemology are:

- What is knowledge?
- Do we know anything at all?
- How do we know what we know?
- Can we be justified in claiming to know certain things?

**Ethics** (the theory of moral values): The study of ethics often concerns what we ought to do and what it would be best to do. In struggling with this issue, larger questions about what is good and right arise. So, the ethicist attempts to answer such questions as:

- What is good? What makes actions or people good?
- What is right? What makes actions right?
- Is morality objective or subjective?
- How should I treat others?

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<sup>4</sup> "What is philosophy?". *The Department of Philosophy of Florida State University*. <https://philosophy.fsu.edu/undergraduate-study/why-philosophy/What-is-Philosophy>. (Accessed 25 July 2019).

**Logic (The theory of good reasoning):** Another important aspect of the study of philosophy is the arguments or reasons given for people's answers to these questions. To this end philosophers employ logic to study the nature and structure of arguments. Logicians ask such questions to distinguish good reasoning from bad reasoning as:

- What constitutes “good” or “bad” reasoning?
- How do we determine whether a given piece of reasoning is good or bad?

Philosophy also includes **Politics** (the theory of legal rights and government; how people should interact in proper society) and **Aesthetics** (the theory of the beauty and nature of art) also.<sup>5</sup>

Metaphysics, epistemology, and ethics are basic and important disciplines within philosophy. Metaphysics is the enterprise of constructing and assessing accounts of what there is. Epistemology is the enterprise of constructing and assessing accounts of what knowledge is and how it can be attained. Ethics is the enterprise of constructing and assessing accounts of what makes actions right or wrong, what makes persons good or evil, what possesses intrinsic worth, what sort of life is worth living, and how these matters are related.<sup>6</sup>

## 2. Introduction of Law and Legal Philosophy

In a simple word, Law is a system of rules that are created and enforced through social or governmental institutions to regulate an acceptable behavior. It has been defined both as “the Science of Justice” and “the Art of Justice”. Furthermore, Law is systems that regulates and ensures that individuals or a community adhere to the will of the state. In *The Concept of Law*, HLA Hart argued law is a “system of rules”; likewise, John Austin in his writing said law is the “command of a sovereign, backed by the threat of a sanction”; Dworkin describes law as an “interpretive concept” to achieve justice in his text titled *Law's Empire*; and Raz argues law is an “authority” to mediate people's interests. Holmes said “The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law.” In his *Treatise on Law* Aquinas argues that law is a rational ordering of things which concern the common good that is promulgated by whoever is charged with the care of the community. Jurisprudence or legal theory is the theoretical

<sup>5</sup> “What is Philosophy?”. *The Atlas Society*. <https://atlassociety.org/objectivism/atlas-university/what-is-objectivism/objectivism-101-blog/3367-what-is-philosophy>. Accessed 23 July 2019.

<sup>6</sup> KEITH E YANDELL, *PHILOSOPHY AND RELIGION; A CONTEMPORARY INTRODUCTION* (First published), Routledge, New York, 18, (1999).

study of law. Scholars of jurisprudence seek to explain the nature of law in its most general form and provide a deeper understanding of legal reasoning, legal systems, legal institutions, and the role of law in society.

**Philosophy of law** is also called **jurisprudence**, branch of philosophy that investigates the nature of law, especially in its relation to human values, attitudes, practices, and political communities.<sup>7</sup> The term jurisprudence has at different times been used in different senses, sometimes it has been used as synonym for the term law, sometimes as philosophy of law and sometimes as a science of law.<sup>8</sup> Jurisprudence is the name given to a certain type of investigation into law, an investigation of an abstract, general and theoretical nature, which seeks to lay bare the essential principles of law and legal concepts.<sup>9</sup> A proper discussion of questions such as these involves understanding and use of philosophical and sociological theories and findings in their application to law.<sup>10</sup> Legal philosophy refers to the branch of philosophy that is concerned with law and the principles leading courts to make decisions. It is the philosophical enquiry of the most basic concepts, methods, dynamics and institutions of law and justice.<sup>11</sup> Legal philosophy is also concerned with the evaluative theories of law. It provides a general philosophical analysis of law and legal institutions. It attempts to delve into issues of law such as the origin of legal rule, scope and the source of its legitimacy, relation of law with ethics and morality and so on.<sup>12</sup>

Therefore, Philosophy of law (or legal philosophy) is concerned with providing a general philosophical analysis of law and legal institutions. Issues in the field range from abstract conceptual questions about the nature of law and legal systems to normative questions about the relationship between law and morality and the justification for various legal institutions.<sup>13</sup> The nature of law has been a perennial topic of discussion in legal philosophy. With a few exceptions, modern analytic approaches to law focus on the tradition of

<sup>7</sup> "Philosophy of Law". *Encyclopedia Britannica*. <https://www.britannica.com/topic/philosophy-of-law>. Accessed 24 July 2019.

<sup>8</sup> DR NOMITA AGARWAL, *JURISPRUDENCE (LEGAL THEORY)*, Central Law Publications, Allahabad, 3, (1997).

<sup>9</sup> P.J. FITZGERALD, *SALMOND ON JURISPRUDENCE (12<sup>th</sup> ed.)*, N.M. Tripathi Pvt. Ltd. Bombay, 1-2, (1966).

<sup>10</sup> M.D.A. FREEMAN, *LLYOD'S INTRODUCTION TO JURISPRUDENCE (6<sup>th</sup> ed)*, Sweet & Maxwell, 4, (1996).

<sup>11</sup> DR YUBARAJ SANGROULA, *JURISPRUDENCE: THE PHILOSOPHY OF LAW (3<sup>rd</sup> print)*, Lex & Juris Publication Pvt. Ltd. Bhaktapur, Nepal, 34, (2018)..

<sup>12</sup> *Ibid.*

<sup>13</sup> "Philosophy of Law". *Internet Encyclopedia of Philosophy*. <https://www.iep.utm.edu/law-phil/>. (Accessed 24 July 2019.)

legal positivism and its critics. This is not to say that some find a place indeed, a central place for the work of Plato, Aristotle, Aquinas, Kant, and Hegel (just to name a few). But the contemporary analytic discussion centers on a few figures and debate regarding their central claims.<sup>14</sup> However, Natural law theory claims to be the adequate or sound jurisprudence (or legal philosophy) and the sound ethics and political theory.<sup>15</sup> The philosophy of law (legal philosophy) extends and specifies political philosophy by considering precisely how far choices made today for one's political community's future should be determined or shaped by choices made and acts made *in the past*, in the form of contracts, wills, constitutions, legislative enactments, customs, judicial decisions, and the like.<sup>16</sup>

There are three branches of legal philosophy. They are; analytic jurisprudence, normative jurisprudence, and critical theories of law. Analytic jurisprudence provides an analysis of the essence of law so as to understand what differentiates it from other systems of norms. Normative jurisprudence makes the examination of normative, evaluative, and otherwise prescriptive issues about the law. And the critical theories of law challenge more traditional forms of legal philosophy.<sup>17</sup> Therefore, the philosophy of law is commonly known as jurisprudence. Normative jurisprudence asks "what should law be?", while analytic jurisprudence asks "what is law?" John Austin's utilitarian answer was that law is "commands, backed by threat of sanctions, from a sovereign, to whom people have a habit of obedience". Natural lawyers on the other side, such as Jean-Jacques Rousseau, argue that law reflects essentially moral and unchangeable laws of nature. Major approaches in legal philosophy include natural law theory, legal positivism, legal realism, the economic analysis of law, and alternative approaches. The entry then provides an overview of important issues in legal philosophy, such as adjudication, legal reasoning, and the philosophy of criminal law.<sup>18</sup>

### 3. Introduction of Buddhist Philosophy

Buddhism is a world religion. The word Buddhism is a *Sanskrit* word which means "An awakened one", one who is awakened to reality, who understands

<sup>14</sup> DENNIS PATTERSON (ed), *A COMPANION TO PHILOSOPHY OF LAW AND LEGAL THEORY* (2<sup>nd</sup> ed), John Wiley & Sons Ltd, United Kingdom, 2, (2010)..

<sup>15</sup> JULES COLEMAN & SCOTT SHAPIRO (eds), *THE OXFORD HANDBOOK OF JURISPRUDENCE AND PHILOSOPHY OF LAW*, Oxford University Press, 2, (2002)..

<sup>16</sup> John Finnis. *What is the Philosophy of Law?*. <http://ssrn.com/abstract=2109921>. Accessed 20 July 2019.

<sup>17</sup> "Legal Philosophy Law and Legal Definition". *USLegal*. <https://definitions.uslegal.com/legal-philosophy/>. (Accessed 26 July 2019).

<sup>18</sup> Thom Brooks. "Legal Philosophy". *Oxford Bibliographies*. <https://www.oxfordbibliographies.com/view/document/obo-9780195396577/obo-9780195396577-0176.xml>. (Accessed 15 July 2019).

true nature of the mind, the world and all sentient beings. The person who has real knowledge about life and the universe is the Buddha.<sup>19</sup> One of the noteworthy characteristics that distinguish the Buddha from all other religious teachers is that he was a human being with no connection whatsoever with a God or any other 'Supernatural' Being. He was neither God nor an incarnation of God, nor any mythological figure. He was a man, but a super-man, an extra-ordinary man.<sup>20</sup> Buddha was beyond the human state inwardly though living the life of a human being outwardly. Just as he is for this reason called a unique being, man par excellence (Purisuttama).<sup>21</sup>

The philosophy of Buddhism is based on moral codes and principles which were originated around 2,500 years ago. Buddhist philosophy refers to the philosophical investigations and systems of inquiry that developed among various Buddhist schools. Buddhism is a philosophy that explains the meaning of life and the world we live in. Buddhism is a way to cultivate one's mind. It believes that happiness stems from the mind. Buddhists everywhere revere as a source of wisdom and guidance the Dhamma of the Buddha, his teaching about the ultimate nature of reality and the way of life that accords with this. ('Dhamma' is the Pali spelling followed here; the more familiar 'Dharma' is in Sanskrit).<sup>22</sup> Both Dhamma and Vinaya of the Buddha are the only thing, there are two aspects of the same object.<sup>23</sup>

In Buddhism, Buddha was considered mortal. The primary goal was Nirvana. It could be achieved by extinguishing avarices. As the means to this end, the Buddha prescribed a disciplinary eightfold path: to be followed in company with other disciplines.<sup>24</sup> There are four noble truths. They are: there is suffering; there is a cause of suffering; there is a cessation or suffering; and there is a way to bring about for the cessation of suffering.<sup>25</sup> The eight folds paths to the cessation of suffering are; right faith, right resolve; right speech; right

<sup>19</sup> RAJAN BASNET & SUMANTA RAJ NEUPANE THE BUDDHA AND LUMBINI, Pashupati Ghimire Coffee Company, Rupandehi, Nepal, .1.

<sup>20</sup> Thangjam Sanjoo Singh. "The Buddha was Neither God Nor An Incarnation of God". *Imphal Times*. <https://www.imphaltimes.com/it-articles/item/12655-the-buddha-was-neither-god-nor-an-incarnation-of-god>. Accessed 26 July 2019.

<sup>21</sup> VEN PIYDASSI THERA, THE BUDDHA'S ANCIENT PATH, Samyak Prakashan, Delhi, 27, (2012).

<sup>22</sup> CHRISTOPHER W GOWAN, PHILOSOPHY OF THE BUDDHA (First published), Routledge, New York, 5, (2003)..

<sup>23</sup> HARISH KUMAR BALUJA, BHARAT MEIN BOUDHA DHARMA AUR MANABADHIKAR, Biddha Nidhi Prakashan, Delhi, 29, (2011)..

<sup>24</sup> SUSHIL K SAIDU, BUDDHISM IN NEPAL (1<sup>st</sup> publication), Kalinga Publications Delhi, 33, (2008).

<sup>25</sup> *Ibid*, at 35.

action; right living; right effort; right thought; and right concentration.<sup>26</sup> There is the doctrine of dependent origination. Buddhism believes in a theory of a cause and effect. We see an effect only because something is happened. That is to say, an act gives rise to an effect. This doctrine seeks the cause of suffering and the way to stop suffering. Buddhist philosophy believes that, ultimately, ignorance is the cause of suffering and knowledge is the way to end ignorance.<sup>27</sup>

Furthermore, the investigation attests to the teaching of the Four Noble Truths as basic to the earliest Buddhism and to later disputes of what to place under each of the four.<sup>28</sup> The Four Noble Truths, are the central teaching of the Buddha and can be summoned up by saying, life is suffering, the cause of suffering is desire, the way to end suffering is to defeat desire, and in order to overcome desire one must follow the “Eightfold Path”. The eight-fold path is divided into three sections. The first section is good conduct, which includes: Right Speech is about being truthful and honest. Right Action deals with our behavior to live a life where our actions are nonviolent. Right Livelihood deals with avoiding involvement in any activities that are violent. Basically, our jobs should be nonviolent. The second section is mental discipline. It deals with right understanding which foresights into nature of suffering. Right thought deals proper detachment from desires. The third section is *Prajna* meaning prefect wisdom. This includes: Right effort, mindfulness, and concentration.

Buddha’s famous sermon is known as the “Setting in motion of the Wheel of Existence”. It is known as the “Wheel of the Doctrine” and the “Wheel of Law”, for the Buddha compared the spokes of the wheel to the rails of pure conduct, justice being the oneness of their length, wisdom the rim, while the axle of the truth is attached to the hub, which is modesty and thoughtfulness. His explanation of doctrine was based on this conception of a metaphorical wheel.<sup>29</sup> However, Buddhism does not give importance to the idea of the Root-Principle or the First Cause as other systems of philosophy often do; nor does it discuss the idea of cosmology. Naturally such a branch

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> ALEX WAYMAN, *BUDDHIST INSIGHT*, Motilal Banarsidass Publicashers Private Limited, Delhi, 127, (2002)

<sup>29</sup> Prashant Chaudhry. “India Buddhism and Social Harmony, A Study of Mahabodhi International Meditation Centre”. *International Journal of Humanities & Social Science Studies (IJHSSS)*. A Peer-Reviewed Bi-monthly Bi-lingual RESEARCH JOURNAL Vol.-II, Issue-I, 200-206, (July 2015)



of philosophy as theology did not develop in Buddhism. One should not expect any discussion of theology from Buddhist philosopher. As for the problem of creation, Buddhism is ready to accept any theory that science may advance, for Buddhism does not recognize any conflict between religion and science.<sup>30</sup> Therefore, the teaching of Buddhism offers a rational understanding of human suffering and also shows a path to diagnose human sufferings. The teaching of Buddhism is based on compassion, non-violence and understanding of self and offers a moral code for all people irrespective of their gender, caste, religion, region etc. Buddhism shows a way to reach in deeper insight of human nature of reality and spiritual insight through meditation. It promotes self-awareness to interact with in everyday life with others.

**Tipitaka as a foundation of law in Buddhism:** Tipitaka (Sanskrita: *tripimaka*) in Pali means (Ti = Three, Pitaka = Basket) three Baskets of teachings: a *Vinaya Pimaka*, a *Sutta Pimaka* (Sanskrita: *Sūtra Pimaka*), and an *Abhidhamma Pimaka* (Sanskrita: *Abhidharma Pimaka*). Among the Three Baskets, the Vinaya Pitaka (Basket of Discipline) is deals mainly with the rules and regulations of the Order of monks and nuns; Sutta Pitaka (Basket of Discourses) contains the discourses delivered by the Buddha to individuals or assemblies of different ranks in the course of his ministry; Abhidhamma Pitaka (Basket of Ultimate Things) consists of the four ultimate things: Mind (Chitta), Mental-factors (cetasika or *chitta samskara*), Matter (Rupa) and Nirbana.

Vinaya Pitaka is the Constitution of the Buddhist *Samgha*.<sup>31</sup> The *Vinaya Pimaka* consists of texts that deal with the rules of conduct governing the daily affairs within the saCgha, the Buddhist Order consisting of ordained monks (*bhikkhus*) and nuns (*bhikkhunīs*). These rules embody authoritative injunctions of the Buddha on modes of conduct and restraints on both physical and verbal actions. They deal with transgressions of discipline, and with various categories of restraints and admonitions in accordance with the nature of the offence.<sup>32</sup> The Vinaya Pitaka is made of five books which are Parajika Pali, Pacittiya Pali, Mahavaga Pali, Culavaga Pali and Parivara

<sup>30</sup> JUNIJIRO TAKAKASU, THE ESSENTIALS OF BUDDHIST PHILOSOPHY (4<sup>th</sup> reprint), Motilal Banarsidass Publishers Private Limited, Delhi, 2, ( 2014).

<sup>31</sup> HARISH KUMAR BALUJA, BHARAT MEIN BOUDHA DHARMA AUR MANABADHIKAR Biddha Nidhi Prakashan, Delhi, 28, (2011).

<sup>32</sup> U KO LAY, (Compiler), GUIDE TO TIPITAKA,. Buddha Dharma Education Association Inc. Sri Lanka, at 21.

Pali.<sup>33</sup> Apart from providing a list of the rules, the *Vinaya Pimaka* also includes the stories behind the origin of each of these rules, offering in detail an account of the Buddha's prescription on issues relating to the maintenance of communal harmony within a large and diverse community of monks and nuns. The Buddhist Jurisprudence developed primarily out of the body of disciplinary injunctions known as the Vinaya.<sup>34</sup> The Vinaya deals exclusively with monastic discipline but glimpses into Buddhist jurisprudence available in other areas of the Buddhist literature also.

The *Sutta Pitaka* is the second of the three divisions of the *Tripitaka*, the Pali collection of Buddhist writings of Theravada Buddhism. The *Suttapitaka* is a collection of *Sutras* and dialogues of the Buddha with his various disciples. The Suttanta Pitaka brings out the meaning of the Buddha's teachings, expresses them clearly, protects and guards them against distortion and misconstruction.<sup>35</sup> The *Sutta Pimaka* contains more than 10,000 *suttas* attributed to Úâkyamuni Buddha or his close companions. The sutta pitaka is divided into five separate collections known as *nikâyas* (subdivisions or collections) are *Dîgha Nikâya*, *Majjhima Nikâya*, *SaCyutta Nikâya*, *AEguttara Nikâya*, and *Khuddaka Nikâya*.<sup>36</sup>

Abhidhamma is the third great division of the Pitaka. Abhidhamma means Higher Teaching or Special Teaching; it is unique in its abstruseness, analytical approach, immensity of scope and conduciveness to one's liberation.<sup>37</sup> It is a huge collection of systematically arranged, tabulated and classified doctrines of the Buddha, representing the quintessence of his Teaching. The *Abhidhamma Pimaka* (literally "higher dhamma") is a collection of texts in which the fundamental doctrinal principles specified in the *Sutta Pimaka* are systematically restructured and organized. The *Abhidhamma Pimaka* consists of seven books: *DhammasaEgaGî*, *VibhaEga*, *Dhâtukathâ*, *Puggalapaññatti*, *Kathâvatthu*, *Yamaka*, and *Pammhâna*.<sup>38</sup>

Therefore, *Abhidharma pitaka* covers Philosophical and psychological analysis and interpretation of Buddhist doctrine. On the basis of above discussion, it says that firstly, without *Vinaya* there is no order (*samgha*),

<sup>33</sup> *Ibid*, p.11.

<sup>34</sup> Nandasena Ratnapala. "Jurisprudence". *Encyclopedia of Buddhism*. Volume VI, Edited by W.G. Weeraratne. Government of Sri Lanka, p.68.

<sup>35</sup> U KO LAY, (Compiler), *GUIDE TO TIPITAKA*, Buddha Dharma Education Association Inc. Sri Lanka, .34.

<sup>36</sup> *Ibid*, at 25.

<sup>37</sup> *Ibid*, at. 189.

<sup>38</sup> *Ibid*, at 191.

and without the community of monks there is no Buddhism. Consequently, the vinaya-texts are the last ones lost, when Buddhism eventually disappears. Similarly the rules of conduct must be promulgated by the Buddha himself. He is the only law giver, and thus all rules to which, every single monk has to obey, are thought to go back to the Buddha. In the same way, the rules are prescribed only after an offence has been committed. These rules are derived from experience and based on the practical need to avoid certain forms of behavior in future. This means at the same time that the cause for a rule is always due to the wrong behavior of a certain person, and consequently there is no existent system of Buddhist law. However, the Vinaya lacks some of the elements in the modern legal system from the perspective of the western world. There is no Court of Appeal, no prison wardens, no bailiffs to compel or enforce compliance with the verdict of monastic peers. The Vinaya is nonetheless law, if only for application within the religious Order, with inevitable repercussion for serious offenses in the secular world. The Buddhist religious Order is a well-organized monastic community, self disciplined, autonomous and law abiding. Therefore, Tipitaka is not law in the sense of the secular law in force in a given society, but constitute nevertheless a code of conduct, a model of peaceful living for the Buddhist community.

#### **4. Relation between Legal Philosophy and Buddhist Philosophy**

Comparative jurisprudence divides legal systems into families or types based on cultural and historical origins. Buddhist law is the most recent entrant into the category of religious legal systems like an Islamic law, biblical law and Hindu law. The development of Buddhist law as a disciplinary subject has been slow because of the lack of a single unifying religious language or script and Buddhism's wide cultural dispersal throughout world. Scholars have also presumed that Buddhism did not have an obvious relationship to secular legal systems because of its distinction between lay and monastic populations and its tolerant, as opposed to mutually exclusive, approach to local religions and politics. More recent studies, however, have demonstrated that the influence of Buddhism on law and political systems has been profound.

The most common and shared ground for studies of Buddhism and law relates to the monastic regulation (*Vinaya*) and its external (and reciprocal) influences on lay law. In the broader approaches, Buddhism include the consideration of the impact of Buddhist ethics on social regulation or the

problem of political power and its legitimating. There were two forms of government, monarchical kingdom and republican territories (*gana sanghas*), that existed and described the political system at the time of Buddha.<sup>39</sup> Buddhists believe that the Buddha awakened to the laws of the universe, which are said to be operating eternally, whether the Buddha discovered them or not. According to Buddhism, nothing can exist on its own and everything is dependent on other things. All elements, all entities, all phenomena are thus related directly and indirectly to one another in the universe. Any change in this huge interconnected compound of existence would definitely, eventually exerts influence on everything else. The principle of dependent origination is the Buddhist view of the cosmic world and the human being.<sup>40</sup> Therefore, Buddhism teaches that all things, both material and immaterial, are entirely subject to the direction of causes and are interdependent. This natural course of things is called in common terms “the law of nature,” and in the Pali language *niyama*, literally meaning “certainty” or “fixed way,” referring to the fact that specific determinants inevitably lead to corresponding results.

The idea of moral justice or reward or punishment arises out of the conception of a supreme being, a God, who sits in judgment, who is a law giver and who decides that is right and wrong.<sup>41</sup> Buddhism does not postulate a creator God as a first cause. Therefore, the idea of law or justice as something promulgated by God directly or indirectly does not arise in the case of Buddhism. Buddhist law, on the other hand, cannot be called positive law in the sense Austen meant it.<sup>42</sup> Buddha was by no means a king or a law giver whose commands were issued to the members of a sovereign state over which he governed.<sup>43</sup> Such laws are obeyed and considered legitimate because their source cannot be called into question. However, in *The Concept of Law*, inclusive positivist HLA Hart suggested that there is a ‘core of indisputable truth’ in the doctrines of natural law. Again his tactics look back

<sup>39</sup> DR PRAKASH NARAYAN, *SOCIAL PROCESS AND BUDDHISM*, Apple Books Publishers and Distributors Delhi, 21, (2014).

<sup>40</sup> Theresa Der-Lan Yeh. “*The Way To Peace: A Buddhist Perspective*”. *International Journal of Peace Studies*, Volume 11, Number 1, Spring/Summer 2006. [https://www.gmu.edu/programs/icar/ijps/vol11\\_1/11n1Yeh.pdf](https://www.gmu.edu/programs/icar/ijps/vol11_1/11n1Yeh.pdf). Accessed 10 July 2019.

<sup>41</sup> WALPOL SRI RAHULA, *WHAT THE BUDDHA TAUGHT* (Revised ed), The Gordon Gallery Ltd, London, 32, (1978)..

<sup>42</sup> JOHN AUSTIN, *LECTURES ON JURISPRUDENCE OR THE PHILOSOPHY OF POSITIVE LAW*, Editor Robert Campbell. John Murray, London, 5<sup>th</sup> ed. (1985).

<sup>43</sup> JOHN AUSTIN, *THE PROVINCE OF JURISPRUDNECE DETERMINED*, Weidenfeld and Nicolson, London, reprint (1965).

to Hobbes and he claims to be merely using reason to identify what minimum sorts of rules are required by the basic elements of the human condition. According to Hart, social rules regulate the conduct of members of societies.<sup>44</sup> Five 'truisms' about humanity give a reason for postulating a 'minimum content' of social rules; these are:<sup>45</sup> Human vulnerability, Approximate equality, Limited resources, Limited altruism and Limited understanding and strength of will.

We can find above principles in the Buddhist philosophy. So, this philosophy also leads the legal positivism too. Furthermore, Buddhist rules are based on ethics and morality. However, ethics deals with the absolute ideal, but positive morality is made up of the actual standards which are adopted in the life of any particular community. Positive morality, like law therefore, emphasizes conduct rather than states of mind; it is also similar to law in that it is imposed on the individual from without, for it has behind it the effective, if unorganized, sanction of public opinion.<sup>46</sup> However, basically, Buddhism upholds a theory of natural laws. In this context these three facts are significant to be noted- Firstly, the theory of natural law propounded in Buddhism by virtue of the fact that karmic correlations are a special instance of causal correlations in nature, which is an ordered system. Therefore, Buddhist texts say that morally good or bad actions and actions of mixed nature are followed respectively by pleasant and unpleasant consequences and consequences of mixed nature. So an individual must avoid evil and do well. Secondly, Buddhism accept a natural law theory in recognizing that man's conscience is generally aware of right and wrong even though conscience is admitted to be sometimes fallible. Thirdly, Buddhism upholds a natural law theory in the sense that it puts forward a social contract theory of the origin of the state and all that it implies.

Fundamental teachings of Buddhism are based on nature. If actions under the control of thought could be organized in line with nature, the good result derived from thought that go against nature are well manifested in Buddhism. Social recognition is created on nature. That is way all Fundamental theories of law are based on natural justice. Hence the relationship that exists between law and Buddhist Philosophy is one based on nature. Meritorious deeds

<sup>44</sup> DR, BAL BAHADUR MUKHIA COMPARATIVE JURISPRUDENCE PART I., Mrs. Malati Mukhia & Ms. Tamanna Mukhia, Kathmandu Nepal, 7, (2011).

<sup>45</sup> WAYNE MORRISON, JURISPRUDENCE: *From The Greeks to Post Modernism*. (Reprint), Cavendish Publishing Limited, London, UK. 376, (2000).

<sup>46</sup> C.W. PATON, A TEXTBOOK OF JURISPRUDENCE (4<sup>th</sup> ed.), Oxford University Press, 73, (2005).

indicated in Buddhism are in harmony with nature while matters shown in Buddhism as evil deeds are inconsistent with nature. The right of all beings to life is accepted both in Buddhist Philosophy and nature. The evil act of taking one's life and its evil effect as thought in Buddhism confirms this right to life as expressed in Dhamma pada, "*Sabbe Tassanthi dandassa Sabbesan Jeevithan PiyanAttanan Upamankatthwa Nahaneyiya naghataye.*"<sup>47</sup> The laws of nature, although uniformly based on the principle of causal dependence, can nevertheless be sorted into different modes of relationship.<sup>48</sup> Buddhism, on the other hand, has a special interest in the human condition, and does not see the source of problems to be located entirely within the external world. Suffering has its origin in the natural processes of cause and effect. Not knowing or understanding this natural cause and effect process is itself the cause of suffering. Buddhism delves into the origin of suffering by encouraging keen investigation of this law of cause and effect, or the law of nature.

Likewise, Buddhism emphasizes the significance of moral behavior of individual in consideration of his well-being as an individual as well as a part and parcel of society. Nobody can think of an individual apart from society. Individuals and society influence each other and the impact of the influence on each other is too explicit to be ignored. Buddhism therefore in laying out ethical behavior for an individual's moral conduct, his social setting has been taken into account for the welfare of both the individual and society. Individual perfection is anticipated primarily for the sake of creating a better social order with his participation.<sup>49</sup> Law is not made but found in society is the core concept of historical school of jurisprudence. According to Savigny, all law is formed originally by customs and popular feelings that is by "silently operating forces. For Savigny, the basis of origin of law is to be found in 'Volkgeist' which means people's consciousness or will and consists of traditions, habits, practice and beliefs of the people. The law comes from the people's spirit of the people (Volkgeist) not from the state."<sup>50</sup> Buddhist philosophy also have deep root in the society like 'Volkgeist'. So, there is

<sup>47</sup> Ms. Crishanthi Amarathunge Dodangoda, Additional District Judge, Kandy, Sri Lanka. "Law and Buddhist Philosophy". *The International Buddhist Center*. <http://centrebouddhique.fr/law-and-buddhist-philosophy/>. Accessed 1 July 2019.

<sup>48</sup> Bhikkhu P. A. Payutto. *Good, Evil and Beyond Karma in The Buddha's Teaching*. translated by Bruce Evans, Buddha Dharma Education Association Inc., 1-2

<sup>49</sup> VEN PATEGAMA GNANARAMA Ph.D. ASPECTS OF EARLY BUDDHIST SOCIOLOGICAL THOUGHT, Ti-Sarana Buddhist Association, Singapore, 35, (1998).

<sup>50</sup> L.B. CURZON, JURISPRUDENCE. Cavendish Publishing Ltd. London, 139, (1993).

the connection between Buddhist philosophy and historical school of jurisprudence.

The historical and sociological background to the Vinaya rules provides us with a flood of light that falls on the area of the origin of Buddhist Jurisprudence. Each rule or law as given in the *Vinaya Pitaka* is traditionally said to have been promulgated by the Buddha himself. The basic idea is to provide as undisputed authority to Buddhist Law. There is no doubt that the major rules trace their origin to him. The minor rules that may have grown with the passage of time, included in the basket of disciplinary laws have their authority foisted on the Buddha. Unfortunately there is no way available to us today to determine the Historical order in which the laws came into existence. The laws grew out of empirical instances in which Buddhist Philosophy was applied to practical situations.<sup>51</sup> Nonetheless, Buddha is credited with the authorship of all Buddhist laws. Although, it cannot be conceived that the Buddha was behind all major and minor laws, the necessity to regard all such laws as being promulgated by him could be readily understood. The followers needed to add a sanctity and authority to the laws. What greater authority could they think of than the Buddha himself, considering that all laws are Buddhavacana (Word of the Buddha) or spoken from the mouth of the Buddha himself. On the basis of above discussions, following are the conclusive statements of this article:

- Buddhism itself incorporates a monastic law code, the *Vinaya* and special disciplinary procedures for the monastic population. This law code has been analyzed extensively and functions as a template for secular rules.
- Buddhism has been a significant social force in shaping the cultural attitudes toward law and the legal system in many countries or societies.
- When the local population reasons through the lens of Buddhism, the legal system can be significantly affected. The form of reasoning and the backdrop of the *Vinaya* rules, as well as the foundational principles of Buddhism, such as *Karma* (action), *Anitya* (impermanence), causation, factorial reasoning and right action can all strongly affect a legal system.

## 5. Conclusion

According to Buddhism, Ignorance is the cause of suffering and knowledge is the way to end ignorance. The eight folds paths to the cessation of suffering

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<sup>51</sup> Nandasena Ratnapala. "Jurisprudence". *Encyclopedia of Buddhism*, Volume VI, Edited by W.G. Weeraratne. Government of Sri Lanka, .68.

(*Nirvana*) are; right faith, right resolve; right speech; right action; right living; right effort; right thought; and right concentration. Therefore, the teaching of Buddhism offers a rational understanding of human suffering and also shows a path to diagnose human sufferings. Buddhist rules are based on ethics and morality. Buddhist ethics are based on of understanding, universal, compassion, equanimity, and openness. Law becomes meaningful only on the basis of the ethics, because law is an instrument for achieving certain ends. Ethics, in turn, receive its validity from the theory of reality. The theory of reality in turn becomes significant on the background of a theory of knowledge. This is also a fact that law is concerned with the behavior of a 'person' or a group of person living in a society within a state or nation. Buddhism, a system of middle path also upholds the theory known as *Saugata Simha Nada*, i.e. *Sarvam dukkham, Sarvam ksanikam, Sarvam anatman*.

The acid test for the validity of any law is to compare it with the Buddha's discourses in short the *Vinaya* and the *Sutta*. If it agrees with the words of the Buddha as found in the *Vinaya* and *Sutta*, the validity of the law is established. In addition to the material or this worldly dimension the Buddhist laws had the non-material or spiritual dimensions too. The Buddhist law also needs to be viewed as both an individual and collective legal system. Sociologically, this is interesting because the law violated collectively could affect those who violated it in a collective manner. Punishment as understood by Buddhist law is devoid of meaning unless it contains compassion for the punished and the desire to remold and convert them into new human being.

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