

# Evolution of the Justice System in Sri Lanka since Olcott's arrival

Reproduced below is the first part of Colonel Henry Steel Olcott Memorial Speech delivered by Attorney General Y J W Wijayatilake, PC at Ananda College on November 21. The second part will be published on November 25.

Returning to Ananda College always evokes fond memories of a happy childhood and a fine education and, so, it gives me great pleasure to be back here. Therefore, I thank the Ananda College OBA for making that possible by inviting me to deliver this year's Olcott Oration.

Given my professional background, the topic I have chosen to speak on this evening will surely not come as a surprise to you. Of course, this is not the first time that law and religion or indeed law and Buddhism in particular have been linked together. In fact, there is a historically unresolved jurisprudential debate between the Natural Law school of thought which recognizes a higher or divine source of law and the Positive Law school of thought which expounds only man-made law as Law. At the centre of the debate is the intersection of religion, morality and law. To add to this, there is growing scholarship on Buddhist Jurisprudence, where its proponents seek to interpret law through the principles of Buddhism. Within this area of study, human rights and other concepts which are generally affiliated with modern and West-centric thinking have been traced in King Asoka's royal edicts of ancient times.

However, rather than assert that law can be interpreted through Buddhism, which would invite a complex, jurisprudential inquiry of an academic nature, I prefer to share with you some thoughts on a more comprehensible subject. It is linked with the great Buddhist Revivalist in whose memory we are gathered here today, Col. Henry Steel Olcott and is also one which I hope would be of more appeal to the diverse audience before me. That is, how the justice system, especially the laws in this country, have evolved from the period of Olcott's arrival, with particular reference to the manner in which Buddhism is reflected in the laws of Sri Lanka. I see this reflection from a dual perspective: 1. because of the similarities between the moral philosophy of Buddhism and expressions or practices of the law and 2. because Buddhism has been given special status by law.

There is another reason why selecting law as the basis of my topic would not be out of place in an Olcott Oration. For, among the many hats that Olcott wore, he was actually a lawyer by profession. For those less familiar with his biography, it would be of significance to know that, before his arrival in Asia and his establishment as a theosophist, he was an attorney in America who specialised in insurance, revenue and fraud. He investigated accusations of fraud against spiritual mediums and was even an investigator of President Abraham Lincoln's assassination. And in Ceylon, he played a major role in seeking to bring to justice the perpetrators of the 1883 Buddhist-Christian riot, more famously known as the Kotahena riots. Though unsuccessful in initiating a criminal trial, Olcott's repeated and strong appeals to the British authorities makes him stand out as a champion of legal rights on behalf of the Sinhala Buddhist community in Ceylon at the time. He is viewed as a legal reformer and ultimately a universal reformer who engaged in a search for order. Therefore, I find additional impetus to focus on law in my oration.

## **Buddhist moral philosophy**

I now turn to briefly introduce the structure of this presentation. As I mentioned earlier, my approach to the subject has a dual perspective. So, in the first part of the oration, I use extracts from Olcott's most famous publication, *The Buddhist Catechism* to draw on aspects of Buddhist moral philosophy and then refer to examples of substantive and procedural law which mirror those philosophical aspects. In the second part, I deal with a more overt reflection, where Buddhism as a religion is given express recognition and protection by our laws. However, in this latter context too, it is important to note that the tenet of tolerance which is fundamental to Buddhist philosophy and also present in Olcott's outlook is always assured in our justice system, so that, despite the prominence given to Buddhism, the legal framework guarantees freedom and tolerance of other religions. In the end, both perspectives come together as manifestations of Buddhism in the laws of this country.

Since I rely upon *The Buddhist Catechism* as a thematic foundation, it is appropriate to first introduce this work. Originally composed by Olcott in 1881 and added on to in the 40 editions which were published in his lifetime alone, the author explains the book as follows: "The unpretending aim in view is to give so succinct and yet comprehensive a digest of Buddhistic history, ethics and philosophy as to enable beginners to understand and appreciate the noble ideal taught by the Buddha, and thus make it easier for them to follow out the Dharma in details." Therefore, using a textual form originally found in Christian religious instruction, more particularly in Roman Catholicism, Olcott sets out by question and answer, the life of the Buddha, the doctrine of Dhamma, the role of the Sangha, a brief history of Buddhism, its Councils and propaganda and, finally, some reconciliation of Buddhism with science.

### **Part I: The moral philosophy of Buddhism as reflected in the law**

To begin with, at the heart of any religious or philosophical doctrine is a code of conduct or behaviour which its followers should practice. Similarly, the law of a country or indeed international law sets out a code of conduct that the community which is governed by that law should follow. Therefore, a religion or, in the case of Buddhism, a philosophy-based code of conduct, as well as a law-based code of conduct will have at their core some fundamental do's and don't's. One of the main differences, though, is that law will include do's and don't's which have no moral equivalent such as the duty to observe traffic lights, the duty to pay tax or the duty to refrain from putting up posters during an election campaign. As evident, positive or active duties and negative or passive duties are both included in the code of conduct under law. *Catechism No.148* demonstrates that Buddhism too includes both types of conduct as condoned behaviour:

**Q.** Do these precepts show that Buddhism is an active or a passive religion?

**A.** To "cease from sin" may be called passive, but to "get virtue" and "to cleanse one's own heart," or mind, are altogether active qualities. The Buddha taught that we should not merely not be evil, but that we should be positively good.

This is based on the answers in *Catechism No.145*:

**Q:** Has not the Buddha summed up his whole doctrine in one gatha or verse?

**A:** Yes.

**Q:** Repeat it?

**A:** "To cease from all evil actions,  
To generate all that is good,  
To cleanse one's mind,  
This is the constant advise of the Buddhas."

As a further example of Buddhism's inclusion of the passive and the active, I urge you to compare the five precepts and the Noble eight-fold path. While the former is couched in negative language where one must refrain or abstain from some act, the latter is espoused in positive or active terms. I quote from Catechism No.125 in this regard:

**Q.** What is this Noble Eight-fold Path?

**A.** The eight parts of this path are called angas. They are: 1. Right Belief (as to the law of Causation or, Karma); Right Thought; Right Speech; Right Action; Right Means of Livelihood; Right Exertion; Right Remembrance and Self-Discipline; Right Concentration of Thought. The man who keeps these angas in mind and follows them will be free from sorrow and ultimately reach salvation.

Therefore, another common strand between the moral philosophy of Buddhism and expressions of law is the mixture of active and negative or passive types of conduct which form their codes of behaviour.

But it is Catechism No.170 which sums up why it is easy draw a link between the moral philosophy of Buddhism and the law and, therefore, why the codes of conduct found in both would not be very different from each other.

**Q:** If we were to try to represent the whole spirit of the Buddha's doctrine by one word, which word should we choose?

**A:** Justice.

So let us see how elements of the code of conduct and the concept of justice postulated in the Buddha's doctrine, the Dharma, also known as the Law of Righteousness, is reflected in our laws. For purposes of my presentation, I draw examples from two aspects of law: substantive law where rights and duties of persons are defined and procedural law where the manner in which rights and duties of persons should be determined is laid out.

a) The Dharma in substantive law

The fundamental moral philosophy of Dharma is the Pancha Sila and it is these five precepts which define a Buddhist. To illustrate, consider Olcott's Catechism No.4.

**Q:** Would you call a person a Buddhist who had merely been born of Buddhist parents?

**A:** Certainly not. A Buddhist is someone who not only professes belief in the Buddha as the noblest of Teachers, in the Doctrine preached by Him, and the Brotherhood of Arhats, but practices His precepts in daily life.

None of us in this audience needs to be reminded of the five precepts of Buddhism, but I nevertheless refer to them one by one so that the task of identifying their counterparts in the law is made easier. Catechism No.153 sets out the five precepts as follows:

**Q:** What are the five observances, or universal precepts, called the Pancha Sila, which are imposed on the laity in general?

**A:** They are included in the following formula, which Buddhists repeat publicly at viharas (temples):

1. I observe the precept to refrain from destroying the life of beings.
2. I observe the precept to refrain from stealing.
3. I observe the precept to abstain from unlawful sexual intercourse.
4. I observe the precept to refrain from falsehood.
5. I observe the precept to abstain from using intoxicants.

The first four of the five precepts find parallels in the legislative enactment which sets out the bulk of criminal offences in Sri Lanka, the Penal Code Ordinance of 1883. Let me commence with the first precept, to refrain from destroying the life of beings. Its equivalent in law is to be found in sections 293 and 294 of the Penal Code which recognize culpable homicide and murder as offences. Of course, it is important to note that the first precept is not limited to the destruction of human life. The word used is “beings” and not “human beings”. Therefore, although the law does not have a blanket prohibition on killing of animals, provisions of the Prevention of Cruelty to Animals Ordinance of 1907 set out that the causing of unnecessary pain and suffering whilst keeping, transporting and, even slaughtering, of animals amounts to an offence. Furthermore, provisions of the Fauna and Flora Protection Ordinance prohibit the killing of endangered species of animals.

### **Restrictive regulations**

The second precept, to refrain from stealing, is also echoed in the Penal Code. Under sections 366 and 379 of this Ordinance, theft and robbery constitute criminal offences.

Sections 360A to 365B of the Penal Code reflect the third precept, to abstain from unlawful sexual intercourse. Accordingly, procurement for illicit sexual intercourse, sexual exploitation of children, rape, incest, unnatural carnal intercourse and grave sexual abuse are all criminalized.

The fourth precept, to refrain from falsehood, is found in a number of Penal Code offences where different manifestations of dishonesty are present. For instance, perjury (section 188), criminal misappropriation, (section 386), criminal breach of trust (section 388), cheating (section 398) and forgery (section 452), are criminal acts which involve some sort of falsehood. Similarly, misrepresentation would attract damages under contract law.

Finally, the fifth precept, to abstain from using intoxicants can be found in laws relating to alcohol and illegal substances. For instance, the National Authority on Alcohol and Tobacco Act of 2006 prohibits sale of alcohol to underage persons, free distribution of alcohol and advertisement of alcohol, as well as imposes other restrictive regulations with the aim of discouraging alcohol consumption. Likewise, the Poisons, Opium and Dangerous Drugs Ordinance of 1929 criminalizes the manufacture, possession and consumption of illicit drugs. The Drug Dependancy Persons (Treatment and Rehabilitation) Act of 2007 and the Conventions Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act of 2008 are also self-explanatory of the legal position with regard to

intoxicants.

I now turn to another aspect of Olcott's articulations of the Buddhist moral philosophy. Catechism Nos.224-226 demonstrate the non-discriminatory principles in Buddhism, particularly where gender and caste are concerned:

**Q:** What is the spiritual status of woman among Buddhists?

**A:** According to our religion they are on a footing of perfect equality with men. "Woman", says the Buddha, in the Chullavedalla Sutta, may attain the highest path of holiness that is open to man – Arhatship.

**Q:** What does a modern critic say about the effect of Buddhism on women?

**A:** That "it has done more for the happiness and enfranchisement of woman than any other creed" (Sir Lepel Griffin).

**Q:** What did the Buddha teach about caste?

**A:** That one does not become of any caste, whether Pariah, the lowest, or Brahmana, the highest, by birth, but by deeds. "By deeds," said He, one becomes an outcast, by deeds one becomes a Brahmana." (See Vasala Sutta).

The right to equality has been recognized under both our Republican Constitutions. In the 1972 Constitution, which set out Fundamental Rights of Citizens for the first time, though without any recourse to remedy in the event of their violation, Article 18(1)(a) read as follows: all persons are equal before the law and are entitled to equal protection of the law. Progressing even further, Chapter III of the 1978 Constitution guarantees a number of Fundamental Rights, including the right to equality, but which are now justiciable in law. Not only is it that Article 12(1) echoes the provision on equality under the 1972 Constitution. Article 12(2) guarantees that no person shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds, while Article 12(4) allows for special provision being made, by law subordinate legislation or executive action, for the advancement of women, children and disabled persons. Therefore, our laws are consonant with Buddhist teaching that all persons are equal and that no one should be discriminated on the basis of gender, caste or any other similar ground.

Before I move on to the next area of law, I admit that critics may say that all religions have a common moral code and laws being only an extension or enforceable version of a universal moral code, it is no surprise that the two accord with each other or that the examples I have drawn from the substantive laws of this country are a reflection of universal laws and have nothing to do with Buddhist moral philosophy. For instance, some of the Ten Commandments in Christianity being similar to the some of the precepts of Buddhism, our penal laws may be a reflection of that religion as much as it is one of Buddhism. Or that the right to equality is merely a derivation from the human rights movement of Post-Enlightenment Europe and globally accepted since the Universal Declaration of Human Rights. But my intention has not been to assert that there is any intentional influence of or derivation from Buddhist philosophy in our law, but merely to highlight the intersection of core legal values with core religious values, and in this case, from the point of view of Buddhist values as articulated by Olcott. It is also relevant that all of the laws which I have referred to were enacted during the period spanning from Olcott's arrival in Sri Lanka to the present day.

b) The Dharma in procedural law

As recently as two weeks ago, I had the occasion to read an enlightening article on how the Eight-fold Noble Path should inform the judicial process, written by an expert in the fields of both Law and Buddhism, former Senior Judge of the International Court of Justice, C. G. Weeramantry. In this part of my presentation, I too focus on the procedural aspect of law, how to dispense justice, keeping in mind some fundamental principles of Buddhist moral philosophy, once again relying on Olcott's catechisms. I begin with Nos.194 to 196:

**Q:** Are there any dogmas in Buddhism which we are required to accept on faith?

**A:** No. We are earnestly enjoined to accept nothing whatever on faith; whether it be written in books, handed down by our ancestors, or taught by the sages.

**Q:** Did he himself teach that noble rule?

**A:** Yes. The Buddha has said that we must not believe in a thing said merely because it is said; nor in traditions because they have been handed down from antiquity; nor rumours as such; nor writings by sages, merely because sages wrote them; nor fancies that we may suspect to have been inspired in us by a Deva (that is, in presumed spiritual inspiration); nor from inferences drawn from some haphazard assumption we may have made; nor because what seems analogical necessity; nor on the mere authority of our own teachers or masters.

**Q:** When, then, must we believe?

**A:** We are to believe when the writing, doctrine or saying is corroborated by our own reason and consciousness. "For this," says he in concluding "I taught you not to believe merely because you have heard, but when you believed of your own consciousness, then to act accordingly and abundantly." (See the Kalama Sutta of the Anguttara Nikaya, and the Maha Pari Nirvana Sutta.)

And where would we find guidance for our reason and consciousness? Catechism No.149 offers the answer:

**Q:** Who or what are the Three Guides that a Buddhist is supposed to follow?

**A:** They are disclosed in the formula called the Tisarana: "I follow Buddha as my Guide: I follow the Law as my Guide: I follow the Order as my Guide." These three are, in fact, the Buddha Dharma.

I dare to say that nothing better exemplifies better than these expositions the correct approach to dispensing justice. For, it is reason and consciousness which should and should alone guide our decisions as to whether a man should be prosecuted and equally whether an accused should be convicted. And, similar to the Three Guides in Buddhism, we can find three sources which guide reason and consciousness in law: Those are legislation, judicial decisions and, most importantly, evidence. Buddhism clearly denounces acting upon blind faith, rumour or uncorroborated material. And yet, unfortunately, it is that very approach which has been rejected by the Dharma that misguided and ignorant masses appear to expect the justice system to apply.

At this point, I deliberately draw a parallel with recent and continuing media and public outcry demanding that the Attorney General's Department arrive at particular decisions which pander to popular belief. However, it has to be unequivocally said that, just as much as the Dharma, the law of evidence requires Law and Judicial Officers to take into account in the decision-making process, cogent evidence which appeals to reason and consciousness, not faith, rumour or popular belief. In fact, the whole structure of the Evidence Ordinance of 1895 is

such that hearsay is meant to be excluded in judging a civil or criminal case, and only a few exceptions to the rule against hearsay are found in sections 17-39. Furthermore, the standard of proof in a criminal case is one beyond reasonable doubt. Although the Evidence Ordinance itself does not set out the degree of proof required in civil and criminal cases, English law applies on this point. Accordingly, it has been held by our courts that the prosecution must establish beyond reasonable doubt the essential ingredients of an offence. Therefore, it would be against a fundamental rule of law and indeed principle of justice if the Attorney General's Department was to initiate or maintain a prosecution in the absence of evidence which matches such a high degree of proof.

Even the hallmark saying "Justice is Blind" is based on the need to maintain objectivity, impartiality and independence of judgment.