

Panca Sila or Five Percepts in Buddhism: A Pristine Source of Origination for Muluki Criminal Code

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• **Article History:** Submitted 15 February, 2025; Reviewed 28 March, 2025; Revised 9 April, 2025 • **Corresponding Author:** Atindra Dahal
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Abstract

Far and away, religion is falsely assumed as manifestation of intermittent enchantments and directives or theological footprints for social rituals. Various fundas and deepening dogmas are forcefully rendered as rigid parameters as well as primary positioning to mis-judge and wrongly adjudicate the religion as mere superstitious showcasing. Unlike Science, it is reflexively ranked or responded as unpragmatic, supercilious, conventional, hallow cum dogmatic discipline too in course of embodying utility for dignifying life and progressive living of human kinds. However, this paper, through an engagingly exclusive study and rigorous analyses, claims that the Buddhism—especially Five Percepts or Panca Sila principle—is primitive and premier source for current Muluki Criminal Code and some other laws. Every single directive of Panca Sila principle or Five Percepts in Buddhism has given gravity, ground and reference to beget several provisions of Muluki Criminal Code and some other laws which are in place and practice. Thus, Buddhism, besides mere pro-rituals religion, should be well considered as point of origination for several laws of present time. Hence, Buddhism should be dully assumed- and deserves an aestheticized assimilation- as mother for Muluki Criminal Code and some other laws, given the exclusive reference of Panca Sila principle or Five Percepts as the foremost foundation.

Keywords: Buddhism, Five-Percepts, Laws, Pañca Śīlā, Muluki Criminal Code

Background

Religion is often and largely deemed as robust rituals and set of superstitions. Engaging into crude rites along with classical ceremonies and connecting that with divinity, devilishness and supernaturalism, as pursuit of most viable means to control people as Adhikari opines, are highly touted manifestations of religions (67). Notwithstanding, Blasi et al. pass a gentle reservation over such propositions then call it ‘blend of misconception and misperception’ (8). As of the reality till now, enhancement and sacredness prevail as cardinal conducts of religion or religious activities as Rai confirms with cross-comparative studies of several societies across the world (137).

Among many sects of prevailing religions in the complexly competitive current theology, Buddhism exists no longer as an evident exception in public mindset and psyche. It emerged and evolved approximately 25 hundred years back (7) as Gethin traces its origination. Since then, mostly it is also assessed to and assimilated in worshipping Buddha’s idols, enchanting the suttas, reciting slogans, parroting teachings, offering to various stupas, lightening in Viharas and so on. Every religion has God/s to worship and certain shrines to worship them. Mediation and devoting self to Buddha’s teaching are esteemed ethos to showcase of being a true Buddhist as Chandako (11) peremptorily prescribes. Buddhism is also mostly and flatly treated in the same way though few practitioners as well as scholars pass demure demur sometimes. Such theological activities and etiquettes are most important manifestations and to-do lists in society as primordially principal principle of Buddhism and its foundational or fundamental features. Rituals and worships are prime practices followed with enchanting as well as libations.

Unlike religion and its various sects, laws are presumed as recent emergence and cognitive evolution as ingenious human attempt, however, its interwovenness with religion-though many can’t even consider or contemplate of exploring- can’t be bluntly gainsaid and brusque grounded away. To trigger about the connection and nexus, Ferrari et al. argue that religion has a deep and dynamic relation with other aspects of societies, and undoubtedly with law too (35).

Laws are assumed and perceived to be more scientific, pragmatic whereas religion as static and dogmatic too as well as having set of serious disjoint or incongruity of the latter with the first. But such parochial and puritanical proposition is an outcome of severe shortage and acute gap of a telling research. Arguing in

similar tone, Sherwood concedes that deep relation between socio-politics and legal context into existing religion is worth pondering issue, now (37). Appiah acknowledges the same as ‘Science of Religion’ (485). Ergo, an incisive and engaging analysis might head the studies in other way pole if attempted.

Further, Movsesian observes an increasing disaffiliation and growing individualization on religious beliefs. Thus, the long set unscientific cum flawed perception are ditched and an apparent interdisciplinary gravity is solicited or sketched overcoming the long practiced limited coverage on the religion. To draw such a deep connection of Buddhism, law may potentially stand and serve as most premium and primary premise. Most of provisions in current *Muluki Criminal Code* were sensed and normalized in that era when Buddhism just had a formal inception, approximately two thousand five hundred years before. Berzano calls the characteristics ‘secular spiritualities’ as religion unfolds many other beauties and embodiment beyond literal understanding and take-on. While endeavoring to examine the relation in same line, Buddhism is found to have been deeply equipped as well as intelligibly and conscientiously rich in possessing the very values and ethics what *Muluki Criminal Code* and some other laws attempt to enforce in expectation of disciplined, decent and dignified society. Thus, Buddhism, especially Five Percepts or principle of *Panca Sila*, should be rightfully and incontrovertibly mused and mapped as mother discipline for *Muluki Criminal Code* and some other laws. Indisputably, Five Percepts or *Panca Sila* principle in Buddhism is seen as bold and unbeatable base for *Muluki Criminal Code* and some other laws. Discussion beneath bequeaths the deliberations in detail.

Research Question

This research work intends to answer a question that to what extent has Buddhism- especially Five Percepts or *Panca Sila* principle been primitive and premier source for current *Muluki Criminal Code* and some other laws?

Methodology

This study is broadly based on archival and doctrinal methodology of research. Set of secondary data substantively support the propositions summarized and synopsisized in this work. Paradigm of interpretation and comparative analyses are key strategies adopted and employed to navigate towards the eventual argument that this paper generates. Delphi method of validity is also considered as one of arch and cardinal considerations. While consulting the relevant references and literature, possibly the most recent in dates and published into renowned gateways are

prioritized. Having deep consonance with an explanatory method of study, the work absolutely aligns with the ethos of a qualitative research.

Discussion and Analysis

Most of provisions in *Muluki Criminal Code*, cardinal as well as of compounded implication to current time, can be fairly and unconditionally traced to have been oozed or originated from the religion Buddhism. Highlighting the similar perception, Bhushan calls it an integration of Buddhist laws into modern legal system. To present the proposition, Bhusan writes, “Buddhist philosophy, with its emphasis on compassion, empathy, and the pursuit of inner peace, subtly influences modern legal systems by advocating for a compassionate approach to justice and reconciliation (127)”. Zurick urges that Bhutan also has accomplished to have substantive projection of Buddhist inheritance vis a vis environment law (667). Furtherance to the presentation of factual evidences, Redwood and Nathan have recounted more than dozen plus cross-country experiences regarding Buddhism’s conspicuous and visible guidance, shaping and enriching reference to current laws in respective nations (37). Thus, it won’t be any undue exaggeration and fabricated eulogy to argue that Buddhism is the mother law, source law or law of laws, rather. Nepal also may be one of pertinently fertile grounds to explore Buddhism’s inspirational influence and enriching engagement over enactment of the *Muluki Criminal Code* and some other laws, in place now.

The indisputable central orientation of Buddhism comprises wisdoms of Four Noble Truths, Eightfold Path, also popularly known as Ashtang marga, the Universal characteristics- impermanence, suffering, and non- self, five precepts, and many more. A concise and terse synopsis of Buddha’s main teachings, which evidently constitute four primely and princely foundational truths- as basepoint for building the better and elegant world- can be presented as such. *Ahimsa*, the theological root of not maiming, impeding or destroying any life. *Dukkha*, the assimilation of dissatisfaction and suffering naturally as that is unavoidably inherent and innate in all the lives. And, *Karma*, the impact or consequences of each one’s deliberate and intentional actions.

Assimilating the due blend of these three issues will undoubtedly shower profound calmness and equanimity in the life to every human kind.

These principles and orientations rightfully guide the people to engage in doing decent cum good deeds and cautiously prohibiting or gainsaying the evil tasks, as Riyaz argues. Hence, such a sober tendency grooms them in growing cultured, pure

and un-immaculate individual. To enhance the virtues and exemplary quality, every Buddhist is assumed to have followed these ethics; and, s/he is evidently enjoined to adhere five precepts: i.e. abstaining from killing, abstaining from stealing, abstaining from sexual misconduct, abstaining from falsehood, abstaining from intoxicants as mentioned in Chapter 33 of the *Samyuktagama Sutra*. The set of disciplinary etiquette is assimilated as Five Precepts or *Panca Sila* in Buddhism.

This advice binds and encourages people for a fair, honest, and deception-free living that does not deprive others of their legitimate rights (Narada 53). Thus, people will be decent; then, eventually, a mutually respectful and harmonized society can be built. Deming regards that *Sila*, one of key preaching in Buddhism, engenders the five vitally and pivotally immeasurable (Kindness, Compassion, Sympathy, Joy and Equanimity) qualities on people (1). Due application and implication of these definitely empower every single individual as most modest, humble and philanthropic being ultimately resulting into an advanced world ahead.

Alike other scholars, Dhakal considers morality or good conduct (*Sila*), meditation or mental development (*Samadhi*) and wisdom or insight (*Prajana*) as the foundational basis of Buddhism. Whereas the Noble eightfold path is the means of arriving at the eventual goal of Buddhism and achieving the apogee of dignity (73). From this vantage point, Buddhism can be explored equally conscious and pragmatically net profitable education to empower human values as well as to vitally wax life-skills on human kinds. Kafle deems right action and deeds as cardinal orientation or envisioning of the Buddhism (49). Furthermore, following Five Precepts or *Panca Sila* is source point where Muluki Criminal Code and some other laws are grounded and promulgated.

Five Precepts or *Panca Sila* (as per Chapter 33 of the *Samyuktagama Sutra*) are:

1. Refrain from killing any living beings
2. Refrain from committing sexual misconduct
3. Refrain from taking what does the owner not give
4. Refrain from telling lies
5. Refrain from taking any intoxicant or drug

These all essences have been well attempted and carefully crafted through various laws in Nepal. Several provisions of *Muluki Criminal Code* and some other laws seem to have been focused and devoted to maintain the same spirit and adhere the

compound convictions of Five Percepts or Buddhist *Panca Sila*. Eventual essence and gist of maintaining law and order gets duly reflected through right and conspicuous representation and assurance of the similar objectives in society. There are many laws in place and practice now, which aim at upholding the objectives that Five Percepts or Buddhist *Panca Sila* had craved for. The eventual envisioning and expectation of *Muluki Criminal Code* and some other major laws are not in distance than essence that Five Percepts has embodied. The following section presents a sectional listing of laws validating or corroborating to rightful and mindful derivation of many provisions of *Muluki Criminal Code* and some other laws based on each percept of Buddhism along with brief elaboration.

a) Refrain from Killing

Refraining from killing is one of fulcrums and desideratum in Buddhism. Preaching and administering followers aptly, absolutely and promptly with this virtue and manifesting this at the highest form is a very desirable obligation or ethics as per Buddhism. The provision which was well envisioned in Buddhism about 2500 years back is mentioned with prime focus in so many provisions of *Muluki Criminal Code* and some other laws now. Very principle of refrain from killing, one among *Panca Sila*, is a visible base or arch foundation for many of laws which are in place these days.

Sections 177, 178, 181-185, 191, 195, 289, 290 of *Muluki Criminal Code* 2074 embody exactly same state and absolutely enshrine various prohibitions then embargos over the possibilities that might reason killing of individual/people. Intentional killing, causing death, acting recklessly to result in to death, acting carelessly in leading to death, attempting to conduct murder are strictly banned and listed as severely punishable acts. As per these clauses or sections, the restrictions further apply for throwing or abandoning newborn, child, disabled or old as that may cause death. Furtherance in the provision, assisting another being in committing suicide, engaging or abetting others in self-harm and executing abortion are also apparently outlawed. Hurting, injuring or harming others, the intention of killing or injuring any cow or ox along with beating, hitting or forcing others are also strictly abjured, denied and forbidden.

Furtherance, sections 3 & 4 of Aquatic Animal Protection Act 2017 BS prohibit to willfully and intentionally employ an electric current, an explosive or to poison in order to catch and kill aquatic animals in any body of water along with from

intentionally catching, killing or injuring aquatic animals. Section 5 of National Parks and Wildlife Conservation Act 2029 BS bans anyone to hunt wildlife or transfer trophy. Section 26 evokes strict penalty to a person who illegally kills, maims, injures, sells, purchases, transfers or acquires rhinos, tigers, elephants, musk deer, clouded leopards, snow leopards and bison. The same law states that persons who keep purchases or sells the fur of rhinos, musk oxen, snow leopards and other Booty of protected species wild animals shall be punished to the extent of offence.

These all provisions mentioned through several laws are eventually reinforcing the first percept of Buddhist *Panca Sila* i.e. refrain from killing. It never becomes an overloaded exaggeration to confirm that Buddhism *Panca Sila* is the very visible base to trace root of all above-mentioned prevailing laws at present.

b) Refrain from Sexual Misconduct

In regard to absconding every individual from aberrant sexual misconduct, which is next provision under *Panca Sila* in Buddhism, currently various laws are in place in our country.

Section 219 of *Muluki Criminal Code 2074* unquestionably and unconditionally denies and prohibits rape. The very law lists that any form of sexual conduct or attempt sans mutual consent or with child under 18 though with due consent is deemed to have engaged in rape. In addition, section 219(4) of *Muluki Criminal Code 2074* provisions stringent penalty even for marital rape.

Sections 219(6), (7), (8), (9) from the very Code 2074 along with sections 222 and 223 fairly and consequentially provision numerous additional penalties and set of sentences in case of rape to HIV positive or STD affected person, elderly, disabled, ill, relative, imprisoned or detained, person of under care and officials.

In addition to above-mentioned provisions, Section 224 of *Muluki Criminal Code 2074* proscribes and bans all sorts of activities expressing lascivious or evocative intention i.e. touches, holds, or an effort to either peep or touch ones sensitive and privy organ. Anyone who opens, attempts to open, obstructs, or hinders in any way the wearing or removing of undergarments, or enters in a lonely area in an unexpected way or demonstrates any pornography, teases or irritates with a sexual motive, gets his or her sexual organ touched or held by, uses vulgar or similar other words, spoken or written, by gesture, or by way of an electronic medium and as such also becomes culprit and has to serve the sentence to the extent of offence. And, section 225 of

Muluki Criminal Code provisions the same in case of children or minor with an added penalty and stringent sentence.

Furtherance, sections 226 and 227 restrict engaging in unusual sexual activity, shorn of the respective person's consensus or smoothing such acts. Section 119 of *Muluki Criminal Code* clarifies that the facilitation and fostering of any form of prostitution is strictly prohibited. Section 120 and 121 further deny and forbid using any body's house, belongings, property, or means of passage for prostitution or committing in sexual commotion with a prostitute, publishing advertising or importing offensive and indecent or vulgar books, pamphlet and other materials in both copy or/and digital versions too. Sections 122 and 123 have provisioned to discourage and ban such activities considering these activities punishable acts. Preamble of Sexual Harassment at Workplace (Prevention) Act 2071 denies and restricts sexual harassment at the workplace and considers this as a valid ground for sentencing the culprit.

Similarly, section 132 of Labor Act 2074, section 4(1) of Human Trafficking and Transportation Control Act 2064, section 4(2) of Human Trafficking and Transportation Control Act 2064, Section 175 of *Muluki Criminal Code* explain various restrictive laws and prohibitory necessities in order to abjure and discourage any form of sexual misconducts and unlawful sexual manners.

These all laws wholeheartedly maintain flawless symphony and deep concordance or consonance with second percept of Buddhism *Panca Sila* i.e. refrain from sexual conducts.

c) Abstaining from Stealing

Stealing or pilfering is one of serious and cancerous problems which is severely saddling the societies across the world. Among cases registered to immediate investigating agencies and police posts, the graph of cases vis a vis stealing is high in number ipso facto revealing the growing dishonest nature of our societies. The eventual disharmony and disastrous discord seemingly stem from stealing and spawns as much serious problem of societal symphony. Buddhism has strictly prohibited such activities and has penalized this offence in five percepts. However, so many provisions in *Muluki Criminal Code* and some other laws have paid an unshaken and unconditional attention to abide with the same spirit and values.

Inter alia, section 241 of *Muluki Criminal Code* firmly and deliberately prohibits on pilfering/stealing or thieving along with misappropriating dishonestly, dispelling

or removing or confiscating any property/belongings from others' possessions, ownership, custody, control or repositioning or transferring the property without due receipt of the respective individual's permission.

Besides, sections 243, 224 and 211 pose rigid and undeniable restriction on burglary, stealing, robbery, abducting, pickpocketing and kidnapping in either of means and method despite what so ever the genuine sounding reason or reservation is extended. No any justification ever shall generate ground to acquit or exonerate the culprit in such cases.

Section 212 of *Muluki Criminal Code* prohibits in holding someone else hostage. Section 131 of Labor Act 2074 and Section 251 of *Muluki Criminal Code* deny or invalidate to embezzle money or other undue advantages from the employers' deals/ transactions or to admit or extend bribes, to bargain or steal property from anyone at work place or premises and even to indulge illegal misappropriation or embezzlement of property, or let anyone else individual to exercise so. Renting, leasing, subleasing, selling, mortgaging or otherwise disposal of other person's property without the respective individual's consent is unlawful and awfully unethical act. Deliberately possessing, utilizing, or misappropriating another person's property attracts the various laws and bring the doer in subject of law trial. Section 252, 253 and 286 of *Muluki Criminal Code* provision and safeguard against robbery, looting, larcenery and extortion. Section 3 of Prevention of Corruption Act 2059 has absolutely denied any form of- either in cash or kind- graft, commissions, bribery and undue bonanzas and section 7 further provisions serious penalties about it.

However, these all laws, which are readily available to track society into better path and to form disciplined cum responsible citizens in regard to social conducts, can be traced to have its root or point of origination into Buddhist *Panca Sila*.

d) Refrain from Telling Lies

Speaking truth and refraining from telling lies is another very cardinal and linchpin principle in Buddhism. Eight-fold path also places 'speaking truth' as major and substantive path among other conducts and is placed as the first modus operandum in Buddhism. *Muluki Criminal Code* and some other laws aright emphasize and uphold the very essence of speaking truth and refraining lies.

Section 249 and 250 of *Muluki Criminal Code* explain that cheating and its facilitation along with dishonest, fraudulent, crooked or deceptive conducts is against

the acceptance thus are absolutely prohibited. Causing any sorts of implied difference in any tender, bid, proposal or contract is totally gainsaid. Forgery, faking, falsification and counterfeiting or perpetrating is totally nulled as enshrined in section 276 of same Code. In addition to this, section 279 further clarifies that all frauds, shams, fraudulent and swindling tasks or endeavors are shunned without excuses. Section 277 considers counterfeit or fabricated document as genuine is *prima facie* illegal thus severely punishable. Falsified document, a set or part, also falls in the same category attracting all the laws and will be tendered in zone of sentence.

Threatening, annoying, mocking, or otherwise acting improperly or behaving rudely and in a way to hurt and harm toward other individual is also thoroughly prohibited as provisioned in section 300. Similarly defaming is also categorically regarded as a punishable act.

These all provisions, which obligate people to present reality and speak only truth, are found to have been directly influenced and originated from one prime percepts of Buddhism, *Panca Sila*.

e) Refrain from Intoxication or Drug

Various laws in Nepal have envisioned for better health of people. Assuming that as one of arch fundamental rights, the state is expected as well as mandated to have positively intervened and indisputably initiated various efforts and activities. To mark ‘an initial throw’ on such pious mission, government has legislated some restrictive laws to discourage the conducts and characters that might offend and decay the health status of the people.

Section 131(4) (k) of Labor Act 2074 disallows to munch, consume, masticate or chomp alcohol or intoxicative drugs while at work premises or at the venue of the employment or service periphery. Section 4 of Narcotic Drug Control Act 2033 bans cannabis/marijuana to be grown, prepared, produced, exported or imported, distributed, sold, stored, distributed, trafficked, or used either curatively or recreationally. Planting & producing opium or coca leaves or any other sorts of narcotic drugs besides opium or coca is also unconditionally proscribed. Furthermore, the prohibition comprises of cultivation, manufacturing or preparation of narcotic drugs, selling or distributing narcotic drugs, exporting or importing narcotic drugs. To buy, store, possess, or engage in any narcotic drug smuggling or trafficking is also unequivocally verboten.

Section 142 of Motor Vehicle and Transportation Management Act 2049 explains that riding a vehicle with the use of alcohol or any other form of narcotic is completely unlawful and punishable too.

These all laws intentionally and deliberately dissuade and ban people on consumption and conveyance too of any sorts of intoxicative or narcotics, in form of solid, liquid or other substances.

Conclusion

Therefore, based on the analyses carried here-so-forth, it is incontrovertible fact to assume Buddhism- especially Five Percepts or principle of *Panca Sila* is rightfully the prime source for *Muluki Criminal Code* and some other laws. Many people are misreading Buddhism mere as a mantle of rituals and are diametrically ignoring and overlooking the elan it has to bring-forth the law related aspect. Various provisions, which have fought tooth and nail to install better social practices, cultivate virtues and vanquish the vices, are visibly inherited from Buddhism. Thus, Buddhism can be rightfully considered as mother law to *Muluki Criminal Code* and some other laws in effect. It can even be rightfully addressed as law of laws or supreme law or source law as well; and, considering such is always immune to any falsification or exaggeration at all.

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