

# Gender Applications in Buddhist Jurisprudence

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**Abstract:** Jurisprudence in any society is based on the social and religious values. As a result religious and social point of view on gender is having direct effect to the ones social role define in constitutions. Social attitudes and practices of traditional society were changed due to the social effects of industrial revolution. Gradually attitudes on gender and social role of individual also changed. As a result, defined social role according to the gender was criticized and challenged by different social groups including scholars during the last century. This trend was emerged in the western world and gradually it influences globally. Buddhist teachings and practices are focusing to understand the reality. Therefore it encourage the individual to be openminded without attaching to any extreme. It encourage the individual to follow the middle path. As a result, Buddhist teachings treating the individual in a flexible manner. It has neutral approach on understanding gender differences. Purpose of this research is to find out gender equity in Buddhism and whether it can provide more practical solution for the gender base problems in the modern world.

Documentary study on Pāli Tipitaka is the method of data collecting and content analysis is used for data analysing in this research.

Gender is not a permanent factor according to Buddhist teachings. Like other factors gender also can be changed according to the mentality of a person. When it comes to the attraction to opposite gender both male and female are having equal state. According to Buddhist teachings one who wants to overcome the sexuality and gender, should overcome his or her thoughts and behaviour on one's own gender. Buddhist teachings accept the sexual differences of individual. Individual may have different behaviours due to their sexuality. Therefore, when enact rules it gives consideration to these differences. Even though the Buddhism is having totally deferent attitude regarding the state of the woman and the man, than the main society at that time, it did not try to disturbed or challenged the reaming legal system. Instead of that it try to change the attitudes regarding woman within the main society.

Gender applications in Buddhist jurisprudence is not giving equal status to both genders or discriminate one gender. But to understand the physical and mental differences of each party. It also considered the social attitudes on gender. And precautions were made to protect its members from the negative social influence. And also to facilitate the members to archive the vision.

**Key words:** Social influence, Gender equity, Monastic code, Clergy community, Harassment

## I. INTRODUCTION

Jurisprudence in any society is based on the social and religious values. As a result religious and social point of view on gender is having direct effect to the ones social role define in constitutions. Social attitudes and practices of

traditional society were changed due to the social effects of industrial revolution. Gradually attitudes on gender and social role of individual also changed. As a result, defined social role according to the gender was criticized and challenged by different social groups including scholars during the last century. This trend was emerged in the western world and gradually it influences globally. The discussions were on the concept of God, gender of God, the gender requirements for priesthood, and also the teachings and practices on gender, in Christian church. These discussions influenced the other Asian originated religions like Hinduism, Islam, Judaism and Buddhism and so on. As a result gender concept of religions are become a common area of study in the globalized world. These studies and discussions were influence to the legal systems worldwide.

Buddhist teachings and practices are focusing to understand the reality. Therefore it encourage the individual to be openminded without attaching to any extreme. It encourage the individual to follow the middle path. As a result, Buddhist teachings treating the individual in a flexible manner. It has neutral approach on understanding gender differences. Buddhist teachings agreed that,

- all individuals are having equal opportunity to attain *Nibbana*/enlightenment without any sexual and gender differences,
- Mental capacity and the development of individual is not depending on gender, social differences or age, but depend on the commitment one made.

Purpose of this research is to find out gender applications in Buddhist jurisprudence, and whether it can provide more practical solution for the gender base problems in the modern world.

## II. METHODOLOGY

Documentary study on Pāli Tipitaka is the method of data collecting and content analysis is used for data analysing in this research.

## III. RESULTS

Buddhist teachings are giving very clear analysis of gender. Applications of jurisprudence in Buddhism are based on the viewpoint it has on individual. Without understanding the concept of gender in Buddhist teachings, one cannot understand the gender applications in Buddhist jurisprudence. Therefore gender applications in Buddhist Jurisprudence will be study under two parts.

- Buddhist viewpoint on gender

- Gender applications in jurisprudence

### I. *Buddhist viewpoint on gender*

Gender is not a permanent factor according to Buddhist teachings. Like other factors gender also can be changed according to the mentality of a person. According to *Sāiyogavisnayoga Dhamma Pariyaya Sutta* in *Anguttara Nikaya(AN)* ones gender is formed according to one's mentality (*AN 4:1:1:10 Sutta*).

“The woman with her internal femininity attend to her womanly charm, deportment, ways, interests, sounds and decorations. Arousing lust for it, she attend to an external masculinity with manly charm, deportment, ways, interests, sounds and decorations arousing lust for it she desires an external association some pleasantness and pleasure on account of that association. ‘women who attached to femininity and united to men not go beyond femininity.’”

“The man with his internal masculinity attend to his manly charm, deportment, ways, interests, sounds and decorations. Arousing lust for it, he attend to an external femininity with womanly charm, deportment, ways, interests, sounds and decorations Arousing lust for it, he desires an external association, some pleasantness and pleasure on account of that association.’ ‘Men attached to masculinity and united to women not go beyond masculinity.’”

“This is dissociation. This is the method of association and dissociation.”

Society of the Buddha's time believes that woman is an obstacle for the man to achieve his spiritual attainments. As a result woman was labelled as a person who is so lusty, and always try to attract men and un-trustable. Buddhist teachings does not agree with that social believe. According to Buddhist teachings, man and woman are having equal contribution when it comes to the attraction to opposite gender. When it comes to the attraction to opposite gender both male and female are having equal state. Buddha stated that the attraction male and female having to each other is equally powerful (*Cittaparidāya Vagga - AN I 1:1:1-10 Suttas*).

“I do not know of a form., sound., smell., taste., touch.. that captivates the mind of man as that of woman. The form., sound., smell., taste., touch.. of a woman indeed captivates the mind of a man.

I do not know of a form, sound, smell, taste, touch that captivates the mind of woman as that of man. The form, sound, smell, taste, touch of a man indeed captivates the mind of a woman.”

Which means one should take the responsibility to tame his or her mind regarding this matter without blaming other party.

*Sāiyogavisnayoga Dhamma Pariyaya Sutta* clearly stated the state one should develop to overcome the sexuality

and gender. According to it one who wants to overcome the sexuality and gender. should overcome his or her thoughts and behaviour on one's own gender. Therefore according to Buddhist teachings sexuality or gender is not a permanent thing. It can be changed due to the behaviour of the individual.

“The woman with her internal femininity does not attend to her womanly charm, deportment, ways, interests, sounds and decorations. Not arousing lust for it, she does not attend to an external masculinity with manly charm, deportment, ways, interests, sounds and decorations Not arousing lust for it she does not desire an external association some pleasantness and pleasure on account of that association.’ ‘Women not attached to femininity and not united to men go beyond femininity’”.

“The man with his internal masculinity does not attend to his manly charm, deportment, ways, interests, sounds and decorations. Not arousing lust for it, he does not attend to an external femininity with womanly charm, deportment, ways, interests, sounds and decorations Not arousing lust for it, he does not desire an external association, some pleasantness and pleasure on account of that association.’ ‘Men not attached to masculinity and not united to women go beyond masculinity.’”

“This is dissociation. This is the method of association and dissociation.”

This means that detaching from the one's own gender is also needed become enlightenment, as one who enlighten is not belongs to any gender. In *Soma Sutta* in *Samyutta Nikaya(SN) Bhikkhuni* Soma stated very clearly stated that the nature of gender of an *arahant/enlightened one* (*SN 1:5:2 Sutta*).

“When the mind is established, being a woman does not matter I have knowledge and reflect the Teaching rightfully. If that was not so, whether to woman or man Whatever was mine is suitable to be in the power of Māra.”

The *arahant/enlightened one* is not belongs to any gender.

Buddhism accepts the one's capabilities and limitations according to the sexuality or physical differences. For instance, once capability to bearing a child is depending on the sexuality (*Āvēnikadukka Sutta, SN 4:3:3 Sutta*). To bear a child one should have female sexuality. If one wants to bear a child, that person should become a woman. According to Buddhist teachings one who in masculine state only can become a *Buddha, Brahma, Sakkha* and *Mara* (*AN 1:15:12-16 suttas*). This doesn't mean that individual who born as a woman ever cannot become above four statuses. If one who in a state of a woman wants to become above status first has to give up the attachment to her state of woman. As a result she can become a man and then can become any above four status by developing the requirements to have each state as

well. As gender is not a permanent factor *Samsaric* circle changing ones mentality one can become man or woman.

When the society believes that only way for woman to, go to heaven or became spiritual is to serve her husband, or women are not capable to achieve spiritual attainments as men, Buddhist teachings clearly stated that woman also can become enlighten as well as the man. And also gave the opportunity to become a member of the clergy community to achieve that goal. When comparing the other religions, Buddhist teachings is the only place where it can be find, equal opportunity given to male and females to become members of the clergy community.

Therefore the first step of identifying the Buddhist jurisprudence on gender is to identifying the Buddhist point of view on gender. It is not bias to any party, just state the fact as it is.

## II. Gender Applications in Jurisprudence

Buddhist monastic code, where we can identify the Buddhist jurisprudence concept, having unique purpose. Without understanding the purpose of monastic code, one cannot understand the base of applications. Buddhist teachings are not discriminating the sexuality or gender aspects of the individual. It gives opportunity to the individual to follow the noble path and attaining Nibbana. Lay community also have the same capability of developing spiritual capacity as clergies. But two communities are having difference purposes when it come to social responsibility. Buddhist clergy community having a role other than following the path to liberation. That is becoming the example to Buddhist teachings. Therefore, it considers the social attitudes when take decisions. All the members of the community should align with the responsibility they hold. Community cannot be misused and used as covering body to lead an easy life. Clergy community should respect the values, laws, lay community is practicing, even it is not relevant or align with the Buddhist teachings. Buddhist monastic code, where we can identify the Buddhist jurisprudence, also based on this philosophy.

Majority of the rules in the monastic code are common to the both parties - *Bhikkhus* and *Bhikkhunis*. For example there are one hundred and eighty one Vinaya rules which are common to both *Bhikkhus* and *Bhikkhunis* in *Ubhato Patimokka* Monastic Code of Clergies. Buddhist teachings accept the sexual differences of individual. Individual may have different behaviours due to their sexuality. Therefore, when enact rules it gives consideration to these differences. For instance there are some rules in in *Ubhato Patimokka* which consider the sexuality or physical differences of individual. first *Sangadisesa* of *Bhikku Pāthimokka* and third and fourth *Pācittiya* of *Bhikkhuni Pāthimokka* are some examples for such rules.

1<sup>st</sup> *Sangadisesa* of *Bhikku Pāthimokka*

“Intentional emission of semen, except while dreaming, entails initial and subsequent meetings of the Community.”

3<sup>rd</sup> *Pācittiya* of *Bhikkhuni Pāthimokka*

“(Genital) slapping (even to the extent of consenting to a blow with a lotus-leaf) is to be confessed.”

4<sup>th</sup> *Pācittiya* of *Bhikkhuni Pāthimokka*

“(The insertion of) a dildo is to be confessed.”

There are some restrictions can be found in Buddhist disciplinary code due to one’s sexuality. According to the *Bhikkhuni Patimokka* woman who is pregnant or doing breast feeding are not allow to get ordination.

61<sup>st</sup> *Pācittiya* of *Bhikkhuni Pāthimokka*

“Should any *bhikkhunī* sponsor (the Acceptance (*upasampada*) of) a pregnant woman, it is to be confessed.”

62<sup>nd</sup> *Pācittiya* of *Bhikkhuni Pāthimokka*

“Should any *bhikkhunī* sponsor (the Acceptance of) a woman who is still feeding, it is to be confessed.”

Likewise there are Vinaya rules which are only applicable to one party according to the physical differences. Originally disregarding the sexuality all individuals were allowed to become members. Giving membership disregarding sexual facts make the clergy community as well parties involves in to a difficult situations. For example, enrolling pregnant ladies and feeding mothers to the *bhikkhuni* community put the monastery in to a difficult situation such as: lay people complain that *bhikkhunis* are not virtuous, and also keeping a child in a monastery cause difficulties to the members of the community as if the child is a boy it is against the disciplinary code. Child also not having a normal life experience. When this kind of situations occur, restrictions were made. Even though it is practically difficult, Buddhist teachings facilitate that sort of situations when it is unavoidable. For example if a lady become a *bhikkhunī* without knowing she is pregnant, *bhikkhunī* society should facilitate to their member to upbring the child till the child become independent. For that *bhikkhunī* community even officially appoint an assistant to live with the *bhikkhunī* who is having a child (*Cullavaggapali, Bhikkhunīkkhandhaka*). In Buddhist tradition when problematic situations occur due to the enrolments, rules were enact with restrictions. This is not only effect to the sexuality or gender. For instance, the people who are suffering from sicknesses, who are indebted, who did offences against law, were prohibited to enrol as there enrolments cause problematic situations.

On the other hand Buddhist tradition identifies the capacity of the individual with the experience and sexuality. Best example is the age requirement for higher ordination - *Upasampada*. Approved age requirement to get *Upasampada*.

or higher ordination is completing the twenty years. The Buddha was given the reasons, for it.

“A person under twenty years, cannot endure coldness and heat, hunger and thirst, vexation by gadflies and gnats, by storms an heat of the sun, and by reptiles; (he cannot endure) abusive, offensive language; he is not able to bear bodily pains which are severe, sharp, grievous, disagreeable, unpleasant, and destructive to life; whilst a person that has twenty years of age, can endure coldness, and ext. This will not do, for converting the unconverted and for augmenting the number of the converted.”

So it is clear that one’s capacity to bear things is considered to enact the Vinaya rule on age limit for higher ordination. This age limit is not change for men in any situation. But for women, this age limit is only applicable for the unmarried ones. Married ones can get the higher ordination when they complete age twelve. Woman’s capability to bear things according to her experience in life is considered here. This shows that Buddhist jurisprudence in gender is having broader point of view.

Buddhist teachings always advices to respect father and mother in the same respect, and when mention parents it first mention the mother. Without using term woman, it introduces a new term to address woman, ‘*Matugama*’ that means mother’s party (*Chullavaggapali, Bhikkunikkhanda; SN, Mathugama Samutta*). This term itself tempt the individual to see the females with respect of a person who has similar qualities of the mother. Even though philosophically accepted, making it a practice is difficult. When it come to disciplinary code this reality was accepted. Main purpose of Buddhist teaching is not to do a social revolution, but to do an inner revelation to overcome suffering. Therefore one main purpose of enacting *Vinaya* rules is to facilitate the members of the clergy Community to attain Nibbana. As a result there are some *Vinaya* rules to protect the members of the community from negative social attitudes. For instance *Bhikkhunis* were advised not to travel and stay outside the monastery alone.

### 3<sup>rd</sup> Sangadisesa of Bhikkhuni Pāthimokka

“Should any *bhikkhunī* go among villages alone or go to the other shore of a river alone or stay away for a night alone or fall behind her companion(s) alone: this *bhikkhunī*, also, as soon as she has fallen into the first act of offence, is to be (temporarily) driven out, and it entails initial and subsequent meetings of the Community.”

When *bhikkhunis* travel alone, or stay alone they were being raped. To protect the *bhikkhunis* from this kind of harassments, rules were enact. When social aptitude is negative, there is a necessity to protect the member of the clergy community.

There are some rules for *Bhikkhus* and *Bhikkunis* which emphasise the security of the *Bhikkunis* as a responsibility of the *Bhikkhu* community. And there are rules in *bhikkhunī vibhanga* preventing *bhikkhunīs* staying away from *bhikkhu saṅgha*. Fifty sixth to fifty nineth *pācittiyas* in *bhikkhunī vibhanga* are some examples for them.

### 56<sup>th</sup> Pācittiya of Bhikkhuni Pāthimokka

“Should any *bhikkhunī* spend the Rains-residence in a dwelling where there are no *bhikkhus* (nearby), it is to be confessed.”

### 57<sup>th</sup> Pācittiya of Bhikkhuni Pāthimokka

“Should any *bhikkhunī*, having completed the Rains-residence, not invite (criticism) from both Communities with regard to three matters — what they have seen, heard, or suspected (her of doing) — it is to be confessed.”

### 58<sup>th</sup> Pācittiya of Bhikkhuni Pāthimokka

“Should any *bhikkhunī* not go for the exhortation or for the (meeting that defines) affiliation (i.e., the *Uposatha*), it is to be confessed.”

### 59<sup>th</sup> Pācittiya of Bhikkhuni Pāthimokka

“Every half-month a *bhikkhunī* should request two things from the *Bhikkhu* Community: the asking of the date of the *Uposatha* and the approaching for exhortation. In excess of that (half-month), it is to be confessed.”

And there are some rules in both *vibhangas* explaining the limitations of *bhikkhu* and *bhikkhunī* relationship. All these rules were enacted due to the misunderstandings of the main society. *bhikkhunōvadaka bagga* in *bhikkhunī vibhanga* and sixth, fifty first, fifty second, ninety fourth and ninety fifth, *pācittiyas* in *bhikkhunī vibhanga* are coming under that category.

### 6<sup>th</sup> Pācittiya of Bhikkhuni Pāthimokka

“Should any *bhikkhunī*, when a *bhikkhu* is eating, attend on him with water or a fan, it is to be confessed.”

### 51<sup>st</sup> Pācittiya of Bhikkhuni Pāthimokka

“Should any *bhikkhunī*, without asking permission, knowingly enter a monastery containing a *bhikkhu*, it is to be confessed.”

### 52<sup>nd</sup> Pācittiya of Bhikkhuni Pāthimokka

“Should any *bhikkhunī* revile or insult a *bhikkhu*, it is to be confessed.”

### 94<sup>th</sup> Pācittiya of Bhikkhuni Pāthimokka

“Should any *bhikkhunī* sit down in front of a *bhikkhu* without asking permission, it is to be confessed.”

### 95<sup>th</sup> Pācittiya of Bhikkhuni Pāthimokka

“Should any bhikkhunī ask a question (about the Suttas, Vinaya, or Abhidhamma) of a bhikkhu who has not given leave, it is to be confessed.”

And also there are rules which enact considering the social attitude regarding gender. Buddhism advises its followers: clergy community as well as the lay community, to respect and obey the law and value system of the remaining society. As a result, many incidences in *Tipitaka* shows that, the *Buddha* advised to obey to some practices in the society, even though they do not match with the Buddhist teachings. For instance during the time of the *Buddha*, husband has the right even to kill his wife if she is not obedient or faithful. According to the background story of, second *Sangadisessa* of *Bhikkuni Vibhanga*, one lady had become a member of the *Bhikkuni* society to protect her life. Story tells that the her husband belongs to the *Lecchavi* clan and he try to prevent her from her wrong doings, but she didn't listen. After that he took the permission from clan of *Lecchavis* to kill his wife and marry another woman. When wife heard about this, she took the valuable things belongs to the household and run away to the country of King *Kosala* to protect her life. To secure her life she even try to become a member of any clergy group exist at that time, but get refused. Finally she came to *Bhikkuni* call *Tullananda* and got the membership of the *Bhikkuni* community. The woman's husband search for her and came to the county of King *Kosala* and found that his wife had become a member of the *Bhikkuni* Community. Husband complained to the king regarding that matter. This has become a big issue and finally the *Budhha* enact the law to prevent the people who was punished by the king, community, army, or any other legal body should not make a member of the *Bhikkuni* community without getting permission from that legal body.

Under the *Bhikkhu*'s disqualification list it was mentioned that one should take the permission of the parents before he take the higher ordination. Even he is a married person there is no need to take the permission from his wife. But for *Bhikkhunīs* it is a must to take the permission from the husband if she is married.

80<sup>th</sup> *Pācittiya* of *Bhikkhuni Pāthimokka*

“Should any *bhikkhunī* sponsor (the Acceptance of) a trainee without getting permission from her parents or her husband, it is to be confessed.”

This shows that even though the Buddhism is having totally deferent attitude regarding the state of the woman than the main society at that time, it did not try to disturbed or challenged the reaming legal system. Instead of that it try to change the attitudes regarding woman within the main society. Best example for this is the Buddhist attitude on the individual whom being raped. According to the description of first *pārājika* when a *bhikkhu* or a *bhikkhuni* being raped, if the person is not mentally involved with the sexual activity and not enjoyed, then that *bhikkhu* or *bhikkhuni* is not breaking the rule. It clearly stated that physical activities in a sexual

relationship is not important if the person is not mentally involved. So it is clear that Buddhist viewpoint in gender applications is go beyond the normal social view.

#### IV. CONCLUSION

Gender applications in Buddhist jurisprudence is not to give equal status to both genders or to discriminate one gender. But to understand the physical and mental differences of each party. It also considered the social attitudes on gender. And precautions were made to protect its members from the social influence. And also to facilitate the members to archive the vision. Purpose of this is to overcome the negative factors of the gender and to achieve the real goal: attaining Nibbana.

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