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Editor's Note…

It is with great pleasure that we witness the completion of the Journal of Humanities and Social Sciences (JHS), Number 2 of Volume 1, in December 2018. After months of hard work, overwhelmed with so much to do but with very little time, the effort has finally come to fruition. It is indeed rewarding to end with having the Journal as a spectacularly finished product in our hands.

The JHS, the official publication of the Postgraduate Institute of Humanities and Social Sciences (PGIHS) of the University of Peradeniya, is here again containing a rich combination of research contributing to knowledge in the areas of Social Sciences and Humanities with pragmatic value. It is of course a succinct demonstration of the visionary commitment of the JHS - trespassing across this vast territory of two areas of study, accommodating an array of diverse opinions and perspectives, local as well as global, in an unrelenting quest for exploring and revealing the hidden knowledge of the fundamentals and different facets of human nature, relationships and institutions, and contributing to the dissemination of the same across the academic and practice world. While carrying forward this commitment, the JHS continues to promote the aspirations of the PGIHS towards contributing to human betterment, welfare and wellbeing by upholding standards of excellence in postgraduate education and research in Humanities and Social Sciences in the country.

The JHS offers a space for academics, researchers, practitioners, and policy makers to take their scholarly explorations, policy and practice innovations and new developments to a wider audience. This space is equally available for PGIHS postgraduate students and research partners as well. The JHS is now online so that its reach transcends national boundaries with a global presence. It is now open to the entire world.

This issue contains a rich combination in terms of pedagogic analysis, artistic inquest, policy implication, practice modeling, spiritual exploration, critical narrative and a thought-provoking review of a recently published academic work on Sri Lankan history. It is thus to broaden the knowledge horizons of the reader with diversity.

It starts with a fascinating scholarly encounter which explores the question of Buddhist law and legal system in comparison to studies of the legal systems evident in other religions of the world. What it says at the very beginning is

that, presiding over the council, *Arahant* Mahā Kassapa invited *Arathant* Upāli to present the *vinaya* rules that were laid down by the Buddha Gotama and since then onwards, Buddhist laws exist to date as a legal system in predominantly Buddhist countries and in some places it has been recognised as a source for domestic laws. As such, Nandana Sri Thalaguné, writing on "Understanding the Law and the Legal System as practiced in the Buddhist Tradition" brings to our attention a scantly documented aspect of Buddhism which needs more scrutiny. It convincingly argues that Buddhism has a long history of a legal system within the order, which has evolved gradually and focused principally on the socialization of the individual through the internalisation of a set of rules, the ultimate objective being the attainment of self-realisation - Nirvana. In this way, however, unlike other religions, it does not impose any rules on the lay people but on the *saṅgha* as a measure of addressing the issue of the steady decline in morality when the latter increased in numbers so that gradual law-making was principally for the training of the *saṅgha* towards guiding their conduct within and outside the Order and attaining the final goal of emancipation. This is quite evident from the *Vinayapiṭaka*, the rules of discipline. This is indeed a fascinating experience in exploring how the Buddhist law and legal system came into existence through the introduction of *vinaya* rules and how it later gained recognition in Buddhist countries like Burma and the manner in which they have been accepted and enforced to date.

In the recent years the tax policy in the country has been a controversial issue with the government claiming that the gap between government revenues and expenditure has been skyrocketing due to unprecedented levels of tax evasion. Sanath Hettiarachchi and Ananda Jayawickrama, taking part in this debate and in dealing with one aspect of this claim, present a thorough, evidence-based analysis of the policy and compliance gaps of the Nation Building Tax (NBT) in Sri Lanka, and the nature of the difference between the potential NBT revenue and the actual NBT revenue collected. According to the authors, the time series behavior of data indicates a significant improvement in the NBT compliance in recent years, especially in 2016. The near constant GDP ratios of potential NBT revenue, potential NBT collectable and gap variables indicate a close association between the growth of potential NBT variables and the growth of the aggregate economy. Overall, they reach important policy implications revealing that the potential NBT revenue estimate, potential NBT revenue collectable and actual NBT revenue collected have reported almost equal growth rate. However, the policy gap which is a result of exemptions given, and the misrepresentation of data or "under-stating" of information in tax returns and tax defaults are some major reasons making a large impact on and contributing significantly towards the total NBT compliance gap.

With the effects of globalisation penetrating through national boundaries, we live in a world where identity crisis is simply a fact of our lives since the local is fast becoming the global and hence the collective dimension of our lives is fast transforming to individual dimensions. With it another facet of the crisis is the question of belonging – where do we belong? Is there a place where we feel attached to and hence belonged to? Muditha Dharmasiri, revisits this question taking us back to the era of great Greek and Roman civilization and explores the concept of identity crisis, as a dramatic strategy and connects it up with the modern-day situation. While discussing the issue of identity in the plays, Plautus' *Menaechmi* and *Amphitruo*, the author examines contemporary Roman society in relation to the concept of identity crisis. She states that mistaken identity is a recurrent theme used in theatre, both in comedy and tragedy. Plautus uses mistaken identity in his plots to create different scenarios which arouse humor. Dharmasiri questions if there is more to it than mere humor and examines several aspects relating to the issue of identity as portrayed in Plautus' *Menaechmi* and *Amphitruo*. While discussing the issues of identity in the plays, the paper focuses on the state of the Roman society at that time and the contemporary society in connection to the identity crisis. Again, modern development of technology has given a space for the individual to become whoever they want to be whenever they want making individual identity a chaotic struggle. The author draws our attention to identity politics as well. The ancient Romans had concerns about the identity of "the Roman" in connection with their citizenship rights, likewise modern-day movements promote specific groups to preserve their identity as a nation. The presence of dual identities, aspects of losing identity, creating an existential crisis, performing identities, overlapping identities enabling a person to acquire more than one identity etc. are eloquently discussed in the context of "mistaken identity" which draws a much deeper level of criticism of the society and man himself.

Introduction of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), sparked a renewed and more vigorous discussion all around the world on social justice for Persons with Disabilities (PWDs), a forgotten group of the human family. For generations back in human history, they have been seen as undesirable and the result of "*karma*" and continued to be denied natural justice. Sarathchandra Gamlath examines the historical move to social environmental interpretation of disability and the international consensus it garnered in the recent past. The author brings our attention to the fact that social construction views interpret that disablement lies in the construction of society, not in the physical condition of the individual. The person is dis-abled because of the restriction of capabilities and opportunities

of a poor social environment so that if all the problems had been created by society, then surely society could "un-create" them. Turning his attention briefly to the long-standing progressive inclination towards the welfare of PWDs in Sri Lanka, the author promotes the need for a holistic framework of action and the place of active community partnership to incorporate community action including the PWDs themselves and their families equally into State action. The author argues, drawing on CRPD stipulations, that it enables an open-door participatory structure as a community-based physical space to connect PWDs and their families to the wider community sphere generating a range of welfare benefits and promoting equal inclusion of PWDs in the mainstreams of society that the other able-bodies take for granted.

The central focus of the next presentation is the concept of *Vijñāna* (consciousness) in Buddhism which enables our diverse readership to engage in a spiritual inquest and feel a spiritual enlightening. Ven. Zu Guang examines and compares the concepts of *Ālaya-vijñāna* and *Bhavanga-citta* in the Mahāyāna and Theravāda Buddhist traditions and explains that the concept of *Vijñāna* (consciousness) is awareness that animates the physical body through each birth and death cycle. It is enthralling to become aware of the fact that *Bhavaṅga* is the most fundamental aspect of the mind, which presents an aspect of consciousness (*bhavaṅga-citta*), as the basis of all mental processes in the *Samsaric* continuum. The process of sense perception begins with *bhavaṅga* and it continues throughout life like a river current until it is annihilated with the attainment of *Nibbāna*. Consciousness is divided in to *Ālaya-vijñāna* and *Bhavaṅga-citta* which play important roles in psychological and physical processes. One of the primary concerns of both concepts of consciousness is to emphasize the operations of cause and effect in the process of the rebirth. Moral actions produce a good destination, while in contrast evil actions produce a bad destination. Again, both *Ālaya-vijñāna* and *Bhavaṅga-citta* play important roles in the psychological and corporeal processes and serve as continuing mechanisms attaining wisdom in order to penetrate consciousness itself. While reading through to the conclusion, the reader gradually become aware that these concepts are crucial to mental and physical actions and play an extremely important role in the life continuum, and *Nibbāna* or enlightenment.

With a thought-provoking presentation, elaborating on reinforcing and sustaining a prestigious narrative, one of the crucial concerns which dominates some of the English Departments of the State universities in the country in accommodating students who come from "radically different" or "non-conventional" socio-economic and cultural backgrounds, the author, Thilini Prasadika, makes a controversial claim that the English Department, is a

"privileged space, where the social and psychological cost of negotiating its value systems often goes unnoticed as little attention is paid to the students who have to reinvent themselves to fit into it. Thilini Prasadika attempts to map the ways in which the "radically different" or "non-conventional" students charter their way in this treacherous path of new identity formation in an effort to adapt to a new system of norms and values demanded by the "privileged space". The author, herself, with an appealing confessionary narrative, accepts that "she had to teach herself the so-called dominant values to reinvent herself to be accepted into that "privileged space". It has been "tough" because of the complicity of its socio-economic, cultural elitism and intellectual demands. As a result, everyone attempts to navigate various subject positions in various discursive terrains with varying degrees of "success" at varying social and psychological costs to negotiate a more or less "nonconventional" socio-cultural background and value system that is imperative for gaining acceptance. Their survival depends on the levels of negotiations with new values system, and perhaps, because of the inability to navigate with successful negotiation, some opt to leave the academic programme or "retake" certain subjects. However, the author accepts that it is a work in progress which demands "further theoretical insight in articulating the identity formation of students". Therefore, this research can be considered as providing impetus to further studies on the "discursive construction of peripheral subjectivities".

This issue of the JHS ends with a review of a penetrating study of the Social and Cultural History of Sri Lanka from 13th century AC to 15th century AC. The opinion of the reviewer is that author of the book has put the historical world in particular and Sri Lanka in general into his debt by this brilliant hiatus filling study of the social life of the people of Sri Lanka from the 13th century to the 15th century AC. in a convincing manner with a critical analysis of data available in the literary and archaeological sources. The reviewer concludes that besides a few drawbacks for which the author needs to be excused because of being hindered by the paucity of evidence and the dubious nature of even the available sources, the fund of information and the soundness of judgment presented in this work contributes in great deal to our existing knowledge of the subject which would undoubtedly be welcome by the students of the Social History of Sri Lanka and that, all in all, this work deserves to be considered an excellent piece of research.

Thus, as was stated earlier, this issue of the JHS has become a splendid blend of knowledge and a source of wisdom from diverse fields reflecting the PGIHS itself as a place of diversity. It is now presented to the world. We hope that it will spark critical thoughts and encourage innovative contributions to the fields of Social Sciences and Humanities.

Understanding the Law and the Legal System as Practiced in the Buddhist Tradition

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Abstract

Buddhism has a long history of a legal system within the order. In the Buddhist tradition law-making was principally for the training of the saṅgha towards guiding their conduct within and outside the Order and finally attaining emancipation. Unlike other religions Buddhism does not impose any rules on lay people but on the saṅgha as a measure of addressing the steady decline in morality when the latter increased in numbers. This is quite evident from the Vinayapiṭaka; the rules of discipline. This paper examines how the Buddhist law and legal system came into existence through the introduction of vinaya rules and how later it gained reception in Buddhist countries like Burma the manner in which they have been promulgated and enforced to date.

***Keywords**: Buddhist law, Buddhist jurisprudence, vinaya**,** saṅgha**,** bhikkhu, bhikkhunī,*

Introduction

There is a wealth of academic literature on Christian laws, its legal system, the Jewish law, as given in the Torah, the Talmud, Sharia and the Islamic law, but little has been written on Buddhist laws and legal system in spite of its detailed law code and long history. Buddhist laws first came into existence after the Buddha decided to lay down rules for the *saṅgha* which developed as a body of persons when people of different walks of life entered originally for the purpose of following the path of enlightenment. The first of the *saṅgha* which began with five ascetics was not governed by rules but later as number increased, they were subjected to rules for their own wellbeing and that of others. This beginning went on to develop till the Buddha's passing away and subsequently came into existence as a *piṭaka* (literally translated as 'a basket') a distinct section of his teachings under the elder *bhikkhūs* of the Order following the first Council headed by *Arahant* Mahā Kassapa. It is said that *Arahant* Mahā Kassapa presiding over the

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Council invited *Arathant* Upāli to present the *vinaya* rules that were laid down by the Buddha Gotama. From then onwards, Buddhist laws exist to date as a legal system in predominantly Buddhist countries like Burma where Buddhist laws have been recognised as a source for their domestic laws. This paper is an attempt to provide an insight into the law and the legal system in the Buddhist tradition while citing Burma as a classic example for a state which incorporated Buddhist laws into its domestic legal system. The paper does not talk of stages of development of Buddhist law. However, it refers to some important incidents that inevitably have to be dealt with in the course of the discussion.

Literature Review

Buddhism, unlike other teachings, has a vast amount of literature ranging from the early period to the scholastic period. The early teachings consist mainly of the original Pāli *Tipiṭaka* while the later period marks scholarly works such as *Aṭṭhakathā* (Commentary). *Vinayapiṭaka* is one of the three distinct sections (baskets). However it came into existence almost 15 to 20 years after the establishment of the *saṅgha*. Therefore, the *Vinayapiṭaka* in the later period consisted of commentaries such as *Samantapāsādikā* [2] and *Kaṅkhāvitaranī* besides the original rules and discourses.[3]

As the *Vinayapiṭaka* shows, the Buddha did not set out a code of rules immediately before or after His first batch of sixty-one disciples was dispatched to disseminate his teaching nor did he ordain them subject to a set of rules. Instead, He started the process of formulating rules one by one, in response to particular incidents as the Order grew in numbers. The Canon reports these incidents in each case, and often knowledge of these "origin stories" can help in understanding the reasons behind the rules. For instance, the original story regarding the rule that forbids lustful conduct between *bhikkhūs*; the rule comes from an incident where a *bhikkhu* was fondling the wife of a Brahmmin who had come to visit his hut. The Buddha wanted women to feel safe so that when visiting monasteries, they would not be in danger of being molested or subject to sexual advances by *bhikkhūs*. In today's parlance these cases are similar to those case laws that came into

[2] *Samantapāsādikā* refers to a collection of Pali commentaries on *Theravāda Tipiṭaka Vinaya*. It was a translation of Sinhala commentaries into Pāli by Buddhaghosa in the 5th century. Many of the verses used in *Samantapāsādikā* are from older *Dípavamsa*. *Samantapāsādikā* is made of two words: *samanta;* and *pasādikā*. Here '*samanta*' indicates four directions and '*pasādikā*' means cool-down. See *Samantapāsādikā*, Commentary to *Vinayapiṭaka,* Ed. J.Takakusu & M.Nagai, PTS. London, 5 Vols., 1924 - 38. Vol. 6, Colombo, 1947.

[3] Buddhaghosa's Commentary on the *Pāṭimokkha*.

existence following a hearing by a judge of a court who decides based on the facts; laws based on both customs and statutes (Thanissaro, 1994).

With *vinaya* providing the basis of subsequent rules, the development of Buddhist law continued and paved the way for the emergence of ecclesiastical laws in most predominantly Buddhist countries. It must therefore be noted that the later period marked the development of a legal system incorporating rights of various nature such as property rights vested with the temple; for instance, in Sri Lanka the Buddhist Temporalities Ordinance No 19 of 1931 amended by the Buddhist Temporalities (Amendment) Act No 3 of 1992 provides a classic example for subsequent Buddhist ecclesiastical laws. The original sources governing the Buddhist ecclesiastical laws are the Buddhist scriptures, which contain a composite body of rules and regulations with reference to the conduct of saṅgha known as *vinaya* rules (Books of the Discipline) and succession to ecclesiastical property (Ratnapala, 2005: 1). With the passage of time, the *vinaya* rules and the rules relating to the administration of ecclesiastical property as a matter of fact have been subject to general modifications in keeping with the actual practice of the *saṅghika* in Sri Lanka (De Silva, 2009: 70).

The Early Period of Buddhist Law and Legal System

The best source that one could turn to when exploring the Buddhist law code is the *Vinayapiṭaka.* Both, in the Sutta and *Vinayapiṭaka* one finds many instances of rule-making in response to misbehaviour or inappropriate conduct of a *bhikkhū* or *bhikkhunī.* Often it is the rebellious *bhikkhūs* and *bhikkhunīs* in the Order who were reported to have deviated from the established norms. Their protests against disciplinary measures bear testimony to the gravity of their misconduct that finally compelled the Buddha to promulgate laws (Dhirasekera, 1982: 310). In the Pāli texts they are known as militant and intolerant of any advice (*dubbacā kho bhante etarahi bhikkhū dovacassakaraṇaggāhino anusāsaniṃ)*[4] In the *Laṭukilopama sutta* (*M.*I.437),[5] the Buddha states that there are misguided disciples who when advised to give up certain habits refuse to do so and accuse the Buddha of being too meticulous and pronounce judgement on him. They show their displeasure not only towards him, the law-giver but at the blameless disciples who abide by these laws (*evaṃeva kho udāyiidh'ekacce moghapurisā idaṃ pajahathā'ti mayā vuccamānā te evaṃ āhaṃsu kiṃpan'imassa appamattakassa oramattakassa adhisallikhat'evā'yaṃ*

[4] See PTS editions of *Saṃyutta Nikāya* (S. II. 204), *Majjhima Nikāya* (*M.* I. 437), *Aṅguttara Nikāya* (*A.*I. 230, 236); *Vinayapiṭaka* (*Vin.*III.177, IV.142).

[5] See PTS edition of *Majjhima Nikāya*.

samano'ti. Te taṅ c'eva nappajahanti mayi ca appaccayaṃ upaṭṭhāpenti ye ca bhikkhū sikkhākāmā.)[6]

The Buddha never had a rigid attitude towards those who constantly attempted to transgress the rules. Once certain groups of *bhikkhūs* and *bhikkhunīs* were very adamant and caused much trouble to the Buddha by indulging repeatedly in unacceptable activities. As reported in the *vinaya two of such groups were Chabbaggiya* (group of six) *bhikkhūs* and *bhikkhunīs* and *Sattarasa-vaggiya* (group of seventeen) *bhikkhūs* who were famous for these activities. The Buddha was not disturbed by their behaviour nor did he try to expel them from the *saṅgha* community on account of these activities. They were not only miscreants and rebels but they also openly protested against the disciplinary measures adopted by the Buddha (Abhayawansa, 2018).[7] One such occasion was recorded in the *Vinayapiṭaka* where a *bhikkhū* named Kassapagotta of Paṅkadha protested at a discourse of the Buddha which referred to monastic discipline: "*atha kho kassapagottassa bhikkhūno bhagavatā sikkhāpadapaṭisaṃyuttāya dhammiyā kathāya bhikkhū sandassante samādapente samuttejente ahud'eva akkhanti ahu appaccayo adhisallikhat'evā yaṃ samaṇo'ti."*(*A*.I. 236).[8]

The words of Subadda at the time of the Buddha's passing away is a fine example which make the elders like *Arhant* Mahā Kassapa call for a Council after three months to codify the Buddha's teaching (*dhamma*) and laws (*vinaya*) which He preached for over four decades.

The *vinaya* came into being as an important part of Buddhism as the Order grew in popularity among the people. In fact, two decades after the establishment of His teaching and ministry He started to introduce *vinaya* rules however it was generally known as a disciplinary code for the *saṅgha*. This code makes the rules therein mandatory for those entrants to the Order. As such they were considered a law code to which many rules continued to be added during the life of the Buddha. It must be noted that these laws He introduced were to be in effect and He only allowed amending those considered minor.

The *Mahāparinibbāna sutta* states that the Buddha a moment before attaining final *nibbāna* (*parinibbāna*) advised Ānanda that He would not

[6] See PTS edition of *Majjhima Nikāya* (*M*.I. 449).
[7] Kapila Abhayawansa (2018) The Buddha and His Monastic Order, http://theravadaarticles.weebly.com/the-buddha-and-his-monastic-order.html#_ftn20: last visited 13 June 2018.
[8] See PTS edition of *Aṅguttara Nikāya*.

name a successor to lead the Order but put *dhamma* (teaching) and *vinaya* (rules) in His place (*Yo vo Ānanda mayā dhammo uca vinayo ca desito paññatto so vo mam'accayena satthā)* (*D*.II.154)[9] and further He is said to have told Ānanda that "if it so desired, may upon His passing away do away with 'lesser and minor' rules (*ākaṅkhamāno Ānanda saṅgho mamaccayena khuddānukhuddakāni sikkhāpadāni samūhanatu)*. (*D*.I.154:6.3) [10]

The importance he gave to the codes of law is evident from the answer He is said to have given to Ānanda a moment before His final passing away. When inquired as to who would succeed Him after His passing away, the Buddha was said to have told him that it is His teachings (*dhamma*) and *vinaya* (the law code). The Buddha is said to have allowed the s*aṅgha* to amend some minor rules or lift them when and if the necessity arose. Therefore, the Buddhist law or the concepts of Buddhist law have over the years given effect to many rules which the s*aṅgha* may have altered or adjusted from the original before they were first redacted around the First Century BCE. It is necessary to state that when and where the term 'Buddhist law' has been mentioned it should refer not to the entire teaching of the Buddha but to the actual rules for social control that he is said to have developed (French, 2015: 847). It must also be noted that the established definition of 'religious law' based on the operation of the Holy Roman Empire of Europe, the procedures of the Islamic Shari'a, or the practices in the Jewish Torah, should not apply to the study of Buddhist Law as well as the modern English meaning which confines law to statutes, cases, rulebooks, law codes, judicial processes, and decision documents of a political entity (French, 2015: 847). Simply, because these laws have not taken into account many of the cultural aspects of law and social sanctions that are used by people to maintain social control often without the use of institutionalised nation-state power. As far as Buddhist law is concerned, its primary intent is to present a system of socialisation and internalisation for the individual in the *saṅgha* community so that she or he can be a practitioner of Buddhism; Buddhist law encompasses cases, rules, judicial procedures, decisions, and sanctions (French, 2015: 847). This bears testimony to the idea that Buddhist law consists not only of internal socialisation but external socialisation compared to other laws today operating in different parts of the world. They have emerged as different legal systems and have drawn academic attention, whereas in the case of Buddhist law it still remains to be studied, perhaps

[9] See PTS edition of *Dīhga Nikāya (Dialogues of the Buddha (Dīhga-Nikāya), translated by T.W. Rhys Davids and C.A.F. Rhys David*.

[10] See PTS edition of *Dīhga Nikāya* and also page 270 of *Dīhga Nikāya*. Maurice Walshe., trans. (1987).The Teachings of the Buddha, The Long Discourses of the Buddha. 1 vol. Boston: Wisdom Publications.

due to lack of enthusiasm of the Western scholars who have however taken pains in the study of Buddhism as a philosophy. Further, it must be noted that another factor that contributes to this lack of enthusiasm is the 'narrow definition of law' in general and in particular the prominence given to 'religious law' in today's parlance. It is in this vein one has to examine the legal principles of *vinayas*.

As Rebecca Redwood French states,

> *"this is or may be the only religion of which the founder is believed to have made regular detailed decisions on legal matters in a narrative casuistic format covering hundreds of topics over a period of approximately five decades". (2015:3)*

According to Buddhist tradition, the Buddha laid down regulating rules for *bhikkhūs* and *bhikkhunīs.* These rules later came into existence as a body of law and known as *vinaya* rules. The Buddha as founder was the source of these rules. Like modern legal systems, the Buddhist legal system too has procedures, judicial processes, punishments for offences for the internalisation and socialisation of the individuals; its principal concern was not limited to welfare and wellbeing of the individual or mankind but that of all beings (*sabbe sattā sukhi hontu).*

When an offence was committed and reported Buddhist law has a mechanism for prosecution of the case as in modern legal systems. If a *bhikkhu* or *bhikkhunī* is found guilty, *Vinayapiṭaka* provides rules for dealing with them and punishments. The means of punishment depend on the gravity of the offence. For instance, the penalties of *parivāsa* and *mānatta* to which the offender is subject. As mentioned in *vinaya*, one who is found guilty is placed under a penalty and he or she should make it known to the other *bhikkhūs* and *bhikkhunīs (Vin.II.32).*[11] Such offenders should also announce it at regular assemblies of *uposatha* and *pavārana.* However, in the event of illness *bhikkhu* or *bhikkhunī* should communicate it through a messenger, such a messenger should [also] be a full-fledged *bhikkhu* or *bhikkhunī* and not an *anupasampanna (VinA.*VI 1166 and *Vin.*II.32).[12] It must be noted that this is what is required even today when a person is released from prison having served sentence, he has to report to the nearest police station of his whereabouts for a stipulated period of time. *Vinaya* further takes this to the

[11] See PTS edition of *Vinayapiṭaka.*

[12] As stated in the *Vinayapiṭaka Aṭṭhathā* , one who has not yet received the full ordination or *upasampadā*.. It must be noted that *anupasampanna does not necessarily mean only sāmaṇera but even a lay person is included in the category.* See *Samantapāsādikā*, Commentary to *Vinayapiṭaka,* Ed. J.Takakusu & M.Nagai.

extent that if the offender is a full-fledged *bhikkhu* he must, during the term of penalty, renounce his authority over his pupils and decline the services offered to him by them. As such he is deprived of his position and powers according to the Commentary (*VinA*.VI.1162).[13]

This shows how important *vinaya* rules function as a disciplinary code for a body of persons in a society engaging both in self-development as well as serving lay people. When there was no one to succeed after the Buddha's passing away, to date the *saṅgha* has been governed by these *vinaya* rules instead of the rules promulgated by state of leaders or other governing bodies. Thus they are trained in internalisation and socialisation within the society instead of living in complete isolation.

Purpose of Introducing *Vinayapiṭaka,* the Detailed Code of Law

As Bhikkhu Sujato states, "if we look at the ten reasons the Buddha gave for laying down the *vinaya* rules, many of them are not just for individual purification, but are concerned with communal stability" (Sujato,2009: 5).

> '*Therefore, bhikkhūs, I shall lay down a training rule for the bhikkhūs for ten reasons: the wellbeing of the saṅgha; the comfort of the saṅgha; the restraint of bad-minded persons; the comfortable living of virtuous bhikkhūs; the restraining of defilements pertaining to this life; the warding off of defilements pertaining to the next life; the inspiration of those without faith; the increase of those with faith; the long-lasting of the True Dhamma; and the support of the Vinaya*' (*Vin*.3.21)[14].

It is said that in most situations the Buddha made certain rules for the *saṅhga* with the principal focus on the socialisation and internalisation of the individual to a set of rules that will help him or her to operate within a community. The above statement endorses this and is further supported by the following passages cited from Buddhist sources emphasising moral training and cultivating good qualities that matter to a greater extent when interacting with others.

In the *Bhaddāli sutta* of the *Majjhima Nikāya,* the Buddha states,

> *"Venerable sir, what is the cause, what is the reason, why there were previously fewer training rules and more bhikkhūs became established in final knowledge? What is the cause, what is the reason, why there are now more training rules and fewer*

[13] See PTS edition of *Vinayapiṭaka Aṭṭhathā* (*Samantapāsādikā).*
[14] PTS edition of *Vinayapiṭaka.*

> *bhikkhūs become established in final knowledge? Buddha replies: "That is how it is, Bhaddāli. When beings are deteriorating and the True Dhamma is disappearing, then there are more training rules and fewer bhikkhūs become established in final knowledge. The Teacher does not make known the training rule for disciples until certain things that are the basis for taints become manifest here in the saṅgha; but when certain things that are the basis for taints become manifest here in the saṅgha, then the Teacher makes known the training rule for disciples in order to ward off those things that are the basis for taints"* (*M*.I.445)[15].

Thus the Buddha further emphasises the importance of training discipline through rules. As Buddha explains,

> *"When a bhikkhu possesses ten qualities, he is worthy of gifts, worthy of hospitality, worthy of offerings, worthy of reverential salutation, an unsurpassed field of merit for the world. What are the ten? Here, Bhaddāli, a bhikkhu possesses the right view of one beyond training, the right intention of one beyond training, the right speech of one beyond training, the right action of one beyond training, the right livelihood of one beyond training, the right effort of one beyond training, the right mindfulness of one beyond training, the right concentration of one beyond training, the right knowledge of one beyond training, and the right deliverance of one beyond training. When a bhikkhu possesses these ten qualities, he is worthy of gifts, worthy of hospitality, worthy of offerings, worthy of reverential salutation, an unsurpassed field of merit for the world." (M.I.* 447)[16].

This incident led to the promulgation of *pācittiya 37 of the Vinayapiṭaka* (*Vin. IV*. 85:Pāc.37).[17]It was certainly an offence (though not punishable) against *sīla* which was not conferred a legal status, because the offender could not be prosecuted and punished under its authority. This resulted in introducing *sikkhāpada.* This is the way the Buddha dealt with socialisation of the *saṅgha* to prevent them from being a nuisance to the laity. As in other legal systems the Buddhist legal system had similar apparatus to deal with

[15] See the Middle Length Discourses of the Buddha published by Wisdom Publications.

[16] See Middle Length Discourses of the Buddha published by Wisdom Publications.

[17] See PTS edition of *Vinayapiṭaka.*

offences. When an incident was reported it was looked into according to the established procedures.

According to the Buddhist *Vinayapiṭaka, the first offender who provokes the promulgation of a sikkhāpada is declared free from guilt (anāpatti… ādikammikassa)* (*Vin.*III.33).[18] His offence at that time is against an item of *sīla* and he could not therefore be legally prosecuted for a pre-*sikkhāpada* (Dhirasekera, 1982: 85). The role of *vinaya* as an instrument of prosecution is indicated in the text of the *vinaya* itself. This is evident from the introduction to *pācittiya* 72 which states that *Chabbaggiya bhikkhūs* expressed their fear of the *bhikkhūs* themselves becoming conversant with it and thus become liable to be accused and questioned by the Buddha Himself or those conversant with it as to laxness in discipline (*sace ime vinaye pakataññuno bhavissanti amhe yen'icchakaṃ yad'icchakaṃ yavad'icchakaṃ ākaḍḍhissanti parikaḍḍhissanti. Handa mayaṃ avuso vinayaṃ vivaṇṇemā'ti*) (*Vin*. IV.143).[19] As *Vinaya Aṭṭhakathā* referring to *sikkhāpada* records that in the presence of *sikkhāpada* the *saṅgha* could make specific references to the body of rules and make just and legally valid accusations (*VinA*.I.224).[20]

During the Buddha's time the *saṅgha* had to depend on the lay for their food. They used to visit the homes of the laity with their alms bowl and collected whatever they were offered. As the order grew in number the Buddha came to know or perhaps was reported to have been told that the *saṅgha* went for food after the sunset. This made the Buddha introduce and impose a rule that said that no member of the *saṅgha* should partake of meals in the afternoon, thereby preventing them from going out for alms at untimely hours. The latent object of this rule was to prevent them from being a burden to the laity. This case- by- case law-making process in the early Buddhist tradition shows that the early practice of law-making was due to incidents that called for laws in public interest. This may be the primary basis for law-making in society.

One may argue that these legal rules were laid down for the renunciant *bhikkhunīs* and *bhikkhūs* as a form of socialisation and a legal code of conduct and that they were just a series of rules followed by *bhikkhunīs* and *bhikkhūs* in sheltered environments without any general reference to the larger society. However this is not the case because though the *saṅgha* emerged as the first organised monastic community, they continued to remain an intrinsic part of the Indian religious and social landscape, not

[18] PTS edition
[19] PTS edition
[20] PTS edition of *Vinayapiṭaka Aṭṭhakathā (Samantapāsādikā)*.

separate from it. As such the rules they followed were very important to the lay population (French, 2015: 9). A few homeless disciples travelling with a teacher could easily be managed, but problems arose among the Buddha's followers once their numbers began to increase it became imperative that a set of rules be developed. The result of this process was the *vinaya*, the first section of the Buddhist canon, a listing of several hundred rules. They are traditionally attributed directly to the words and decisions of the Buddha and called Buddhist Law because they remain the rules enforced within the community of *bhikkhūs* and *bhikkhunīs*.

The discussion so far clearly suggests that the purpose of establishing Buddhist laws and a legal system too had a latent object. It is none other than the firm establishment of a *saṅgha* community to continue his teachings to future generations so as to benefit mankind. It is with this purpose the Buddha wanted the *saṅgha* whom He treated as children to be well disciplined; for their own wellbeing and that of others. This is quite evident from the following passage of the *Kakacūpama Sutta* of the *Majjhima Nikāya*;[21]

> *"Bhikkhūs, the bhikkhūs at one time caused indeed pleased my mind. Then I, bhikkhūs, addressed the bhikkhūs saying: Now I, bhikkhūs, taking one solid meal a day, I, bhikkhūs, am aware of good health and of being without illness and of buoyancy and strength and living in comfort. Come you too, bhikkhūs, take one solid meal a day; you too bhikkhūs, will be aware of good health and of being without illness and of buoyancy and strength and living in comfort. There was nothing to be done by me, bhikkhūs, by way of instruction to those bhikkhūs; all that was to be done by me, bhikkhūs, was only to remind them."*(*M.I.*124) [22].

With this objective in mind He promulgated disciplinary rules. He laid down rules that emphasised strict moral conduct particularly when living in a community and depending on lay people. He introduced a set of disciplinary rules for the *saṅgha* in order to correct the mischievous disciples and to keep them within the *Brahmacariya* life. He did not want to control the *saṅgha* by way of the injunctions or restrictive regulations. However, he was compelled to do so due to the need for internalization of rules and the socialisation of the *saṅgha*. Hence, there are no record of a single instance where the Buddha

[21] See page 218 of the Middle Length Discourses of the Buddha published by Wisdom Publications.

[22] See Middle Length Discourses of the Buddha published by Wisdom Publications.

was said to have imposed disciplinary rules on the *sāsana* in the early period (*VinA*.I.213).[23]

Later Developments in Buddhist Law and Legal System

Huxley referring to precolonial Burma says that Burma has inherited rich legal and ethical texts such as *Dhammathats*. The contents of the *dhammathats* (dhammasatta in Pāli and *dharmaśāstra* in Sanskrit) consist of rules and they bear testimony to the legalistic aspect of its precolonial culture (Huxley, 1997: 2). Huxley citing an example brings in a judgment tale and gives an instance of the mechanism by which a *vinaya* rule which is applicable only to *bhikkhūs* is extended to the lay community. As Huxley states there are four rules about monastic inheritance in the *vinaya*. Three of them concern the principle that a *bhikkhu* or a *sāmaṇera* who nurses a dying *bhikkhu* in his final stages should inherit such personal belongings of the latter as his alms bowl and robes. In Burmese law, this principle was incorporated into *dhammathats* encompassing the laity. Huxley narrates a case of a wealthy person in Benares whose son entered the Order at the age of seven and was ordained at twenty-five. The wealthy person learnt that his son had died of fever in a distant monastery. He later came to know that the precious ring which he had given to his son was in the possession of the *bhikkhu* who nursed and buried him. He asked for it back and, when this was refused, he appealed to the highest possible authority. It was decided based on the principle laid down by the Buddha that the person who attended to the deceased during his sickness and buried him on death should receive his belongings, hence the ring should go to the *bhikkhu* who nursed him. This, the *dhammathats* explain, is why children cannot inherit from parents who were nursed (in their final illness) and buried by a stranger. Notice the underlying assumption which is too obvious to be made explicit: that, wherever possible, the laity should emulate monastic behaviour. Higher status groups, as was the case in The Republican Rome and is still the case in India, live under a more restrictive legal regime. Indian Sociologists call this process "*sanskritisation*"; since it is an established rule recognised and incorporated into legal systems in Buddhist countries like Burma, some may also call such process as "*vinaya-isation*"[24] of Buddhist legal system. "The Kozaungkyop, a 16th-century *dhammathat*, preserves an interesting variant of this rule from which the *saṅgha* (the Buddhist monastic community) will always profit: "Whoever feeds a stranger in his last illness inherits whatever he possesses, save for the stranger's jewelry which is donated to the *saṅgha*" (Huxley, 1997: 10). The *dhammathats* belong to the family of Buddhist law.

[23] See PTS edition of *Vinayapiṭaka Aṭṭhakathā (Samantapāsādikā)*.

[24] The continued influence of *vinaya* rules on Burmese domestic legal system particularly providing impetus for law-making can be described as '*vinaya-isation'*.

Their closest relatives are the Arakanese and Mon *dhammathats*, followed by the Siamese and Khmer legal literature. More distantly related, but still inspired ultimately by the legal literature of Pagan, are the Northern Tai law texts from Chiang Mai, Nan, Luang Prabang, and Vientiane (Huxley, 1997: 12).

In theory, the *dhammathats* are still the ultimate source of Burmese personal law for the majority of the population. In the courts of Rangoon it would be perfectly proper to rely on a passage from a 17th century *dhammathat* as a statement of the current law on divorce, adoption, or intestate succession. In practice, however, citation of the pre-colonial legal literature is rare. The important sources of what the British called 'Burmese Buddhist Law' are the 20th century law reports in which the modern application of the ancient principles has been elaborated, instead this vestigial survival is today less in doubt (Huxley, 1997:14). *Dhammathats* has been a manual of instruction for those who would act as judges, whether they did so in a professional or institutional capacity (e.g., as a royally appointed judge) or not. The monastic *vinaya* literature functioned in a closely parallel way. Both *vinaya* and *dhammathats* stipulate that the text of the law operates as a final authority, as mediated through the figure of the judge who is established as such due to educational and moral criteria (Lammerts, 2010: 4).

Although it appears that *vinaya* rules are expected to be strictly adhered to, the Buddha was so democratic when He promulgated the rules as He never wanted to control the *saṅgha*. The Buddhist monastic life was appealing to the people this resulted in drawing people into the Order. According to *vinaya* rules, a *bhikkhu* is entitled to four requisites: c*īvara, pindapāta, senāsana and gilānapathi* (Walpola Rāhula, 2003: 7). The purpose of restricting to these four requisites was to regulate enjoyment of endowments by those entering the Order. Being attached or clinging to material possessions was seen as hindrances to spiritual advancement. As such practice of such rules became part of the Buddhist monastic life (De Silva, 2009: 70).

As Schonthal states laws pertaining to Buddhism in Sri Lanka and other modern day Buddhist countries consist of two types. One is a set of laws that gives state powers to manage the conduct and wealth of the *bhikkhūs* while another make it mandatory for the state to protect the *bhikkhūs*' welfare (2014: 151).[25] Further he points out that the Constitution of Sri Lanka in a

[25] Benjamin Schonthal (2014) The Legal Regulation of Buddhism in Contemporary Sri Lanka. In Buddhism and Law: An Introduction, ed. Rebecca Redwood French and Mark A Nathan. Cambridge University Press. Pp 150-167.

separate chapter confirms this as a state obligation to protect *Buddhasāsana* while giving foremost place to Buddhism (Schonthal, 2014: 151). The first type of law consists of statutes, ordinances, and administrative orders. Woodhouse (1918: 3) referring to the Buddhist Temporalities Ordinance says that trusteeship is to be determined by the chief incumbent of the temple; this is generally held by the senior most *bhikkhū* and he will succeed the previous chief incumbent. This system is known as the succession of student after student (*śisyānu-śisya-paramparāva*).[26]

Methodology

Available Buddhist scriptures being the primary sources, this research focuses on the Buddhist law and its legal system examining the early Buddhist literature as well as later scholarly works written after the Buddha's *mahāparinbbāna*. In analysing the early Buddhist literature, the author examines 20th century English translation of the *Vinayapiṭaka* published by the Pāli Text Society (PTS) of London. I.B. Horner's translation consisting of *Suttavibhaṅga, Mahavagga, Cullavagga, Parivāra* comes in six volumes. These principal sections provide detailed accounts of *vinaya* rules promulgated by the Buddha from time to time. Apart from the *Vinayapiṭaka*, discourses *(suttas)* in the *Suttapiṭaka* namely the *Dīga Nikāya, Majjhima Nikāya, Aṅguttara Nikāya, Saṃyutta Nikāya and Kuddhaka Nikāya* are consulted. In other discourses the Buddha has dealt with the importance of discipline, advising the *saṅgha* by way of discourse, for instance the *Majjhima Nikāya* mentions four different situations which necessitate disciplinary action or legal proceedings referring to the latter as *adhikaraṇa* (*M.I 247*).[27] As such in examining the Buddhist laws and jurisprudence one has to look to the *suttas* of the *suttapiṭaka* as early sources of Buddhist law and jurisprudence. Besides early literature, later scholarly works include commentaries (*aṭṭhakathā*) to *Vinayapitaka by Buddhagosha, Samantapāsādikā , Kaṅkhāvitaranī, his famous work Visuddhimagga* (Path of Purification). The works of modern scholars of the 20th century too have been consulted in this exercise of understanding Buddhist law and legal system in the early Buddhist tradition. For better understanding, the Buddhist legal system was to some extent dealt with as early development of *Vinayapiṭaka* as a detailed code of law and later development focusing mainly on Burmese experience. This helps readers understand how Buddhist

[26] G W Woodhouse (1918) *Śisyānu-śiya-paramparāva* and Other Laws Relating to the Buddhist Priesthood. The Ceylon Antiquary and Literary Register.vol.4 (1918-1919). As some argue, current practice is not really 'student-after-student' system but 'student's student-after-student' system. The ownership goes from student not to the next student of the original owner but to the student of the one who inherited it. Hence the term is a misnomer.

[27] See PTS edition of *Majjhima Nikāya* (Middle Length Sayings).

law came to be established in the domestic legal systems providing impetus to law-making in many predominantly Buddhist countries for instance, its influence on developed ecclesiastical laws which were developed late is a classic example for incorporating *vinaya* rules and traditions into domestic laws.

Discussion

Having perused the early and later literature, the author's view is presented under the following identified areas that illustrate the Buddhist law and its legal system while clearing the misinterpreted notion of law by the later scholars in the West who held a narrow view of 'Buddhist law' and 'law' in general. One such area is the definition given to law by the Western scholars which focuses on limited aspects of law. Often it is misunderstood with the word '*dhamma*' which has the connotation of law in different contexts.

Modern Definition of Law and '*Dhamma*' in Buddhism

Generally, what the Buddha preached for almost forty five years is known as '*dhamma*' or *dharma* in Sanskrit language. This term extends its scope to a broad range of meanings, encompassing things such as the nature and its order, the universe and its natural formation, the society and its formation which includes one's duty, obligation, etc., within the order or community. All these in one way or other denote the meaning of law in the general sense. Unfortunately, it is confined to identification of the teachings of the Buddha by mainly the Western scholars who translated most of His teachings. Exceptions to these are some Buddhist scholars like Eugène Burnouf and Brian Hodgson who did use the English term 'law' when translating the term '*dhamma*.' According to them, the Buddha's teachings about the nature of the universe, the position of the human being, *karma, nirvāna*, etc., that form the basic concepts come within the meaning of law.

Generally speaking, the English term 'law' too has some similar denotations in some contexts, such as when we describe the workings of the natural world (laws of nature) and the sciences (thermodynamic laws). But the English term 'law' extends to a degree that includes reference to rules and regulations coming from authoritative positions and rules and conditions concerning particular events as in various sports that govern the players whose obedience is required. As such the meaning of the term law is much more circumscribed in the legal world, it refers to state-driven decision-making operations and the rules that are used in those processes. In other words, the term 'law' has been narrowed down to denote 'state-driven decision-making operations' that regulate the state and its subjects. This applies to any type of body of persons which functions in society, be it

religious or political that has a membership that accepts the authority of such body.

It is now quite clear that it is the Western scholars who have made an error while translating the teachings of the Buddha which resulted in either identifying some concepts of Buddhism as laws in a general sense, while looking at the same from the modern legal perspective. This difference of opinion among the Western scholars also results incorrectly understanding the Buddhist concept of 'law,' for an instance, in the *Vinayapiṭaka* (*Vin.* I.21)[28] and the *Majjhima Nikāya* (*M.*I. 163) [29] the term *dhamma* is used in two different contexts: *bhavissanti dhammassa aññātāro (there would be some who would understand the doctrine),* here *dhammssa* refers to the doctrine or the teaching of the Buddha. In the *Dīgha Nikāya* (*D.*I.85), *Majjhima Nikāya* (*M.*I.440) [30] and *Vinayapiṭaka (Vin.*I.*315)*[31] the following passage 'shows a different contextual use of *dhamma as'*: *Ariyassa vinaye yo accayam accayato disvā yathādhammaṃ paṭikaroti…. āyatiṃ saṃvaraṃ āpajjatī'ti* refers to *vinaya* rules and it is translated to read as "it is a sign of progress in this noble discipline if one realises his lapse to be such and remedies it according to law and safeguards against its repetition in the future." Here in this passage '*yathādhammaṃ* is translated as 'according to law' and not as 'according to the teaching'.This suggests the inadequate examination of all original source material and misinterpretations resulting from ignorance of the nuances of the language (i.e. Pāli and lack of familiarity with the subject) and misinterpretations resulting from a desire to force available evidence to fit into a preconceived pattern. This confused some scholars to the meaning of the word '*dhamma*' identifying it as only referring to the teaching of the Buddha instead of the context it is used particularly where rules are concerned relating to the conduct of the individual. Dhirasekara points out an instance where Sukumar Dutt misinterprets a passage from the *Vinayapiṭaka* reffering to rules. (Dhirasekera, 1982: 19-20),

> *"Dutt says that 'the Buddha refused to lay down any rule for the saṅgha' (Dutt,1924:65) But to say this no more than an act of wishful thinking, for by no stretch of imagination can we find any such idea in the above statement which is ascribed to the*

[28] See PTS edition of *Vinayapiṭaka.*

[29] *Ariyapariyesana Sutta*. See pages 255-56 of the Middle Length Discourses published by Wisdom Publications.

[30] *Bhaddhāli Sutta*. See page 244 of the Middle Length Discourses published by Wisdom Publications.

[31] See PTS edition of *Vinayapiṭaka.*

> *Buddha. Therefore, we would call this first false move of Dutt in consequence of which he ventures to ascribe to the primitive Buddhist community an idea which would historically be most unsound, viz that the Buddha himself had laid down no regula (law) for the saṅgha."*

In further countering Dutt's statement, Dhirasekera cites from passages from *Majjhima Nikāya* and *Vinayapiṭaka* as follows:

> *Evam eva pana udāyi idh'ekacce moghapurisā idam pajahathā'ti mayā vuccamānā te evam āhaṃsu. Kim pan'imassa appamattakassa oramattakassa adhisallikhatevā'yaṃ samaṇo'ti (M.I.* 449).[32]

> *Ko nu kho bhante hetu ko paccayo yena pubbe appatarāni c'eva sikkhāpadāni ahesum bahutarā ca bhikkhū aññāya saṇthahiṃsu. Ko pana bhante hetu ko paccayo yena etarahi bahutarāni c'eva sikkhāpadāni honti appatarā ca bhikkhū aññāya saṇṭhahantī'ti* (*M.I.* 445 and *S. II*. 224) [33].

> *Yo pana bhikkhū pātimokkhe uddissamāne evam vadeyya kiṃ pana imehi khuddānukhuddakehi sikkhāpadehi uddiṭṭhehi yāvad'eva kukkuccāya vihesāya vilekhāya samvattantī't sikkhiāpadavivaṇṇake pācittiyaṃ* (*Vin.IV*.143)[34].

He points out that around one quarter of the *saṅgha* appealed to the Buddha that He was laying down too many rules (Dhirasekera, 1982: 20) and goes on to state that Dutt had further distorted the word *paññatto* quoting " *Yo vo Ānanda mayā dhammo ca vinayo ca desito paññatto…* Dhirasekera, adding to this, states that throughout the *Vinayapiṭaka* the word *paññatti* is used referring to promulgated rules of discipline (Dhirasekera, 1982: 20). Therefore it must be noted that the term "Buddhist law" should refer not to the entire teachings of the Buddha but to the actual rules that He is said to have developed in the interest of creating a religious community acceptable to society, that would work towards achieving their highest emancipation and the wellbeing of the lay followers. This suggests that the terms "Buddhism" and "law" have been used as differentiating terms to indicate the ways in which Buddhism functioned in harmony with the secular legal systems. It did not reject the secular legal system but made its own rules and

[32] *Laṭutikopama Sutta*. :PTS Edition of *Majjhima Nikāya* (Middle Length sayings) and see also pages 552-553 of the Middle Length Discourses published by Wisdom Publications.
[33] See PTS editions of *Majjhima Nikāya and Saṃyutta Nikāya*
[34] See PTS edition of *Vinayapiṭaka*

regulations which were not in conflict with the laws of secular legal systems. The Buddha was particularly concerned with the idea that good deportment, conduct and behaviour of an individual on a daily basis radically reduced conflict and the need for legal rules and increased the possibility of that person being able to pursue goals, in this case, meditation and enlightenment. This is a very different perspective of the law and one that has all but disappeared in the twentieth century. This will help overcome the gaps in the current definitions of law which are based on cases, rules, rights, judicial procedures, decisions and sanctions and not on how we want an individual to act or a society to operate so that everyone can exist in harmony. If the purpose of the law is to maintain peace and order, the punishments to which people are subject by law should seriously address the challenge of reforming the offenders.

Mere sentencing or rigorous imprisonments have been a failure. Instead teaching and practice of meditation for those serving terms in prison have been adopted as a measure of reforming the offenders instead of confining them to various activities as part of the punishment. This is to help one realise his or her weaknesses. Even in recent time this has been tested by Kiran Bedi, India's first female police officer. She revolutionised the idea of reform in one of Bangladesh's most notorious prisons through offering a ten-day *vipassanā* meditation courses to prison guards and inmates alike. At present, *vipassanā* meditation as taught by S.N. Goenka has been successfully offered over the last 25 years within prisons located in India, Israel, Mongolia, New Zealand, Taiwan, Thailand, the United Kingdom, Myanmar, the United States and Canada.[35]

As Redwood suggests our definition and understanding of the law will have to expand to include a range of processes and ideas. The term “law” has come to mean something very particular in modern English, for example Redwood states ,“the written secular law of a nation-state, that is, the statutes, cases, rulebooks, law-codes, judicial processes and decision documents of a political entity” (Redwood et al, 2014: 13), so too has the term “religious law” taken on this correlation of judicial processes, rules and sanctions.

Buddhist Jurisprudence

When carefully studying Buddhist jurisprudence, one may find the principle it is based on i.e. the principle of morality. The latter in fact is in constant conflict with modern law when it comes to making rules. Hart in his famous

[35] https://www.vridhamma.org/Courses-in-Prisons;last visited July, 30 2018.

book 'Concept of Law' (1994:185) states that there is an undeniable connection between law and morals. According to him, the development of law has been down the ages strongly influenced both by the conventional morality[36] and the ideals of particular social groups. However, it does not mean a necessary connection between the two. Yet, those who believe that there should necessarily be a connection between the two emphasise that if rules that did not meet the requirements of justice, fairness or moral values of that society, such rules should not be recognised as laws (Silva, 2015: 220). It must also be noted that although some are tempted to believe that laws are considered valid irrespective of their moral content provided they originate from the correct source, but the proponents of this idea do not deny the fact that there is a connection between law and morals (Silva, 2015: 220). In other words, the law could justify any act that would seem against morality, but in the interest of the majority and their wellbeing, such acts that become law, protect them from being tried in the so-called court from where justice is supposed to originate when acts which conflict with morals are challenged. Hart in agreement with Hobbes and Hume's teleological approach (Silva, 2015: 222)[37] states that the proper end of human activity is survival. Thus, he explains the basic facts of life: they are human vulnerability; approximate equality; limited altruism; limited resources; and limited understanding and strength of will. These circumstances of human nature show the importance of having rules to protect persons, property and promises (Silva, 2015: 224). However, there is a tendency among people to deviate from the rules at times to achieve their own immediate selfish interests.

It is quite clearly shown that these fundamental rules have been laid down in almost every religion today as precepts, because they are essential for the survival of the community. Violation of such rules would lead to crimes of passion, crimes against women and children and would finally destabilise peace and harmony in the community (Silva, 2015: 222). When society deteriorates in moral values, they must be upheld by law, unless there is another mechanism to maintain the order without law. Thus, the law comes into being as a means of protecting morals which is evident from the acts that

[36] Conventional morality is characterised by an acceptance of society's conventions concerning right and wrong. At this level an individual obeys rules and follows society's norms even when there are no consequences for obedience or disobedience. Adherence to rules and conventions is somewhat rigid, however, and a rule's appropriateness or fairness is seldom questioned. Kohlberg, Lawrence (1971). From Is to Ought: How to Commit the Naturalistic Fallacy and Get Away with It in the Study of Moral Development. New York: Academic Press. pp. 153-235.

[37] At page 222, Silva explains teleology means the stages by which a thing of any given kind, progresses regularly to its specific or proper end.

are considered 'offences' in law of which the foundation is moral precepts for instance the five precepts in Buddhism. These precepts when violated in one way or another would amount to offences in law. They would be dealt with by way of punishment. Therefore, one may agree that laws provide for the upholding of morals in society. However, it is in reality not the case in every statute enacted by law-makers. In this sense, there appears to be inevitably a connection between law and morality.

Hart further citing *Radbruch* states that the separation of law *as it is* from *as it ought to be* (morality) would contribute to nothing but fear and disgust, and at the same time he was in agreement with the view that the fundamental principles of humanitarian morality are part of legality. Therefore, no positive enactment or statute however clearly expressed and however clearly conformed to the formal criteria of validity of a given legal system, would be valid if it contravened basic principles of morality (Hart, 1958: 617). This suggests that the law should conform to the minimum requirements of morality. This reminds us of certain rules that the Buddha was not willing to accept when they were put forward to him by *Devadatta* in relation to the discipline of the *saṅgha* as they were too harsh, for instance, when he insisted that *bhikkhū*s should lead a '*dhutaṅga*' life (confining to forest life) and abstain from accepting meat or flesh as food, etc. These extremist or rigorous rules do not conform to moral principles, but as *bhikkhūs* they have to depend on the laity for alms and the latter should not be burdened by the former being choosy of food offered. Therefore, in such instances, the question of morality shall not arise, despite the fact eating flesh of an animal may be seen as 'morally wrong.'

Domestic law has been influenced and shaped by social morality and wider moral ideas according to Hart (1994: 204). One such example is the rule of recognition in the USA. This includes principles of justice of substantive moral values. This proves that there is a necessary connection which is an inevitable, unavoidable or unimpeded connection between the two. This suggests that if the law is to last it needs the moral approval of the community. This could be further supported by the fact that the most compelling reason for the Buddha to introduce rules of discipline was that some *bhikkhūs* and *bhikkhunīs* of different social backgrounds appeared to be either ignorant of etiquettes or unconcerned about certain acts that were not worthy of *bhikkhūs*, such as killing, stealing and engaging in sexual activities.

As Bhagvat states,

> *"As the saṅgha gained prominence gradually among other recluse communities in the Indian society of the sixth century BC, they not only became centre of attraction but organised themselves into a body of persons in which individuals had to restrain their natural liberty and unlimited right to anything which would tempt them as part of well-disciplined training." (Bhagvat, 1939: ii).*

According to Bhagvat, "*what the saṅgha gained was 'social contract' which they utilised in minimising grievances of the majority and controlling the unruly characters by means of legal coercion and maintaining a balance in the associated life of the sangha."(1939:ii).*

According to Bhagavat's statement the idea of social liberty was rooted in the very nature of the *saṅgha* and it raised above the other contemporary religious associations acquiring the dignity of a republican state (Bhagvat, 1939: ii). This confirms that the *saṅgha* of the Buddhist Order in its early stage possessed some of the most modern principles which make a state worthy of its name (Bhagvat, 1939: iii). Like every state it was 'divisible' into a body of persons like the Buddha Himself, His principal disciples like Sāriputta and Moggallāna would issue orders and directions from time to time, as authorised persons, to the *saṅgha* in general.

The *saṅgha* was also guided by the notion of justice which according to Plato is the right of ordering human relationship. It involves the view that 'each citizen' - in the case of the *saṅgha* - has an equal claim on the common good, in respect of equal needs and the corollary implied therein is the differences that in response to claim are differences that the common good itself requires' (Bhagvat,1939: iii). This means all legal matters were settled in the *saṅgha* not by or with interference of a supreme authority but by appeal to the whole body of the inmates regarding their idea of the common goal. Therefore there was no individual who was vested with supreme authority.

It must be noted that whatever the definition given to law its purpose remains the same to date. Its purpose is the preservation of the institution. Buddhism as it gained recognition and prominence became established and institutionalised with evolving rules required for its continuation. It was in harmony with the state. This is mentioned in the third chapter of Kautilya's *Arthaśāstra on "Concerning Law"* which states that the responsibility of

carrying out the administration of justice should be vested with three members acquainted with sacred law (*dhamasthas*) and three ministers of the king (Sharmasastry, 2010: 213). Bhagvat citing from Kautilya's *Arthaśāstra* (III. 10) states that the laws of the *saṅgha* were binding on the king and he had to punish those who broke it (Bhagvat, 1939: iv). Once an incident was recorded in the v*inaya (Vin*. IV, 225) about a Licchavi woman who was found to have committed adultery and her husband wanted to kill her. She went Sāvatthi and got *pabbajjā*. When the husband came to know about it, he complained to the king who said that the woman had become a *bhikkhunī*, but no punishment could be inflicted on her. Another incident is also reported in the *vinaya* that some *bhikkhūs* were suspected of theft by the king's security. The case was said to have been tried by the Buddha and he gave the verdict accepted by all (*Vin.* III, p. 60). These incidents suffice to prove that the *vinaya* laws were in conformity with the requirements of the State and the Buddha had particularly advised the *saṅgha* that their behaviour should conform to the royal wish according to *Mahāvagga (*III. 4, 3). This is besides the rules pertaining to admission of people to the *saṅgha*, the convicts and the prior permission for government servants of the king (*Mahāvagga.* I, 40, 4, 41). [38]

Legal Principles in the *Vinayas*

There are seven principles in Buddhist legal tradition which have striking parallels to Western principles. (Keiffer-Pülz, 2014). They are:

1. No crime or penalty without a law. This could be described in Latin terms as *nullum crimem sine lege, nulla poena sine lege*. According to this principle, the first person to effect a prescription is never liable to punishment; this is known as *anāpatti* clause in the *pāṭimokkha* rules or prescriptions.

2. The principle of inculpability: insanity or mental disorder. This protects one from punishment.

3. The differentiation between intentional and negligent act. Intentionality is a central topic in Buddhist monastic law in particular and it is dealt in detail in the law of *karma* as far as action is concerned. Therefore it is a significant fact that the negligent commission of an intentional crime does not result in an offence, whereas the negligent or intentional commission of a negligent crime leads to an offence. It is explained as follows: if a *bhikkhū* were to sit

[38] See PTS edition of *Vinayapiṭaka.*

down on a child who happened to be lying on a chair but concealed by, say, a blanket or a piece of cloth, and in so doing the *bhikkhū* kills the boy, no offence involving expulsion (*pārājika*) occurs, because homicide is an intentional delict, and the intention is missing here. But if a *bhikkhū* drinks a glass of fruit juice thinking it to be fruit juice, while the fruit juice has become alcoholic after being left in the sun for too long, he commits the offence of drinking alcohol because this is a negligent delict, and one becomes guilty of transgression with or without intention (Keiffer-Pülz, 2014).

4. The gradual differentiation of offences. This is the central subject of the casuistries in the *Vibhaṅgas*. Because determination of the appropriate offence depends on whether all factors for a certain offence are in fact present, offences may vary. In the case of theft, for example, one precondition for a *pārājika* offence is that the stolen goods have to be worth more than five *māsaka.* If one steals an object worth less than five but more than one *māsaka*, it is a "grave offense", if it is less than one *māsaka*, the offense is simply one of "wrongdoing" .(Keiffer-Pülz, 2014)

5. The absorption of offences. In the *vinayas* early signs of absorption are found in the category of the *yāvatatiyaka-saṅghādisesa* offenses (matters requiring a formal meeting of the Order, which are only completed with the third admonition). Infraction of these rules does not immediately lead to a *saṅghādisesa* offence. Only after the completion of the recitation of the formula for admonishing is done, one incurs a *saṅghādisesa* offence. If the perpetrator resists when the motion is recited, an offence of "wrongdoing" arises: if he still resists when the first two resolutions are recited, a "grave offence" arises. But all these offences are absorbed by the *saṅghādisesa* offence, which occurs with the completion of the third resolution. Keiffer-Pülz points out that in the Pāli commentarial literature from first century onwards various systems of absorption are described and applied to the case of theft (Keiffer-Pülz, 2014: 55). Other offences commonly related to the perpetration of the main offence- a theft such as breaking into a house or damaging furniture, are treated according to a model of absorption, and not concurrently.

6. The equality of all ordained members of a local community is independent of the hierarchy of position within a local *saṅgha*. Almost all aspects of the communal life, such as the allocation of seating, food, clothing, were regulated according to one's position in

the monastic hierarchy. However seniority had no bearing on the value of a vote regarding formal procedures; all votes were of equal value. At least in the *Sarvāstivāda* and *Mūlasarvāstivāda vinaya*; there are examples that the *bhikkhūs* of great merit and virtues or the leader or elder of an assembly enjoyed the privilege of special immunity from prosecution, even for one of the most serious offences in monastic legislation or *saṅghādiśesa* (Keiffer-Pülz, 2014: 56). In such instance, the principle of equality is suppressed at least partly.

7. The last of the seven principles is consensus; here every decision within the *saṅgha* has to be arrived at unanimously by consensus, but when there is a difference of opinion then the majority decision prevails.

Procedure for Dealing with Punishable Offences

Matters together with those arising from violation of the disciplinary rules which necessitate legal prosecution (referred to as *adhikarana*) are considered to be of four kinds. They are: disputes arising within the Oder relating to the matters of *Dhamma* and *Vinaya* (*Vivādādhikaraṇa);* accusations of fellow members (*Anuvādādhikaraṇa);* transgressions of the *vinaya* rules (*Āpattādhikaraṇa); and* irregularities resulting from the failure of proper procedure in all monastic formal acts, *Kiccādhikaraṇa*, (Abhayawansa, 2018).Penalties and punishments which should be inflicted on the members who become offenders under the disciplinary code should have to be decided in accordance with the gravity or seriousness of the rules violated by them. All the rules mentioned in the *Vinayapiṭaka* come under seven categories with reference to their severity. They are *pārājika, sanghādisesa, aniyata, nissaggiya-pācittiya, pācittiya*, *pātidesaniya and sekhiyā.* Punishments laid down for the violation of rules pertaining to the categories referred to above are respectively: excommunication, temporary suspension from the Order until the offender fulfills all the requirements which are necessary for the complete purification, confession with forfeiture, confession and confession verbally acknowledging the offence (Abhayawansa, 2018). Apart from these seven categories, the Buddha introduced five other kinds of punishment for certain shortcomings of the members of the Order which are not directly related to the code of discipline. Those acts of punishment are: act of censure (*tajjaniyakamma*); act of subordination (*nissayakamma*); act of banishment (*pabbājaniyakamma*); act of reconciliation (*patisārāniyakamma*); and act of suspension (*ukkhepaniyakamma*).[39]

[39] See *Culla-vagga, Kammakkhandhaka.*

Case law in Buddhism

Buddhist law refers to the rules of the monastic law code of the *Vinaya*. Oscar Von Hinüber states that it is the senior disciples of the Buddha like Sāriputta who decided to promulgate rules in view of disciplining the *saṅgha* (1995: 7). He was citing the very first case which led to the promulgation of disciplinary rules. Von Hinüber cites a passage from *Vinayapiṭaka* (Vin.III.9) which shows that the purpose of promulgating rules was to maintain order. It further says that without *vinaya* there is no order, and without a community of monks (*saṅgha*) there is no Buddhism. Therefore, in order for the *saṅgha* to continue as an organised body, the *Vinayapiṭaka* emerged. The case law in Buddhism which has a history dating back to the times of the Buddha bears testimony to this.

The Case of Sudinna: the First of *Pārājika* Rules

Sudinna[40], a son of a wealthy householder who lived in the city of *Vaisali*, having gone forth from the household to become homeless entered the Order.As recorded, Sudinna's mother having heard that her son was leading a homeless life and was suffering suggested return home and enjoy the comforts which he used to enjoy when he was a householder. Despite his refusal she employed every possible means to get him back to his previous life. With this in mind she told him that he was the only child of the family, the family would not continue, as he had already left the householder's life. She thus requested him to have union with his former wife in view of continuation of the family lineage. He agreed to do so and was said to have had sexual intercourse with his wife for the purpose of a child (Analayo, 2012: 399-408).

It is interesting to note that there are different versions of this account. As the *Mahisasaka* version states, Sudinna's parents are said to have said to him that although he was their son, he disobeyed them and undertook the path to become one of *Sākyan* clan. As a result his ancestor's lineage [by man] will cease. According to royal statute, when succession is discontinued, the wealth is lost to the government. Sudinna, having heard this went back to his wife and engaged three times in sexuality (Anālayo, 2012: 405). When this was reported to the Buddha, He laid down the rule of celibacy. Sudinna's case thus becomes the case of breach of celibacy that led to the promulgation of *pārājika*. This shows how important celibacy is for a *bhikkhu* and *bhikkhunī* in the Order. In other words, sex is considered the most serious

[40] In some versions of *Vinayapiṭaka* and other Buddhist literature Sudinna was identified as Yasa or son of Kalanda.

monastic transgression, an offence considered equal or perhaps worse than killing or theft according to Gyastor (2015: 276). Sudinna's crime was simply the first of these types of misconduct to occur for the promulgation of *pārājika* rules (Anālayo, 2012: 418).

Case of Ajjuka[41]

Ajjuka was a *bhikkhu* of Vesālī. In settling a dispute regarding the estate of his lay-supporter, he was accused of partisanship by one of the parties concerned and was reported to Ānanda. The case went up before Upāli, who decided in favour of Ajjuka (*Vin*.iii.66-7),[42] and was commended by the Buddha for this decision.[43]

As time passed, and the number of rules grew, some of the Buddha's followers, headed by Ven. Upāli, gathered the major rules into a set code ,the *pāṭimokkha,* ,that eventually contained 227 rules. The minor rules, which came to several hundred, they gathered into chapters according to the topic and are called *Khandhakas*.

The *pāṭimokkha* we now have come in a text called the *Suttavibhaṅga*. This presents each rule, preceded by its origin story, followed by what permutations, if any, it went through before reaching its final form.

Modern Jurists Relying on *Vinaya* Rules

The recognition accorded to Buddhist *vinaya* rules by jurists is quite clearly evident from some landmark decisions of Sri Lankan courts with regards to upholding Buddhist moral principles, particularly where the case of the conduct of *bhikkhūs* is concerned. The Court of Appeal of Sri Lanka in a landmark judgment once ruled that the issuing of driving licences to Buddhist priests not only violated the *vinaya* rules but also the Constitution[44] (Sunday Times, 2014).

The ruling came after a two-judge bench of the Court of Appeal heard a petition filed by three *bhikkhūs* whose applications to obtain driving licences

[41] Andrew Huxley (2014) "Pāli Buddhist Law in Southeast Asia." In Buddhism and Law: An Introduction, edited by Rebecca R. French and Mark R. Nathan, 167–82. New York: Cambridge University Press.

[42] See PTS edition of *Vinayapiṭaka (*iii.66-7).

[43] See *Therī-gāthā*. K. R.Norman., trans. (1971). Elders' Verses. Vol.1. London: PTS. (*ThagA*.i.370); and see *Manorathapuraṇī; Aṅguttara Nikāya Aṭṭhakathā* (*AA*.i.172).

[44] The Sunday Times (2014) Red light for Buddhist monks in driving seat, http://www.sundaytimes.lk/140406/sunday-times-2/red-light-for-buddhist-monks-in-driving-seat-91570.html: last visited 16 July 2018.

were turned down by the Commissioner of Motor Traffic after he consulted the Commissioner of Buddhist Affairs.

In this case it was argued that "the issuance of a driving licence to *bhikkhu* would offend the Buddhist way of life and the Buddhist culture in our country. The Constitution of Sri Lanka itself, by its Chapter II and Article 9 protects the Buddhasāsana, and the Judiciary being one arm of the State, is bound to give effect to the above Constitutional Provision," Justice Anil Gooneratne said in his ruling — with Justice Deepali Wijesundera agreeing (Sunday Times, 2014).

The case of Sumana Thera was cited where he was to be admitted and enrolled as an attorney-at-law, reported in 2005 (3) SLR at 373. Though this case was in favour of Sumana Thera, to be admitted and enrolled as an attorney-at-law, it was pointed out by the counsel who appeared for the Colombo YMBA and All Ceylon Buddhist Congress that "*no bhikkhu could practise as a lawyer without violating religious precepts, i.e. bhikkhu's way of life is incompatible with that of a lawyer"*(Sunday Times, 2014).

Further it was pointed out that referring to page 373 of Sumana Thera's case judgment where it was stated that "*Vinayapiṭaka contains statements regarding discipline and conduct of a bhikkhu. They are made by priests who are the final arbiters on such matters relating to the order to which priests belong and to whose discipline a priest is subject to and these opinions can hardly be questioned by court and must be accepted by court. He also referred to page 375 of the case and emphasised that the vinaya has become and now has the force of customary law of the land and therefore enforceable by courts. Rules laid down by the Buddha for the discipline and personal conduct of his disciples is enforceable through civil courts, by laymen as customary law*" (Sunday Times, 2014).

These judgements bear testimony to the fact that modern jurists have acknowledged Buddhist scriptures such as *vinayapiṭaka* as sources of law to arrive at a decision and support their judgments over the conduct of *bhikkhūs.*

Decisions of cases could have been overturned if one argued on the basis of the Fundamental Rights which every Sri Lankan citizen is guaranteed with. But when it comes to *bhikkhūs* as long as they are in the Order, such rights should not be grounds for them to challenge in a court of law even when the rights have been violated. Because they represent a particular community governed by a set of rules known as *vinaya* rules to which they are subjected. They accepted these when they entered the Order. These *vinaya* rules bind

on them as long as they are in the community of *bhikkhūs*. Accordingly, in the case of *bhikkhūs* and *bhikkhunīs* of the Order, the *vinaya* rules shall prevail over fundamental rights.

Conclusion

Buddhist law in the final analysis focuses principally on socialisation and internalisation of the individual with a set of rules. The latter helps him or her function as a disciplined individual whose ultimate objective should be the attainment of self-realisation. Hence, the law of socialisation and internalisation has two objectives; the manifest and latent. The latent object was to help him or her attain self-realisation through gradual training on the Noble Eightfold path, while the manifest object should be to make the individual acceptable to the society instead of being a burden to the community. One hardly finds, in modern definition of law or the Western way of looking at law, these manifest and latent objects and its only object is to deal with issues of social, political, and economic order.

The *saṅgha* as a community has a legal system based on the teaching (*dhamma*) and *vinaya* (promulgated rules) of the founder, the Gautama Buddha. The Western scholars including social scientists, legal scholars, and jurists have failed to understand this, maybe because of the influence of Max Weber's view on Buddhism. Weber viewed Buddhism as "another-worldly" religion, concerned with the mystical and contemplative, and not actively engaged in mundane politics and law. This proves that Weber has not studied Buddhism in depth. If he had done so, he would have observed the latent and manifest objectives of Buddhism which talk about the aspects of both socialisation and internalisation of the individual in society. Even thought this idea is not being discussed here in detail it is felt to be important to mention as it would encourage further research in to the subject.The ultimate objective of Buddhist Law and legal system is to make a disciplined individual from whom the society would benefit, while he himself would ultimately benefit by being trained on the Noble Eightfold path leading to self-realisation in the end. Thus the objective of Buddhist law serves two purposes: to socialize the highest happiness and to help discipline individuals in their attainment of the highest happiness (*summum bonum).* The purpose of modern law does not address these two objectives instead it's only concern is to establish standards, maintain order, resolve disputes, and to protect liberties and rights. In general, it is a set of rules that govern and guide actions and relations among and between persons, organisations, and governments.

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An Analysis of Compliance and Policy Gaps in Nation Building Tax in Sri Lanka

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Abstract

The objective of this paper is to find and analyze the policy gap and the compliance gap of the NBT revenue of Sri Lanka. In this study, NBT tax gap is defined as the difference between the potential NBT revenue and the actual NBT revenue collected. Further, additionally assessed NBT revenues after audit and default NBT are also used as measures of explaining the compliance gap. The results indicate that the potential NBT revenue estimate, potential NBT revenue collectible estimate and actual NBT revenue collected have reported almost equal growth rates. The period average of the NBT compliance gap stood at Rs. 9,627 million. The NBT policy gap in levels however reports a regular increase during the period and stood as Rs. 55,511 million on average. The period average of total NBT gap stood as Rs. 65,138 million. It is also found that the total NBT gap remains as 51.3% of potential NBT revenue estimate on average. This total NBT gap is shared as 43.7% of policy gap and 7.6% of compliance gap on average during the period. Further, audit information explains that hiding information or under stating of information in tax returns is one of the major causes of the NBT compliance gap. It is revealed that tax default is also contributing significantly to the compliance gap. Further, the NBT tax shows a low collection efficiency ratio as well.

Keywords: *Nation Building Tax, Policy Gap, Compliance Gap, Collection Efficiency Ratio*

Introduction

Taxation generates resources for a range of activities of governments, i.e. from the provision of public defense, law and order as proposed by Adam Smith to the provision of menial services such as street cleaning and sanitary

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services. In a developing country context, the government activities shared a significant part, often amounting to more than 20% of the GDP. In general these high government spendings are covered from government revenue which includes proceedings generated by the tax system and fees and surcharges and borrowings. Since continuous and excessive use of bond financing of high expenditure makes management of public finances difficult in the long run, taxation is considered the best way of financing government activities as it reduces the inter-generational burden of high government expenditure and imperfections in behavioural patterns.

The efficient and effective management of a tax system is however a challenging task in modern economies, especially in developing countries. Due to inefficiencies in the system or malpractices and behavioural responses resulting due to loopholes in laws and regulations or in tax administration, many of those who are liable to pay taxes do not pay or do not pay the full amount, making the collected amount of tax less than what is expected to be collected. The collection of taxes is lower than what is expected at the beginning of the year and what is used for making expenditure projections makes nation states, big or small, highly vulnerable in managing and achieving their macroeconomic goals. Actual revenue collections that fall short expected may results in suddenly abandoning or postponing some expenditure programmes in the middle or making its scale down, etc. or even probably making achieving the intended targets difficult. Further, insufficient revenue collection may often lead governments to borrow heavily under unfavourable conditions which makes the fiscal position of the country weak and generate more macroeconomic imbalances and issues.

It is a well-known fact that the tax system of Sri Lanka has continuously failed to generate revenue to cover the expenditure of the government and therefore runs large and continuous budget deficits. This has led to various issues in fiscal policy and macroeconomic management as government borrowing has also increased to high levels. Many studies have revealed that continuous borrowing makes the fiscal position of a country unsustainable and adversely affects the overall macroeconomic management.[3] Further, it is found that the tax revenue of Sri Lanka has not reported a similar growth as of GDP. This has resulted in a decreasing ratio of tax revenue as a percentage of GDP, from 18% in 1990s to 12% in recent years, and known

[3] This is known as the literature on fiscal policy sustainability in which the financing of continuous deficits by borrowing is assessed on inter-temporal framework of analysis for feasibility of policy continuation in the long-run. See Jayawickrama (2004) and Dayaratne-Banda and Priyadarshanee (2014) for examples of studies related to Sri Lanka.

as having lower income elasticity of taxation in Sri Lanka.[4] The general meaning of this decreasing tax/GDP ratio is that because of various reasons such as low tax compliance, administrative inefficiency, policy faults, behavioural responses or any other reasons the amount of tax collected has fallen short of what could have been collected. As a result a large tax gap has been observed in Sri Lanka and over the last few decades the gap has been on the rise. It is argued that collection discrepancies in both direct taxes and indirect taxes have contributed to the widening tax gap in Sri Lanka.

From the institutional perspective of tax authorities, the difference between the tax revenue expected to be collected and the actual tax revenue collected is known as the tax gap. Holmgren (2013) defines the tax gap as the difference between the tax liability, the amount of tax to be paid in a given fiscal year and the amount of tax paid voluntarily on time by the taxpayer.[5] Khwaja and Iyer (2014) define tax gap as the difference between revenue potential as implied by the tax law and the actual revenue collected by the tax authorities.[6] Many studies have discussed the factors affecting the tax gap. Tax evasion has been identified as the main cause for the tax gap. Some authors included tax avoidance and tax debt also as significant factors contributing to the tax gap (Raczkowski, 2015). According to Murphy (2014), the following factors result in tax evasion: trading in shadow economy, untaxed proceeds of tax frauds, capital gain tax, inheritance tax, offshore tax abuse, criminal attacks on tax systems, taxpayers' errors and negligence, and any other error in connection with action related to taxation. Based on different factors affecting the tax gap, some studies classified the tax gap into few groups: under-reporting gap, the gap arising due to under reporting of income and overstating of deductions; underpayment gap, the gap resulting due to failure to fully pay reported tax owed and non-filing gap, the gap arisen due to failure to file return (Alm and Borders, 2014;

[4] See Jayawickrama (2008), Amirthalingam (2013), Madushani and Jayawickrama (2015) and Kesavarajah (2016) for a discussion on various issues in Sri Lanka's tax system such as declining tax/GDP ratio, low income elasticity and their causes.

[5] However, some researchers argue that this institutional perspective definition of the gap is faulty as it does not incorporate the behavioural responses of taxpayers to changes in the tax system, policies and regulations (see Gemmell and Hasseldine, 2014). Gemmel and Hasseldine (2014) argue that in the presence of behavioural responses of taxpayers the tax gap measures exaggerate the degree of non-compliance.

[6] There may be a difference between 'actual tax revenue collected' and 'actual tax revenue collected by the tax authorities' if officers of the tax authorities are corrupted. As a result, the total tax collected may not be received by the tax department fully. In a corrupt system of tax administration, the tax evasion does not fully benefit the taxpayers as a significant part of tax paid by taxpayers can be accumulated with tax collectors and officers or some tax agents.

Raczkowski, 2015). Giles (1999) defines the tax gap based on hidden economy and computed based on the size of the hidden economy and a suitable tax rate depending on the economic activity. However, the lack of a perfect definition for hidden economy and uncertainty of the suitable tax rate this definition has led to significant measurement errors. The computation of the tax gap is considered vital for policy making bodies and tax authorities. According to Villios (2012) the tax gap estimate helps in identifying the types and levels of tax non-compliance. The tax gap estimates may compel tax authorities to find ways and means to fight against tax non-compliance and corruption at various levels of tax collection and to improve the effectiveness of revenue collection. Gemmel and Hasseldine (2013) reckon the tax gap as the primary measure of tax non-compliance which resulted due to avoidance (legal) and evasion (illegal).

In Sri Lanka, indirect taxes dominate the tax structure by accounting for more than 80% of total tax revenue. A large part of revenue from indirect taxes is generated by taxes on goods and services or value added taxes. The Nation Building Tax (NBT) is the second largest indirect tax after the Value Added Tax in Sri Lanka. During the period from 2009 to 2017, the NBT revenue amounted to 18% of the total indirect tax revenue and about 0.7% of the GDP of Sri Lanka on average. The NBT which was introduced in the year 2009 is charged on business turnover of firms generated through the final consumption of goods. As the final consumption expenditure of goods and services of a country is indicated by gross domestic expenditure, the revenue from the NBT depends on expenditure incurred on the value of final products, i.e. gross domestic expenditure (GDE). Therefore, it is expected that the NBT revenue will maintain a direct relationship with GDE which means that the NBT collection should go up with the increase of GDE over time. However, may be due to various issues in tax administration, low rate of tax compliance, high evasion of taxes, various growth oriented and consumption oriented policy decisions, the NBT has failed to generate the expected revenue from the taxpayers thus leading to a tax gap. This study intends to estimate the size of the NBT tax gap in Sri Lanka and to analyze its causes and to analyze consequences based on time series data from 2010-2016.

Literature Review

The methods of estimating the tax gap can be broadly categorized into two types: macro methods of estimation and micro methods of estimation. In macro methods the tax gap is estimated using macroeconomic variables such as hidden economy with the use of proxy variables, i.e. demand for currency and physical input and information on national income and financial

accounts. In many studies on tax gaps, much attention was given to the estimation of the hidden economy as activities of the hidden economy are considered to be a major reason for the tax gap. The hidden economy is also referred to as the underground economy, shadow economy, informal economy, black economy, etc. in the literature. However, it is not recommended that all activities of the hidden economy be considered taxable as some activities of the hidden economy such as unpaid housework, child rearing, etc. may not be considered for taxation. In the currency demand method, it is assumed that dishonest taxpayers engage in cash transactions to avoid taxation because then the transaction is untraceable. The method calculates the excess currency demand made due to dishonest behavior to estimate the size of the tax gap (Gemmell and Hasseldine, 2012; Villios, 2012; Raczkowski, 2015). However, results of these type of models were questioned because of unrealistic assumptions of the models. In the physical input estimation method proxy variables are used to estimates the true value of overall economic activity. For example, Kaufmann and Kaliberda (1996) use the value of electricity consumption as the true value of overall economic activity and then they compute the tax gap as the difference between the value of electricity consumed and the value of the officially computed GDP in a given period of time. However, it is often questioned whether the electricity consumption is a good measure of the shadow economy (Fuest and Reidel, 2009). Another approach in using macro variables calculates potential tax revenue using tax base variables and suitable tax rate and then the tax gap is computed as the difference between potential tax revenue and the actual tax revenue (Khwaja and Iyer, 2014). In many studies, regression analysis is used to estimate the potential revenue by controlling for structural and institutional variables.

Results of macro accounting methods are also questionable as there may be significant accounting errors in national accounts due to shadow economy activities, not reporting and under-reporting of information, etc. Errors in estimating the macroeconomic variables such as GDP, demand for currency, demand for physical inputs, etc. may create large errors in the tax gap estimate and have misleading outcomes. As explained by Raczkowski (2015) imposing taxes based on the economic strength of the taxpayers is important to reduce non-compliance of tax payment. Harremi (2014) notes that tax evasion depends on the country contexts and it accounts for 80% - 90% of the total tax gap. He further states that tax avoidance, excessive levels of corruption, and low effectiveness in tax administration may also result in increased tax gaps.

Compared to macro methods, micro methods are more appropriate as they follow a bottom up approach in estimating the aggregate tax gaps. In micro methods, survey method and tax audit methods are more common. Under the survey method, a tax authority which has the access to the list of taxpayers may send out questionnaires to the taxpayers with a view to obtain information on their activities and transactions and then use that information to estimate the tax gap by individual taxpayer. Depending on the category of taxpayers estimated individual tax gaps will be extrapolated to estimate the overall tax gap of the economy (Villios, 2012). Though it is costly and time consuming, the survey method is more suitable as the tax gap can be identified according to different sectors and different groups of taxpayers, etc. However, the accuracy of the estimates based on survey information depend on the willingness on the part of taxpayers to provide correct information. If the tax has been evaded by the taxpayers the survey method may not generate sensible results as data obtained by the survey may not be true and accurate.

The use of the tax audit method is more convenient as the calculation is based on careful observation of information provided by individual tax payers in the process of taxation and verification of such information by the tax authority. Auditing of tax files using random samples may allow one to come up with a fair estimate of the tax gap by extrapolating the results to all taxpayers. For example, in 2001 the US government examined and reviewed a random sample of 46,000 tax returns to measure the tax compliance using the audit approach and the results were extrapolated to the population to obtain an aggregated tax gap. Tax gap analyses which are based on random tax audits may deliver better results as there might be a difference between the amounts of tax paid before and after the audit by the same taxpayer. However, resource constraints of tax authorities may restrict the audit sample to a limited number of tax files and affect the quality of the audit as well. Further, if there are avenues for tax evasion through unreported transactions or cash transactions the auditing may not be very successful. Similarly, if the tax system is corrupt the auditing also may not generate a sensible outcome.

Methodology

The main objective of the paper is to find the policy gap and the compliance gap of the NBT revenue of Sri Lanka. The policy gap explains the loss of tax revenue due to government policies that are meant for economic growth and development objectives. However, the compliance gap indicates the inefficiency and fraud in the tax system as the actual tax collection falls below the potential revenue. In this study, the tax gap is defined as the difference between the potential revenue and the actual collected tax

revenue. This method is more aligned with the national accounting approach of macro method based on the calculation of potential revenue. The potential revenue is computed by multiplying the tax base by an appropriate tax rate. As the NBT was charged on business turnover generated through the final consumption of goods, the expenditure on final consumption goods is considered as a better approximation of the tax base of the NBT. As the final consumption expenditure of goods and services of a country is indicated by gross domestic expenditure, the revenue from the NBT depends on expenditure incurred on the value of final products. Therefore, the household consumption expenditure which is included in gross domestic expenditure is considered as proxy for expenditure incurred on final products. It represents about 63% of the expenditure incurred on final products within a year, i.e. business turnover.

The paper uses the following definitions of variables and gaps: The potential NBT revenue denoted by $PNBT^R$ is computed using the following method:

$$\mathbf{PNBT^R = \tau \times FCE^H} \qquad \ldots\ldots\ldots\ldots\ldots\ldots (1)$$

where τ is marginal tax rate and FCE^H is household final consumption expenditure. The potential NBT revenue is obtained by multiplying household final consumption expenditure by the NBT tax rate. The tax rate used for calculation is 2% NBT rate.

The potential NBT revenue is different from the potential NBT revenue collectable by the tax authority, denoted by $PNBT^C$, because of the existence of tax exemptions. Therefore, $PNBT^C$ can be calculated as follows:

$$\mathbf{PNBT^C = PNBT^R - EXMT} \qquad \ldots\ldots\ldots\ldots\ldots\ldots (2)$$

where, EXMT stands for value of exemptions given on business turnover. The value of EXMT is computed by multiplying business turnover of tax exempted sectors by the NBT tax rate. In this case the business turnover of the following sectors was deducted from the household final consumption expenditures: housing, water, electricity, gas and other fuels, health, transport, education, recreation and culture, restaurants and hotels and direct purchases abroad by residents. Therefore the potential revenue collectable by the tax authority is given as the difference between potential NBT revenue and the exempted business turnover from the tax.

Using equations (1) and (2) we define the NBT policy gap as follows:

$$\textbf{NBT Policy Gap} = PNBT^{R} - PNBT^{C} \quad \ldots\ldots\ldots\ldots\ldots\ldots (3)$$

where the policy gap is defined as the difference between the potential NBT revenue and the potential NBT collectable revenue by the tax authority. The term policy gap means that government policies on taxation, such as tax rate policies and growth oriented or consumption oriented exemption policies may largely determine the gap under a given level of economic activity. The government or the tax authority in this case has high leverage in managing the tax gap by adjusting tax rates and/or exemptions.

We define the NBT compliance gap as follows:

$$\textbf{NBT Compliance Gap} = PNBT^{C} - ANBT^{R} \quad \ldots\ldots\ldots\ldots\ldots\ldots (4)$$

where, $ANBT^{R}$ stands for actual NBT revenue collected by the tax authority.

The compliance gap indicates the degree of efficiency/inefficiency in the tax administration. A widening compliance gap indicates an inefficient tax system and tax administration as the actual tax collection falls below the potential revenue collectable. In a growing economy with a better tax system, we expect the compliance gap to be low.

In addition to the above tax gaps, the Collection Efficiency Ratio of the NBT, which gives the actual NBT revenue has been computed as a percent of the potential NBT revenue of government. If the tax system is efficient, the collection efficiency ratio should be closer to 100.

This paper uses time series data related to the NBT of Sri Lanka from 2010-2016 for the calculation of the above two gaps. Data was obtained from the Annual Reports of the Central Bank of Sri Lanka and publications of the Inland Revenue Department (IRD) of Sri Lanka. Secondly, we used audit information to find evidence on the NBT compliance gap. Generally, the IRD audits 3% of total NBT files annually and recovers an additional (assessed) NBT revenue. We use this additionally assessed NBT revenue (after audit) as a measure of the compliance gap. We use information on tax default also to discuss the compliance gap. The tax default occurs when a taxpayer does not pay the tax that he/she has to pay as per the revealed business turnover on the tax return. For this we use aggregate information of annual audited NBT tax files from Annual Performance Reports of the IRD.

Analysis

Table 1 gives the details of NBT tax files and revenue collection during the period between 2010 and 2016. Though the NBT was introduced in 2009, our analysis is limited to the 2010-16 period due to availability of complete data. The number of NBT tax files increased markedly from 2010 to 2012 due to changes in the threshold of taxable business turnover. In 2011, the threshold business turnover reduced to Rs. 500,000 per quarter and as a result the number of NBT tax files increased to 91,702 in 2012 from 14,577 files in 2010. However, during the period 2013-2015, the number of NBT files reduced significantly as the quarterly taxable business turnover increased to Rs. 3 million in 2013 and to Rs. 3.75 million in 2015. As a result, more than 70,000 NBT tax files were closed during this two-year period. The threshold of the NBT was again reduced to Rs 3 million per quarter in 2016. As a result, the number of NBT files increased by more than 75,000 in the year. The total NBT revenue collected in nominal terms has increased from Rs. 46 thousand millions in 2010 to Rs. 84 thousand millions in 2016. This has increased the NBT share of total indirect tax revenue of Sri Lanka from 15% in 2010 to 21% in 2016. It is reported that the NBT accounts for about 12% of the total revenue collected by the IRD of Sri Lanka. The GDP share of NBT shows fluctuations as the share dropped from 0.7 in 2010-2011 to about 0.6 between 2012 and 2015. It has recovered again in 2016 and increased to 0.8 in 2017 as per provisional data of the year. Therefore, the drop in the number of tax files has created a significant loss to the NBT revenue collected by the IRD and resulted in a downturn of NBT revenue compared to the growth of the economy, i.e. decrease in NBT revenue share of GDP.

Table 1 NBT Files and Revenue Collected

Year	No. of NBT Files	Actual NBT Revenue Collected (Rs. Mns)	NBT Revenue as % IRD revenue	NBT Revenue as % of Indirect Taxes	NBT Revenue as % of GDP
2010	14,577	46,023	11	15.1	0.72
2011	60,370	53,501	12	17.4	0.74
2012	91,702	57,106	13	20.0	0.65
2013	20,480	59,397	12	20.2	0.62
2014	22,381	65,354	13	20.3	0.63
2015	21,627	67,911	12	22.3	0.62
2016	97,438	84,066	13	20.9	0.71

Source: Performance Reports of IRD, 2010-16.

Table 2 provides computed potential NBT revenue, potential NBT revenue collectable by the IRD and NBT gaps. The potential NBT revenue for the year 2010 was estimated to be Rs. 87,804 millions. It increased to Rs. 160,076 million by 2016 with a 10.6 average annual nominal growth rate. In 2010 the potential revenue collectible is estimated to be Rs. 51,913 million. It increased gradually during the period and stood as Rs. 90,974 million in 2016. During the period the potential revenue collectable increased by an annual average rate of 9.93% which is in par with potential NBT revenue growth. During the period 2010-2016, the actual NBT revenue collected by the IRD also increased from Rs. 46,023 million to Rs. 84,066 million with a 10.79% average annual nominal growth rate. It seems that the potential revenue estimate, potential revenue collectible estimate and actual NBT revenue collected have reported almost equal growth rates in nominal terms. However, during the course of seven years the IRD was not able to bridge the initial gap reported between these variables on average.

Table 2 Calculation of NBT Policy Gap and Compliance Gap

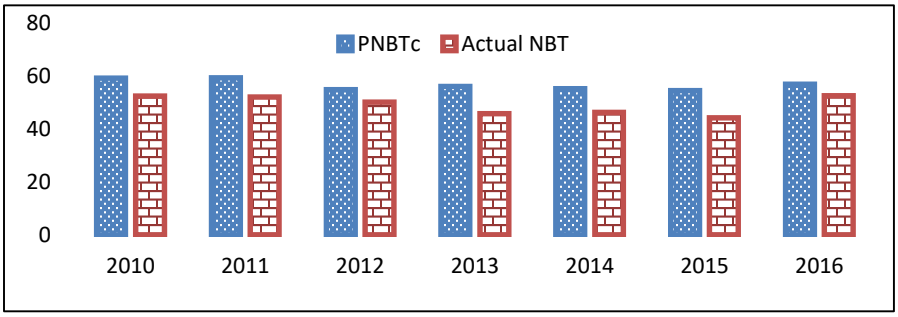
Year	Potential NBT Revenue Rs Mn	Potential Revenue Collectible by IRD Rs Mn	Actual NBT Revenue Collected Rs. Mn	NBT Compliance Gap Rs. Mn	NBT Policy Gap Rs. Mn	Total NBT Gap Rs. Mn
2010	87804	51913	46023	5890	35891	41781
2011	102898	61042	53501	7541	41855	49396
2012	113834	62438	57106	5332	51396	56728
2013	129673	72687	59397	13290	56986	70276
2014	141493	77993	65354	12639	63500	76139
2015	153543	83698	67911	15787	69845	85632
2016	160076	90974	84066	6908	69102	76010
Average	**127046**	**71535**	**61908**	**9627**	**55511**	**65138**
Average nominal growth rate	**10.60**	**9.93**	**10.79**	**18.63**	**11.77**	**11.09**

Source: Author's calculations.

Figure 1 gives potential NBT collectible by the IRD and actual NBT revenue collected by the IRD as a percentage of potential NBT revenue estimated. It reveals that the potential NBT revenue collectible remains below 60% of potential NBT revenue. During the period 2012-2015, the ratio has fallen to about 55% and slightly improved in 2016. The actual NBT revenue collected generally remains at about 50% of potential NBT revenue. However, the

ratio dropped to about 45% during 2013-2015 and recovered in 2016. It seems that the difference between the potential NBT revenue collectible by the IRD and the actual NBT revenue collected has been narrowed down with the growth in both variables indicating an improvement in the collection of the tax.

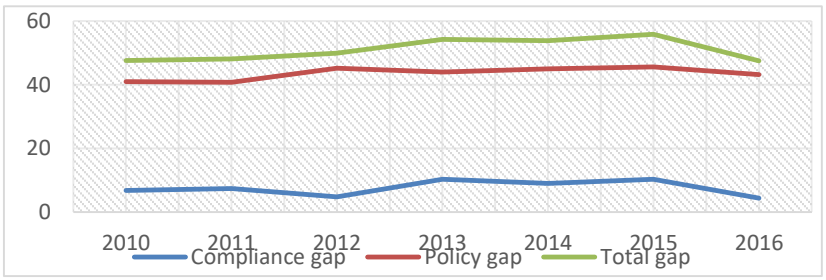
Figure 1 Potential NBT Collectable and Actual NBT Revenue as a Percentage of Potential NBT Revenue



Source: Author's calculations.

Table 2 also gives the estimated NBT tax gaps: compliance gap, policy gap and total gap. There is a large year to year variation in the compliance gap. The gap has increased largely in 2013 and 2014 compared to previous years and increased to more than Rs. 15,000 million in 2015. In 2016, the estimated compliance gap reduced markedly to Rs. 6,908 million from Rs. 15,787 million reporting an annual drop of more than 56% in nominal terms. Despite the significant drop in 2016, the compliance gap has on average reported about 18.6% as nominal growth rate during the period. The presence of taxpayers who are qualified for payment of NBT but have not registered for that, presence of taxpayers who have already engaged in payment of tax but made under payments and also presence of registered persons who actually do not pay taxes may be considered as the main factors affecting the compliance gap.

Figure 2 NBT Compliance, Policy and Total Gaps as a Percentage of Potential NBT Revenue Estimate



Source: Author's calculations.

The NBT policy gap in levels however reports a regular increase during the period. It increased from Rs. 35,891 million in 2010 to Rs. 69,845 million in 2015 though it dropped slightly by Rs. 743 million in 2016. The average annual nominal growth of the NBT policy gap remained as 11.77% during the period. The key policy decisions affecting the policy gap under the existing NBT rate are tax exemptions granted for sectors such as house rent, water, electricity, gas, other energy usage, health, transport, sport, entertainment and cultural affairs, education and hotels and restaurants. In addition, the policy gap becomes large due to tax exemptions granted for 50% of the business turnover on wholesale and retail trade.

Figure 2 explains how NBT gaps as shares of the potential NBT revenue estimate have changed over time. During the period 2010-2016, the total NBT gap remained as 51.3% of potential NBT revenue estimate on average. The share was of course less than 50% before 2013. In the years 2013 and 2014 the total NBT gap has increased above 50% and reached 55.8% in 2015. In 2016, it dropped to about 47.5%. Of this total NBT gap, the policy gap accounts for 43.7% and compliance gap accounts for 7.6% on average during the period. A close observation of Figure 2 reveals that the compliance gap showed a steep drop in 2016 compared to the trend in the policy gap. Further, the difference between the policy gap and the total gap has become narrower in 2016, indicating a significant improvement in the NBT compliance.

Table 3 gives potential NBT variables and NBT gaps as a percentage of GDP over time which can be used to examine the time series behavior of NBT variables in relation to the movements in GDP. The GDP ratios of potential NBT revenue, potential NBT collectible and gaps variables remain fairly constant over the years. This signals that the potential NBT variables have reported a growth rate equivalent to the growth rate of the aggregate economy.

Table 3 NBT Gap as a Percentage of GDP and Collection Efficiency Ratio

Year	Potential NBT Revenue as % of GDP	Potential Revenue Collectible by IRD as a % of GDP	NBT Compliance Gap as a % GDP	NBT Policy Gap as a % of GDP	Total NBT Gap as a % of GDP	NBT Collection Efficiency Ratio
2010	1.37	0.81	0.09	0.56	0.65	52.42
2011	1.43	0.85	0.10	0.58	0.68	51.99
2012	1.30	0.72	0.06	0.59	0.65	50.17
2013	1.35	0.76	0.14	0.59	0.73	45.81
2014	1.37	0.75	0.12	0.61	0.73	46.19
2015	1.40	0.76	0.14	0.64	0.78	44.23
2016	1.35	0.77	0.06	0.58	0.64	52.52
Average	**1.37**	**0.77**	**0.10**	**0.59**	**0.69**	**49.04**

Source: Author's calculations.

In Table 3 the NBT collection efficiency ratio has been produced which is defined as the percentage the actual NBT revenue collection over the potential NBT revenue of the government. If the tax system is efficient, the collection efficiency ratio should be close to 100. The NBT collection efficiency of Sri Lanka seems to be very low as its period average is just 49.04% and it recorded a declining trend from 2010 to 2015. The NBT collection efficiency ratio fell from 52.42% in 2010 to 44.23% in 2015 by 8.19% points. This signals a significant loss in the collection efficiency of tax. However, the collection efficiency ratio improved in 2016 compared to the previous year indicating an improved tax administration.

Table 4 Additional Turnover and Assessed Tax Revenue after Audit

Year	No. of Files Audited	Additional Turnover after audit		Additional NBT assessed after audit		
		Amount Rs. Mn.	As a % of GDP	Amount Rs. Mn.	As a % of Actual NBT Revenue	As a % of GDP
2010	437	2169	0.03	201	0.44	0.003
2011	1811	9819	0.14	570	1.07	0.008
2012	2751	123612	1.42	2337	4.09	0.027
2013	614	69935	0.73	2461	4.14	0.026
2014	671	105044	1.01	1997	3.06	0.019
2015	649	66972	0.61	1627	2.40	0.015
2016	2923	116913	0.99	2776	3.30	0.023
Average	**1408**	**70638**	**0.70**	**1710**	**2.64**	**0.017**

Source: Author's calculations.

Table 5 NBT Defaults

Year	NBT Default Rs. Mn.	NBT Default as a % of Actual NBT Revenue	NBT Default as a % of GDP
2010	1578	3.43	0.025
2011	1777	3.32	0.025
2012	2415	4.23	0.028
2013	2654	4.47	0.028
2014	2727	4.17	0.026
2015	3828	5.64	0.035
2016	6560	7.84	0.055
Average	**3077**	**4.72**	**0.032**

Source: Performance Reports of IRD

Table 4 gives number of audited files and additional turnover and assessed tax revenue after the audit. The IRD generally audits three% of total NBT files annually. However, this 3% of files will be selected from files which are suspected to have incorrect information or under-revealed information. The number of audited files follows the variation in total NBT files. The amount of additional turnover revealed from the audit varies largely from Rs. 2169 million in 2010 to Rs. 123,612 millions in 2012. On average, annual additional business turnover brought to the taxation after audit is Rs. 70,638 million during the period. This additional business turnover accounts for about 0.7% of GDP of the country. The additional NBT assessed after the audit has increased significantly from 2010 to 2016. The additional assessed NBT was Rs. 201 million in 2010 which is about 0.44% of total NBT revenue. The amount has increased to Rs. 2776 million in 2016 which is about 3.3% of total NBT revenue of the year. By auditing 1408 NBT files in a year on average the IRD collected additional NBT revenue of Rs.1710 million in a year during the period. This indicates that if the IRD audit at least 10% of similar files (about 9744 files in 2016), it has the potential to collect additional NBT of Rs.9, 253 million approximately which is about 11 percent of the actual NBT collected.[7] It will also result in reducing the NBT tax gap by about 9 percentage points. This indicates that there is a large potential for increasing the NBT revenue by strengthening auditing of tax files.

[7] It is believed that the number of tax files with false information or under-revealedestimation are more common among the taxpayers in Sri Lanka. However, because of staff, other resources and time constraints the IRD has restricted the audit sample to 3% of files. Improvements in the tax compliance and availability of correct information requires the IRD to increase its audit capacity.

Table 5 gives another side of the NBT tax compliance, i.e. the default amount of the tax. Defaulting occurs when the taxpayer does not fully pay his/her due tax liability calculated based on revealed business turnover in the tax return. The reported NBT default was amounted to Rs. 1578 million in 2010. This has gradually increased over time to reach Rs. 6560 million in 2016. The defaulted amount stood as 7.8% of the NBT revenue collected in 2016. This large default rate again indicates a high degree of inefficiency in the NBT collection of Sri Lanka.

Conclusions

The objective of this paper was to find and analyze the policy gap and the compliance gap of the NBT revenue of Sri Lanka. The policy gap explains the loss of tax revenue due to government policies on tax rates and tax exemptions. The compliance gap, however, indicates the inefficiency and fraud in the tax system as the actual tax collection falls below the potential revenue. In this study, the tax gap is defined as the difference between the potential revenue and the actual collected tax revenue. This method of estimation is more aligned with the national accounting approach of the macro method based on the calculation of potential revenue. Further, we use assessed NBT revenue after audit as a measure to explain the compliance gap. Information on NBT default has been used to explain causes of the compliance gap.

The paper finds that the potential NBT revenue estimate, potential NBT revenue collectible estimate and actual NBT revenue collected have reported almost equal growth rates in nominal terms. There is a large year to year variation in the estimated compliance gap. It has on average reported nominal growth rate of about 18.6% during the period. The period average of the NBT compliance gap stood as Rs. 9627 million. The NBT policy gap in levels however reports a regular increase during the period with an average nominal growth rate of 11.8%. The period average of the NBT policy gap stood as Rs. 55,511 million during 2010-2016. The period average of total NBT gap stood as Rs. 65,138 and the gap recorded 11% nominal growth rate between 2010 and 2016.

It was also found that the total NBT gap remains at 51.3% of potential NBT revenue estimate on average. This total NBT gap shared as 43.7% of policy gap and 7.6% of compliance gap on average during the period. As per the results, the policy gap which is mainly due to tax exemptions given creates a large impact on the total NBT gap. The time series behavior of data indicates a significant improvement in the NBT compliance in recent years, especially

in 2016. The near constant GDP ratios of potential NBT revenue, potential NBT collectable and gap variables indicate close association between the growth of potential NBT variables and the growth of the aggregate economy. Further, audit information reveals that hiding of information or under stating of information in tax returns is one of the major causes of the tax compliance gap. It is also revealed that tax default contributes significantly towards the compliance gap.

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Appearances are Deceptive: Identity Crisis in Plautus' *Menaechmi* and *Amphitruo*

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Abstract

This paper focuses on the issue of identity presented in Plautus' Menaechmi and Amphitruo. This paper focuses on the issue of identity presented in Plautus' Menaechmi and Amphitruo. Plautus touches upon social, political and philosophical concerns of the day while evoking humor. He manipulates similar names and appearances to confuse identities and to create a comic plot. In both plays there are moments where the characters question about themselves which would eventually lead them to an existential crisis. When dealing with this issue, Plautus uses metatheatrical aspects to connect his audience to make them a part of the experience. While discussing the matter of identity in the plays, this essay analyses on the contemporary Roman society in connection to the identity crisis.

***Keywords**: Plautus, identity crisis, Roman audience, Roman comedy, Amphitruo, Menaechmi*

Introduction

The identity of an individual is formed even before their birth and it either persists or gradually changes. With time, internal and external aspects influence the growth of a character. Sometimes one would aspire to assume someone else's identity, or one would impose a new identity on someone. Mistaken identity is a recurrent theme used in theatre, both in comedy and tragedy. For instance, in tragedy, Sophocles deals with Oedipus, Euripides with Dionysus in *Bacchae* regarding the identity crisis and the *anagnorisis*, "recognition", leads to a catastrophic ending. And this theme is quite common in New Comedy, as Plautus uses mistaken identity in his plots to create different scenarios which arouse humor. Is there more to it than mere humor?

This essay examines several aspects related to the issue of identity portrayed in Plautus' *Menaechmi* and *Amphitruo*. First, it is vital to study how Plautus

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plays with one's name in creating a comic plot. He creates confusion by playing with the same name given to different characters but identical in appearance. Secondly, he takes this to a higher level by introducing immortals who are shape-shifters who have the power to disguise as whoever they wish to. On the one hand, *Menaechmi* struggles with people who are born identical and on the other hand *Amphitruo* deals with characters who turn themselves into another to look alike. At the same time, not just the characters, but many of the Plautine 'plays' themselves deal with identity crisis. Are the plays simply Roman, Greek or a fusion? When dealing with this, Plautus uses metatheatrical aspects. Here I focus on the effects of using this feature and how it aids to portray something far beyond a comedy. Thus, while discussing the issues of identity in the plays, this essay focuses on the state of the Roman society at that time and the contemporary society in connection to the identity crisis.

Previous Scholarship

There is much work done on Plautus and his plays, but here I only discuss some works which center on the topic that I have chosen. Plautine comedy is filled with plots of disguise. Several authors have dealt with this theme and Frances Muecke in his article, "Plautus and the theatre of disguise" (1986), presents how disguise is not merely a "plot devise" or "an element of intrigue", but evokes "a metaphorical meaning" from a visual perspective (Muecke, 1986: 217). Throughout his article he connects how theatre itself has a nature of disguise in the sense of representation and performance. An actor disguises with costumes to imitate a character. Here a character disguises to impersonate another character. Thus, in a way these plays have a play within a play.

An issue that revolves around the play *Amphitruo* is about its genre and this aspect, as I believe, aids to explore the theme of identity crisis as well. R. P. Bond mentions in "Plautus' *Amphitryo* as tragi-comedy" (1999) that the play presents signs of "being of mixed genre" as voiced by one of the characters of the play itself[2](Bond 1999: 203).The article quotes from the work of John Orr, *Tragicomedy and Contemporary Culture* stating how tragicomedy questions the certainty of self and the certainty of knowledge (Bond, 1999: 205) In the section where Bond examines the portrayal of character in the play, he analyzes the character of Amphitryo stating that he is a "figure of tragic potential" and the circumstances make him appear ridiculous (Bond,

[2] I will be further examining on this point in the section under, The confusion with shape-shifters.

1999: 209).The embodiment of these two aspects lead him to an existential crisis.
Thirdly, as Ruth R. Caston mentions in her article, "The Divided Self: Plautus and Terence on Identity and Impersonation" (2014), the themes of disguise and impersonation are not mere metatheatrical inventions but involve different types of philosophical thoughts. She mainly focuses on the Stoic and Epicurean ideas related to the issues of identity. Her article brings forward the idea that not just the dramatists of that era but also the philosophers were interested in the theme of identity at that time.

Language is also a very influential aspect regarding comedy. Erik Gunderson in his book, *Laughing Awry: Plautus and Tragicomedy* (2015) devotes a chapter to explore this notion. He explains about the deceptive nature of the words used in Plautus' plays in the chapter "Giving Words". The Latin idiom *verba dare* is often translated as 'to deceive' but not as 'to give words'. According to Gunderson, *verba dare* to Plautus is never about giving words, but plotting a treacherous "misrecognition" (Gunderson, 2015: 57). The characters who are in power believe that the words stand for reality while the disenfranchised uses words to control the other[3]. He believes that they only have words but not any other influence. However, as I believe, words are a powerful weapon which is used by those in power to control the marginalized as well. In the chapter titled, "The Last Laugh" he analyzes the play *Amphitruo* paying attention to the distress caused by the gods upon the mortals and how the abuse of another leads to a tragicomedy.

Name and Identity: What's in a Name?
First of all, it is vital to explore how Plautus draws our attention in several instances to the importance of a name. For one thing, in *Menaechmi*, Peniculus at the beginning of his monologue states *iuventus nomen fecit Peniculo mihi, ideo quia mensam, quando edo, detergeo* ,"The youth has given me the name Peniculus, because when I eat, I wipe off the table", (*Menaechmi,* 77-78) (Polt, 2015: 436). Thus, Plautus starts off by stressing the importance of one's name. At the beginning, the twin brothers were named as Menaechmus and Sosicles[4]. However, the tragedy occurs when Menaechmus gets kidnapped by the wealthy Epidamnian. Sosicles is given the name "Menaechmus" by their grandfather, who is also Menaechmus, simply because he loved the boy who got kidnapped more than the one who

[4] In this essay I will be using the name Sosicles for Menaechmus of Syracuse, for the purpose of clarification.

was at home. Accordingly, Plautus sets the stage for the comedy of errors with mistaken identity[5].

However, while emphasizing the importance of a person's name, there are also unnamed characters in Plautine comedy[6] (Duckworth, 1938: 268). For one thing, the wife of Menaechmus is simply, *matrona*, "wife". In many New Comedy plots, this is an apparent fact when it concerns the names of women, especially wives. Even in Menander's *Dyskolos* the wife of Knemon is known as "Sostratos' mother". As Duckworth mentions, are we to assume that they were originally named but the names got lost in the process or were they unnamed from the very beginning? (Duckworth, 1938: 268). Continuing with his argument, if this *matrona* is originally unnamed, does it mean that they are of little importance? Throughout the play, she is ridiculed and at the end of the play she becomes just a mere "good" with a price tag, *venibit uxor quoque etiam, si quis emptor venerit*, "Even his wife will be sold too, if any buyer would come", (*Menaechmi,* 1159-1160). If such is the case, this surely undermines her role while the slaves are named and given much prominence even to the origin of their name.

The Confusion with Shape-shifters

In *Menaechmi* the humor and the confusion increase since the two brothers have the same name and are identical in appearance. However, in *Amphitruo* the immortals use their power "to be identified" similarly as the two mortals presented in the play, *nam meus pater intus nunc est eccum Iuppiter/ in Amphitruonis vertit sese imaginem/ omnesque eum esse censent servi qui vident,* "For my father, Jupiter is inside now, he has turned himself into Amphitryo's image, and all the servants who see him assume that it is him" (*Amphitruo*, 120-123). The hidden agenda behind this is very clear, but the confusion it creates present more aspects to consider.

According to Greek mythology, many gods can take any shape they desire, and they have the power to do anything they want, even turning a play from a tragedy to a comedy or to a tragicomedy.

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[5] This echoes with Ionesco's *The Bald Soprano*, where Mr. and Mrs. Smith talk about the family of Bobby(s).
Mrs Smith: I was thinking about his wife. Her name was Bobby, like his. As they had the same name, when you saw them together, you could never tell one from the other. It was really only after he dies that you could tell which was which. But fancy, even now, there are still people who mix her up with her dead husband when they offer their condolences. (Watson (tr.), p. 89) Here, an entire generation is called Bobby. Ionesco cleverly questions and manipulates the issue of identity throughout this absurd play.

[6] According to him there are thirty characters that are unnamed in Plautus' texts.

> *deus sum, commutavero. eandem hanc, si voltis, faciam ex tragoedia comoedia ut sit omnibus isdem versibus. utrum sit an non voltis? sed ego stultior, quasi nesciam vos velle, qui divos siem. teneo quid animi vostri super hac re siet: faciam ut commixta sit: sit tragicomoedia*
>
> "I am a god, I will change it. This same, if you wish, I will change it from a tragedy to a comedy with all the verses the same. Whether you wish it would or not? But I am too stupid, as though I didn't know what you wish, who am a god. I feel what your mind feels about this matter: I'll make this a fusion: may it be a tragicomedy" (*Amphitruo,* 53-59).

These lines are uttered by Mercury in *Amphitruo*. Here several facts are important to this discussion. For one thing, the matter regarding the genre of the play is first brought forward. Secondly, who is Mercury? Gunderson analyses the function of Mercury as a character in the play in the following way: "Mercury is outside the drama as well as inside it. Mercury is a god as well as a slave. Mercury is a god dressed as a slave. Mercury is a man dressed as a god dressed as a slave. Mercury is an actor. Mercury is an orator" (Gunderson, 2015: 78). Thus, Mercury assumes several roles within the play. As Gunderson summarizes, Mercury presents the audience about the "theatro-political" world and the issue of servitude which loom over Rome. Therefore, Plautus uses these disguises to evoke some of the prevailing issues of the day.

In *Menaechmi*, the name or the identity of the character changes due to the immense love that the grandfather has towards his grandson, and in *Amphitruo* Jupiter simply wants to sleep with Alcumena. *Amphitruo* is the only surviving comedy of Plautus which includes immortals as characters in a play and deals with a mythological story. His other extant plays focus on domestic life and day to day situations. Thus, it is significant that Plautus uses this myth to illustrate the issue of mistaken identity which he explores in many other plays. A mortal can change his name but only an immortal can turn himself physically into another. Even then, it is quite rare to witness the king of gods appearing on stage. In *Amphitruo* the immortals assume a new identity "to mount a deception" (Muecke, 1986: 218). As Muecke discusses in his article, "those involved in a disguising typically discuss the details in advance and prepare the audience for the fooling of the victim" (Muecke, 1986: 218). In the prologue, Mercury signals to the audience how they would be able to recognize the similar figures on stage apart but not the characters

involved in the play except for the gods. This heightens the humor and keeps the audience in an elevated position, almost as equals to the gods themselves.

> *nunc internosse ut nos possitis facilius, ego has habebo usque in petaso pinnulas; tum meo patri autem torulus inerit aureus sub petaso: id signum Amphitruoni non erit.*
>
> "Now, that you may be able to easily distinguish between us, I will always carry these little wings here on my cap, then my father however will have a golden tassel under his cap; that mark will not be on Amphitryo" (*Amphitruo*, 142-145)

On the other hand, in *Menaechmi*, as Moorhead concludes each Menaechmus makes their identity clear through their speeches (Moorhead, 1953: 123-124). Secondly, the *palla*, "robe" or "mantle", plays a main role where it is only worn by Menaechmus under his toga at the beginning, whereas Sosicles carries it afterwards. Thus, in both plays Plautus tries his best not to confuse the audience unlike he does to his characters in order to heighten the humor and drama in the comedy.

The Confusion Within: Who Am I? Am I Insane?

In both plays there are moments where the characters question themselves and it goes to the length where they end up doubting their own identity.

> *quid, malum, non sum ego servos Amphitruonis Sosia? nonne hac noctu nostra navis huc ex portu Persico venit, quae me advexit? nonne me huc erus misit meus? nonne ego nunc sto ante aedes nostras? non mi est lanterna in manu? non loquor, nón vigilo?*
>
> "What the hell! Am I not Amphitryo's slave Sosia? Didn't our ship come here from Port Persicus this night, which brought me here? Didn't my master send me here? Am I not standing in front of our house now? Isn't there a lamp in my hand? Am I not speaking, am I not awake?" (*Amphitruo*, 402-407)

Mercury with his power of words and appearance "convinced" Sosia that "he has lost his identity" (Duckworth, 1938: 150). This is an aside scene, and he talks to himself and speaks to the audience at the same time while Mercury is standing next to him on stage. This section highlights the helplessness of the mortals when they become the puppets of the immortals. Sosia questions about his own existence and there is no one to aid him at this point. For the gods, this is a matter of pure entertainment and pleasure but for Sosia and

Amphitryo even Alcumena, it becomes a tragic incident. Thus, there is both the embodiment of tragic and comic features.

It is worth observing how Plautus deals with the confusion of women and men equaling it to pure madness. No one tries to understand each other, they stick to their own beliefs. For instance, in *Amphitruo* when Sosia was confused after seeing his own double, Amphitryo treats him as crazy. Similarly, when Alcumena is at a complete loss, both Amphitryo and Sosia consider her to be mad or insane, *quaeso, quin tu istanc iubes pro cerrita circumferri?*, "Please why don't you order an exorcism for this madwoman?", (*Amphitruo,* 776). Alcumena is also going through the same identity crisis that Sosia underwent at the very beginning of the play with Mercury, but he is not trying to understand her situation. Alcumena becomes the innocent victim of the play because no one listens to her and she is ridiculed by her own people. Christenson states that she is often characterized as "a misplaced tragic heroine" [7](Christenson, 2001: 243).

In *Menaechmi,* the first confusion occurs when Cylindrus, the cook, mistakes Sosicles for Menaechmus. There, Sosicles offers him money to purchase a *porci,* "pig", to perform a sacrifice to bring himself back into his senses. Later in the play, in a humorous way the confusion of Menaechmus is considered a sickness. Therefore, the family summons a doctor, *Salvos sis, Menaechme…non tu scis, quantum isti morbo nunc tuo facias mali?*, "Save you, Menaechmus. …Don't you know how much damage you are now doing to that disease you have?" (*Menaechmi,* 909-912). This is a pattern apparent in both plays, whenever a person is in a confused state due to reasonable causes, the others tend to label them as *insanum,*"insane",. Gradually, Sosicles acts "insane" to get them out of his sight, *quid mihi meliust quam, quando illi me insanire praedicant, ego med adsimulem insanire, ut illos a me absterream,*"Since they call me insane, what will be better for me than to pretend that I am insane, so that I may drive them away from me?", (*Menaechmi,* 831-832). Accordingly, he uses madness as a deception to get out of the problem[8] (Maurice, 2005: 52). In a way, this evokes humor but at the same time, it shows how hardly anyone is willing to discover the truth with logical reasons or listen to the other with caution.

The *anagnorisis,* "recognition", only occurs in *Menaechmi* due to the clever slave Messenio, *tua est imago. tam consimilest quam potest … / hi sunt*

[7] Moreover, quoting Sedgwick, he stresses that there is a change of tone in the play when she enters compared to the scenes with the immortals. Sedgwick, W.B. 1960. *Plautus: Amphitruo*. Manchester, p. 103 But overall, Christenson believes her role as farcical.

[8] Maurice discusses about the acting ability of Sosicles and that he is good at improvising.

gemini germani duo, "He is your image. He is as like you as it is possible to be. … These are the two twin brothers", (*Menaechmi*, 1062-1082) In *Amphitruo* Jupiter reveals himself in order to save Alcumena of any fault, *mea vi subacta est facere* ("She was forced to do it by my power" (*Amphitruo,* 1143).

As Moorhead states, "throughout the play their identity is repeatedly mistaken by their most intimate associates" (Moorhead, 1953: 123) In that sense do people know each other merely by their appearance and name? Simply because one has taken another's identity (name and appearance in this situation), does it render the same person? Are the name and appearance the only features of identifying a person? The way they talk, dress, walk, eat, their ideas or interests would be other reasons that would distinguish another from a doppelganger. But interestingly such factors are eliminated to heighten the humor of these plays. It is worth noticing that in *Menaechmi* Sosicles gradually adapts to the situation and acts his part well. He knowingly acts as someone else, and he seems to be enjoying this "new identity" which was imposed on him. Due to this cunning behavior Mc-Carthy renders Sosicles as "the play's trickster" (Maurice, 2005: 47). At this point Sosicles has nothing to lose, thus he does not care what happens to these Epidamnians or what they think of him.

The Identity of the Plays and the Metatheatrical Aspects

When dealing with the issue of identity, one's place of origin is equally significant. These plays are known as Greek adaptations and as de Melo points out Plautine comedy belongs to the genre of *fabula pallatia* (comedy in Greek dress) due to its adaptation of Greek plays (De Melo, 2011: 24). Thus, the plays themselves have a confused identity. They are not entirely Greek or Roman, it is a combination of both. According to Duckworth, in the study of Roman comedy, identifying what is Greek or Plautine is a hard task (Duckworth, 1938: 139). Adding to this point he stresses the idea that the audience in the second century BC was not much concerned with "the problem of originality" the plays were "popular entertainment". They were mainly craving for "an abundance of laughter" (Duckworth, 1938: 139).

The prologue of *Menaechmi* states that *adeo hoc argumentum graecissat, tamen non atticissat, verum sicilicissitat,* "So this plot is Greek; however, it is not Attic, truly Sicilian", (*Menaechmi,* 11)[9]. As Sharrock points out, his

[9] This idea is further explored by William S. Anderson in his chapter "Plautus and His Audience: The Roman Connection" in his book *Barbarian Play: Plautus' Roman Comedy* (1993).

underlying idea is that "we are in Rome" (Sharrock, 2009: 44). In order to add some *Romanness* to the play, Plautus includes for instance a range of Roman cuisine (De Melo, 2011: 27). Peniculus mentions about *glandionidam suillam, laridum pernonidam, aut sincipitamenta porcina*, "kernels of a swine, bacon off the rear leg, or pig's half-head", (*Menaechmi*, 210-211). As O' Bryhim states "colloquial expressions" (O'Bryhim, 2001: 160) such as *hercle, edepol,* "By Hercules! By Pollux!" add more Roman flavor as well.

Moreover, in *Menaechmi* the prologue quite skillfully plays with the audience. The narrator takes the viewer with him to the places he mentions, from Tarentum to Epidamnus and so forth, but even then, he says that he is in the same place: *verum illuc redeo unde abii, atque uno asto in loco,* "I have returned to the place that I have come from, and I'm still standing in the same place", (*Menaechmi*, 56). Plautus cleverly confirms "that this is a play" or the metatheatrical aspects emerge in such scenes, *haec urbs Epidamnus est, dum haec agitur fibula: quando alia agetur, aliud fiet oppidum,* "This city is Epidamnus, while this play is acting: when another one is acted, it will become another city", (*Menaechmi*, 72). The same applies to the characters[10]. Schoeman states that "self-consciousness is what constitutes metatheatre and is prevalent throughout the Plautine corpus'' (Schoeman 2014: 38). The characters ensure that the audience knows that they are "really just actors engaged in role playing" (O'Bryhim, 2001: 154).Secondly, to Schoeman "this is theatre of imagination" (Schoeman 2014: 40) and the spectator is taken from far beyond Rome. In *Amphitruo* Plautus mingles reality with illusion by introducing immortals (Schoeman, 2014: 54). These are either conveyed as monologues or asides and they directly address the audience. This is another way of keeping the attention of the audience and making them involved in the play.

The Identity Crisis and the Roman Audience

Since metatheatre is a recurrent theatrical technique that Plautus uses throughout his plays, there could be a reason behind this. For several reasons, during the Roman Republic it was difficult to keep the audience till the end of a play. For instance, the second prologue of Terence' *Hecyra* states that the shows were disturbed at times due to a tight-rope walker and another time because of a gladiatorial show[11]. Moreover, as Wiseman points

[10] *Sicut familiae quoque solent mutarier*: *modo ni caditat leno, modo adulescens, modo senex, pauper, mendicus, rex, parasitus, hariolus* (*Menaechmi*, 74-76).

[11] *quum primum eam agere coepi, pugilum gloria, funambuli eodem accessit expectatio: comitum conventus, strepitus, clamor mulierum, Fecere ut ante tempus exirem foras.* "The first time, when I began to act this play, the vauntings of boxers, the expectation of a rope-

out "even building a permanent theatre was regarded unacceptable" (Wiseman, 2015: 51). This shows the difficulties the dramatists had to face at that time. As O'Bryhim mentions, the use of military imagery in many of Plautus' plays might suggest the idea that since this is a time of war, the audience must have comprised with many soldiers and they were "conscripted citizens rather than volunteer professional soldiers" (O'Bryhim, 2001: 154). As he further states whether the audience was "unsophisticated that is a matter of opinion".

Such was the Roman audience. They were more enthusiastic to witness blood and other spectacular acts. With the end of the Punic War (264 BC–146 BC), the simplicity of the Romans drastically changed. Their life styles became complex with the influx of wealth. The fact that people who craved to enjoy another human being punished and killed in numerous ways while cheering in the audience, says a lot about the character of the Romans at that time. Killing became a sport for them. This in a way reminds of Juvenal's criticism of the Roman people, *panem et circenses, "*bread and circuses", (Juvenal, *Satire* 10.71). He shows his contempt for the moral degradation of the Romans and their cheap entertainment as gladiator shows without realizing the political propaganda behind all this. They were distracted by the politicians of the day. The Romans have forgotten about their old ways of their ancestors. They have become slaves to luxury and free life. This echoes in Sallust's *Bellum Catilinae* in Cato's speech, *saepe de luxuria atque avaritia nostrorum civium questus sum,* "I have often complained about the luxury and avarice of our citizens", (Sallust, *Bellum Catilinae* 52.7). When Sosia says *non vigilo*, "I am not awake", (*Menaechmi*, 407), it resembles the sleeping or inactive Romans which Cato talks about, *expergiscimini aliquando et capessite rem publicam,* "wake up once and save the republic", (Sallust, *Bellum Catilinae,* 52.5).

The issue with the Roman identity became serious with time. As mentioned above, after the Punic War, Rome faced issues with the citizenship. The rising numbers of slave population, the displacement of individuals during these catastrophic times, the extension of the Roman territory with its conquests and colonies, people of different stock mingled with the Romans. Even in the play, Menaechmus is kidnapped and many plays of Plautus deal with misplaced children, who are sold into slavery and young men facing issues with marriage due to falling in love with slave girls. However, all ends well with these plays after the recognition scenes where most of the time

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dancer, added to which, the throng of followers, the noise, the clamor of the women, caused me to retire from your presence before the time" (*Hecyra* :25-28).

these are misplaced children who got lost or either sold into slavery. Thus, this idea of citizenship is an underlying issue behind the mask of identity crisis.

Even when Augustus Caesar commenced his work as the first emperor, he laid out the Julian marriage laws (Lefkowitz, 1992) in the latter part of the first century BC. He wanted to reform the Roman society from its ills. Marriage was disregarded, and adultery prevailed, and this became a great obstacle for bringing up citizens of Roman blood. He aspired to maintain the Roman identity. This is echoed in *Menaechmi* when Menaechmus stole the mantle of his wife to present it to his courtesan, Erotium, he asks *ubi sunt amatores mariti*? "Where are the married lovers/adulterers?", (*Menaechmi*, 127). He says that they should congratulate him for performing such a brave task. Plautus in a way addresses the issue of adultery and the effect it would have on society.

When dealing with the plot of *Amphitruo*, two sons were born simply because Alcumena slept with two "Amphitrios". This is the most absurd part of the play. But on one hand, it shows that there will be issues concerning legitimate and illegitimate children if one gives into adultery. This might be a reason why the portrayal of Alcumena is done in a careful way. Christenson quoting Hunter, states that Alcumena is "the epitome of the respected Roman matron" (Christenson, 2001: 243). The fact that she is white washed of any blames at the end of the play shows the value of a virtuous woman. If she knowingly acted upon this act, things would have turned out very differently, thus she is "morally innocent of wrongdoing" (Duckworth, 1938: 150). Jupiter has the power to transform into any form, but he only takes the form of Amphitryo, in order to emphasize the virtuous nature of Alcumena. In such ways the plays render socio-political issues of the day.

Identity Crisis and Contemporary Society

When the world we live in frequently encounters cultural, social and political changes, the individual finds it problematic to maintain a fixed identity. For one thing, the development of technology has given a space for the individual to become whoever they want in the cyberspace. Social media provides a platform to create an identity and a freedom of power much similar to the supremacy manifested by the gods in *Amphitruo*. People can be whoever they want whenever they want. Thus, individual identity has become a chaotic struggle.

Moreover, the identity of an individual in the contemporary world, has crossed the boundary of one and moved into form a collective identity giving rise to the term identity politics. These alliances form to defend a particular group's interests politically, they could be either centered on gender, race, ethnicity religion or any other aspect in the society. As the ancient Romans had concerns with the Roman identity in order to be exclusive with their citizenship rights, likewise the modern-day movements hail specific groups to preserve their identity as a nation. Such worldwide movements have created a safe space for some of the minorities but at the same time these divisions have expanded the rifts among groups creating wider issues. And some parties believe that the emergence of identity politics affected class politics by paying much more attention to the afore mentioned aspects of the society (Bernstein, 2005: 48). However, the multiculturalists would welcome people of diverse interests from various cultures to be a part of a nation rather than encourage one mainstream culture.

Conclusion

Through the manipulation of names, appearances and treacherous plots, Plautus presents a comedy of errors. In Old Comedy, Aristophanes openly criticized the real-life figures and the ills of the society, the Roman playwrights of New Comedy use the mask of comedy or in this scenario the dual identity to present the issues of the day as well. As I mentioned in the introduction, the aspects of identity change and one would be led to the edge where they might lose their identity in the process, creating an existential crisis. It is vital that the viewer should realize that the identity is also a performance, an act where an individual is involved in a role play. Even in contemporary society, the introduced divisions or identities have paved the way for overlapping identities. Thus, enabling a person to acquire more than one identity. This in a way echoes with Gunderson's analysis of Mercury's character where he takes several roles on and out of stage. Therefore, it is evident that Plautine comedy based on mistaken identity draws a much deeper level of criticism of the society and man himself.

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Personal Disability or Social Inability – Social Construction Interpretation and Community Partnership for Welfare of PWDs

S. Gamlath[1]

Abstract

Disability is a complex phenomenon, involving different dimensions. This paper examines the historical move from the individual-medical model through welfare to social environmental interpretation of disability and its international consensus, and the provisions of United Nations Convention on the Rights of Persons with Disabilities (CRPD) which also stipulates disability as more or less a social construct and the value of bringing community as a key partner into the framework of action to ensure equal position of Persons with Disabilities (PWD) in society. This paper briefly looks at longstanding progressive attention to the welfare of PWDs in Sri Lanka as well. Based on the overall discussion, it concludes that making the community an active partner in the holistic action of the State, and enabling an open-door participatory structure as a community-based physical space to connect PWDs and their families to wider community sphere brings a range of pragmatic benefits to PWDs and connect them together as purposive self-help groups that advocate for and promote actions for their overall welfare, with social justice and equal inclusion in society, and become vigilant grass-roots watchdogs on monitoring progress.

Keywords: *Convention on the Rights of Persons with Disability, Medical Model, Welfare Model, Social Model, Social Interpretation, Community Space*

Introduction

The word disability conjures up images of a kind that few would consider enviable. Different people and cultures have different viewpoints about Persons with Disabilities (PWDs). Some see them as objects of pity, less of a human being, useless to society, not normal, scroungers etc. It is however a complex phenomenon involving different dimensions. Until very recently, any discussion of disability policies has focused mainly around medical treatment, welfare benefits and social services to help PWDs. Such policies have been increasingly challenged and now it is widely recognized that

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disablement arises not from physiological or cognitive impairments but from a host of social and environmental disadvantages (Drake, 1999). The United Nations Convention on the Rights of Persons with Disability (CRPD) which states that, "persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others" (UNO, 2007: Article 1, page 4) also acknowledges the importance of social environmental factors in determining the level of severity of disability. The article 37 of the Protection of Rights of Persons with Disabilities Act, No.28 of 1996 in Sri Lanka defines a person with disability as "any person who, as a result of any deficiency in his/her physical or mental capabilities, whether congenital or not, is unable by himself / herself to ensure for himself / herself, wholly or partly, the necessities of life" (GOS, 1996). It is, in fact, a definition which does not reflect the underlying social and environmental barriers which hinder the positioning of the lives of persons with disabilities (PWDs) on an equal footing with others in society. The conditions which remove people from being involved in mainstream life due to factors that are recognized as forms of "disability" can be individual and social or both. The individual conditions of disability can become severe as a result of social barriers. Therefore, ensuring an enabling social environment for the PWDs that will allow them to be involved in normal life as equal members of society becomes a collective social responsibility.

National census of population and housing in Sri Lanka in 2012, records approximately 1.62 million persons as having some type of disability.The numbers are believed to be much higher if those persons who have become disabled as a result of war, road accidents and a range of other health conditions etc. are taken into account. Of the total, the majority is female, i.e. 53% while males are 43% and older adults or the elderly with the extra burden of old age of these a staggering 95.7% have been revealed to have not engaged in any educational activity at all, and around 1.1 million are reportedly economically inactive (DCS, 2012).

These disturbing facts continued to remain even though, Sri Lanka has demonstrated concerns for the welfare of PWDs since pre-independence, i.e. about 1930s. As a result, some important steps have been taken all the way through post-independence decades to support PWDs and their families. With significant steps of the 1996 Act, National Policy in 2003 and National Action Plan in 2014, such efforts have been further strengthened. The 1996 Act, can be regarded as a promising effort in comparison with the global standards of the time. However, much of what has been done seem to be

"isolated activities" with "isolated impact". A significant change to make considerable positive impact on the lives of PWDs across the country is yet to be seen. The anecdotal evidence shows that a great majority of local communities have been by-passed when receiving the benefits of the existing services and programmes, and their exclusion can be viewed as a serious social issue which is yet to be dealt with. The country still lacks a unique plan of action, in terms of both policy and services, to ensure inclusion of persons with disabilities as equal citizens in the mainstream of society. It needs an overall revamping of the existing service delivery, implementation and monitoring mechanisms in order to ensure strong community involvement, especially at community level service delivery and monitoring. With the ratification of the United Nations Convention on the Rights of People with Disabilities (CRPD) in February 2016, Sri Lanka is now mandatorily obliged to be committed to create a disability friendly social environment through both policy and programme intervention.

This paper first examines the historical move from individual-medical model to the social environmental interpretation of disability and its international consensus, and CRPD provisions which also stipulate disability as more or less a social construct and the value of bringing the community as a key partner into the framework of action to ensure equal position of PWDs in society. It then briefly looks at longstanding progressive attention for the welfare of PWDs in Sri Lanka. Based on this discussion, the paper identifies "community space", especially networking together PWDs, their families and others including service agencies and professionals who are concerned for the equal participation of PWDs in mainstream processes and delineates what sort of community space it should be and identifies some of its core functions.

The conclusion commensurates with the CRPD recommendation for making the community an active partner and enabling an open-door participatory structure as a community-based physical space to connect PWDs and their families to the wider community sphere.The community connection will be a significant component in all aspects and levels of action. It brings many pragmatic benefits to PWDs and forms PWDS, their families and other interest and advocacy groups together as purposive self-help groups that vigorously advocate for and promote actions for their overall welfare, with social justice and equal inclusion in society, and become vigilant grass root watchdogs on monitoring progress.

Social Interpretation of Disability

Disability has been defined in different ways. It is a complex phenomenon, involving several dimensions. These different dimensions need to be reflected in any precise definition. Bowles (2005: 53) identifies three quite different models, or underlying beliefs, about disability that have emerged historically. They are (1) the individual-medical model (Medical Model), (2) the Welfare or Policy Model (Welfare Model) and (3) the Socio-Political Model (Social Model).

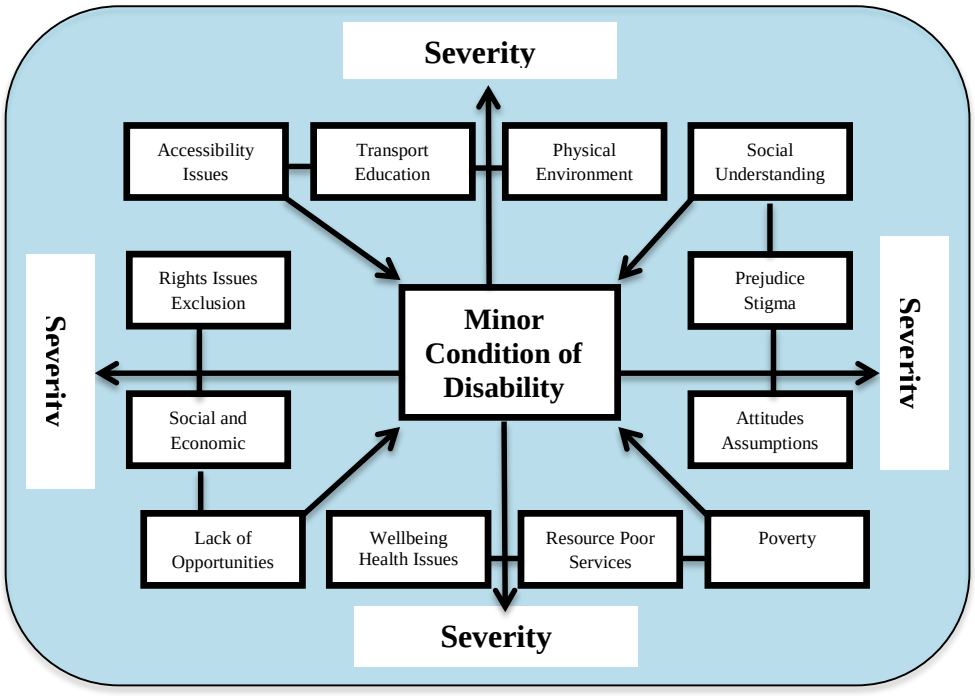
The explanation that has prevailed for most of the twentieth century was the medical interpretation of which the origin was Western medicine, which used the word disability to refer to the impact of "impairment" upon everyday living (Drake, 1999). This interpretation, however, challenged and responded to the moral approach to disability and human difference which had earlier prejudicially labeled disability as a personal tragedy or "*karma* etc., which was a religious interpretation with a condemnatory attitude, for which individuals were held responsible (Draper, 1995). Therefore, "the medical approach was a significant shift in thinking from the moral approach. Individuals were no longer held responsible for their medical conditions but were seen instead as hapless victims in need of expert help to assist them to recover" (Bowels, 2005: 53). However, the medically oriented definition of disability had also emerged within societies, constructed and governed by non-disabled people. As a result, the majority of changes that takes place still involve accommodating impaired persons into prevailing social norms and environment thereof, PWDs were still confined to "the impaired role" and were removed from all normal social roles and responsibilities (De Jong, 1983). There was no attention to the changes to the social and physical situation of the community to accommodate the needs of the impaired person. The medical definition then fails to sufficiently recognize the fact that the consequences of disability become more or less severe depending on the social environmental circumstances, and there was no concern for the fact that "in a world perfectly suited to a disabled person, although the physiological impairment still remains, he or she will no longer be "*disabled*" (Drake, 1999: 11).

The welfare model, known also as the economic or policy model as well, emerged with the growth of the welfare state. For the first time, disability was seen as a social problem caused by the person's "activity limitation", not just a "medical impairment", that required social solutions. The welfare model calls for educational and vocational, rehabilitation and community support for people with disabilities, and goals of independence and employment (Bickenbach, 1993). Within the welfare model 'patients'

became 'clients' and service support takes a more holistic approach with multidisciplinary teams working with the whole person in their environment (Oliver, 1996). Under the influence of the welfare model, social workers and other professionals took a more primary role with their newly labeled clients (Oliver, et. al., 2012).

More recently, however, a competing account, a more radical view of disablement, has emerged i.e. "social model of disability". The social model, which takes a human rights approach to disability, emerged due to the persistent failure of both the welfare model and medical model to take into account the effects of the social environment in creating disability (Bowles, 2005). It views disability as a "condition of which the level of severity is determined by a range of environmental, structural and attitudinal barriers than that of obvious congenial factors which deny the full participation and hence full citizenship rights of the person with disability in society" (Drake, 1999: 10). Drake (1999: 13) continues to emphasize that as such, disability is the disadvantage or restriction of activity caused by a contemporary social organization that takes no or little account of people who have physical impairments and thus exclude them from the mainstream social activities. With this view, disability was interpreted as much more a socially constructed phenomenon than that of either medical or welfare interpretation (Rimmerman, 2013; French and Swain, 2012; Oliver, Sapay and Thomas, 2012; Harris and Roulston, 2010;Bowles, 2005, 2005; Barnes and Mercer, 2004; WHO, 2001; Drake, 1999; Brisenden, 1986; Bickenbach, 1993). The severity of even manageable (minor) disabilities can become more rigorous when affected by broader socio-environmental factors.

Figure 1: Social Model of Disability



The social model of disability which is often referred to as the "barriers approach" views disability in terms of environmental, structural, and attitudinal barriers. The barriers impinge upon the lives of disabled people and have the potential to impede their inclusion and progress in many areas of life, including employment, education, housing and leisure (French and Swain, 2012: 6). This humane understanding about most of the problems faced by PWDs as consequences of external factors is a significant step forward in human history. The social environment transforms even a minor disability condition into a severe one (Figure 1). This debate about the meaning of disability is crucial if the attitudes and policies of the past are to be comprehended and the ambition of people with disabilities to achieve full citizenship and equality is to be realized (Drake, 1999).

According to this view, one can be much "less disabled" in a disability friendly social environment than that of another which is not comparably disability friendly so that it can be an experience rather than an acute condition. For example, an Australian lawyer who uses a wheelchair said that, "I am much less disabled in America, where I can get into most public buildings and catch public transport on my own" (Bowles, 2005: 50). Crow (1992: 2) explains that disability is not always a problem with the body but with society. "It wasn't my body that was responsible for all my difficulties, it was external factors. I was being dis-abled – my capabilities and opportunities were being restricted – by poor social organization". Even more importantly, if all the problems had been created by society, then surely society could un-create them". Brisenden (1986: 176) argues that "We are disabled by buildings that are not designed to admit us, and this in turn leads to a range of further disablements regarding our education, our chances of gaining employment, our social lives and so on. The disablement lays in the construction of society, not in the physical condition of the individual".

With the recognition that socially detrimental conditions determine the degree of "severity of disability", new perspective that severity of disability is more or less a "social construct", promotes recognition of people with disabilities as a clearly visible minority group in modern society. Bowles (2005: 56-57) quotes Morris (2001) who argues that two key points make the social model a radical shift in perspective from the medical and welfare models. First, it recognizes people with disability as a minority group, and the fact that disability is oppression and also discrimination and the "disabling barriers of unequal access and negative attitudes". Secondly, it asserts that with disabilities should be in charge of decisions and policy making in their lives and have independence as active citizens at all levels in society so their rights are protected. They should be able to speak with their

own voices rather than being dependent recipients of services dominated by the interests and perspectives of the able-bodied.

International Consensus

Social construction views about disability received significant attention with the World Health Organization (WHO) adopting a multidimensional definition of disability – International Classification of Functioning (ICF). It was officially endorsed by all 191 WHO Member States in the 54th World Health Assembly on 22 May 2001, Resolution, WHA, 54.21, as a collectively agreed international standard to describe and measure health and disability (WHO, 2001). As such, the ICF was developed through a collaborative international approach with the aim of having a single generic instrument for assessing health, welfare and social status and disability across different socio-cultural settings.

The ICF recognizes the importance of the social-environment and political forces in defining disability. It incorporates all these dimensions and stresses the condition of disability as a dynamic interaction between health conditions, welfare, social environmental and personal factors (WHO, 2001). It does not negate people's body structure and functions but significantly highlights their activities, the life areas they participate in, and the factors in their social environment that affect their experiences. With this broad interpretation, "severity of disability" was recognized predominantly as a socially constructed phenomenon. Medical conditions may still restrict people's abilities but the way those conditions are dealt with in the mainstream social process will determine the scale of a person's ability for self-care and level of independent participation in community (Bowles, 2005; WHO and World Bank, undated)

As a result of this discussion moving up to a significant world stage, the prejudiced attitudes of the able-bodied towards PWDs was recognized as a significant barrier for their inclusion. The proponents of the social model advocated for strong collective action at global level to raise awareness of the fact that "different abilities" are what is needed to be seen and appreciated, not "disabilities" or "inabilities". It created prolonged international discussions on the need for action from the international community for correcting a historical mistake, a grave violation of human rights and social justice. This consensus is resonated in the statement made by the then Secretary General of the United Nations, (UNO, 2008) "….as has (now) become clear to us, more needs to be done. Societies have continued to create disabling barriers. Persons with disabilities have continued to suffer from discrimination and lower standards of living. That is why last year,

after two years of deliberations, the international community recognized the need for an international convention, of an equal standard to other major conventions, to correct this injustice[2]".

Consequently, the United Nations Convention on the Rights of Persons with Disabilities (CRPD) came into effect in March 2007. It convincingly stresses, all throughout, the human rights and social justice issues associated with disability, and calls for all member States to take stern policy actions and make structural reforms to address them (UNO, 2010).

Convention on the Rights of Persons with Disabilities (CRPD)

The article 1 of the CRPD says that "the purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. The CRPD outlines the rights of people with disability under fifty (50) different articles. In addition, it presents a set of protocols under 18 different Articles regarding the powers vested on the committee. It is "to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by the State Party of the provisions of the Convention" (UNO, 2007: 33).

The CRPD recognizes that, "Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." (UNO, 2007: 5). It pronounces (Article 3) that, "the principles of the present convention shall be: (*a*) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; (*b*) Non-discrimination; (*c*) Full and effective participation and inclusion in society; (*d*) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity; (*e*) Equality of opportunity; (*f*) Accessibility; (*g*) Equality between men and women; (*h*) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities" (UNO,CRPD 2007, Article 3, page 5).

[2] Kofi Annan, as United Nations Secretary-General, in his message to the opening of the third session of the Ad Hoc Committee on a Comprehensive and Integral Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, on 24 May 2004 (https://www.un.org/sg/en/content/sg/statement/2004-05-24/secretary-generals-message-opening-third-session-ad-hoc-committee - last visited, 28 July 2018).

In summary, the convention provides protection for everyone in the member states against discrimination based on disability. It encourages everyone to be involved in implementing the provisions it sets out and to share the overall benefits to the community and the economy that flow from participation of the widest range of people. It recognizes that disability discrimination happens when people with a disability are treated less fairly than people without a disability. It bears even a much broader view about discrimination around disability, as it can occur when people are treated less fairly because they are relatives, friends, care-givers, or associates of a person with a disability. The discrimination against women and girls is specially mentioned, "women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms (UNO, CRPD, 2007: Article 6, page 8).

The CRPD recognizes the fact that severity of disability is a "social construct" than entirely a medical condition and as a result, the exclusion of PWDs from equal opportunity in society is a violation of fundamental human rights. It "recognize(s) the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community" (UNO, CRPD, 2007: Article 19, page, 14). A person with disability may be severely more disabled in a social environment where there is less concern for their rights than in one where their rights are upheld, and the social environment is conducive in accessibility accommodating them as equals in society.

The massage of the CRPD to all signatory states is to take a collective responsibility and formulate policies to make the social environment as disability friendly as possible. Although Sri Lanka initially signed the convention, it was finally ratified almost eight years after it was brought to the floor of the UN general assembly in March 2007. Now, the collective responsibility of the country is to create conducive social environment to accommodate PWDs as equal citizens. The policy needs to reach out establishing firm awareness across the society that PWDs are equal citizens of the country and need to be treated with fairness, equal treatment, and opportunity to live their lives with dignity that all others take for granted.

The Situation in Sri Lanka

Since as early as the 1930s, there have been concerns about the welfare of the PWDs in the country (Jayasuriya, 2000). Various relief measures and

services had been identified even before Sri Lanka gained independence from British colonial rule. The recommendation of Poor Law Ordinance No 30 of 1939 says that, "to provide such relief as may be necessary for persons of either sex unable to support themselves owing to physical or mental infirmity or incapacity and in need of relief" (part 11 section 4 (1), page 4). Again, the welfare and social security issue of the PWDs was one key area for which Sir Ivor Jennings Commission Report (1947) had recommended the need for formulation of stern policy and structural responses. Based on these recommendations, personal social services targeting PWDs and their families were introduced. Later on, further measures such as relief allowances for the needy disabled, compensation payments for the acquired workplace related incapacity, vocational training programmes for the disabled by the Department of Social Services, and training allowances from the Department of Labour etc. have been adopted along the years to support welfare of the PWDs and their families (Jayasuriya, 2000). These measures were continued through the hey-day of the welfare state in Sri Lanka during the period of 1950s and 60s with some progressive steps enacting more support services.

However, progression was curtailed and towards the late 1970s, severe resource limitation and lack of political will to continue with welfare state policies, and weakening traditional family and community-based systems of care and protection, have seen, not a serious setback but a standstill of gradual progress in attention to the welfare of PWDs that had been steadily progressing through 1950s and 60s. A reverse in this stagnation is seen again from about mid-1980s and as a result, different pieces of legislation and policies emerged at different times to guide targeted services. For example:

- Public Administration Circular 1988;
- Trust Fund Act for the Rehabilitation of the Visually Handicapped 1992;
- Protection of the Right of Persons with Disabilities Act No. 28 1996;
- Social Security Board Act 17 1996;
- National Health Policy 1996;
- General Educational Reforms 1997;
- Ranaviru Seva Act 1999; Protection of the Rights of Persons with Disabilities (Amendment) Act. No. 33 2003;
- National Disability Policy 2003; and,
- National Action Plan for Disability 2014

These are some legislative measures which promoted targeted personal welfare services including health, education, income support and rehabilitation together with training life and employability skills. Among them, provisions for the welfare of PWDs in Public Administration Circular of 1988, and Trust Fund Act for the Rehabilitation of the Visually Handicapped of 1992 are two significant legislative developments which enacted personal welfare services, income, rehabilitation and training services. They emphasized the inclusion of community sector organizational participation, training life and employability skills and rehabilitation, with the aim of drawing and connecting PWDs to mainstream socio-economic processes. It, in a sense, demonstrated a paradigm shift from maintenance to developmental approach (Midgley, 1996; UNDP, 1996) to welfare. Again, unlike the welfare service approach that the country had been predominantly adopting throughout previous decades for looking after the needs of PWDs, these new steps for inclusion of community sector participation in service delivery, at least to some extent, indicated not only simply of a lack of adequate resource concerns but of implications of some gradually changing attitudes towards the social justice perspective to service planning and delivery.

The Protection of the Right of Persons with Disabilities Act No. 28 of 1996, National Disability Policy in 2003 and National Action Plan for Disability in 2014 are certainly landmark developments. The 1996 Act provides a comprehensive definition of the condition of disability with a substantial coverage of medical, welfare and social concerns of disability. This can probably be regarded as significant progress in the field that the country had demonstrated even in terms of the global standards of the time. Two institutional arrangements, the National Council for Persons with Disabilities (NCPD) and the National Secretariat for Persons with Disabilities (NSPD) were created with the NSPD for the purpose of being the implementation arm of the decisions of NCPD which is the overall policy recommendation and overseeing arm of the Act (Ministry of Social Empowerment and Welfare, 2017). The National Policy in 2003 provides mechanisms and tools to implement the Act, outlining an extremely comprehensive framework of action. It promotes and protects the rights of PWDs with a social justice perspective, and recognizes that they should have opportunities for enjoying a full and satisfying life and for contributing to national development with their knowledge, experience and particular skills and capabilities as equal citizens in the country. The National Action Plan (NAP) for Disability in 2014 is another significant breakthrough and is widely regarded as the key document which promoted Sri Lanka towards its historic ratification of CRPD in February 2016. It provides a framework for the implementation of

seven core areas of National Disability Policy: empowerment, health and rehabilitation, education, work and employment, mainstream and enabling environment, data and research and social institutional cohesion. It calls on all state sectors at different levels to participate in the implementation of NAP and to include people with disabilities in their policies, plans and budgets. Equally, it also calls on the corporate and non-governmental sectors, and civil society and the mass media to participate and contribute to the implementation of the National Action Plan.

However, the grave failure in the implementation of the progress made in the area of policy had been widely evident in the country (Jayasuriya, 2000). There were gaps between the programmes designed to be implemented in accordance with new policy guidelines, and resources and institutional arrangement to deliver services. The discussion around the paradigm shift from the medical and welfare to the social model approach was heightened but the lack of adequate effort to raise social awareness enabling such a paradigm shift was a severe obstacle. There was no significant policy or programme efforts to make people understand disability as more or less a "social construct" promoting prejudiced social attitudes and negative public perceptions of disability, and a move to justify positive discrimination for inclusion of the PWDs with the opportunities in mainstream socio-economic processes. Inability to access physical structures hampers engaging in all aspects of opportunities that such places offer because clearing off barriers to convenient access to physical places with common agreement of all sectors which would ultimately be stipulated in terms of legal requirements, for example, setting essential specifications for multistoried public buildings, spaces of recreation activities, public transport services etc. had not happened. There was no effective and efficient coordination mechanism so that stern policy and programme implementation across all national, provincial and local levels had become somewhat inconsistent. As evidence at community level clearly demonstrated that factors such as lack of access and attention to quality of service, inadequate training of the frontline workers, neglect of duty of care, lack of responsible accountability in process and monitoring etc. had been some of the real barriers for effective implementation of the key policy and action. Such irregularities and misconduct continued to be unchallenged due to a lack of strong value foundation and positioning of power to act at the regulated administrative levels from top down if the values and mandated service requirements, codes of conduct etc. are breached. It is certainly by no means negligible because of the fact that the key beneficiaries of service provisions are an extremely vulnerable group of people in society. The implementation of severe retribution in situations of grievances due to deliberate violations of

professional codes of conduct of those involved in service delivery were either lenient or absent. The lessons are available in this regard to be learnt, for example, power for investigation and reprimand vested upon the Disability Services Commissioner in the state of Victoria in Australia (ODSC, 2017). This is to prevent mistreatment of the PWDs and their families at the hands of certain professionals, frontline service and care support workers etc. resulting mainly due to maltreatment, negligence or lack of mandatory duty of care.

Overall, what is actually noteworthy in the Sri Lankan situation is that because of the complex nature of a condition of disability with many different dimensions, for example, it may necessitate all medical, welfare, social dimensions, any pragmatic policy effectiveness will depend on its holistic nature of framework and mutually influential integration. Again, these scattered pieces of documents do not reflect value underpinning a unique visionary perspective. The policy which must be unique and guide the action is vague in terms of the value position it stands for. The CRPD reflects an integrated partnership approach with strong social justice and community – based value position. By no means is the power of PWDs themselves negated and it advocates for their inclusion in all aspects of action throughout. Social empathy, equality, justice principles and human rights permeates throughout the convention and participation of PWDs themselves and the wider community of their families, significant others and advocacy groups, is promoted as a primary stand at grass-root level from where firm observation of those values has to proceed.

Community Partnership

With the ratification of the CRPD, the voices of, not only the advocacy groups on those issues and concerns, but, most significantly, the collectives of PWDs and their families had strengthened so that the discussion on the equal opportunity for PWDs in the country had renewed. Inclusion of strong voices especially from the collectives of PWDs and their families was no longer continued to be unheard (Akasa, 2018; Ghai, 2002). In general, it was noticeable even in the CRPD stipulations, for example, the Article 3 of the convention clearly emphasizes the need for policies enabling full and effective participation and inclusion of PWDs in mainstream social action. Article 4 (3) states that in the development and implementation of legislation, policies and programmes, and in other decision-making processes concerning issues relating to persons with disabilities, the state needs to consult closely with and actively involve persons with disabilities through their representative organizations. Again, Article 19, emphasising the need for living independently and being included in the community,

strongly emphasises that the state requires recognizing it and providing for all persons with disabilities to live in the community, with choices equal to others. Effective and appropriate measures need to be taken to facilitate full inclusion and participation of PWDs in the community, and to prevent isolation or segregation from the community, community services and facilities that are available for the general population on an equal basis to persons with disabilities (UNO, CRPD, 2007, Article 19, page 13-14).

It has been well documented that the CRPD presents a comprehensive instrument to promote social inclusion of PWDs (Rimmerman, 2013; Flynn,2011) and this stipulation and its rigorous acceptance of the importance of community for PWDs is particularly consistent with the social model of disability (Scotch, 2011) State action with social understanding of disability and incorporated community connection strategies through active partnership as such have already been proven to be effective in generating a range of pragmatic benefits to PWDs and their families. It is already widely agreed that holistic action with the community being an active partner enables effective service planning and delivery as well as proper implementation and monitoring, and advocacy for further rights-based improvements. (NDS, 2017; White, Summers and Ferrari, 2017; Morales, A. et.al., 2015; Rimmerman, 2013; Scotch, 2011; Choudhry, 2011; ODSC, 2017; DHS, 2017; UNO 2010; Milner and Kelly, 2006; Ghai, 2002). The community sphere enables a comfortable space for PWDs and their families to feel that they are no longer passive welfare dependents but rather equals participating in society to the best level of their abilities, and that the services and facilities which create such an enabling environment are underlined with values of empathy and social awareness of justice, not merely the attitudes of sympathy and patronized medicalization of welfare (White, Summers and Ferrari, 2017; Rimmerman, 2013; Scotch, 2011; Choudhry, 2011). The experiences in situations of such enabling environments demonstrate that collective actions:

- promote strong civil society participation and effective voice of social advocacy on behalf of the PWDs for influencing gradual institutional changes to ensure that access and equity issues of the PWDs in the country are systematically addressed and answered;
- involve formal professional (through formal social or community service structures, for example, community-based agencies including NGOs) intervention at the community level and makes PWDs and their families aware of the existing public service provisions;
- enable their access to them, and link them to the systems for monitoring the flow of intended benefits; assists persons with

disabilities and their families to be aware of their rights, and become empowered and capable of self-advocating for their rightful place in mainstream socio-economic process;

- facilitate PWDs and their families to meet a range of social and recreational needs and training opportunities for enhancing life and employability skills within the community context through small purposive group activities;
- enable linking them gradually to identified CSR (Corporate Social Responsibility) stakeholders so that appropriate skills can be promoted to be included in the labour market;
- increase social awareness in general so that the disability of the persons should not actually be a matter to be highlighted at all;
- develop competency-based short-term training programs and deliver them to train a group of direct service workers to be employed in the sector, especially in the community-based agency context;
- promote active community volunteering, as many other countries have successfully done, in community-based programs facilitating and helping with social interaction of the PWDs across a range of social, cultural and recreational activities, and enabling possible opportunities of respite to their families as an extra social and emotional support;
- stimulate an empathic listening approach across the sector, especially in consultations for policy, program development and implementation, service planning and delivery, and monitoring which explicitly stress that persons with disabilities do not need "sympathy" and they are also equal citizens in the country for almost everything that others take for granted;
- advocate for recognition of PWDs as a clearly visible minority group in society clearing pathway to inclusion of their rights in statutory legislations, social policies, infrastructure and organizational systems etc. as equally as the rights of other minority groups; and,
- function as a strong vigilant "watchdog" on behalf of PWDs in situations of all forms of discriminations and abuses and advocating and appearing for ensuring justice.

When communities vary in their inclusiveness and support, impairment may become more or less salient to individual experience and life chances (Scotch, 2011). In situations where community dimension of society is threatened, for example, as Choudhry (2011) explains in the case of neo-liberal Indian State, PWDs are in grave peril in terms of support for social inclusion and community participation.

Conclusion

Disability is no longer seen as an unfortunate tragedy or medical condition. Until very recently, any discussion of disability policies was centered mainly around medical treatment, welfare benefits and social services to help PWDs. However, such policies have been increasingly challenged and now it is recognized widely that disablement arises not only from physiological or cognitive impairments but from a host of social and environmental disadvantages. The severity of even manageable (minor) disabilities can become more rigorous when affected by broader social environmental factors. The social model views disability as a condition of which the level of severity is determined by a range of environmental, structural and attitudinal barriers than that of obvious congenital factors and accidental physical deformities which deny the full participation and hence full citizenship rights of the person with disability in society. Accordingly, the social model of disability is often referred to as the 'barriers approach' where disability is viewed not in terms of the individuals' impairment, but in terms of social justice issues, which impinge upon the lives of disabled people and which have the potential to impede their inclusion and progress in many areas of life, including employment, education, housing and leisure. This humane understanding about most of the problems faced by PWDs as consequences of external factors is a significant step forward in human history. The debate about the meaning of disability is crucial if the attitudes and policies and actions of the past are to be comprehended and the ambition of persons with disabilities to achieve full citizenship and equality is to be realized.

Historical evidence shows that Sri Lanka has taken some positive steps, especially in terms of social policy, to respond to the welfare needs of the PWDs. Starting from the pre-independent period, up until when the United Nations Convention on the Rights of Persons with Disabilities (CRPD) was formally ratified in 2016, there have been a series of legislation and policy enactments including most significant initiatives, the Protection of the Rights of Persons with Disabilities Act of 1996, National Disability Policy in 2003 and National Action Plan in 2014. Yet, unfortunately, the key issue is that most of them seem to be ad-hoc responses with compartmentalized action with isolated impact, which are simply scattered across different pieces of documents, and are still incomprehensive in terms of a sternly effective unique framework of action. Because of the complex nature of a condition of disability with many different dimensions, any pragmatic service development and delivery effectiveness will depend on its holistic nature of framework and mutually influential integration of action at all levels from national to community.

With the country's ratification of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), a framework for action is now available. One key aspect of action that the CRPD rigorously promotes is involving the community as a key partner in action. The community connection has already proven to be a significant component in all aspects and levels of action, it brings many pragmatic benefits to PWDs, creates a community space by networking PWDs themselves, their families and other interest and advocacy groups together, and forms purposive self-help groups that vigorously advocate and promote action to be taken with a social construction perspective for their own welfare, with asocial justice and equal inclusion in society, becoming vigilant grass root watchdogs on monitoring progress.

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Ālaya-vijñāna in the Yogācāra School & Bhavaṅga - citta in Theravāda Abhidhamma in Relation to the Process of Rebirth

Ven. Zu Guang[1]

Abstract

This article examines and compares the concepts of Ālaya-vijñāna and Bhavaṅga-citta in the Mahāyāna and Theravāda Buddhist traditions. Vijñāna (consciousness) refers to the awareness that animates the physical body through each birth and death cycle. According to the Theravāda Abhidhamma, Bhavaṅga is the most fundamental aspect of the mind, which presents an aspect of consciousness (bhavaṅga-citta), as the basis of all mental processes in the Samsaric continuum. The process of sense perception begins with bhavaṅga and it continues throughout life like a river current until it is annihilated with the attainment of Nibbāna. Both Ālaya-vijñāna and Bhavaṅga-citta play important roles in psychological and physical processes. They serve as continuing mechanisms attaining wisdom in order to penetrate consciousness itself. They are crucial to mental and physical actions and play an extremely important role in the life continuum, and Nibbāna.

***Keywords**: Vijñāna (consciousness), Ālaya-vijñāna (store consciousness), Bhavanga-citta (factor of existence), Process of Rebirth*

Introduction

The *Yogācāra* School emphasizes that store consciousness (*ālaya-vijñāna*) is the life force of the "mind" which consists of the mental force of awareness that animates the physical body. *Ālaya-vijñāna* has been translated as 'store consciousness' which is the basis of everything. It means that all actions (*karmas)* created in the present life and previous lives are stored in the store-consciousness (*Ālaya-vijñāna),* regardless of the wholesome (*kusala)* or unwholesome (*akusala)*. By practicing the teachings of the Buddha, the unwholesome consciousness (*Ālaya-vijñāna*, *akusala)* can be eliminated or purified, which leads to the path of liberation.

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According to the Theravāda *Abhidhamma*, *Bhavaṅga* (factor of existence) is the most fundamental aspect of the mind which presents a kind of consciousness (*bhavaṅga-citta)* as the basis of all mental processes. The process of sense perception begins with *bhavaṅga* and it continues throughout existence like the current of a river until it is annihilated with the attainment of *Nibbāna*.

Both *Ālaya-vijñāna* and *Bhavaṅga-citta* play crucial roles in psychological and corporeal processes. They serve as a means of attaining understanding and wisdom (*paññā*) in order to penetrate consciousness itself. They are important for mental and physical actions. Thus, this article investigates *Ālaya-vijñāna* and *bhavaṅga-citta* in accordance with the Buddhist theory and further examines the role they play in the process of rebirth.

The Definition of *Ālaya-vijñāna* and *Bhavaṅga*

Ālaya-vijñāna and *Bhavaṅga* are extremely important in both Theravāda and Mahāyāna traditions. They are the key points of transition of a being from one life to the other in terms of the process and transformation to final emancipation. I will describe both concepts with regards to meaning and its functions.

The *Ālaya-vijñāna*

According to Venerable Walpola Rahula, all the elements of the *Yogācāra* storehouse-consciousness are already found in the Pāli Canon (De Silva, 1992: 66). He writes that the three layers of the mind (*citta*, *manas*, and *vijñāna)* as presented by Asaṅga are also used in the Pāli Canon: *Citta*, *Manas*, and *Viññāṇa.* Thus, we can see that *vijñāna* represents the simple reaction or response of the sense organs when they come in contact with external objects. This is the uppermost or superficial aspect or layer of the *vijñāna skandha*. *Manas* represent the aspect of its mental functioning, thinking, reasoning and conceiving ideas, etc. *Citta* which is here called *ālaya-vijñāna* represents the deepest, finest and subtlest aspect or layer of the aggregate of consciousness. It contains all the traces or impressions of the past actions and all good and bad future possibilities" (De Silva, 1992: 67).

The *Bhavaṅga - citta*

According to the *Abhidhamma* of Theravāda, the word *Bhavaṅga* is the most fundamental aspect of the mind (Wallace, 2007: 95), which presents a kind of consciousness (*bhavaṅga-citta)* as the basis of all mental processes or the life continuum.

Bhava means becoming and *aṅga* means factor. It means sub-consciousness literally referring to the fact of existence or life continuum. The Theravāda tradition asserts that the *bhavaṅga* is the most fundamental aspect of the mind and motivates one to seek *Nibbāna*. It is not found in the *sutta*s as a cognitive process but is first found in *Abhidhamma, Paṭṭhāna* (Collins, 1982: 238).

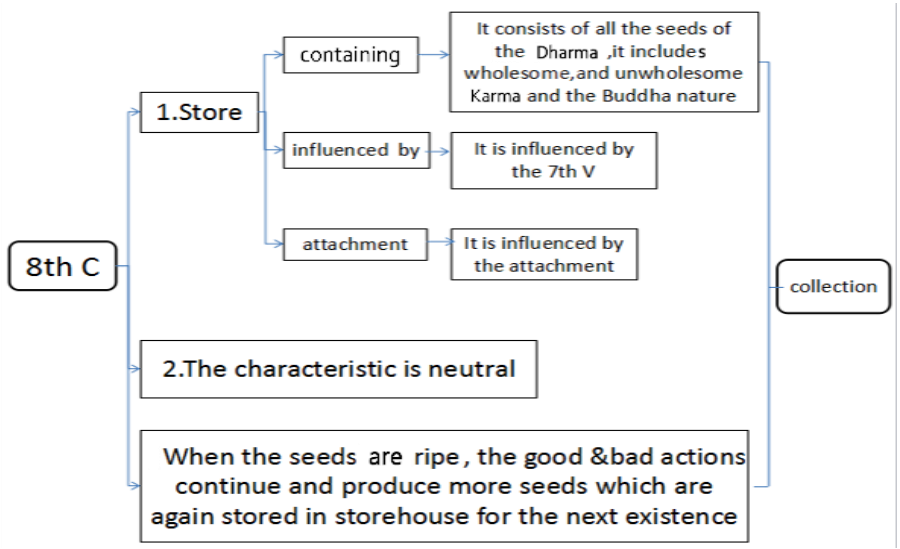
The Function of *Ālaya-vijñāna* and *Bhavaṅga-citta*

In this part, I will explain how the functioning of *Ālaya-vijñāna* and *Bhavaṅga-citta* according to the karmic potential.

***Ālaya-vijñāna* (Store Consciousness)**

The *ālaya-vijñāna* is constant, because it occurs conditioned by the past *saṃskāra*s, so it is also a karmically indeterminate resultant state (*avyākrta-vipāka*) and accumulates in the entire body.

For the term, Eighth "consciousness" (*ālaya-vijñāna*), its nature is exclusively the Non-obscuring indeterminate, and it interacts with the five universally interactive *Dharma*s. Before its transformation into wisdom, the eighth consciousness always arises together with the seventh consciousness and the five universally interactive *Dharmas:* attention, contact, feeling, conceptualization, and deliberation.



The concept of "Store Consciousness" (*Ālaya-vijñāna*) might have been developed in some early Buddhist schools (Zhicheng, 1991). Store consciousness accumulates all potential energy for the aggregate of the mind

and form (*nāma-rūpa*), the mental (*nāma*) and physical (*rūpa*), manifesting the existence of oneself, and supplying the ground for all existence. It receives impressions from all the functions of the other consciousnesses and retains them as potential energy for their further manifestations and activities. Since it serves as the basis for the production of the other seven consciousnesses (called the "evolving" or "transforming" consciousnesses), it is as well-known as the base consciousness (*mūla-vijñāna*) or the causal consciousness. Since it serves as the container for all experiential impressions (termed metaphorically as *bīja* or "seeds"), it is also called the seed consciousness (*種子識*) or container consciousness.

The Explanation of Consciousness (*Vijñāna*) in the *Saṃdhinirmocana Sūtra*

The conception of the *ālaya-vijñāna* takes on such a long train of synonyms and characteristics. For what the *ālaya-vijñāna* represents, in these classical *Yogācāra* texts at least, are all the aspects of *vijñāna* excluding supraliminal cognitive processes. And the functions and characteristics of subliminal mental processes are extremely complex and manifold.

How is the *ālaya-vijñāna* structured linguistically? As mentioned above, this subliminal consciousness is also called *consciousness-containing-all-seeds*.

The *ālaya-vijñāna is introduced* as the "*mind with all the seeds*" (*sarvabījakaṃ cittaṃ*), and the *Saṃdhinirmocana Sūtra* describes its process of development in terms closely related to the descriptions of *vijñāna* and the mental stream (*santāna*) in the *Abhidharma-kośa-bhāṣya* in the early Pali texts. In these early notions of the mind, the *ālaya-vijñāna* "*descends*" into the mother's womb, "*appropriates*" the gestating fetal material increases and develops in a newly re-embodied existence: in *saṃsāra* within the six destinies (*gati*), living beings are born and come into existence (*abhinirvṛtti*) and arise (*utpadyante*) in the wombs of beings.

All the seeds, as the mind (*sarvabījakaṃ cittaṃ*) matures, congeals, grows, develops, and increases (Lusthaus, 2007) and are based upon the two-fold appropriation (*upādāna*) as follows:

1. the appropriation of the material sense-faculties along with their supports (*sādhiṣṭāna-rūpīndriya-upādāna*); and secondly,and
2. the appropriation which consists of the predispositions toward profuse imaginings in terms of conventional usage of images, names, and concepts (*nimitta-nāma-vikalpa-vyavahāra-prapañca-vāsanāupādāna*).

The appropriations exist within the realms with form, but the appropriation is not two-fold within the formless realm. The text indicates the relationship between the animate body and the *ālaya-vijñāna,* namely that the unending saṃsaric existence (except in the formless realm) depends upon some form of cognitive awareness. The *Saṃdhinirmocana Sūtra* presents the concept of *ālaya-vijñāna,* "storehouse consciousness", which is characteristic of the *Yogācāra* teachings.

The *Vijñāna* of the *Yogācāra-bhūmi*

The *Sūtra* states that the mind has three designations: *citta, manas* and *vijñāna*, which indicate one and the same thing. Some authors' view of *citta* and what is present are *vijñāna,* which are further explained. It is called *citta* considering its movement to a distant past; it is *manas* considering its previous movement and it's *vijñāna* considering its tendency to rebirth. A similar distinction is admitted by the *Yogācāras*: citta is *alaya-vijñāna*; *mana is klisṭaṃ manas* (defiled mind) as well as the mind of immediate past moment; *vijñāna* is what cognizes the object in the present moment.

Ālaya-vijñāna, store consciousness is the seed-bed of all that exists. Every seed lies in the store consciousness when the seed becomes mature under favorable conditions. The *Yogācāra-bhūmi* comments that the defiled mind is always centered on delusion, egotism, arrogance and self-love.

The *Ālaya-vijñāna* (Store Consciousness) in the *Viniścaya-saṃgrahaṇī*

The concept of the *ālaya-vijñāna* found in the *Viniścaya-saṃgrahaṇī* is a systematically developed Abhidharmic term. This was composed after the *Saṃdhinirmocana Sūtra,* which is called the *ālaya* treatise consisting of the proof portion, the *pravṛtti* and *Nivṛtti* portions.

The *ālaya-vijñāna* is constant because it occurs conditioned by past *saṃskāras,* so it's also a *karmically* indeterminate resultant state (*avyākṛta-vipāka*), and it accumulates in the entire body.

The functioning conditions are momentary and intermittent, since they occur for present conditions, are experienced as wholesome (*kusala*) or unwholesome (*akusala*) and thus are karmically neutral (*avyākata*), and they are only related to their own respective sense bases. Therefore, none of the momentarily occurring seventeen types of cognition can be the *vijñāna*s which appropriate the entire body at birth or throughout life and finally transforms *vijñāna* to wisdom, and liberation.

The Functions of *Bhavanga-citta*

There are three functions of *Bhavanga-citta**:*** *l*ife continuum, functioning as *bhavaṅga*; rebirth linking consciousness (*paṭisandhi*); death consciousness (*cuti-citta*).

1. Life continuum functions as *bhavaṅga*, which ensures the uninterrupted continuity of individual life: *Bhavaṅga* literally means "*factor of life*", which is usually translated into English as "*life-continuum*". The *bhavaṅga-citta*s keeps the continuity of a lifespan, so that what we call a "being" continues to live from moment to moment. The process of sense perception begins with *bhavaṅga* and it continues throughout existence like a stream or the current of a river until it is annihilated with the attainment of *Nibbāna*.

2. Re-linking consciousness (*paṭisandhi viññāṇa)*: "Dependent upon Activities Consciousness arises." By consciousness here what is meant is the re-linking or rebirth of consciousness. The consciousness of his present life is dependent on his past and present *kamma*, which involves a linking of the past life with the present and thereby implies re-birth. The *paṭisandhi-viññāṇa* arises only in an unborn child. In the pre-natal stage the re-linking consciousness may be said to exist only passively (in the *bhavaṅga* state) and not actively, since the child is still a part of the body of the mother.

3. Death consciousness (*cuti-citta*): The last *citta* is called death consciousness **(***cuti-citta*), the *bhavaṅga* often acts as *vipāka, and citta* is the result of the same *kamma* which produces the rebirth consciousness. It shows the karmic results. For example, if the rebirth consciousness is wholesome (*akusala vipāka*), there is birth in a pleasant plane and all *bhavaṅga citta* of that life are wholesome as well.

***Ālaya-vijñāna* (Store Consciousness) and *Bhavaṅga-citta* in relation to the Process of Rebirth**

The notion process between *vijñāna* and *saṃskāra* (in both their aspects) can be recognized in the formula of dependent arising in the *Sūtra*:

(1) *Vijñāna* is first a resultant process that occurs conditioned by the results of past actions (*saṃskāras* condition the arising of "saṃsāric" *vijñāna)*, whose,

(2) cognitive processes are pre-eminently involved in the very activities that eventually bring about its own perpetuation ("cognitive" *vijñāna* conditions the arising of karmic activities (*saṃskāra*)), which

(3) in turn makes that "saṃsāric" *vijñāna* "grow, develop, and increase".

The river current and riverbed are inseparable, likewise the mental and physical streams (*vijñāna* and *saṃskāra*) simply are saṃsāric existence. We are, like a river, the results of all that we have thought, felt, and done. As the Buddha said, "This body does not belong to you, or to anyone else. It should be regarded as '*the results of*' former action that has been constructed and intended and is now to be experienced".

Saṃdhinirmocana Sūtra introduced the reintegration of the diachronic dimension of *vijñānas* in relation to *saṃsāric* continuity, rebirth, maintenance of the animated body, and the perpetuation of *karma* in the form of seeds with the synchronic analysis of the mind focusing upon momentary cognitive processes. The details have yet to be filled in but the broad outline is clear. The two distinct dimensions of *vijñāna*s occur simultaneously and are mutually dependent upon each other, and 'attachment' and 'clinging', implicated in the terms '*ādāna*' and '*ālaya*', will become the base for further development.

Ālaya-vijñāna appropriates the body from birth to death throughout numerous lifetimes until its final eradication during the process of purification and liberation. The *ālaya-vijñāna* continuously occurs as an unbroken stream because it occurs conditioned upon the nonstop effects of past *karma.*

Verses Delineating the Eight Consciousnesses of *Yogācāra* text

Ālaya-vijñāna in the three realms with their nine grounds comes into being in accord with the power of *Karma*. Although the eighth consciousness does not create karma because it is totally passive in function, the seeds stored within it ripen to create actual *dharma*s that are the Three Realms and the Nine Grounds.

Again with the gage of eight consciousness *Ālaya-vijñāna between death and rebirth:* After going and before coming, it's in control. At death the first seven consciousnesses are reabsorbed into the eighth consciousness. At birth they are regenerated as separate consciousness. After going and before coming refers to the intermediate state between death and rebirth. At death

the eighth consciousness is the last to leave the old body, and at birth it is the first to begin functioning.

The Third Link of *Viññāṇa* or Consciousness in Dependent Origination

The formula states, "Depended upon Activities Consciousness arises". Dependent consciousness here means re-linking consciousness or re-births consciousness. Therefore, the conscious life of a man in his present birth is conditioned by the activities he performs of his own volitional, his good and bad actions, and his *kamma* of past lives. In other words, the consciousness of his present life is dependent on his past and present *kamma*s. This formula is of great importance since it involves a linking of the past life with the present and thereby implies rebirth. Hence, this third link is called *paṭisandhi viññāṇa* or re-linking consciousness or re-births consciousness.

The ideas are quite different from various points of view, and one may wonder how activities of the past life can condition a present birth. Material sciences seek to explain birth on the premise of the present existence only. The biologist says that it is the union of a father with a mother that conditions birth. According to the Buddha's teachings the two conditioning factors by themselves are insufficient to result in birth. Otherwise every complete union of a father with a mother should lead to a birth. These two are purely physical factors and it is illogical to expect that a psycho-physical organism, a mind-body combination known as a human being, can arise from two purely physical factors without the intervention of a psychical or mental factor.

Many analogies have been employed by the Buddha to show that nothing travels or transmigrates from one life to another. It is just a process of one condition influencing another. The resultant *kammic* energies of human activities, not yet expanded, are so powerful that they can condition the formation of an embryo in another world and give it consciousness.

One important point must not be overlooked. The *paṭisandhi-viññāṇa or* re-linking consciousness arises only in the unborn child. In the pre-natal stage, the re-linking consciousness may said to exist only passively (in the *bhavaṅga* state) and not actively, since the child is still part of the body of the mother. When the child is born and assumes a separate existence and begins to contact the external world, then it may be said that the *bhavaṅga* nature of the pre-natal state of mind gives way for the first time to a conscious mind to fully process the *vīthi-citta* (Gunaratne, 1982).

Waldron's View on *Viññāṇa as* a Rebirth Consciousness

Waldron's view is that *viññāṇa is* not only linked to the growth of karmic formations but also connected to the "*four sustenance*s". Waldron explained: "First, as one of the four sustenances, along with edible food, sensation, and mental intention consciousness, as "*sustains*" each single life as well as one's stream of lives" (Waldron, 2003: 21). *Viññāṇa* thus can be viewed as one of the four sustenances of life.

It appears that the cycle of *saṃsāra* is hard to break and that it takes a concerted effort to do so. The destruction of *viññāṇa* is essential for this path to liberation. Waldron explains, "While the processes of *viññāṇa* grow and increase, thereby sustaining *saṃsāric* life, they can also be calmed, pacified, and brought to an end, marking the end of the cycle of birth and death. Indeed, the destruction of *Viññāṇa* (along with the other four aggregates) is virtually equated with liberation" (Waldron, 2003: 21).

The Stream of Mind (*Citta-Santāna*)

In Buddhist literature the word c*itta-santāna* means "*stream of mind*" or "*consciousness-continuity*". Some schools of Buddhism hold that individual mind-streams continue from one lifetime to the next, with karma as the basic causal mechanism that supports the transmission of energy or the desire to live. Since Buddhists generally reject the existence of the "*soul*" or "*self*," they nevertheless maintain the idea that there is an animating phenomenon capable of spanning lives and giving rise to rebirth, i.e. consciousness. Since consciousness is here involved with linking the past life with the present one, it is also called re-linking consciousness or re-birth consciousness.

According to the Buddhist point of view, it is said that *karma* is powerful enough to release or create the condition for a being to be reborn in an appropriate place in accordance with their nature of the mental formations that sustain its consciousness. Here a good example is a person's activities driven by desires and cravings which originate from his or her desire to live. These desires and cravings are energies that contain within themselves the potential for attracting the conditions for a further existence. When the body ceases to live, these energies simply transmit their power to another body and sustain it until it again ceases to function. This process will never come to an end until the desire for sensual experience is completely extinguished.

The appearance of *vijñāna* represents in *Brhadāranyka* as *Upaniṣad* the manifestation of the *ātman* as the highest cognitive power in the individual human being. In the cosmogonic myths of the *Śatapatha Brāhmaṇa, Prajāpati* manifests himself (*ātmaṃvijñānāmaya*), wishes to create a second

self that is made of mind, and transforms himself into the eater and the food. According to Jurewicz (2000), the inclusion of *Viññāṇa in paṭiccasamuppāda* represents the Buddha's parody of the manifestation of the creator as cognizing subject, a creator whose volitions or *saṅkhāra*s have built up the possibility of cognition and hence dispelled the state of non-cognition or *avijjā*. The Buddhist views *viññāṇa* as that element which is reborn again and again as long as the creator continues to want to manifest. Since from the point of view of the Buddha, there is in reality no *ātman* that undergoes such transformations, the cosmogony represented by *avijjā saṅkhāra viññāṇa* represents the absurd recycling process of a self which falsely postulates its own existence. (Sivananda, 2002: 5) Therefore, how the Stream of Mind (*Citta-Santāna*) processes living beings according to past karma continues in different directions.

Bhavaga **and the Process of Death and Rebirth**

The nature of *bhavaṅga* for a given lifetime is determined by the last full consciousness process of the immediately preceding life. This last process is in turn strongly influenced and directly conditioned by, though it does not result in the technical sense of *vipāka*-the *kamma* performed by the being during his or her life. Relevant here is a fourfold classification of *kamma* according to what will take precedence in ripening and bearing fruit.

The four varieties are: 1. Weighty (*garuka*); 2. Proximate (*āsanna*); 3. Habitual (*bahula, ācinna*) and, 4. Performed (*kaṭatta*). This list is explicitly understood as primarily relevant to the time of death. In other words, at the time of death, the many karmas a being has performed during his or her lifetime are going to bear fruit and condition rebirth.

The *bhavaṅga* of a being is of the same type throughout his or her life, this is, of course, just another way of saying that it is the *bhavaṅga* that defines the kind of being, and it follows that the only time the nature of a being's *bhavaṅga* can change is during the process of death and rebirth. This defines the kind of being.

The answer is that if any "weighty" *kamma*s have been performed then these must inevitably come before the mind in some way and overshadow the last consciousness process of a being's life. But if there are no weighty *kamma*s, then, at least according to the traditions followed by the *Abhidhammatthasaṅgaha*, some significant act recalled or done at the time of death will condition the rebirth. In the absence of this, which has been done repeatedly and habitually will play the key role. Failing that, any repeated act can take centre-stage at the time of death.

The mechanics of the final consciousness process are discussed in detail in both the *Visuddhimagga* and the *Sammohavinodanī* and are summarized in the *Abhidhammatthasaṅgaha*. The account of any consciousness processes begins with *bhavaṅga*. From *bhavaṅga* the mind adverts in order to take up some different object. If the object is a present sense object, in normal circumstances, the mind adverts to the appropriate sense door by means of the *kiriya* mind element (*mano-dhātu*) and if the object is a past (or future) sense-object, *citta* or *cetasika*, or a concept (*paññatti*), the mind adverts to the mind door by the *kiriya* mind consciousness element (*mano-viññāna-dhātu*). The object of the death consciousness process may be either a sense-object (past or present), or *citta* and *cetasika* (past), or a concept. The process may thus occur either at one of the sense-doors or at the mind-door. Having reached the stage of *javana*, either by way of one of the sense-doors or just the mind-door, five moments of *javana* will occur, followed in certain circumstances by two moments of *tad-ārammaṇa*. Immediately after this is the last consciousness moment of the lifetime in question, this is a final moment of the old *bhavaṅga*, and it receives the technical name of "falling away" or " death consciousness" (*cuti-citta*). It is important to note that this final moment of *bhavaṅga* takes as its object precisely the same object it has always taken throughout life.

However, the last *bhavaṅga* of one life is immediately followed by the first *bhavaṅga* of the next life, this first moment of *bhavaṅga* is called "relinking" or "rebirth consciousness" (*paṭisandhi-citta*) and, being directly conditioned by the last *javana* consciousnesses of the previous life. It takes as its object the very same object as those - that is, an object different from the object of the old *bhavaṅga*. Thus the new *bhavaṅga* is a *vipāka* corresponding in nature and kind to the last active consciousnesses of the previous life, with which it shares the same object. The *paṭisandhi* is followed by further occurrences of the new *bhavaṅga* until some consciousness process eventually takes place.

In terms of the earlier classification, *kamma* is past *citta* and *cetasika* cognised at the mind-door, what is being said is that at the time of death a being may directly remember a past action, making the actual mental volition of that past action the object of the mind. What seems to be envisaged, though the texts do not quite spell this out, is that this memory prompts a kind of re-living of the original *kamma*, one experiences again a wholesome or unwholesome state of mind similar to the state of mind experienced at the time of performing the remembered action.

The Relation to the Process of Death Consciousness (*cuti-citta*)
When a person approaches death, some object will present itself to the last cognitive process of that person. This object can be of three kinds:

1. ***kamma*:** An act of good or evil *kamma* committed earlier. It is past *citta* and *cetasika* cognized at the mind-door and what is being said is that at the time of death a being may directly remember a past action, making the actual mental volition of that past action the object of the mind.

2. ***A kamma-nimitta*** a sign of *kamma* (*kamma-nimitta*) which will determine the kind of rebirth awaiting him. It is a sense-object (either past or present) or a concept. Again what is envisaged is that at the time of death some past sense-object associated with a particular past action comes before the mind (i.e., is remembered) and once more prompts a kind of reliving of the experience.

3. ***A Gati-nimitta:*** A sign of destiny (*gati-nimitta*) where the dying person is destined to be reborn. It is a present sense-object but perceived at the mind door. This kind of object is restricted to cases of beings taking rebirth in one of the unpleasant or pleasant realms of the *kāma-dhātu.*

There is only one rebirth linking consciousness (*patisandhi-citta*) but there are countless *bhavanga citta*s. The last *citta* is called death consciousness (*cuti-citta*). The *bhavanga* often acting as *vipāka citta* is the result of the same *kamma* which produces the rebirth consciousness, which shows the karmical results. For example, if the rebirth consciousness is wholesome resultant (*akusala vipāka*), there is birth in pleasant plane and all *bhavanga citta* of that life are wholesome resultant as well.

***The Visuddhimagga* with regard to the *bhavanga-citta*:**
When the *patisandhi-citta* has ceased, following on whatever kind of rebirth-consciousness it may be, the same kind, being the result of the same *kamma.* Whatever it may be occurs as *bhavanga-citta* with that same object; and again those of the same type occur. As long as there is no other arising of consciousness to interrupt the continuity, they will go on occurring endlessly in periods of dreamless sleep, etc., like the current of a river.

The *bhavanga-citta* is like the current of a river, which is interrupted when there is an object presenting itself through one of the senses or through the

mind-door. When the *citta*s of the sense-door process or the mind-door process have ceased, the current of *bhavanga-citta* is resumed.

The commentary to the *Visuddhimagga, the Paramattha-Mañjusā*, explains the process through a simile. It raises the question as to how there comes to be disturbance (movement) of the *bhavanga* that has a different support because it is connected with it. However, it is with its metaphysical functions that the *bhavanga-citta*s bear the closest resemblance to the *ālaya-vijñāna*s.

The condition of existence in two senses:
Firstly, in the sense of its mere occurrence as a phenomenon of the *saṃsāric,* temporarily extended sphere, as a necessary part of any individual name-and-form, it is both a causal, 'constructive' and a resultant, constructed factor. Secondly, it is itself a conditioning factor of existence, in the particular sense of being a necessary condition for any conscious experience of life. It is only on the basis of *bhavaṅga* that any mental processes can arise. Moreover, it is precisely upon this dual nature (i) of a continuous, constructed aspect of mind necessary for *saṃsāric* existence and (ii) of an active, conditioning aspect serving as a precondition for all cognitive processes of building that the complex notion of the *ālaya-vijñāna*s rests.

Runes (1942) explains it thus: "subliminal as allegedly unconscious mental processes especially sensations which lie, below the threshold of consciousness". It does not correspond with subliminal consciousness either. The mind does not receive a fresh external object. One experiences a *bhavanga* consciousness. Immediately after a thought-process, too, there is a *bhavanga* consciousness. Hence, it is called *vīthi-mutta-* process freed, sometimes acting as a buffer between two thought-processes.

In early Buddhism, the mind is the sixth sense organ the mind operates as the basis of all mental activity. Contrary to that, *Abhidhamma* presents a kind of consciousness called *bhavaṅga-citta* (stream consciousness) as the basis of all mental processes. Accordingly, the process of sensory perception begins with *bhavanga*. It continues throughout existences like a stream or the current of a river, until it is annihilated with the realization of *nibbāna.*

In any case, it is not a permanent state such as the soul in other philosophical traditions. The first moment of consciousness at birth and the last moment of consciousness at death are two names for the same *bhavanga. The bhavanga-citta* is a conditioned state governed by the law of causation. The process of sense perception begins with *bhavanga* and proceeds through seventeen stages, or better, thought moments.

Comparative of *Bhavanga*, Behaviour and the *Ālaya-vijñāna*

We have found that *bhavanga* is regarded in the texts as most immediately the result of the last active consciousnesses of the previous lite, and that these consciousnesses are in turn seen as a kind of summing up of the life in question; *bhavanga-citta* is then itself the most significant aspect of that previous life encapsulated in a single consciousness. Appropriate to this view of the matter, Venerable Buddhaghosa discusses the workings of *bhavanga* in the process of death and rebirth in the context of dependent arising (*paṭicca-samuppāda*) in order to illustrate how the *saṅkhāra*s (conditioned by ignorance) of one life give rise to the third link in the chain, namely *vijñāna*, understood as the first moment of consciousness in the next life. So *bhavaṅga* is the basic mentality a being carries over from his or her previous life. Moreover, *bhavaṅga* is a complex *citta* with one specific object, which constantly recurs throughout a being's life.

The fact that the *Abhidhamma* uses the notion of *bhavanga* to define both the nature of a given being and also what constitutes a lifetime as that being suggests that the concept of *bhavanga* is being used to explain not merely the concept of continuity but also why a particular being continues to be that particular being throughout his or her life, rather than become some other being - to become another being is to change one's *bhavanga*.

Curiously, the *Theravādin Abhidhamma* seems not to articulate an explicit answer to the question, yet it is surely inconceivable that those who thought out the traditions of *Abhidhamma* handed down to us by Bhodhaghosa (2010), and Buddhadatta and Dhammapala had not thought of the problem. “What would those ancient *ābhidhammika*s have said? Is the answer to the problem deliberately left vague so as to avoid getting entangled in annihilationism and externalism?” The notion of *bhavanga* as explicitly expounded in the Theravāda *Abhidhamma* seems to certainly aim to provide some account of psychological continuity. It is clearly getting close to being something that might be used to give some explanation of how latent tendencies are carried over from one life to the next and where they subsist when inactive. To understand *bhavaṅga* in such terms is not necessarily to assimilate it to the twentieth century notion of the unconscious. It is, however, to attribute to it some of the functions of the *Yogācārin ālaya-vijñāna*. Indeed, Louis de La vallee Poussin (1988), some sixty years ago, suggested that the notion of *bhavaṅga* bears certain similarities to the *ālaya-vijñāna*, and it is this, as much as the modem idea of the unconscious, that has probably influenced contemporary Therāvādin writers in their expositions of *bhavaṅga*. While assimilating *bhavaṅga* to the *ālaya-vijñāna* may be problematic, it is not entirely unreasonable to suggest that both

conceptions ultimately derive from a common source or at least a common way of thinking about the problem of psychological continuity in Buddhist thought. As Lance Cousins and Lambert Schmithausen (1987) have pointed out, Vasubandhu cites the notion of the *bhavaṅga-vijñāna* of the Sinhalese school (Tāmraparṇī Nikāya) as a forerunner of the *ālaya-vijñāna*. A full comparative study of *bhavaṅga* and the *ālaya-vijñāna* is beyond the scope of the present paper, but it is worth trying to take just a little further by briefly highlighting three significant points of contact between the two notions. For the first two points, I take as a representative source Hsuan-tsang's Ch'eng wei-shih lun (*Vijñapti-mātratā-siddhi*).

Like *bhavaṅga*, the *ālaya-vijñāna* is understood as essentially the result of previous actions which give rise to a particular kind of rebirth, in other words, it is the nature of the *ālaya-vijñāna* which determines what kind of experiences a being is destined to have (Gethin, 1994). Again, like *bhavaṅga*, the *ālaya-vijñāna* is said to be the mode of consciousness at the time of death and rebirth. Furthermore, Hsuan-tsang likens consciousness at these times to consciousness in deep dreamless sleep. Finally, we have the association of both *bhavaṅga* and the *ālaya-vijñāna* with the notion of the "originally pure mind".

According to the Buddhist point of view, the doctrine of rebirth talks about an evolving consciousness or stream of consciousness which is related to the death of the aggregates or beyond the aggregates. It has become one of the contributing causes for the arising of a new aggregation. The consciousness of the new person is neither identical to nor entirely different from that in the deceased but the two forms a causal continuum or stream. According to traditional Buddhist eschatological theory life can transmigrate into one of states or realms including those of human beings, all kinds of animals and several types of supernatural beings (six realms).

Rebirth is conditioned by the *karma*s (actions of body, speech and mind) of countless previous lives. For example, good karmas will produce a happier rebirth or result in a good destination whereas bad karmas will produce an unhappy rebirth or result in a bad destination. The basic cause for this is due to the abiding of consciousness in ignorance (Pāli*:"avijjā",* Sanskrit.*"avidyā*"). When ignorance is uprooted, rebirth ceases.

One can ask a question, "Do you know where we keep the seeds (*bīja*) of *karma* to become a link for rebirth?" The answer is in the store house of consciousness (*Ālaya-vijñāna*), according to the Yogācāra School. It describes this consciousness as possessing "all the seeds" (*sarvabījaka*) from

which future phenomenal existences will grow. The storehouse consciousness is attached to the sense faculties and to the impressions of "differentiations" (*prapañca*) left by the conventional usages regarding phenomenal existence and is called "attachment consciousness" (*ādāna-vijñāna*).

Conclusion

This paper highlighted the *ālaya-vijñāna* and *bhavaṅga-citta* in the processes of transition from life to life, first showed how the meaning of the concept and functions, how karmic potential leads to rebirth and death, and then to final transformation from impure to pure emancipation.

The first term may tentatively be rendered as the "undercurrent forming the condition of being, or existence", and the second as "sub-consciousness", though, as will be evident from the following, it differs in several respects from the usage of that term in Western Psychology. The eighth consciousness is called the *ālaya-vijñāna* or storehouse consciousness. It is the foundation of all the other seven consciousnesses. When we say that all phenomena are creations of the mind, the *ālaya-vijñāna* contains both the potential for enlightenment and *saṃsāra*. Through the discriminations and attachments of the seventh consciousness, the seeds within the *ālaya-vijñāna* are given the conditions to grow to fruition giving rise to new karmic actions and planting new seeds in the *ālaya-vijñāna*. This cycle is repeated over and over unceasingly, giving rise to a continual unfolding of phenomena.

Bhavaṅga-citta is a karma-resultant state of consciousness (*vipāka*), and that, in birth as a human or in higher forms of existence, it is always the result of good or wholesome karma (*kusala-kamma-vipāka*), though in varying degrees of strength (*paṭisandhi*). The same holds true for rebirth consciousness (*paṭisandhi*) and death consciousness (*cuti*), which are only particular manifestations of sub-consciousness. The *bhavaṅga-citta* keep the continuity in a lifespan, so that what we call a "being" continues to live from moment to moment.

The above description shows the different interpretations and explanations of concepts of consciousness, *Ālaya-vijñāna* and *Bhavaṅga-citta.* One of the primary concerns of both concepts of consciousness is to emphasize the operations of cause and effect in the process of the rebirth, moral actions produce a good destination, while in contrast evil actions produce a bad destination. Furthermore, both *Ālaya-vijñāna* and *Bhavaṅga-citta* play important roles in psychological and corporeal processes and play an extremely important role in the life continuum, and *Nibbāna* or enlightenment.

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Negotiating "Marginal" Subject Positions: The Dynamics of Class and Culture in the English Department Discourse of a State University in Sri Lanka

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Abstract

Despite or perhaps because of the long and prestigious history, there is an emergent discourse among the English Department alumni and Faculty that English studies are in crisis in university today, because "standards" have to be lowered, changed or broadened to accommodate a "radically different" kind of student. Whereas earlier students were from middle or upper middle class, Anglicized, urban, professional milieu, now prospective students are much more diverse, and many are even first-generation undergraduates. This study attempts to trace the "evolution" (or transformation) of the English Department students of a state university as they try with varying degrees of "success" and varying social and psychological costs to negotiate a more or less "nonconventional" socio-cultural background and value system that is imperative for gaining acceptance.

Keywords: *Non-conventional, Privileged space, English Department, Value system, Negotiation*

Introduction

While reinforcing and sustaining a prestigious narrative, one of the crucial concerns which dominates the English Departments today is accommodating students who come from a "radically different" or "non-conventional" socio-economic and cultural backgrounds, especially without "violating" its established values and norms. As a matter of fact, the social and psychological cost of negotiating the value systems of this "privileged" space often goes unheard, and little attention is paid to students who have to reinvent themselves to fit into the English Department's norms or those who slip through the cracks of this established system. The ideological set-up of the majority of English Departments are dominant-inflected; therefore, the spatial politics of the majority of the Departments operate as a surveillance mechanism of the dominant culture. This study attempts to map the ways in

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which the "radically different" or "non-conventional" students charter their way through these conflicting ways of identity formation.

Methodology

This is a qualitative discourse study based on discussions and unstructured interviews from a cross section of both special and general degree students and academics over the last fifty years of a Department of English of a state university in Sri Lanka. It also draws on random interviews conducted with the academics and undergraduates of other English Departments of state universities in Sri Lanka. Further, this includes a self-reflective narrative of the researcher since the subject position of the researcher cannot be divorced from the research since it feeds into the discourse which the researcher attempts to critically engage in.

Theoretical Framework

The theoretical framework used in the study attempts to explore the spatial dynamics of the Department of English and subject formation of the "non-conventional" students. The analysis primarily draws on Pierre Bourdieu's (1973) idea of cultural reproduction and social reproduction and Michel Foucault's (1984) concepts on space and power.

The Dynamics of Space: The Department of English in Context

At the outset, the aim of rigorous academic and intellectual training for the undergraduates in English Departments was to facilitate the production of the "intellectual élite" of the country; therefore, access to the space was mediated through socio-economic and cultural privilege. The composition of students was consonant with anglicized cultural literacy, and urban, professional backgrounds. According to Prof. Ludowyk, as quoted by Halpe (1970: 6),

> "I feel that the *natural ability* of most of our students to handle these courses justified them. *We had those who were well qualified both by their control of English and their reading of Literature to work at a level required of any student reading English at a university* (Emphasis Added)".

Consequently, the presumed democratization of Universities in 1956 "dissolved" the socio-economic and cultural boundaries which hitherto withstood the access of the "intellectual proletariat". According to Halpé (1970: 7),

> "The spectacular intensification of nationalist feeling led rapidly to the adoption of the national languages as media of instruction in the universities, too an extension of a change that had begun in the schools a decade earlier. This change led to a sudden democratization of university education and a sharp increase in admissions to the universities, besides the change in the position of English".

The sociology of the Departments of English, particularly the one discussed here, suffered a decisive twist, and gradually the numbers of students with so-called "natural ability" and "control of English and reading of Literature" (Halpe, 1979: 6) declined. In the face of declining numbers, the Department anxiously permitted access to a predominant body of urban-educated Second Language English speakers, and subsequently to students from rural, nonprofessional backgrounds who were proficient in English.

Enabling access for the students of a "non-conventional" background to the Department suggests a certain rupture which has occurred in the politics of the English Department, and by extension, in the politics of the higher education policies. Once the old British system was replaced by the introduction of new policies in higher education, the English Departments had to adjust to a system which would survive its reputation. According to an interviewee, since the year 2000, when the semester system was introduced to the universities, there has been a gradual increase in the admission of students from this "non-conventional" background. The background to this rupture would have been created long before, when the *Swabhasha* movement began. This new category of students, who have had no exposure to English at an "intimate" level, therefore began interpellating themselves to the Departmental discourse by imitating the norms and values upheld by the Department. According to one of the interviewees, "this is a cost that these students are willing to bear because it guarantees social mobility".

The Discourse on Standards: The "Established" Norms of the Department and the "Non-conventional" Student

Wickremasinghe (2010), in a writing on, "Reimagining English Studies" proposes an interdisciplinary approach to "re-design and re-structure the discipline" (P. 03) of English Departments. Canagarajah (2011: 255), also stresses the need to "to develop the conceptual and methodological resources to engage productively with the new texts and language practices of post-coloniality". In a similar vein, Hathtotuwegama (2015: 11), points out that,

> "No, I don't believe in eliminating standards as happens in some places, so that you have come or go Chicago, that would be insulting. I suggest inventing new standards, our standards, to absorb a variety of need, offering students more challenging and creative handles to grip English with, where the students' knowledge of Sinhala/Tamil would also be vitally useful; not just to "advance the cause of English" as has been happening all these fine years but to project the life, people, the culture of this country".

Despite many of these suggestions or claims, the quality of the undergraduate program of English is inextricably tied with the discourse of maintaining standards in English Departments. Among the academics who stand in favor of maintaining the standards, one interviewee stated that;

> "My concern about this whole business of lowering the standards seems to be a very patronizing gesture. People want to get into the English Department and do this magical course because they want to belong to a certain class. So, the moment you lower the standards, that incentive is no longer there. You don't come from a privileged background and in the Department, there are high standards and you want to aspire those standards and doing so you gain mobility. This is what *kaduwa* is all about".

The Faculty of the English Department, however, assumes that any student who is qualified for the English program will be given the opportunity to study despite their social background, which to a greater extent is valid. Nonetheless, certain reluctance or anxiety can be observed when the Faculty "accepts" or "accommodates" the students who come from a "non-conventional" background which is either manifested in the form of rigorous marking standards or in the form of pedagogy.

The discourse of standards is mainly reinforced through the teaching of the cannon in English Departments. Even though many Departments have broadened their scope of studies, prominence given to teach the canonical texts cannot be dismissed. This assumes a certain class privilege to teach/learn them; therefore, the discourse of class and cultural capital is tightly bound with the intellectual literacy to read poetry and prose of high culture. As MacCabe (1986: 4) observes, "This elevated study of literature was not, however, something which could be available, like literacy, to the entire population" (P. 04). This highlights that the production and consumption of Literature is essentially a bourgeois practice; therefore, it requires the "natural ability" which Prof. E.F.C. Ludowyk refers to. This idea

is given emphasis in "Cultural Reproduction and Social Reproduction" by Pierre Bourdieu (1973: 58) where he states that,

> "An educational system which puts into practice an implicit pedagogic action, requiring initial familiarity with the dominant culture, and which proceeds by imperceptible familiarization, offers information and training which can be received and acquired only by subjects endowed with the system of predispositions that is the condition for the success of the transmission and of the inculcation of the culture. By doing away with giving explicitly to everyone what it implicitly demands of everyone, the educational system demands of everyone alike that they have what it does not give. This consists mainly of linguistic and cultural competence and that relationship of familiarity with culture which can only be produced by family upbringing when it transmits the dominant culture".

According to Bourdieu, this practice enables the production/reproduction of a power nexus which disables the agency of the "non-conventional" students due to their lack of economic, cultural and social capital (Bourdieu, 1973: 178) to fit into the ideological setting of the Department.

The Crisis: Accommodating a New Demography of Students

The interviews carried out so far allow a broad categorization of students according to the socio-economic and cultural capital they wield.

1. The *first category* consists of students who fit into the norms of the Department because they have the "right" background and level of competence (and these may be one and the same thing). They tend to be urban, even metropolitan beings, the children of Anglicized professional parents from the Middle Class and above, who are at least second-generation university entrants, and whose parents are more or less "liberal". Their home language is most often English though there is increasing bilingual fluency which is a more recent change (post-1980). The following response best illustrates the subject-position of students who "belong" to this category;

   > "Both my parents come from middle and upper middle-class backgrounds. My family can be quite traditional when they want to. But overall, they are quite progressive. I don't feel uncomfortable in the Department. I like the fact that we can openly discuss things in class with lecturers and express our ideas freely. The subject matter of the courses is very comprehensive.

> The courses are interdisciplinary and I like it. I only wish there was a wider range of courses made available for students to choose from. Expectations of the Department don't really contradict with my own. I haven't been confronted with such a situation, as yet. The stuff we read and learn in class actually made me more socially conscious".

2. The *Second category* of students are those who come from the Middle/Upper Middle class but who are Sinhala (or rarely Tamil) speakers whose home language is Sinhala (or Tamil) and whose parents are more monolingual than the first group. They may be *swabhasha* graduates or business persons. They may live in urban areas now, but the shift to an urban lifestyle would have been at most a generation ago. These students would have learnt English fairly early at school, and the necessity to study English is to ensure that financial upward mobility is matched with social acceptance by the Anglicized elites and their proxies. The subject-position of the students in this category is emphasized in the following response;

> "I think I can fit into the Department very well. We speak in English every now and then but my first language is Sinhala. Some of my relatives are higher officials in the government service and university academics. When I was a kid I was known as someone who is fluent in English. In most cases, the home language of my relatives is English but I can use both Sinhala and English equally well. From Grade six, I was in a bilingual class and it helped me a lot to expand my use of language. Thus, I cannot say that I'm uncomfortable in the Department".

3. The *third category* consists of students whose parents are lower middle-class Sinhala (or Tamil) speakers who have little competence in English and are not conscious of what studying English in the university system involves in terms of social class transformation. Often these students are first generation university entrants and have rural roots though they have studied English in tuition classes or have got scholarships to National schools. These students have acquired some competence in the language through diligence and hard work but continue to make class-marked "errors" especially in pronunciation. The Department has taken them in, perhaps reluctantly and there is a constant soul-searching as to whether justice has been done by them or not. These students are characterized by excellent performance in other subjects, but the value system at home and the value system of the Department hardly ever meet. One sub group tries

to emulate or achieve the "standards" of the Department at some social cost (alienation from family and friends) while the other sub group either finds it difficult (or are not willing) to attempt this transformation, and yet suffers other kinds of costs (uneasy relationship with the department and other students). In both cases, the students in this category fall between two stools. The general political economy of the students in this category can be given emphasis in the following response;

> "I am from a rural area and knew some English to score the highest marks in the class. In the Department there was an urban-educated guy who used to tease me for my accent. For example, I pronounced 'school'(/'sku:l/) as '*Ischool*' (/isku:l/) Others used to call me "Special" in a sarcastic way because for one thing they thought that I don't deserve a special degree in English and also during those days I might have spelt the word 'special'(/spɛ́ʃəl/) as '*Ispecial*'(/ispɛ́ʃəl/). As a result, I became more and more self-conscious about the mistakes which I would make. I worked hard to get an A- in the second semester of my first year but since I had economic problems and therefore, I had to do tuition classes, I had less time to contribute to my studies. Because I was feeling insecure in the Department, *I had no option but to act humble, nice and grateful to the people in the Department.* I was a misfit in every way. Sometimes I was more radical in my opinions than those who come from this privileged background. These incidents have lowered my self-esteem and I think I'm trying to belong to this privileged class. I want to be upper-class. Earlier, I could take my father anywhere I wished because he speaks English. But now I feel that his accent is not good. For example, for 'corruption' (/kərʌpʃən/) he would say 'karuption'. (/kʌrʌpʃən/) And now I feel uncomfortable. I'm trying to build my self-esteem in other ways such as by buying a car, knowing that I'm trying to belong to a particular class".

Majority of students who "belong" to the *third category* are disempowered within the space of the Departments of English due to extralinguistic values (Parakrama, 2012: 107) attached to the use of English and study of English Literature as a discipline. The dichotomy between the "conventional" students and the "non-conventional" students of the English Department is indicated by the type of English which is used. It is the assumption that while the "conventional" student would speak the "standard, prestigious variety" of Sri Lankan English the "non-conventional" student would speak the "sub-standard, not-pot English". For instance, one of the interviewees stated that

there had been a young girl from a "prestigious" ladies' college who corrected his/her pronunciation. The interviewee also stated that he/she likes his/her mistakes to be pointed out directly rather than being made fun of his/her pronunciation behind the back. According to another interviewee, there had been an instance where a student from a rural background who had "bad" pronunciation was humiliated by the lecturer. Nonetheless, instances are not rare when students from a "non-conventional" background attend elocution or other popular institutions such as the British Council to "improve" their pronunciation. (These institutes would only focus on teaching "Standard English" pronunciation such as the RP). Therefore, through diligence and hard work, some students train themselves to practice the values of the Department, which would yield marginal acceptance. Once *admitted* to the academia or other "white collar" jobs, these students, especially those who come from the "non-conventional" background, serve as gatekeepers of a particular value system which is upheld in the Department. This conditions them to serve particular class interests; on many occasions, they channel their labor to work for the best interests of a class to which they do not "legitimately belong".

Negotiating two different value systems, in many ways, is challenging for the "non-conventional" English Department student. In many cases it is apparent that those who have developed "radical" worldviews during the academic program have started negotiating their subject positions with "mainstream" worldviews. As a result of maintaining this double identity, a student can have non-racist opinions within the space of the Department, but outside its space they can be supportive of racist narratives. Many students who come from a "non-conventional" background, amidst the difficulties of grappling with the subject matter, attempt to negotiate this crisis situation. They would honor the Department "whole-heartedly" either as a strategy of survival or with the intention to show that they fully belong to the discourse of the Department. Some interviewees would acknowledge that they are misfits, and through their sense of non-belonging, attempt to convince that they do not conform to the English Department norms. But in reality, they fall prey to the very same discourse which they try to evade. Many students who attempt to interpolate themselves to these norms during the Academic program tend to deracinate themselves from the family setup for the sake of cultivating a sense of belonging in the Department. But once they return to their families, perhaps after the academic program, they would assimilate themselves in the "conventional" ideological set-up of the families.

This socio-economic and cultural dialectic reinforces the "conventional" students as the "natural" or the "norm", whereas the "non-conventional"

students are co-opted to the narrative as anomalies. This dynamic is implicitly reinforced in many discursive practices of the Departments of English even though this is hardly accepted by the faculty or the alumni. These students do not wield the socio-economic and cultural capital of the first or second groups; therefore, their “survival” in the Department depends on the levels of negotiation with an “alien” value system. Perhaps because of the inability to negotiate the spatial dynamics of the Department, a handful of students of the English Department opt to leave the academic program or retake certain subjects.

Treading Unknown Territories: A Self-reflective Account

This study requires to position myself as a researcher; as a result, my subject-position as a graduate of a prestigious English Department and two years of working experience as an Academic in a similar space warrants a self-reflective analysis. I “belong”/” belonged” to the lower middle class, and to date my anxiety dominates when I attempt to position myself in the class and cultural discourse. As an undergraduate of English, I channeled my labor to identify my intellectual scope in the Department. A certain part of my time was also spent on cultivating my taste for Literature; I taught myself the so-called dominant values to reinvent myself to be accepted by the dominant culture. My life as an undergraduate was tough, and my career as an academic was equally tough. My subject-position as the not-so-ideal-intellectual did not earn me the right to teach the “cool subjects” as an academic. This, I realized, was a result of the complicity of socio-economic, cultural elitism and intellectual demands. I was intellectually dormant for a considerable period of time; I always had to grapple with my low self-esteem especially in terms of my command of the language and cultural knowledge. Through diligence and hard-work, I was able to co-opt myself into the intellectual narrative of the Department to a certain extent. I do not wish to portray this study as an apologetic gesture; on the contrary, I attempt to dissect the socio-economic and cultural underpinnings of “carrying” the subject-position of an English Department graduate without the desired socio-economic and cultural acceptance.

Conclusion

This study attempts to delineate the ways in which “non-conventional” English Department students of a state university attempt to navigate various subject positions in various discursive terrains. It concludes that, despite the long and prestigious history, there is an emergent discourse among the English Department alumni and Faculty that English studies are in crisis in university today. Whereas, earlier students were from a middle or upper middle class, Anglicized, urban, professional milieu, now prospective

students are much more diverse, and many are even first-generation undergraduates, the "standards" have to be lowered, changed or broadened to accommodate now a "radically different" kind of student. This student belongs to the lower middle class, and her / his anxiety dominates as a result of the complicity of socio-economic, cultural elitism and intellectual demands in their attempt to position themselves in the class and new cultural discourse. They try with varying degrees of "success" and varying social and psychological costs to negotiate a more or less "nonconventional" socio-cultural background and value system that is imperative for gaining acceptance. Their "survival" depends on the levels of negotiation with an "alien" value system. Perhaps because of the inability to navigate with successful negotiation, some opts to leave the academic programme or retake certain subjects. However, this study is a work in progress which demands further theoretical insight in articulating the identity formation of this new student. Therefore, this research can be considered providing an impetus to further studies on discursive construction of peripheral subjectivities.

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Social and Cultural History of Sri Lanka from 13th Century AC to 15th Century AC.
N.A.Wimalasena
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Reviewed by S.B.Hettiaratchi[1]

N.A. Wimalasena has put the historical world in particular and Sri Lanka in general into his debt by this penetrating study of *Social and Cultural History of Sri Lanka from 13th Century AC to 15th Century AC*. Through this, he has acquitted himself brilliantly in filling the hiatus of the study in social life of the people of Sri Lanka from the 13th century to 15th century AC in convincing manner with the critical analysis of data available in the literary and archaeological sources. This does not however mean that this study is exhaustive and his findings conclusive. Moreover, this is not at all free from drawbacks but for this he is not all responsible as this study, like those in many other periods is beset with certain difficulties. This is mainly owing to the paucity of historical data at the disposal of the researcher on the one hand and the dubious nature of even the available data on the other.

The author was interested in discussing the social motivations of the individual's behaviour from a historical point of view, and the process and effects of change, especially change resulting from geo-politics, local and foreign. The period he has chosen for study shows unforeseen vicissitudes of rapid transfer of the center of administration, disturbed patterns of succession to the throne, foreign invasions which had disastrous negative impact that were concomitant on the collapse of the long cherished hydraulic civilization of the "*Sinhale*". He has thus taken up for discussion in detail matters incident to change the social fabric.

Even though with stray allusions, the author has been able to cover quite competently a wide range of topics spread out in five chapters.

The first chapter (pp.17-63) covers the introduction of his subject and the sources. In the introduction he has briefly spelled out the social dynamics of the period and his research problem. He states that study of social dynamics in motion and the changes which took place in the social conditions of women, marriage and social groups and ranking was his main research problem. He has not dealt with subjects such as family and kinship, family as

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a social unit, kinship terminology, and local groupings. In the literary survey, a detailed discussion of the primary sources has been carried out and in the section of secondary sources, works which deal with the social history of the Island have been reviewed. In this, he has pointed out that there were but random studies in the social history of the period as justified in his study.

There are two striking features regarding the literature of the given period: one is that most of its works which contain historical data even those relevant to the previous periods were composed during this period; the second is that it is enriched with the emergence and development of a new branch of literature, i. e. Sandesa poetry, which depicts many aspects of culture of ordinary folk including their social behaviour. The author has given due recognition to these two particular aspects in his survey besides other details. Thus he has done a lengthy literature survey which is comprehensive and qualitative no doubt but, in my view, had he become more sensitive to these special features highlighting their relevance and importance to his study without having been unduly influenced by general comments his efforts would have been more laudable.

I have few comments to offer on chapter two which deals with the political and economic background of Dambadeniya, Yapahuva, Kurunegala, Gampola and Kotte that led to social change. A discussion of the subjects of the emergence of elite or *prabhus*, political power of Brahmanas and the changing demographic patterns in this chapter are indeed interesting and in particular he has convinced us that it has a direct bearing on his thesis.

The chapter three deals with the position of women. Feminism in ancient oriental studies is a subject which has received much attention of the philosophers and social scientists. The author has summarized most of the theoretical views of historical persons of the period under survey as others who have done in the periods before and after.

The chapter four carries a discussion of the examples of the institution of marriage institution during this period. In this section, the definition of marriage is informative which serves the purpose of explaining the theoretical foundation of marriage. He has undertaken a lengthy discussion of polyandry (pp. 269-290) in which the definition of polyandry, evidence of the origin of the system and occurrence of fraternal polyandry system in Sri Lanka have been dealt with. It must be pointed out that this discussion, however, could have benefited by insights from the collection of essays entitled *Caste and Kin in Nepal, India and Ceylon* edited by C.V. Furer Haimandorf (1960), which contains important material for the subject. It is noteworthy that in this chapter and in the previous one he has freely used the

Sandesa poems and contemporary literary works such as the *Kavyasekhara* of Totagamuve Rahula and *Alakesvara Yuddhaya* by an unknown author.

Under Chapter five dealing with social groups and ranking he has made an interesting study having reassessed the traditional problems of Ksatriya, Brahmana, Vaisya and Sudra first and then social mobility with special reference to the emergence of new elite groups and their activities using new material; and finally other castes or families such as Lamanikula, Menavara, Ganavasi and Girivamsa, Irugalkula, Panikkarkula, Kannadi, Vannikula, Savulu and Mukkuva; most of them had not surfaced in the previous periods. During the period between the twelfth and fifteenth century there was a large influx of Brahmanas to the Island from South India. For some time they remained as a distinct class.

It is gleaned from the sources that the presence of Brahmanas at the Royal court in particular and society in general was necessary, primarily, it may be assumed, for the performance of the rites of *abhiseka*, marriage, birth and death in which Buddhist monks played no part. For example, the funeral rites of King Parakramabahu VI were conducted by Brahmanas. Hence they were indispensable to the king as well as to the gentry and their learning skill would have been relied upon society in important affairs of state and ordinary people.

A problem in Sri Lanka's history, hitherto unanswered satisfactorily is who the Lambakannas were. Sir James Emerson Tennent in his monumental publication named *Ceylon* has included a map of the Island for the first time in history with the inclusion of Pali, Sanskrit and Sinhala versions of the geographical terms of historical importance (to face p. 318) which invites the attention of the academic world of cartographers and social scientists. He has marked on this a territory called Lambakanna to the south-east of Mahaveli Ganga. Although this was not in close proximity to Mahiyangana, the whole area is, apparently, considered to be the habitat of the indigenous Yakkha tribe. This gives rise to the conjecture that Tennent believed that the Lambakannas come from this area, or, they predominantly lived in this area. There is an inscription at Situlpavva which records *yakadataha Vahaba*. In addition there are other inscriptions of Kuvera, the god of the Yakkhas. There is a new suggestion that the Lambakannas have the root to this indigenous stock of people, *i.e.* Yakkhas. The author has summarized the details of this issue. But this cannot be treated as an exhaustive study.

In spite of typographical lapses for which he can be excused leaving it behind that for improvement in the second impression and certain drawbacks as pointed out above, his fund of information and the soundness of his

judgment have contributed in great deal to our existing knowledge of the subject which would undoubtedly muster good impression of the students of Social History of Sri Lanka. All in all this work deserves to be considered an excellent piece of research.

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