

The Price of Purity: The Religious Judge in 19th Century Nepal, Containing the Edition and Translation of the Chapters on the Dharmādhikārin in Two (Mulukī) Ains by Axel Michaels, Axel. Torino: CESMEO (Corpus Juris Sanscriticum), 2006. ISBN 8887828075.

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The function and duties of the *Dharmādhikārin* as described in the *Mulukī Ain* (MA) are the subjects of this book. The MA is a codification of various ancient legal documents promulgated in Nepal in 1854 at the instigation of Prime Minister Jaṅga Bahādura Rāṅā when king Surendra Vikrama Śāha was in power. The *Dharmādhikārin* or religious judge was one of the most powerful Brahmin official at the court. He was an already well established religious authority by the time the relevant chapter of the MA was compiled, since the position (which might have been taken from the *Marāṭhās*) had been created at the end of the 18th century when the Śāha dynasty had unified the country. But not much is known of his activities prior to the description given in the original *Mulukī Ain* (MA 1854) or in a later and more concise version compiled in 1888 (MA 1888).

As Andras Höfer has shown in his classic study, the MA is one of the most important documents for studying the traditional caste society of Nepal. But though other scholars have contributed to retrieve the code from oblivion, it has not yet received all the attention it deserves¹⁸¹. Michael proposes an interesting investigation of some of its sections. It has the advantage of combining an anthropological approach of Nepali religion and society with a first hand knowledge of Nepali language.

The book comprises a long introduction, a critical edition (in *Devanāgarī* script) of the two chapters on the *Dharmādhikārin* (chapter 89 of MA 1854 and chapter 32 of MA 1888) with a description of the manuscripts and editions on which it rests, and an annotated English translation of the two chapters.

From all this one gathers that the main duty of the *Dharmādhikārin* was to grant expiation (*prāyaścitta*) and rehabilitation (*patyā*) (or purification cum reinstatement) to those who had contracted impurity or sin through their contact with a person who had violated the rules of purity. In others words, the religious judge did not deal with the main culprit but with

¹⁸¹ Höfer, Andras, *The caste hierarchy and the State in Nepal. A Study of the Muluki Ain of 1854*, Innsbruck, Universitätsverlag Wagner, 1979. See also a critical edition by Jean Fezas (2000), and a partial translation by Mahesh Candra Regmi (1979).

those who, through their contacts with him, had been indirectly afflicted by his offences. It was not until the *Dharmādhikārin* (and he alone) had issued a certificate of rehabilitation that they could get fully readmitted into their caste. As for the main culprit, the MA ruled that he was to be punished by the king or by the Prime Minister (MA 1854/89/4, p. 20). The punishments varied according to the gravity of the offence from capital punishment to temporary degradation (life imprisonment, branding, confiscation of one's ancestral property, pp. 21-23), but they always implied a change in caste status. Moreover, they were heavier if the culprit had knowingly transferred his impurity to others, that is if he had had contacts with them while not ignoring that he was already in a state of pollution. The prescribed duty of the *Dharmādhikārin* then consisted in examining whether or not those persons could be rehabilitated and what method was the best. Those most likely to contract impurity through their contact with a polluted or degraded person were the spouses and the children. An important element for the *Dharmādhikārin*'s appreciation was what Michaels aptly calls the subjective aspects of the action. Having contacts with an impure person fully knowing (*jāni jāni*) his condition was held to be different from doing so in ignorance of the same (which was called *bhor*). For here too, doing wrong intentionally could result in an increase of the punishment. It was moreover expected that the culprit approach himself the *Dharmādhikārin* and confess his fault, a condition of rehabilitation clearly prescribed by the ancient (written) Indian law (*dharmasāstra*).

It is therefore clear that from the point of view of the MA, impurity has religious (and social) consequences as well as penal consequences and that it is to be punished accordingly. Whereas penal measures such as imprisonment or fines can only be applied by the state, the *Dharmadhikārin* is required both to administer some form of expiation (*prāyaścitt*) and to rehabilitate the culprit into his former caste status (*patiyā*). Michaels is right in stressing the complementary nature of his two functions: while expiation "aimed to remove the evil of sins, either in this life or in after-life", *patiyā* "sought to prevent others from the evil consequences of evil deed" (p. 37). However, as Michaels also shows, the MA is not always consistent in its use of the different categories. There are cases where the overlapping of social, religious and penal consequences forbid clear distinctions.

The system of law of which the MA is a codification was traditional in Nepal. It was partly derived from local customary laws and partly from *dharmasāstra*, that is from ancient Indian law based on Hindu scriptures. The precise part played by each of its sources in the MA remains somewhat obscure. But one has to recognize that with ancient Indian law too it is difficult to assess the exact relationship between custom and

(written) law, for they kept mutually influencing each other. In other words *dharmaśāstra* was not immutable: it could always be adapted and modified to suit prevailing social circumstances.

There are no direct quotations from the *dharmaśāstra* literature in the MA, but it is natural to wonder to what extent its chapter on the *Dharmādhikārin* was influenced by ideas taken from it for after all the Brahmin in question was in charge of affairs connected with the maintenance of *dharma*. May be this subject could have been dealt with in a more systematic manner in the introduction of the book. It seems to me that at least three principles underlying the application of ancient Indian law are to be found in the chapter of the MA under study. Those are 1) State and religion are not separated and the king is required to preserve the socio-religious order; 2) the individual is not separated from his social group; and 3) the law is not applied to a given territory with uniformity but it varies according to castes and ethnic groups.

First, state and religion are encompassed into the same global order called *dharma*. It explains that, for the sake of maintaining the socio-religious order, offence against the State (or crime), and offence against religion (or sin), should both be punished. The MA reflects this conception. It implicitly recognizes the ancient Indian conception of the king as responsible for maintaining the proper hierarchical relationship between the individual castes when it has the ruler (or other representatives of the state) punish those who transgress their caste observances. It shows that in the 19th century civil and religious law were not separated in the Hindu kingdom of Nepal. Moreover, the MA believes in the necessary cooperation between the king and the Brahmin. It is because, ultimately, royal authority is bound with notions of moral and religious order, that the king has to take necessary steps to have his penalties supplemented by an expiation which only a Brahmin can give. Just as in ancient Indian law the king is invested with special authority in social matters, for he is not only supposed to give a decision in accordance with *dharma*, it is also his duty to enforce *dharma* through coercion. Punishment (*daṇḍa*), which enables the king to perform his function, is indeed identified with *dharma* in brahmanical ideology (Manu VII, 17)¹⁸².

The MA adopts a second principle of ancient Indian law when it considers that every act committed by an individual has a social dimension: there is no such thing as a sphere of privacy. Accordingly, whosoever transgresses the rules of his caste defiles those with whom he interacts. He endangers the purity of his whole caste because impurity is

¹⁸² Lingat Robert, *The Classical Law of India*, translated from the French with additions by J. Duncan M. Derrett, Berkeley, Los Angeles, London, University of California Press, 1973 : 214.

contagious. This is why the *dharmasāstra* prescribes measures to suspend polluted persons from their caste status either temporarily (until they are rehabilitated) or permanently. The MA shares a third principle with ancient Indian law when it prescribes measures that vary according to caste and gender — an indication that it too rules out the equality of subjects before law.

But if the MA reflects something of the conceptions of the *dharmasāstra*, it is not itself a *dharmasāstra*. On the one hand, it is still steeped into the dharmic order and its impossibility to distinguish between the social and the private sphere of an individual, on the other hand, it makes a distinction between activities of a strictly religious nature and those having a social dimension, as it deals only with the latter. Thus, though it adopts the *dharmasāstra* classification of evil actions, it does not mention all the offences which the latter records. For instance it does not punish a Brahmin who forgets his Veda. Whereas *dharma* encompasses both the social and the religious order, the MA delimits a religious sphere and removes it from law. It also limits the authority of the religious judge. It allows the king and his all powerful Prime Minister (or the Court Council, where noblemen were in greater numbers than Brahmins) to interfere with the *Dharmādhikārin*'s decisions, and even to disregard the written law. In other words, the MA keeps out of its concern offences of a purely religious nature, and it registers and legitimizes the paramount nature of the political control.

It is an established fact that in the actual performance of his duties the Hindu ruler was not subordinated to Brahmins, rather he was their principal patron and they were dependent upon him for their survival. That he enjoyed the final authority in all social matters was at least clearly the state of affairs in the Hindu kingdoms of India contemporary with the codification of the MA¹⁸³. It is therefore not only in Nepal that religious judges worked under political control, however Nepal stands alone among all modern Hindu kingdoms in its promulgating a law text codifying and thus regularising the duties of the *Dharmādhikārin* on a given territory. The fact that the text was decreed at the instigation of the Prime Minister explains it. The MA accompanied other State reforms introduced by Jaṅga Bahādura Rāṅā soon after his return from Europe as he laid the foundation of the modern nation-state.

This book is an important contribution to the legal history of Nepal. It tells about the nature of royal authority in a society where religion and law are still closely interwoven but which is witnessing a beginning of secularization. As with all texts of a prescriptive nature, the questions

¹⁸³ See, for example, O'Malley, L.S.S., *Indian Caste Customs*, Cambridge, Cambridge University Press, 1932.

naturally arise as to whether its rules were actually observed in daily life or to what extent they inform us about the empirical social reality. But it indicates in any case the norms that were imagined by those in power. As such it is also an important contribution to the social and cultural history of Nepal.