

**THE CODE OF BEHAVIOUR OF BUDDHIST MONKS AND CLERGYMEN
IN THE GENUINE RULE FOR MONASTIC PEOPLE IS
A LEGAL DOCUMENT OF ALL
ELEVATED MONGOLIA**

Mrs. J. Urangua

Doctor and Professor of the SSS of the University of Mongolia.

Mr. Bayarsaikhan

Doctor and associate professor Head of Law History Research of the Law School of the University of Mongolia.

Өгүүллийн товч утга: Энэхүү өгүүлэлд 1911 онд Монголчууд төрийн тусгаар тогтнолоо байлдан олж аваад Манжийн хуулиудыг халж өөрийн монгол хууль дүрэм ээ боловсруулж эхэлснийг гэрчлэх нэгэн сурвалж болох “Жинхэнэ дагаж явах хууль дүрэм” -нд лам нарын холбогдолтой нийгмийн харилцааг хэрхэн зохицуулж байсан явдлыг судлан үзсэн болно. Чингэхдээ энэхүү дүрмийн зарим заалтуудыг өмнөх үеийн хуулийн заалтуудтай харьцуулан үзсэн юм. Энэхүү сурвалжийг анх удаа судлан үзэж, судалгааны эргэлтэнд оруулж, ном болгон 2004 онд УБ хотноо хэвлүүлэн гаргасан байна.

Түлхүүр үг: хууль дүрэм, эрх зүйн акт, тусгаар тогтнол, шашин төрийг хослон барьсан хаант төр.

There is one significant point that is defined in the genuine aspiration of our nation when she declared her independence by her constitution. It says that we inherit our state and history, culture and its values. This provision gave us an impetus to deal with legal heritages of the State Legal materials for investigation and make them renoun to the readers for acceptance and rejection.

As a result of the national Liberation movement took place in Mongolia at the beginning of twenty century. Mongolia got her independence from the Manchu tyranny in 1911 and restored her statehood. It created a favorable condition for our nation to restore our national and legal thinking. First of all, western legal concept, psychology and culture penetrated into our mind. It opened our avenues to study legal system. But there were still retentive impact of the Manchu-Chinese legal influence. There was no other way.

The progressive statement (prince Khanddorj, monk Chagdarjav, Da Lama Tserenchimed of Mongolia) organized surreptitious gathering of the Khalkha dignitaries and the nobles and discussed to get a support from tsarist Russia and sent Khanddorj, Chagdarjav and Khaisan as mission.

In 1919, the Republic of China revoked Mongolian autonomy and annexed her to China again.

Those statement actively sought ways and means to get rid of the yoke of the Republic of china.

Jalkhanz geegen was appointed to meet ming officials. Taking this opportunity, he discussed with Larsen, a merchant of the American trading firm of Andersen – Meyer and left secretly in his (larsen's) car on the third of the first month of winter.¹

¹ The dilav Khutugt memoirs of out Mongolian politics.

At this period some say that if we ask for aid from Japan. This will be soon accomplished and America is far, so aid will not come soon. This shows that there was deep tendency toward the west and east.

So we decided to present about one important document "rule and regulation to abide by (1913-1918) was functioning for 1911-1919 in all elevated Mongolia. This is one of the interesting sources of legislation of that period to regulate the relations of monks who were influencing upon certain part of Mongolian society.

It was valid until the legal documents were decreed for 1913-1918. The most components of this legal document were relevant to the monks. This is not without cause. There were many events concerning pro and against monks. As soon as Mongolia declared her independence, she set up her own monarchy and its system, which wielded combined powers of religion and state. The highest dignitary became the head of state. It was very significant for the society of Mongolia. At this period every son Mongolian became monk. It was usual habits of Mongolians. Every Mongolians took a vow not to marry. In another word, celibasy was very popular. The society of Mongolia consisted of such kinds of population in a certain area.

According to the first article of the rule there was necessary procedure to inform and get a permission from the Ministry of Religion or Dharma king. If ordinary monk commits an offence, this case was to notify the ministry of religion. If high dignitary commits an offence, this case was to notify the Dharma king. In another word judges or prosecutors did not have an authority to investigate or prosecute guilty monks or dignitaries without a permission. On one hand, there was prevention of infringement upon individuality on the other hand, it was incumbent upon the six principal ministries, advisors to the ministries, principal Khampo, the Dharma king of the city, ministry of religion, two chairmen of eastern aimag assemblies, prince at the office of western two aimags, official and Luvsantseren, prosecutors for Mongolian citizens of capital city and trader's center "Maimaa" to abide by this rule. It was a standard for behaviour for mostly for monks and for civilians. This kind of legislation of religious people was part of combined principles.²

² Combined principles. It is aid that this principle was invention of Khublai khan.

It was a fundament for implementing Dharma rule.

In another word, Buddhist concept or Dharma rulers' authority was legalized. It may be aimed at unifying and consolidating Mongolians, under the Buddhist concept to revise her independence, who lost their independence and freedom for many years. This kind of policy was proper in that period. In 1918 autonomic Mongolian population was exactly 542504. It means our population was over half million.³

Monk population was 115 thousand.⁴ If we relied on this fact, it is possible to say that 2/3 of the total population was monk. It is clear that they were influential force. But above-mentioned permission was not included in the later legal documents of all elevated Mongolia.

These rules detailed woman's behaviour and procedures to visit monasteries and temples. 12th article forbade monks to associate with girls and laymen on the district territories for seduction. This stipulation did not mention about a liability. But this kind of provision came from the clause of Mongol legal document of the Manchu in 1795 and remained in the legal source of restoration ministry of decreed Outer Mongolia. If we collocate these clauses.

³ Maisky. Modern Mongolia UB.2001 page 26

⁴ Maiski's work page 351

Rule with 32 clauses regulates to forbid mixture of monks with layman quarter people for seduction.	First volume manuscript study. Transcription and indexes done by B.Bayarsaikhan edited by Ts.Shagdarsuren J. Gerelbadrakh Page 227.228.2004	The keeping of girls away from Buddhist temples, revised edition. 1441 st clause. The legal sources of restoration ministry of the decreed out Mongolia.	Legal sources of the decreed Mongolia U.B 1997. page 147
There is a prohibition of mixture of girls with monk quarters. Male novices were banned to visit civilian quarters for	Girls were banned to stay at monk quarters. If monk keeps a girl at his hostel residential quarter, that monk can be	Girls are banned to visit monastery quarters. If monk keeps a girl at his hospice, this monk can be fined by 18 animals religious ca	Girls should not visit temples where monks live. If monk keeps a girl at his hostel without good cause that

III МОНГОЛЫН ОЙРХИ ТҮҮХИЙН АСУУДЛУУД

seduction. They were banned to keep girls at their hostels at settlements or countryside for seduction.	fined 18 animals, religious officer can be fined by nine animals, Bikhshu and novices can be fined by five animals. These fines can be confiscated. If Cuckold is ministry official he can be transferred to relevant ministry for penalty.	nbe fine dby 9 animals. Bikhshus and novices can be fined by five animals. Those animals can be kept at the authority. If Cuckold is internal ministry official he should be sent to revelant grand-jury.	monk can be friendly 18 animals. If this case was investigated, abbot and disciplinarian monk each can be fined by nine animals. Cuckold can be penalized.
---	--	--	---

From this comparison, it is easy to notice that the regulation and its penalty starting from 1780 up to 1920 were the same. In another word, monarchy Mongolian copied the contents of the Manchu law and translated them into life without change. This rule said that living of girls with monk at residential quarter was completely banned. This rule was worked out in 1919. But terminology "completely banned" was written in 1818 and came into being.

The legal document of the decreed Mongolia exactly copied. It is written in the table.

This provision of 12th rule has, may be, a link with the provision of the Manchu legal system. In another word, the Manchu adjusted the religious morality and ethics to the civil legislation and this was reflected in the Mongolian legal documents and became moral standard which was accepted by those authorities of religion and state. This is a specific feature of this document. The prohibitions of this rule are:

1. monk and novice to spent a night at a strange house and go away without informing the abbot
2. to sleep with nuns
3. to have a sex with girl living at monk's hostel
4. to inform banner nobles or princes or abbots when monk goes to recite sutra and mantra at family in mugden town, Shireet khuree, Khukhe khot and 49 outer banners

5. to spend a night at a girl's house without husband

The transgressioner should be subject to penalty for infringement upon the monastic rule.

As law breakers were liable to the statute law lamas and their assistants were penalized as payment of animals as fine or punished as birch rods. Also monks were unfrocked. There were those several penalties. For example: If lamas and novices do not spend a night at a family who invited monk or go without notification to his superior monk or a man who invited lama without notification to his superior monk, they can be found by 9 animals as penalty. Those animals can be transferred to the government property. The man who invited a lama without notification to his superior monk can be penalized by his ministry under which he is authorized. These provisions in the monastic rule are similar in some manner to the provisions of the Manchu legal system. They are observed easily.

According to the monastic rule and regulation, the lamas and dignitaries were liable to carry themselves on with permission contained to following reasons: 1. to demand repayment of debt; 2. to sew dress; 3. to visit relatives; 4. to recite a scripture for medical purpose; 5. monks to be invited to authorized ministry officials when they were out from monastic enclosure and in secular areas.⁵ Except those there were a certain liberalized points for the reasons to meet women and small girls of close relatives and one's own mother and elder or younger sisters.

But there were no such type of pure Mongolian regulation for monks and clergymen.

However, women including young girls were liable to enter Buddhist temples on the fourteen of lunar month to pay homage to altar and to kindle ghee lamp and burn incense under strict supervision of ministry of religion with monastic disciplinarians. After the offering ceremony they were to leave temples for their homes according to the monastic code.⁶ Also women including young girls were permitted to attend Maider ceremony and religious dancing ritual, which take place every year. It is important to clarify a concept about women including young girls, "There are two words" women and girls in collocation. If we investigate the situation in that period, women and girls of Mongolia in former Ulan-Bator almost all were prostitutes. There were many ghers near the big temple towns in which were girls for love affair. Some of them lived with their parents. Lamas should follow celibacy. It was their vow. But the law of life is very powerful. One third or fourth of those lamas did not abide by this monastic rule. This is the note about Mongolian monks of discipline⁷. This situation entailed the certain regulations according to the Maisky's note, those women

⁵ mongyıl čayajin-u bičig Tergegun devter .2004. Page 226

⁶ rule consisted of 32 points. 22nd point

⁷ Maiski. Modern Mongolia. Page 56

and girls were victims to the social illness. They were not out of the state policy and legislation. In this rule, they were mentioned 22 times. This means that there were attention to them.

According to the rule, when woman reaches 60 years, she was liable to take a vow and could become a nun.⁸ If this rule is infringed, she could be punished by 100 floggings. It was a clause of the code.

Those clauses were introduced into the Mongolian law under the Manchu and into the legal documents⁹ of the restoration ministry of Outer Mongolia decreed for the first time. The Manchu law banned 60 year-old woman to become a nun dug to her choice. But monarchial Mongolian law liberalized the provision by permitting 60 year-old woman to become a nun. Nun means woman of years took a vow by shaving her hairs on her head.

Those law documents mentioned three times about 60 year's nun.

1. If she reached 60 years old, she might become a nun. If she was under 60 years old and became a nun, she could be punished just like other women and girls.
2. Once rule and regulation enacted, if nun infringes upon the stipulation in the rule and regulation of moral code she shall be flogged 100 times.
3. As rule and regulation, if women under the 60 years and girls were kept or if there were stealing and making a fire and careless storing of marked board and betting on card playing. The province disciplarian should be penalized by fine. These are regulations of relation.

At that period, there were many cases of infringement upon the rule and regulation within the enclosure of the monastery by wearing yellow dresses and taking vodka and wines. They were arrested by police officials and patrol soldiers and transferred to their administrative units. The numbers of them were increasing. Due to

⁸ Ya. Tsevel he defined as nun, woman renounced and took vow and were red and yellow robes.

⁹ Dictionary of twenty one said any woman should be nun at one's will. If they do, they should be punished. mongyol čayajin-u bičig page 70

the rule and regulation, they shall be rodged, birched, beaten by board, tortured and exiled and shall be sentenced to death but these punishments were possible to ransom.¹⁰ If we demonstrate the account of the ransom, they were tabled in following manners.

III МОНГОЛЫН ОЙРХИ ТҮҮХИЙН АСУУДЛУУД

Due to the legislation, it was necessary to penalize those Ruffians even though they had no ransom for exchanging penalty, if their offences were overlooked, they could commit more crimes.

Therefore, they should be sentenced more strictly. It was a note came from the Manchu government to the grand lama. In reply to the note, the grand lama increased of ransom to the chen of ransom, they said that it was more appropriate measure to admonish and penalize those Ruffians. Then they asked for advice to abide by their proposal and the enacted legislation. In this letter they said that those penalties could be notified to the grand lama. It was regulation of the relations of common people. It penalty was not possible to exchange by ransom. The punishment should be undergone. If the guilty person wanted to appeal the grand lama for mercy, if was possible to do it. If the grand lama pardoned those who requested to mitigate their penalties, this decree of the grand lama should be distributed among the authorities of all khalkha Mongolia. It was an evidence of the grand lama who was privileged to have a mercy upon his subjects. On the other hand, Дальний Восток, the magazine published an article in 1913 about the grand lama's prerogative on mercy. It is again the witness of the grand lama's prerogative. The ministry of religion distributed the wooden tablet to the seventeen institutions. The wooden tablet explained, first, the reason of activities, second, destination, third, date of issue, fourth, the duration of wooden tablet. Those who wished to have a wooden tablet used to get permission through the disciplarian from the authorities. This wooden tablet was given under the strident rule. The disciplinarian was very roughly a kind of monk-police. If this disciplinarians failed to bulbils his duty, he should be fined by animals. There was wooden tablet. Except of it there was an identification paper. It was given first to a monk who visited his parents, second, to get a treatment of spring, third, to make pilgrims to another temples. When they achieved their aims, they should notify the disciplinarians of aimag or religions faculties. This identification paper contained the clear explanation of purpose, and date of duration.

¹⁰ this point is the same for man. They should be monk at one's will, if so then can be punished.

It is impossible to consider them as the rule and regulation belonged to only monks.

According to the administrative law theory, one aspect of the relations is a breakage, another one of this relation is infringement. Due to the effect of the offences the liability should be judged. The liability was imposed on offender regardless of their ages and sexes (monk or laymen or women). This is the clear evidence of the jurisdiction level of that period.

There was the rule and regulation about the secular people in the lay quarters, monks, who had not a wooden tablet, were in the secular quarters and mixed with women and girls

against the clauses of the rule and regulation. In these case they were liable for infringement. The clause concerned the matters said that women and girls entered the enclosure of monastery at their will of harbour monks in their homes. They were liable to be beaten with a sole of shoe twenty times. But monks and novices without wooden tablets were encountered with the patrols. If they had no time to get a permission because their parents were sick and needed to recite the scriptures for them immediately, in these cases, they should not arrested. But they should notify the ministry of religion. This ministry should investigate them and give back wooden tablet if they were not guilty. If they were guilty, they should be birched by 100 times. If they pretended at their will, they should be notified the ministry of religion. This obscenities should be warded off.

The article 12 of this rule and regulation monk should behave well. If he breached the monastic rule, he was, first, ambitions for wrong view, second, to grow hair in secular garbs at their will, he should be manacled for 45 days, and trampled on the plank and beaten with no hips 100 times and make him a monk and transfer him to the disciplinarians of province. He should congregate 2000 days in the congregation hall without interruption and procrastinate every day 200 times. This punishment is in the rule and regulation of the Manchu. According to the rule and regulation, when monks congregate at the temples or get an instruction from their teachers and circulate the common grounds of street and square, firms and markets for religious purpose. They should walk after the sunrise or before the sunset. It was customary standard. But there were not such regulations in Mongolian legislations. With the purpose of preventing the theft and fire from jikh khuree and gandan monastery one unit became ten households in ten stockades and elected its chief. One person was appointed as patrol and another person was as watchman. Its aim was to keep common peace. If somebody breached the established rule, he or she should be penalized. This kind of keeping order was the evidence of law enforcement.

The relations concerning monks and clergymen which were regulated by the genuine rule and regulation of monarchical Mongolia is first of all, embody every features of previous legal documents. Second, reflects the dual principles to a certain extent, third, keep the religions morality in the religions sense.

This legal source on the administration and law history of Mongolia was serving during the monarchical Mongolia or for 1913-1918. The source was very significant before the legal instrument was enacted by the Mongolia decreed.

This legal source has several features such as

1. It was a basic root for the law reform of Mongolia. In another word, it was beginning of law formation of Mongolia by replacing the legislation of the Manchu chin dynasty was

III МОНГОЛЫН ОЙРХИ ТҮҮХИЙН АСУУДЛУУД

dominating Mongolia for over two hundred years. So the importance of this study was defined on the basics of the genuine rule and regulation to be abided by.

2. This rule contained law tradition and developed it. In another word, transhuman nature and its characteristic had been elaborated and tested for long process of history as just fine or punishment by animals as fine. The structure of the punishment is, may be, similar to the khalkha law. The Khalkha law of the ministry of religion was in force for the grand lama's subjects. There was the legislation of three banners of khalkha law and its contents concerning Buddhist monks and clergymen had been revised in 1709 to a certain extent. It was called Khalkha law of the religions ministry in 1770. It was in force up to 1925 for the grand lama's disciples and their clans.
3. The some parts of this rule and regulation were direct adoption from the Mongolian legislation under the Manchu chin dynasty. This is the evidence that the established order which had been abided by for long period was not easy to reform. But some punishments were replaced by mitigated ones. It means that there were in some cases some attempts to reform. However they were temporary measures.
4. The main feature of this rule and regulation was detailed regulation of the relations of monks and laymen and women, concerning the socio-political circumstance in that period.
5. This rule and regulation first emphasized "otog", administrative unit, by this, it is specific. In another word, the structure of this administrative unit was not relevant to this period. It was existing before the Manchu period. The Manchu legislation did not deal with the otog, the administrative unit. Some scholars say that legislation of the Manchu was not able to enact in Mongolia because they did not deal with the "otog" administrative unit.
6. This act introduced a certain number of penalties such as to labour, to birch, to defrock, to wander prisons in another provinces, to clean various temples and to arrange monastery teas and meals at his own expenses. These were not before. This new type of introducing penalties purported to mitigate penalty and reflected social relations in that period. This is the direct result of the policy.