

Buddhist Law According to the Theravāda Vinaya II: Some Additions and Corrections,
by Oskar Von Hinüber

Journal of the International Association of Buddhist Studies, Vol. 20, No. 2 1997

Buddhist Law According to the Theravāda *Vinaya* (II):
Some Additions and Corrections

1.

In a forthcoming article, Édith NOLOT discusses the *Vinaya* term *nāsanā* in great detail¹. In course of her discussion she briefly draws attention to the fact that *paṭiññāya*, Sp 582,30 sqq. does not mean “with the consent”, as I erroneously translated JIABS 18.1 1995, p. 37, 6, but “by acknowledgement”.

As I did not concentrate on the legal side of the relevant paragraph in the *Samantapāsādikā* in my earlier article, but on the problem of legal texts belonging to the Abhayagirivihāra, it may not be out of place to make good for this omission. The *Samantapāsādikā* here comments on the VIII. *Samghādisesa* dealing with a monk accusing another monk of a *pārājika* offence without any reason. This rule is introduced by the story of the monk Dabba Mallaputta who is wrongly and maliciously accused by the nun Mettiyā to have raped her. Consequently, the nun Mettiyā is punished by expulsion from the order (*nāsanā*): *tena hi bhikkhave Mettiyaṃ bhikkhuniṃ nāsetha*, Vin III 162, 37 quoted Sp 582, 16.

From the text of the *Vinaya* it is clear that Mettiyā acts at the instigation of the Mettiyabhummajaka monks, who persuade her to accuse Dabba Mallaputta of rape. The reason is that they want to do harm to Dabba Mallaputta, who is highly respected by laypeople and therefore gets better food than they themselves. Thus there is not the slightest shadow of doubt that Dabba Mallaputta is an innocent victim of the combined viciousness of the Mettiyabhummakaja monks and the nun Mettiyā.

Here, the legal problem starts, at least as the *Samantapāsādikā* sees it. Once Dabba Mallaputta rightly rejects the accusation, the following sentence quoted by É.NOLOT from a different context and concerning two novices is valid: *tatra dūsakassa paṭiññākaraṇaṃ natthi*, Sp 269, 9 “there is no acknowledgement by the rapist.” According to the *Sārattha-*

1. “Studies in Vinaya technical terms VI”, note 28, JPTS 24.1998 (in press).

dīpanī by Sāriputta this means²: *pucchitabbābhāvato. na hi dūsako* “*kena cittena vītikkamaṃ akāsi, jānitvā akāsi, udāhu ajānitvā*” *ti evaṃ pucchāya arahati*, Sp-ṭ (B^e 1960) II 94, 1-3 “Because there is no questioning. For the rapist does not deserve to be asked thus: ‘With which intention did you commit this transgression, intentionally or unintentionally?’” Obviously, a rapist is expelled from the Saṃgha at any rate³, but not necessarily the person raped. For the *Samantapāsādikā* continues: *dūsito pucchitvā paṭiññāya nāsetabbo. sace na sādiyati na nāsetabbo*, Sp 269, 10⁴ “[the monk, who] has been raped, is to be expelled because of [his] acknowledgement after having been asked. If he did not enjoy it, he is not to be expelled.” The reason for this procedure is given by Kassapa Coḷa in his *Vimativinodanī*: *paṭiññā-karaṇaṃ natthi sevetukāmatā maggena maggapaṭipattīti dvinnam āngānaṃ siddhatā. dūsitassa pana maggena maggapaṭipatti evam ekaṃ siddham, sevetukāmatāsankhātam sādiyaṇaṃ asiddham. tasmā so pucchitvā “sādiyin” ti vuttapaṭiññāya nāsetabbo*, Vmv (B^e 1960) I 147, 23-26 “There is no acknowledgement because both parts, the desire to have intercourse and the entering by an (appropriate) way is certain. However, in case of the raped [monk] only the entering by an (appropriate) way is certain, the enjoyment called desire to have intercourse is not certain. Therefore, he is to be expelled because he says in acknowledgement after having been asked ‘I enjoyed it⁵’”. This, at the same time, shows that the *Vimativinodanī* gives a slightly different explanation. For, if *sevetukāma* is considered as certain, *ajānitvā* of the *Sāratthadīpanī* is of course ruled out⁶.

In the story of Dabba Mallaputta and Mettiyā this obviously leads into a dilemma: If Mettiyā acknowledges rape, she is to be expelled, but so is the innocent Dabba. This seems to be the underlying reason for the Mahāvihāra/Abhayagirivihāra controversy dealt with briefly in my earlier article: *kiṃ pana bhagavatā Mettiyā bhikkhunī paṭiññāya nāsitā apaṭiññāya nāsitā ti. kiñ c’ettha yadi tāva paṭiññāya nāsitā thero kārako*

2. The *Vajirabuddhiṭṭikā* does not explain this paragraph.

3. Cf. *dve ... nāsetabbā*, Sp 269, 9.

4. E^c *dūsito ti pucchitvā*: has to be corrected into *dūsito pucchitvā* with B^e.

5. My understanding of this paragraph owes much to criticism and suggestions by the Venerable Bhikkhunī Juo-hsüeh.

6. Vmv occasionally criticises Sp-ṭ: O. v. HINÜBER: *A Handbook of Pāli Literature*. Berlin 1996, § 338.

hoti sadoso, atha apaṭiññāya thero akārako hoti adoso, Sp 582, 30-34 “Has the nun Mettiya been expelled by the Buddha because of [her] acknowledgement [or] without acknowledgement? For if she has been expelled because of an acknowledgement, the Elder [Dabba Mallaputta] has acted [i.e. has committed an offence] and is guilty. Without acknowledgement [by Mettiyā], he has not acted and is not guilty.”

In our *Vinaya* text, which is the one of the Mahāvihāra, no immediate reason for Mettiyā’s expulsion is given in the rather neutral formulation: *tena hi bhikkhave Mettiyaṃ bhikkhuniṃ nāsetha*, Vin III 162, 37 quoted Sp 583, 12, in contrast to the Abhayagiri version: *tena hi bhikkhave Mettiyaṃ bhikkhuniṃ sakāya paṭiññāya nāsetha*, Sp 583, 9. This, however, involves the guilt of the innocent Dabba Mallaputta. We do not know, if and how the Abhayagiri *Vinaya* experts may have solved this problem⁷, which was evidently widely discussed.

However, the legal experts of the Mahāvihāra also run into difficulties. If it is not a clear case of rape as the one between Sāmaṇeras referred to in *Pārājika* I (Vin III 323, 29 sq. with Sp 269, 9-22), but involving two ordained members of the Saṃgha contradicting each other when asked about the evidence, the situation becomes complicated. In the very beginning of this discussion it is simply stated: *Dabbassa ca yasmā imassā ca vacanam na ghaṭiyati, tasmā Mettiyaṃ bhikkhuniṃ nāsethā ti vuttaṃ hoti*, Sp 582, 17-19 “because Dabba’s [evidence] and her evidence do not agree, therefore it is said “you should expell the nun Mettiyā”.”

After the neutral text without *sakāya paṭiññāya* is said to be superior, a detailed discussion of the legal problems follows in the *Samanta-pāsādikā* (Sp 584, 15-585, 9): “These are the considerations of the experts in the [legal] commentaries (*aṭṭhakathācāriya*)⁸: If a monk wrongly accuses another monk of a *pārājika* offence (*antimavatthu*), this is a *saṃghādisesa* offence [*Samghādisesa* VIII, Vin III 163, 21**]; if he accuses a nun, it is wrong doing (*dukkata*)⁹. On the other hand, it is said

7. In spite of Vjb B^e (1960) 196, 14-20 and Vmv B^e (1960) I 282, 12-20.

8. According to both, Sp-ṭ B^e (1960) II 346, 16 and Vmv B^e (1960) I 282, 24, this opinion is found in the *Mahāaṭṭhakathā*.

9. These experts are quoted here, because the latter case *bhikkhuniṃ anuddhamseti dukkaṭaṃ*, Sp 583, 17 is not provided for in the *Vinaya* as confirmed by *pāliyaṃ anāgatattā*, Sp-ṭ B^e (1960) II 347, 3. If something is neither found in the *Vinaya* (*sutta*), nor in the Mahāpadesas of the *Vinaya* (*suttānuloma*), it is possible to resort to the *ācariyavāda*, which is the *Aṭṭhakathā* tradition as established by the participants of the first council (Sp 230, 27; 231, 9-11).

in the *Kurundī*: [here applies the rule:] If there is a lie, it is a *pācittiya* (*Pācittiya* I, Vin IV2, 14**)10.

Here, the following has to be considered:

According to the first interpretation (*purimanaye*; i.e. of the experts in the commentaries), wrong doing is adequate because of an intentional accusation (*anuddhamšana*). Although (1.) in case of a lie there is a *saṃghādisesa* offence for a monk [and not *Pācittiya* I], if a second monk is involved, [and] although (2.) in case of a lie, it is not a conscious lie, if a monk talks with the intention to offend (*akkosa*) a [second] monk, who is unclean [i.e. who has committed an offence], but of whom he [the first monk] thinks to be clean [i.e. not to have committed any offence], but a *pācittiya* offence because of abusive speech (*Pācittiya* II, Vin IV 6, 5** with Vin III 166, 9), as [in these two cases], in the same way here, too, (i.e. Mettiyā vs. Dabba Mallaputta) a *pācittiya* offence involving a conscious lie does not apply, because of an intentional accusation. It is correct to assume only wrong doing11.

According to the last (i.e. second) interpretation (*pacchimanaye*) because of a lie only a *pācittaya* offence is adequate. For, according to the rule (*vacana*) there is a *saṃghādisesa* offence for a monk, if he intentionally accuses a [second] monk (*Samghādisesa* VIII), and for [a monk,], who intends to offend [a second monk] a *pācittiya* offence (*Pācittiya* II according to Vin III 166, 9).

There is no such rule [saying] it is wrong doing, if a monk [offends] a nun [and not another monk]12. However, there is the rule [saying that there is] a *pācittiya* offence in case of a conscious lie (*Pācittiya* I). Therefore, a *pācittiya* offence is adequate.

However, here the following careful considerations [are necessary]: If there is no intentional accusation (*anuddhamšana*), it is a *pācittiya* (i.e. *Pācittaya* II, and not *Samghādisesa* VIII) offence; if this (i.e. the intention) is there what is to be assumed then? Here, although it is correct that there is a *pācittiya* offence, if somebody lies, there is an indepen-

10. Consequently, the views quoted are contradictory and need discussion.

11. According to the opinion of the *Mahāaṭṭhakathā* communicated Sp 583, 17, cf. note 9 above, there is wrong doing, if a monk acts versus a nun. This is reverted on purely formal grounds in *bhikkhunī ... bhikkhuṃ anuddhamseti dukkaṭaṃ*, Sp 584, 5.

12. As this is what is found in the *Mahāaṭṭhakathā* [cf. Sp 583, 17], it is likely that Sp 583, 19-25 is a quotation from or rather a paraphrase of the text as found in the *Kurundī*. Note also the unusual expression *vacanappamaṇa*.

dent *pācittiya* offence, if somebody accuses [a monk] of an unfounded *saṃghādisesa* offence (Vin IV 9, 9), therefore, because the intention to accuse is there, there is no room for a *pācittiya* offence because of a conscious lie (*Pācittiya* I). But it is impossible that there is no offence [at all] for [the monk] who accuses¹³.

The first interpretation seems to be better: Therefore, if a nun accuses a [second] nun of an unfounded *pārājika* offence, it is a *saṃghādisesa* offence [*Samghādisesa* II, which is common to both, monks and nuns (*sādhāraṇa*), Sp 915, 35; Kkh 43, 34], if she accuses a monk, it is wrong doing¹⁴. Here, a *saṃghādisesa* is [an offence] leading to removal, wrong doing is leading to confession¹⁵; neither leads to expulsion (*nāsanā*).

Because she (Mettiyā) has a bad character by nature, is a wicked nun and says moreover herself “I have a bad character”, therefore the Buddha expells her because of this state of uncleanness.“

So far the *Samantapāsādikā*. Thus, in the end Mettiyā is simply expelled, because she is “by nature a wicked nun of bad character“ (*pākatiyā ’va dussilā pāpabhikkhunī*). This indicates that, at least at the time of the *Samantapāsādikā*, there was no tangible legal argument in the *Vinaya* by which Mettiyā could have been expelled(!). This might indicate that the verb *nāseti* is used rather loosely in the introductory story to *Samghādisesa* VIII, because there is no rule according to which the offence committed by Mettiyā could be handled. The *saṃghādisesa* thus introduced is used against the Mettabhummajaka monks who had persuaded Mettiyā to make a false accusation.

2.

The second correction concerns a mistranslated sentence on p. 25, 31sq. of my article mentioned above in the story of the theft occurring in *Antarasamudda* (Sp 306, 29-307, 22): When it is said that the value of the stolen object is a penny or even less, the Elder Godha, who

13. This seems to be the consequence because the *Kurundī* assumes the wrong offence, i.e. *Pācittiya* I instead of *Pācittiya* II. Consequently, there is some sort of formal defect in the reasoning of the *Kurundī*.

14. This follows from the assumption by the experts quoted Sp 583, 17.

15. The category *desanāgāmin* applies to the five *lahuka* offences (Sp 1382, 14 with Sp 1319, 12sq.) that is to all offences except *Pārājika* and *Samghādisesa* according to Sp 1334, 30 (ad Vin V 127, 22). Only *Samghādisesa* offences are classified as *vuttḥānagamin*, cf. also Sp-ṭ B^e (1960) I 168, 16sq. ad Sp 415, 23, because they are “removed” by *parivāsa* etc.

eventually decides the case, asks (and not states, as translated previously): “Indeed, has the Buddha prescribed somewhere a *pārājika* with regard to a penny (*māsaka*) or even less than a penny?” The answer to this question is of course “no”: *āpatti thullaccayassa ... atirékamāsako vā ūnapañcamāsako vā*, Vin III 54, 22, cf. III 47, 3 “it is a grave offence (but no *pārājika*), [if the stolen goods are worth] more than a *māsaka* or less than five *māsaka*.” Thus Godha reverts the earlier verdict that there had been a theft, and rightly so.