



DEVELOPMENT OF JUDICIAL PROCESS TO DEFINE PARAMETER FOR CRIME-FREE PERIOD TO LOWER NUMBER OF REPEAT OFFENDERS: A CASE STUDY OF INTERNATIONAL LAW AND DISCIPLINES

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Received 7 May 2024; Revised 25 May 2024; Accepted 17 June 2024

Abstract

Background and Objective: Prison inmates are overflowing with the fact that society does not provide opportunities for former prisoners. These are factors that cause Thailand to spiral into endless problems. This group of people must make more effort than others to ask for a small opportunity to regain space to continue living because they have made a mistake and committed a crime. Moreover, it becomes a seal that prevents them from accessing "opportunities." Prisoners know that returning to the outside world is not easy. When they do not have a job and are not accepted by society, they fall back into the old cycle. The reason why released prisoners re-offend is because they are unable to find a job. Therefore, they must commit crimes without any choice to survive in society. When released from prison, a person has a criminal record. Stigmatized by society, no one dares to hire someone to work, and when society does not provide opportunities, they have to earn money through illegal means and become a repeat offender. The purpose of this research article is to compare the determination of crime-free periods in Thailand and abroad, including the guidelines of the Vinaya Act regarding a monk who has committed an offense according to the Vinaya. The Buddha prescribes punishments for monks only in cases specified in the Vinaya to find solutions and make recommendations to the government regarding the importance of bringing peace to society.

Methodology: This qualitative research analyzed information from both national and international legal documents, and information from the study of the Vinaya Act. The researcher used documentary research method, including research from the Vinaya Act, Tripitaka, and legal texts related to the development of the judicial process to define parameter for crime-free period to lower number of repeat offenders.

Main Results: They revealed that 1) A parameter for a crime-free period should have been defined after a person was released from punishment if he or she did not commit a repeat offense. 2) When a person was cleansed for a specified period, it affected judgment; that was, the person who was cleansed caused the erased sentence. As a consequence, the offender whose guilt was cleared would have become someone who had never been convicted before.



Involvement to Buddhadhamma: Development of judicial process defined parameters for crime-free period. It was related to the nature of applied Buddhism. It was the application of guidelines from the Vinaya Act regarding a monk who had committed an offense according to the Vinaya and applying Buddhist teachings to the law for defining a crime-free period to lower the number of repeat offenders for sustainable society.

Conclusions: Thailand had a severe problem of releasing people from prison and re-offending. Even though releasing people from prison was ready to improve themselves, if society did not give them the opportunity and stigmatized them, as they say, humans would naturally have a bias towards releasing people from prison. Knowing the history, no one would have dared to take the job. Therefore, it was one factor that forced many people who were released from prison to repeat crimes according to the "badge" given to them by society. Even though society should have given these people a chance to escape punishment, the equation would have been completed. Although imprisonment was an essential mechanism of the criminal justice process, the impact of imprisonment also became the stigma of the inmates. The best thing society could have offered was an "opportunity" to be part of society again without "stigma." Work opportunities were essential to help formerly incarcerated people start a new life after being released.

Keywords: Crime-Free Period, Repeat Offenders, Vinaya Act

Introduction

Thailand currently needs help with the number of prisoners exceeding the required standards. The ranking results indicate that Thailand has the eighth most significant number of inmates globally, third in Asia, and first in ASEAN. Considering the comparative population of ASEAN countries such as the Republic of Indonesia, with a population of 251,170,193 people, and the Republic of the Philippines, with a population of approximately 100 million people, the number of prisoners is lower than Thailand's population of 66.1 million people.

Thailand has thus faced a situation of prisoners or overflowing prisons for many years. Prison overcrowding creates severe problems in prison management in Thailand due to a lack of personnel, resources, and a sufficient number of prisons (Sutham, 2018), which is a burden on the country's budget. The sanitation system in the prison needs to be revised. An essential factor that severely impacts the efficiency of prisoners' rehabilitation may cause obstacles in their adjustment to outside society after their release. This causes the problem that once the offender has been released when they return to society, they are unable to adjust, which causes them to commit crimes again. Currently, the Ministry of Justice is faced with the problem of many prisoners in prisons. Furthermore, there is a problem of prisoners who re-offend after being released from prison, causing them to have to return to prison again. These are reasons that cause prisoners who are released to commit crimes again. This is because prisoners who are released cannot find employment or work in society. Therefore, they must commit crimes without any choice to survive in society. Labelling Theory and Stigma Theory in criminology indicate that humans are naturally biased towards prisoners who are released. When they know their biology, no one will



dare to accept them for work or let them return to society. Reintegrating smoothly for these people is quite tricky (Raksakao, 2021) and is another factor that forces many of those released from prison to return to repeat crimes according to the "badge" given by society. Therefore, it is an obstacle to reintegrating into outside society after release. This causes problems when the offender is released. When returning to society, there are still repeat offenses. When society does not provide opportunities, they must earn money illegally, becoming a repeat offender and going back and forth between prison and home. As a result, the number of criminals in society has increased and continues to accumulate. This matter is related to criminal history registration, primarily criminal history information. Only the owner of the data can inspect it because this is the fundamental right of the data owner. When recruiting, employers often require applicants to sign a consent form. Then, the employer will check if it found that the job applicant has a criminal history. The employer will not accept the job. Some laws prevent people from working as prisoners, including the Lawyers Act of 1985, the Civil Service Act of 2008, the Medical Profession Act of 1982, the Royal Thai Police Act of 2004, the Teacher Civil Service and Educational Personnel Act of 2004, and 25 other acts, including no erasure of records no matter how many years have passed since being released from prison. This leaves these people with criminal records for the rest of their lives.

According to the Constitution of the Kingdom of Thailand, Section 65 stipulates that the state should establish a national strategy as a goal for sustainable national development. As attested by the principles of good governance, it is to be used as a framework for preparing various plans to be consistent and integrated in order to create a joint driving force towards the said goal to be in accordance with the law on the preparation of national strategy. After that, the National Strategy Preparation Act of 2017 specifying the prescribed enacted a National Strategy Committee to prepare the 20-year national strategy (2018-2037), the first national strategy of Thailand according to the Constitution of the Kingdom of Thailand. This must lead to action in order for Thailand to achieve its vision, which is "Thailand is stable, prosperous, sustainable and a developed country by developing according to the philosophy of Sufficiency Economy" for the happiness of all Thai people. It has the goal of national development for being "a stable nation that people are happy, and the economy continues to develop. Society is fair with sustainable natural resource base." Raising the country's potential in many dimensions creates chances and social equity by developing people to be good, talented, and of high quality in all dimensions and at all ages, establishing growth based on a high standard of living that is ecologically friendly. The public sector exists for the benefit of the general population. Furthermore, the government intends to overhaul the nation's legal system. One of the major concerns addressed by the National Justice Reform Commission is the implementation of nationwide reforms in the legal system. The fourth reform problem is this: shifting the way of justice is administered in order to promote safety and equity in society. Reducing obstacles to releasees' reintegration into society and merging criminal registries are two significant reform initiatives.



From such importance, the researcher has studied and compared the determination of the distance from defilement in Thailand and abroad, including the guidelines of the Vinaya Act to be applied to inmates at Surat Thani Central Prison to reduce the number of repeat offenders among inmates.

Objectives

The purpose of this research article is to compare the determination of crime-free periods in Thailand and abroad, including the guidelines of the Vinaya Act regarding a monk who has committed an offense according to the Vinaya. The Buddha prescribes punishments for monks only in cases specified in the Vinaya to find solutions and make recommendations to the government regarding the importance of bringing peace to society.

Methodology

In this study, the researcher used the documentary research method, including research from books, the Vinaya Act, Tripitaka, legal texts, textbooks, journals, articles, and information from the Internet on issues related to the development of the justice process in determining the period of innocence to reduce the number of repeat offenders as well as finding ways to solve problems with the following steps:

Step 1: Gathering documents related to the research: the researcher collected documents related to the development of the justice process in determining the period of immunity from defilement to reduce the number of repeat offenders, regardless of books, the Vinaya Act, Tripitaka, laws, textbooks, research papers, theses, journals, conferences and seminars, documents, and in-depth interviews.

Step 2: Analyzing documents and summarizing research issues: the researcher brought the documents collected from step 1 to study, starting with the study of the development of the justice process in determining the period of immunity from impurity in order to reduce the number of repeat offenders by outlining the problems and then extracting only the pertinent laws from the Vinaya Act's recommendations for verdicts and Act level. Buddhism's Tripitaka was gathered for the content to put it together and examine the problems and make comparisons based on the established research questions.

Step 3: Summarizing research results and recommendations: The researcher summarized the analysis results to study guidelines for enacting laws, specifying a crime-free period to obtain conclusions and recommendations for those with the authority to further amend and improve relevant laws.

Results and Discussion

When conducting a comparative study for determining the parameter of crime-free period in Thailand and abroad as well as the period of freedom from the impurity of monks who committed offenses according to the Buddhist Vinaya, the research results found that the classification of criminal records in the French Republic was divided into three types according to



the severity of the offense under the Criminal Code: 1) Criminal record number 1 (BULLETIN NO.1) was the most complete document among all records because the Criminal History Register No. 1 recorded the criminal history of offenders and all sentences and punishments for offenders. Therefore, information in the Criminal History Register No. 1 would have only been available to those involved in criminal proceedings in court, that was, investigators. Prosecutors and judges, in cases where the offender had no prior history of committing a crime, there would have been a message saying: "There is no history." (nothing in this history register.) 2) Criminal history registration number 2 (BULLETIN NO.2) was the second most complete document because the Criminal History Register No. 2 would have avoided recording information that led to reinforce crimes that the offender committed in the past in specific ways. Therefore, the information in the Criminal History Register No. 2 did not contain the following facts: the judgment used for training and training for children, misdemeanor verdicts, awaiting punishment after the punishment period had elapsed, guardianship of minors, judgments that expunged due to the expungement of information in criminal record number 2, which delivered only to officials involved in court administration or administrative officials in public organizations, such as provincial governors, in case of applying for government service or requesting decorations or disciplinary investigations. In case there is no history of previous offenses, there would have been a message saying, "There is no history." 3) Criminal history registration number 3 (BULLETIN NO.3) was the least completed minor document. Criminal record number 3 would not have displayed the following information: A prison sentence of more than two years without a suspension of parole to prevent such information from causing harm to the perpetrators.

In the Republic of Singapore, after the crime-free period expired, criminal records were classified automatically without making any request. This period was at least five years from the completion date of the sentence or release from detention. In both cases, there were no further appeals or litigation at any stage (Teeraphan, 2019). When comparing with Thailand, it was found that Thailand stipulated conditions for classifying or destroying criminal history records in 19 cases according to the Police Code, not related to cases type 32 Fingerprinting (No. 4) 2018, divided into 19 cases: 1) Documented proof of death such as a death or autopsy certificate, or official confirmation of death registration from the Civil Registration Database of the Department of Provincial Administration were tangible; 2) The victim retracted their complaint, withdrew the lawsuit, or legally settled the matter; 3) The prosecuting authority definitively ordered not to proceed with prosecution or terminated the criminal process in accordance with the guidelines on criminal proceedings; 4) The court decided to dismiss the case or refused to hear it; 5) The court issued a conclusive verdict to dismiss the case; 6) The prosecutor in court decided to abandon the case; 7) A law was passed after the offense was committed, which nullified the offense; 8) A statute exempting the offender from punishment; 9) A court decided to resurrect the case for consideration stating the defendant was not the offender; 10) The criminal case was resolved in accordance with Section 37 of the Criminal Procedure Code; and 11) It involved allegations that a minor or young person had committed a crime. The judge did not impose a jail



sentence. Alternatively, the punishment had been modified to a juvenile approach, like those who were required to pay a fine or received a warning before being freed by the court. When a child or youngster had passed the time frame established by the court's decision-which was neither a prison sentence nor an order to suspend punishment-without defining the terms of probation. On the other hand, they were waiting for a punishment to be applied without laying out the guidelines for behavior control. In accordance with the court's ruling or directive, the child or young person had finished the training period. A child or youth whose court judgment or order deferred punishment or postponed the application of a sentence with probationary conditions had been granted an innocence certificate by the kid and youth Training and Training Center (Srisanit, 2018). Following release, the court issued an order or judgment establishing guidelines for maintaining behavior control. It could have effectively exited probation for the duration set by the court, and so forth; 12) In a case pertaining to the law's rehabilitation of drug addicts, wherein the subcommittee released individuals who have completed drug addiction treatment; 13) The court's sole authority to impose a fine (this applied to all categories of offenses); 14) A case under the Domestic Violence Victims Protection Act B.E. 2550 (A.D. 2007) or its amendments; 15) A case related to the use of special measures in lieu of the prosecution of criminal cases in accordance with Sections 86 and 90 of the Juvenile and Family Court and the Juvenile and Family Court Procedure Act B.E. 2553 (A.D. 2010) or its amendments; 16) A case under Chapter 8, Section 91 of the Organic Act on Prevention and Suppression of Corruption, B.E. 2542 (A.D. 1999) or its amendments, where the committee, NACC, looked into the facts and decided that if any charge did not have information, that charge would be dropped; 17) The court issued a final judgment to seize property or to perform penance, or the court orders the use of safety measures in accordance with Section 39 of the Criminal Code or waited for the determination of the penalty, or the court imposed conditions of probation that expired after a predetermined period of time, or the court had any other judgment that was not more severe; 18) The accused's fingerprint sheets were kept in the directory, and subsequent documentation from the relevant government agency verified that they were not the accused; and 19) The fingerprint sheets of those who applied for authorization to work in government or to enter the workforce in different agencies had electronic fingerprint data stored on them (Tongmuaengluang, 2018). It could have been seen that none of the 19 cases above were related to people who had been imprisoned before. Therefore, any person imprisoned even for a minor offence was unable to request data segregation from the database. As a result, those individuals must have criminal history information with them for the rest of their lives.

In addition, there were no legal restrictions on the amount of time that criminal records could have been erased for those who had previously been found guilty in accordance with the 19 cases mentioned above. Consequently, many people found it challenging to ask government organizations to expunge their criminal records. It also made living more challenging, demanding more time and money. It was impossible for these people to avoid the flaws if they were impoverished and lacked information and awareness about seeking the deletion of their previous



data. An employer could have conducted background checks on applicants before accepting them as employees. The employer had the right to reject a job application if they found out they had a criminal past. This was one of the issues that contributed to these people's unemployment and increased the likelihood that they committed new crimes, which worsened their criminal record.

Regarding the erasure of criminal records, the French Republic had the following options: In the case of a crime (10 years or more of imprisonment), after five years of release from prison, the individual who was formerly incarcerated could have asked the court to have the record erased. In the case of *délit* (imprisonment for not more than ten years), three years after being released from prison, the individual who was convicted could have asked the court to have their record erased. In the case of contravention (a misdemeanor that merely carries a fine and restricts rights), after a year from the date of release, a person charged with contravention could have sought to have their record expunged. In the Republic of Singapore, individuals who had previously committed a crime could have been able to have their names expunged from their records provided that five years passed (Crime-Free Period) and they did not commit and not connected to any further crimes, were not in custody or under police supervision and they were not under the supervision of drug rehab centers. A person's name could have been taken off of their criminal history record. In Thailand, records were expunged upon death, and the accused's fingerprints were kept in the directory until formal proof from pertinent government institutions proved that they were no longer the accused.

According to the Buddhist Vinaya discipline, there was a case of studying the period of being free from impurity for monks who committed offenses. The researcher would have liked to state this in the following order: when a monk committed an offense, which meant an offense, transgression, and punishment resulting from violating the precepts. There were seven types of offenses, namely *parajik*, *saṅgādises*, *thullaccaya*, *pācittiya*, *pāṭidesanīya*, *dukkha*, and *dubhāsit*; this could have been divided into two types: *Krugapathi*, a severe offense, namely *Parajik*, and *Sanghatises*. As for *Lahukāpat*, a light offense, namely *thullaccaya*, *pācittiya*, *pāṭitaṇīya*, *dukkha*, *dubhāsit*, and the offenses mentioned above were divided into offenses that could not have been relieved, namely *parajikā* offenses. As for the offenses that could have been relieved, there were the remaining six offenses (Phra Brahmagunabhorn (P.A. Payutto), 2014), which were *Sanghadises*, *Thullaccaya*, *Pācittiya*, *Pāṭitesanīya*, *Dukkata*, *Dubbāsit*. These offenses of monks had been specified in the Vinaya Pitaka, with the total of 227 precepts.

Moreover, an offense that could not have been relieved was a *parajikā* offense. When any monk committed this violation, he committed the gravest offense. It was considered a severe punishment. It was a punishment of expulsion from being a monk, which was equivalent to death (Phrakru Kosolsasanabandit Krishna Buchakun, 2021). This *parajikā* offense was a serious offense that could not have been corrected. Monks had to suffer and felt bad. There was a total of 4 precepts: 1) having sexual intercourse, 2) theft, 3) killing a human being, and 4) showing off an *uttarimnussadhamma* that is not within oneself (Phra Brahmagunabhorn (P.A. Payutto), 2014).



As for the offense that could be remedied, the Sanghatise offense had the most severe punishment. Monks who had been convicted had to enter the penitentiary. It was to stay in a limited area. It was equivalent to being punished with imprisonment (Phrakru Kosolsasanabandit Krishna Buchakun, 2021). As for other offenses, when a monk committed this transgression, they had to do penance; that was, they had to tell their fellow monks about their offense. However, the administration of the Sangha had a type of punishment for monks called "Nikkharam," which was classified as Sangha, the following punishment measure. After this, the monks who violated the precepts or any other prohibitions appropriate to the case were fined. Nevertheless, the monk did not accept it. If it was not accurate according to the Dhamma and Vinaya, then it had to be punished as punishment appropriate to that offense (Phramaha Udom Saramedhi, 2003).

In this instance, the researcher had investigated whether a documented history of misconduct would have existed following a monk's alleged violation of the Vinaya. It had been discovered that a monk who had broken the law, for instance, needed to be removed from their position as a monk. Alternatively, a monk needed to enter the Sangha after committing a crime. An alternative was for a monk to commit a crime and then atone for it. In these situations, there was absolutely no record of any misconduct. It was said that the monk had once again become a person of unwavering morality (Pali IX., 2024). On the other hand, the names of the monks were listed in the Vinaya Pitaka, which also documented their history. All that existed was the law. Based on the deeds of monks, the Lord Buddha composed the Vinaya, the first chapter. Thus, it could not have been argued that the law's initiator, a monk, was in error (Woottipunyaisakul, 2003). This chronicled the events of the monk who first gave the commandment; it would have tales like Phra Suthinna becoming intoxicated with guys. But in all the drunkenness, they did not come across any precepts that forbade it. As a result, the behavior at the time was not unlawful. Furthermore, Parajik was not to be held responsible due to the absence of Vinaya law, among other reasons (Rattanachai, 2022). As a result, the Vinaya Pitaka had the earliest account of a monk's transgression, which occurred during the time of the Buddha. It served merely as a documentation for later Buddhists to understand the fundamentals of retribution. It wasn't a crime; the monk who first proposed the law was the one who did it. The Lord Buddha then instituted this offense. Any monk who disobeyed the rules was thought to have committed an offense. Thus, documenting this history served as a case study for monks in succeeding eras and shed light on the genesis of the original Vinaya formulation.

Studying this case revealed that Buddhism did not record any history of monks who violated the Vinaya. After receiving the punishment, the monk was considered to have pure morality to ensure that mental intoxication was cleared. This principle applied to government procedures that did not erase the criminal records of offenders. It was the opportunity to better oneself, overcome mental defilements, and be free from despair. The researcher viewed it as another punishment because the state's power must punish the offender by being imprisoned for one term. When released from prison, those people had to be punished once again by having a record of being sentenced to a final sentence of imprisonment to follow them forever. Ending



recidivism is not the responsibility of ex-offenders alone, but society has a part to play in providing opportunities to these groups. Governmental organizations also need to project a certain image and launch a campaign to increase social acceptance of former prisoners. As for people in society, they must have looked at former prisoners with distinction; not all former prisoners were bad people. Still, not every individual was good. There were good and wicked people mingled together in every community. The majority of the former prisoners received training. The Department of Corrections was able to successfully change these individuals, but these people also want to be good people and want to be given opportunities. Society should, therefore, have not shunned these people. Prisoners who had been released from prison should not have been allowed by the law to further restrict their rights because it would have been like receiving double punishment and seeing that giving those who had been released from prison the opportunity to have a career would have made people in society safer. Since there were other ways for those who had been released from prison to pursue an honest career, they would prefer not to go back to prison. Therefore, there should have been an opportunity for those released from prison to have a place in society on an equal footing with others. In order to ensure that society was informed and had the right understanding, public relations could have been carried out by disseminating pertinent and trustworthy facts, information, and research findings. Moreover, simply amending the law might not have been enough. A screening and certification body ought to be in charge of verifying the good behavior of inmates who were being released from jail. In order to foster trust with businesses, any changes to the law should have been carefully reviewed in light of public safety concerns as well.

Originality and Body of Knowledge

Buddhism does not record the history of monks who have committed crimes against the Vinaya; when they received punishment from the disciplinary rules, there is a monk with pure morality. As for recording the history of monks, it occurred during the Buddha's time in cases where monks did anything that the Buddha considered inappropriate for monks' practice. Therefore, the prohibition prevents any monk from doing such a thing again. If any monk violates this law, he will be punished, according to the Vinaya; therefore, the Sangha administration does not specify a period for clearing impurity. It only provides monks who are negligent in their discipline with the chance to rectify their behavior and avoid becoming entangled in impurities. Unlike prisoners who are in prison, when released from that punishment instead, there must be a stigma attached to them forever. Buddhism, therefore, points to kindness, forgiveness, and giving opportunities to monks who have committed crimes to become good conductors. The monastic society accepted it and did not criticize it in any way. However, the guidelines learned so far should serve as a spark for the state to realize the importance of enacting laws regarding the determination of the reprieve period for prisoners released from prison. As for determining how many years the period of exoneration will be determined, the state must consider further. The researcher is certain that the notions of the French Republic and the Republic of Singapore should

be governed in accordance with the religious governance criteria stated above to ascertain the duration of innocence for inmates who have been released from prisons in Thailand as depicted in Figure 1.

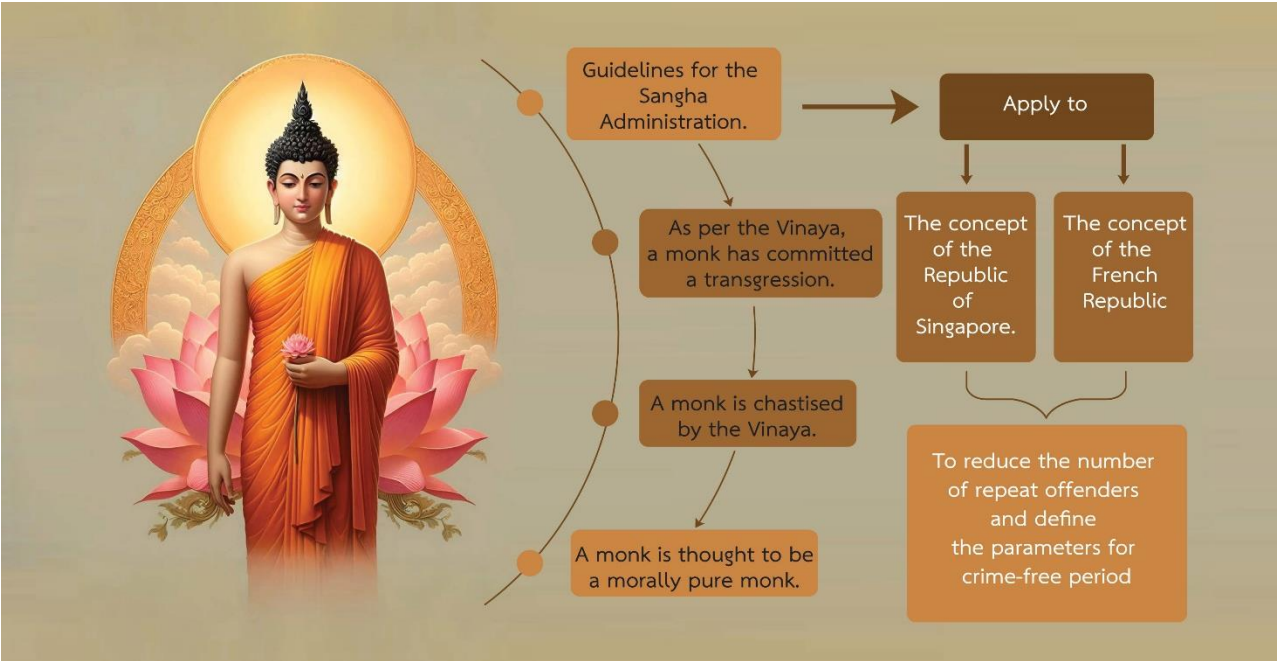


Figure 1 Applying Buddhism to define parameter for crime-free period to lower number of repeat offenders

Conclusions and Recommendations

Studying the development of the justice process in determining the period of innocence to reduce the number of repeat offenders were the study of foreign laws and the Vinaya Act. The researcher concluded as follows. The fact that society did not provide space or career opportunities for those released from prison to start a new life had left many released from prison with nowhere to go. They would not have accepted until having to return to the same life cycle and repeat offenses until having to return to prison. Although many agencies supported vocational training for prisoners, there should have been a process to prepare prisoners before they were released. However, they also had to accept it. Society still had a prejudice against these people who had been released from prison to return good people to society sustainably; those released from prison deserve the opportunity to earn a living and be self-sufficient with human dignity. In economic terms, the Thai labor market had a significant shortage of foreign workers from neighboring countries. Therefore, those released from prison were a valuable domestic resource that would have helped create economic benefits for the country. The "opportunity" the released person wanted in the law should have also facilitated the pursuit of careers for those released from prison. In the case of the prison releasing the prisoners, the law should not have limited rights again because it would have been like double punishment. The study results suggested that the government must have given importance to enacting laws by



specifying a crime-free period for those released from prison. (the criminal record removed his name) as a result of the law automatically as soon as the criteria met the specified conditions. 1) Serious cases that were punishable by imprisonment for more than ten years had a crime-free period of 5 years after the sentence was released. 2) A three-year crime-free period followed a sentence of less than ten years in jail for certain cases. 3) Petty offense cases specified the crime-free period for one year after the sentence was released because the person released from prison still had their name in the criminal history record. In Thailand, criminal records would have never been erased. As a result, those released from prison who wanted to become good people and were ready to face society could not have applied for work. According to the researcher's recommendation, future research should have considered applying Buddhist principles to Thai legislation, for a law stipulating that a person who would have automatically been freed from impurity by the law immediately must have been a person who did not appear to have acted. They were repeatedly violating the principles of the five precepts, which were the essential practices of the general public. By abiding by the Five Precepts, a person's name could have been expunged from the criminal record by preventing unrelated repeat offenses.

Acknowledgement

This study examined the development of the judicial process to define parameters for crime-free periods to lower the number of repeat offenders. It was a case study of international law and disciplines. This article's material is based on a case study of Surat Thani Central Prison, Department of Corrections, Mueang district, Surat Thani province, which is part of a larger research project on the development of the legal system to specify parameters for crime-free periods to reduce the number of repeat offenders. The content has been modified by the researcher to align with the tenets of Buddhist teachings.

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