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"Necessary Evil": The Growth of a System of Judicial Courts and the Responses it Evoked among the Buddhist Monastic Community in Ancient Sri Lanka

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The initial steps toward the growth of a system of judicial administration can be seen very early in the history of Sri Lanka and, by the second and third centuries of the Christian era, regular functioning courts could be found even at urban centers located at considerable distance from the capital of the kingdom at Anuradhapura. The income from fines levied at such courts was available for disposal by the ruler. The commentaries on the Theravāda Canon written in Pāli in the fifth century and later, which are based on works written in the local language at an earlier time, reveal the prevailing atmosphere of a propensity for litigation that caused some concern among the commentators. It is most interesting to note that the Vinaya Commentary, the *Samantapāsādikā*, refers to a category of people called *aṭṭakārakā*, literally "lawsuit-makers," who, "owing to their acute pride, intense hatred and predilection to cause discord," tended to get involved in litigation.[1] The commentators sought to discourage this practice among members of the monastic community. It is perhaps significant that the discussion on "lawsuit-making" occurs in the Bhikkhunī-vibhanga section of the *Samantapāsādikā* rather than in the earlier exegesis on the Bhikkhunī-vibhanga. Though at the end of the passage the author of the commentary states that the observations should apply to the monks as well, it leaves the impression that litigation had become a serious problem even within

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1. 4 SAMANTAPASADIKA: BUDDHAGHOSA'S COMMENTARY ON THE VINAYA PIṬAKA, 906 (J. Takakusu & M. Nagai eds., 1967).

the community of nuns.

Institutional provisions had been long prevalent for the adjudication of complaints concerning transgressions of disciplines and disputes among fellow members of the monastic community. The ecclesiastical courts that heard such cases were guided by the monastic disciplinary codes preserved in the Vinaya and their interpretations transmitted in the Theravada tradition. There is at least one instance in an investigation in an ecclesiastical court where a monk is given the authority by the ruler to "hear any case in the kingdom."[2] Godattha, the learned monk in question, had delivered a judgment on a matter involving the determination of the monetary value of a stolen object. It was this decision that attracted the admiration of Bhatika Tissa (140-164 CE). Such recruitment of talented monks to work in royal courts would have had a beneficial effect because they brought with them the experience gathered in ecclesiastical courts for the development of the emerging system of judicial administration under royal direction.

It is clear from the commentarial literature that new types of disputes had begun to demand attention. Some of these disputes were between laymen and the monastic community. A good number of them involved matters relating to property. Evidently, these commentators were living at a time when petty theft and violation of monastic property rights were rife, providing opportunities and generating motivation for "lawsuit-making." Such acts led at times to violent incidents between monks and the laymen. One commentator counsels that a monk who finds an intruder felling trees on monastic property not seize the offender's axe and break its cutting edge by dashing it on rocks. If indeed he has already done so by the time he recalls this advice, he is requested to have the axe repaired and to return it to the owner.[3] Presumably, to a greater extent than the monks, the nuns were considered to be easy prey for aggressive action by laymen. Men who maintained themselves by theft and even common village youth would enter the property of nunneries to remove the produce, cut

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2. 2 SAMANTAPASADIKA: BUDDHAGHOSA'S COMMENTARY ON THE VINAYA PIṬAKA, 306-07 (J. Takakusu & M. Nagai eds., 1927).

3. *See Samantapasadika*, *supra* note 1, at 910.

down trees, and forcibly carry away equipment.[4] It is not entirely difficult to understand that while some monks resisted aggression by resort to force, it was the nuns who had to seek recourse through legal action more often. Recourse to litigation would have been one of the practical means available to women under such circumstances.

However, recourse to the system of courts did not prove to be a simple way out of the predicament. It would seem that, from the point of view of the commentators, the judicial process performed two functions: it provided protection to people and property, and punished offenders. In their advice to the nuns, the commentators recognized the need for nuns to avail themselves of the first function, but at the same time they were eager to prevent the nuns from being associated with the punitive aspect of the judicial process. It had been long realized by Buddhist thinkers that punitive action associated with the judicial process could involve resorting to violent acts that would cause physical injury. Even if a few monks like Godattha were working within this system, it is difficult to assess to what extent they were able to influence its focus on punishment. A Sri Lankan ruler known as Vohārika Tissa, or "Tissa, the Lawyer" (209-231 CE), had made an attempt to develop a penal code which did away with punishments that caused physical injury to the convicted offender.[5] Sirisanghabodhi (251-253 CE) was another ruler who attempted to follow the nonviolent path in the administration of justice.[6] As would be expected, such attempts were, on the whole, unsuccessful experiments. Kings espousing the cause of nonviolence were easily deposed. They were, at best, ineffectual rulers. However, concerns expressed by Buddhists about the penal system proved to be durable. We find some writers, such as the twelfth-century author of the Sinhala text *Karmavibhāga*, arguing that all violent acts, including even the implementation of judicial punishments involving physical injury, were evil deeds which were to be

4. *See id.* at 908.

5. *See* MAHĀVAMSA 36:8 (Wilhelm Geiger trans., 1958).

6. The *Mahāvamsa* presents Sirisanghabodhi as a ruler who was reluctant to punish malefactors. This king was easily removed from power due to his hesitation about using military force against rebels. *See id.* at 80:1, 91:2.

meticulously avoided by the good Buddhist.[7]

Penal measures, even the nonviolent ones, caused loss to the convicted offenders: hence, it was argued that as a result, bad *kamma* would accrue to the person who initiated a complaint at a court of law. If the accused were to be found guilty, the person initiating the judicial process would be instrumental in causing injury or loss to another, even if the penalty imposed were justified in terms of the law. Further, involvement in litigation would arouse disaffection among the laity. The advice tendered to Buddhist monastic *sangha*, in this particular case the nuns, appears to have been formulated after serious consideration of all these aspects.

The nuns were permitted to request of the judicial officials (*vohārike*) that they be provided with protection and that property taken from them be restored, but it was essential to ensure that complaints were not directed against any particular individual and were of an unspecific or general nature (*anodissācikkhanā*).[8] If the judicial officials were to investigate such an unspecific complaint, and then proceed to apprehend the culprits and punish them, even to the extent of confiscating everything they possessed, the nun would not bear any responsibility or be guilty of an ecclesiastical offense. Similarly, if the judicial officials were to announce by the beat of a drum that those who perpetrate such and such deeds at the nunnery would be punished in such and such a manner, and then apprehend offenders and punish them, the nun would bear no responsibility. However, under no circumstances was the nun to initiate a lawsuit, by herself or through an intermediary such as a functionary attached to the nunnery. Even if judicial officials had come to see her, she would commit an offense if she were to make a complaint to them, either personally or through a functionary, with a view to initiating a lawsuit. Nuns were also not allowed to reveal the identities of criminals, even if questioned by judicial officials. They were instead instructed to say: "It is

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7. *See Karmavibhāga* (Sa-skya manuscript No. XXXVII) (R.A.L.H. Gunawardana ed., forthcoming).

8. *See Samantapasadika, supra* note 1, at 909 (*"kevalamhi mayam rakkham yācāma, tam no detha avahaṭa-bhandañca āharāpethāti vattabbam. evam anodissācikkhanā hoti, sā vaṭṭati."*).

not proper for us to say who did it. You yourselves will come to know."[9] However, if the judges told the nun that she did not have to say anything because they themselves knew all about it and then proceeded to give their verdict, she was not guilty of having committed any ecclesiastical offense. Only the person who initiated the process would be responsible.[10] In other words, emphasis was on encouraging nuns not to make a specific complaint against another person.

If a nun decided to file a lawsuit and approached the judicial officials, she committed an offense at each step. The first complaint involved a preliminary offense in the *dukkaṭa* category; the second involved an offense of the "grave" (*thullaccaya*) category; and at the conclusion of the judicial proceedings (*aṭṭapariyosāne*), she was guilty of an offense of the *sanghādisesa* category, involving suspension from the order, whatever the result of the lawsuit was.[11] The gravity of the offense that the nun committed through involvement in the judicial process was not related to the justifiability of her suit in terms of the prevailing law. For if the person against whom she filed the suit were to be found guilty and punished at any level higher than a fine of five *māsakas*,[12] in ecclesiastical terms the nun was considered guilty of having committed the most grievous type of offense, the *pārājikā*, involving the penalty of expulsion from the order. The only exception to the rule was a situation in which a nun unwittingly found herself involved in a lawsuit that had gone on for quite some time earlier.

The rule prescribing expulsion from the order for involvement in a successful lawsuit in which the other party had been punished above a certain limit does not appear in the *Vinaya Piṭaka* and seems to have been a Sri Lankan innovation.[13] Thus losses caused on someone through the judicial process were considered to be on par with theft. In the Vinaya it was theft of an object worth more than five *māsakas* that brought expulsion from the

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9. *Id.*

10. *See id.* at 908.

11. *See id.* at 906-07.

12. Five *māsakas* amounted to a fourth of a *kahāpana* in value.

13. Even in the later *Parivāra* section, the penalty was *sanghādisesa*. *See* 5 VINAYA PIṬAKA 72, 83 (1883).

order on an offending monk. Considered purely from a layman's point of view, these provisions would appear illogical, since the more justified the nun's complaint in terms of the law, and the more grievous the offense giving rise to the complaint, the guiltier she was in the eyes of the Vinaya. On the other hand, from the commentator's point of view, judicial punishment was a form of violence and, as such, it was abhorrent; and the graver the violence, the greater the gravity of the responsibility of those involved in that process.

The gradation of ecclesiastical offenses involving association with the judicial process was perhaps designed to encourage one who had filed a lawsuit to withdraw it at an early stage. The prescription of such a grave course of action as expulsion from the order perhaps reflects a situation in which litigation had become a serious problem within the community of nuns in ancient Sri Lanka. It may also be pointed out that the underlying assumption of the commentator was that access to courts was easy. The scenarios outlined by him involved situations of nuns going to courts, the judicial officials visiting the nunnery to collect information, and announcements being made to ensure protection for the nunnery. They carry the implication that by this time a regular system of judicial courts with a penal code, designed to provide security for person and property, had emerged.[14]

14. This paper draws on material presented in an earlier contribution by the author. *See* R.A.L.H. Gunawardana, *Subtile Silks of Ferreous Firmness: Buddhist Nuns in Ancient and Early Medieval Sri Lanka and their Role in the Propagation of Buddhism*, 14 SRI LANKA J. HUMAN. 1990 (1988).