

Book Review

Prabhas Pokharel

Höfer, A. (2004). *The caste hierarchy and the state in Nepal* (2nd ed.). Himal Books.

Introduction

The caste hierarchy and the state in Nepal is a book written by Andrés Höfer. The book was first published in the year 1979 by Universitätsverlag Wagner. The second edition of the book was published in 2004 by Himal Books. In this review, I have analyzed Andrés Höfer's 'The caste hierarchy and the state in Nepal.' The book is a study of the Muluki Ain of 1854. Through this review, I analyze the book as well as the Muluki Ain (from here on referred to as MA) and its relevance in modern society. Various scholars have extensively reviewed the book. Sharma (2004) has extensively reviewed Höfer's work. Messerschmidt (1981) was able to bring out various nuances present in the MA.

Similarly, Höfer's work has also been reviewed by the popular media, Dixit (2004) explains how MA kept Nepalis legally shackled, and she also shows a stark contrast between MA and the American constitution. I reviewed this book from the perspective of power and habitus instead of the previous reviews that focused more on the book's ethnohistorical aspect. I also attempt to explain how caste-based discrimination still creeps into modern Nepal as a quotidian affair.

Höfer's work is monumental in the realm of Nepali social sciences. The very idea that a non-Nepali person could dissect such intricate nuances of a complex Nepali society is deserving of accolades. Besides, this ethno-theoretical analysis looks at a legal document yet provides a rich understanding of Nepali culture and society of the time. MA, despite being orthodox and regressive, gives an insightful view of Nepal's history. The historical analyses help to break down the complex caste system and can aid in the understanding of the present-day scenario of Nepal. The text looks at the most uncomfortable facets of Nepali history in a detailed manner. Similarly, even though the text is not rabble-rousing, it clearly shows the reflection of privileges the high castes gained through the lower castes' institutionalized domination.

The book is a study of Muluki Ain (MA). Ain means law and Muluki seems to be derived from the Arabic word Mulk, meaning country. The amalgamation of the two words means the law of the country or the law of the land. MA was not a legal document with completely new ideas, MA derived most of the laws from the ancient Hindu scriptures. Höfer (2004), talks about the sporadic

mention of dharmasastra. The extent of Mughal influence on MA has not been an area of inquiry. Among the Mughal administration's influence, he mentions "Ain-i-Akbari" which particularly has not got enough attention (Höfer, 2004, p.3). Sharma (2004), points towards Dharmasastra and Nitisastra as a possible inspiration for MA. He even goes as far as calling MA "an heir" to some of these classical works (Sharma, 2004, p.160). MA seems to have aggregated the pre-existing ideas in the Hindu scriptures and turned them into laws. However, as mentioned earlier, the source of these laws are not the same; they are taken from various religious scriptures and legal codes.

MA is just over 690-pages and covers a smorgasbord of issues from the law of inheritance to issues solely related to caste hierarchy. Höfer, however, chooses to analyze the parts of MA that deal with caste hierarchy. Höfer analyzes the MA in a detailed manner mentioning even the minute things. There are 19 chapters in the book, all of which deal with the caste. MA is a complicated text as there are rules for everything. The author looks at aspects such as purity/impurity, inter-caste relations, commensality rules, sexual relations, divorce, incest, and rape. He also looks at the elaborate lists of punishments and fines.

Jang Bahadur Rana is at the forefront of this MA as he was the one who introduced it. His name is followed by the names of 30 dignitaries from the Rana family. The legislative body consisted of 219 signers who belonged to the "Court Council" (bhardari kausal). The council from its structure can be seen as an exclusive group that offers very little to no room for inclusion. The council predominantly consisted of mostly upper-caste men (Höfer, 2004, p.5). Since the MA protected the elites' privilege, the upper caste men's predominance was seen in the list of signers. From the council's core members, it can be analyzed that they had proximity to power. Their proximity to power questions the objectivity of MA. Power and its relation to MA will be discussed later on.

The part of the MA, concerning the caste, does not seem like a mere list of laws and by-laws but, it rather seems like a list of stringent rules. The consequences of disobeying those rules could result in the harshest of punishments (even death). Nepali society is different from other societies. The heterogeneous societal structure is indeed complicated. Despite such a heterogeneous setup, MA is based on the principle of universality; universality looks at



This work is licensed under the Creative Commons ©Prabhas Pokharel

Prabhas Pokharel, student at School of Arts, Kathmandu University, Nepal

Email: pokharelprabhas@gmail.com/ <https://orcid.org/0000-0001-5271-1881>

citizens with a sort of homogenous lens universality would see the citizens from the perspective of uniformity, which consequently would mean making a homogenous set of rules for a heterogeneous group of people.

These stringent rules of MA, if analyzed from today's perspective may seem orthodox, casteist, and sexist from many accounts. Höfer does not seem to be interested in value judgment he rather dives deep into the nuances of caste hierarchy. The author does not give a plain translation of the MA, he rather shows an ethnohistorical account of a legal code that changed the history of Nepal. Lawmakers', dignitaries and signers brought the MA into existence and made it an idealistic rule book that dictated everything for everyone. Höfer contrasts the idealistic thoughts of the MA with empirical social reality, he does that by comparing state-caste relationship.

Rules Creating Divide

MA should not be simply looked at as a legal document. If we dig deeper we can see how MA is responsible for the divide (that is a byproduct of caste hierarchy) that exists in our society hitherto. Even when we look at society today, people need to follow many rules as per their caste. There are certain things that a Brahmin should and should not do. Why do the modern-day Brahmins follow these rules? What is the source of these rules? Most of these rules are present in the MA of 1854. Today the rules have become more and more flexible. Hence, the author mentions that the law is a "dynamic interpretation" of social reality and not a static one (p.175). A person in the modern-day and age cannot be defiled of his/her caste status. A Brahmin could not accept bhat from a person below them in the caste hierarchy. However, there was reciprocity of water between them and other pure castes (Non-enslavable Alcohol-Drinkers and Enslavable Alcohol-Drinkers). Commensality law relating to water and rice are complicated. Accepting any food items from the person one is not allowed to accept from (by law) could result in defilement of the receiver's caste status. This makes the receiver vulnerable and other people who come in contact with the receiver. The receiver would be prosecuted if they were to conceal their defilement and transfer it to their "fellow caste members by continuing to live in commensality with them" (p. 25). These rules cannot be applied to modern rules. If a Brahmin were to break any of these rules today they would not bear the same penal consequences as they did back in the times of MA.

The MA was rigid in its rules and Brahmins were vulnerable too as they were at a high risk of losing caste status, however, in most of the cases they would be degraded only to a slightly lower status. Over the years, however, the status of discrimination towards Dalits has seen very little to no improvement. On the other end of the spectrum, the vulnerability of Brahmin is reduced to a great extent. Higher caste legitimized their actions and behaviors and deemed them acceptable. For instance, MA does not approve of Brahmins drinking alcohol or eating meat. However, over the years chicken meat, buffalo meat, and even alcohol have been legitimized by the so-called

"high-caste". In terms of legality, there is no particular superior or inferior caste. However, in practice, Brahmins still have the upper hand as they are the only ones who can do rituals. Society is not only governed by the law, many tacit rules govern it. Brahmins still reaping the benefits of the caste hierarchy is a byproduct of such tacit rules. Sharma (2004, p.224) notes that "bahuns as a group have forsaken all rigidities of caste and religion."

The rules of MA can be seen in relation to the Theory of Practice, primarily habitus (Bourdieu, 1977). Habitus and Doxa's concepts can be used as an intrinsic component in understanding the rules that have been creating a divide in our society till today. Bourdieu is taken as a reference point, with habitus he provides a framework to understand how dominant social conditions manifest and reproduce in a society. The central concept of Bourdieu is Habitus. Habitus does not seem to have a concrete, objective definition, however, he defines it as a system of "durable, transposable dispositions" (Bourdieu, 1977, p.72). Habitus can function on a personal level as well as on a group level, Bourdieu (1977) claims, "a subjective but not individual system of internalized structures, schemes of perception, conception, and action common to all members of the same group or class" (p. 86). Over the years a person is shaped up through his/her experiences, knowledge, etc. Thus, the discrimination and orthodox rules that are practiced to date because those rules were written in MA, could be a perfect example of how habitus manifests in our society. MA over the decades swiftly transitioned from being merely a legal code to becoming habitus. Once, it becomes habitus it becomes a practice. Therefore, even though MA may be seen as an orthodox set of rules from the past it still lives on in the mindsets of the people in the form of Habitus.

Doxa could be another important concept that can aid in a better understanding of MA. Doxa refers to pre-reflexive intuitive knowledge shaped by experience, to unconscious inherited and relational predispositions (Grenfell, 2008). Predispositions here mean to hold a certain attitude; these attitudes are inherited over the years and these attitudes are not individual they are rather an attitude of a group. How many people do you think have gone through every rule of MA? It is a 690-page book. However, most of the modern-day discrimination can be traced back to the MA. However, the MA derived those from pre-existing texts of caste rules. (Remember that caste rules were already present before the MA? Kathmandu already had caste-based 'legal' codes? MA did not create the caste system in Nepal.) Even a person who is not even aware of the existence of the MA is aware of these rules. These rules are passed on from generation to generation; people are just following it. The modern law has no place for such discriminatory practices however, it is being partially followed. That is the power of doxa, it is established and embedded in the minds of every Nepali citizen. With the combination of habitus and doxa we have rules and predispositions that we adhere to without questioning it.

Even today we hear crimes being committed against Dalits and minorities. Why do these crimes happen? Why are people still reluctant to change their mindset? Because

the doxa is too strong; despite many awareness programs, despite being educated, people cannot let go of their doxa. Therefore, radical change is not possible. We are constantly hearing about such cases and they have become a part of our everyday lives. We have different predilections when we hear such news and that is habitus.

The perspective of Power

Foucault (1976) defines power as "the multiplicity of force relations immanent in the sphere in which they operate and which constitute their own organization". Foucault argued that in medieval times power was demonstrated by the authority through the display of violence. There are many rules in MA, that give a hint of violence. Through this authoritative display of power, MA controls the population.

Dumont (1970), helped in the understanding of the dichotomy between pure and impure through his book. The caste system and its implications; he studied caste in Pan-Indian civilizations. Pure and Impure have multiple meanings in the Nepali language. Sapha, pabitra, chokho and suddha all translate as pure in English. Jutho, bitulo, sutak, and asauc all mean impure. Impurity can be both temporary as well as permanent. It is important to note that "impurity is transferred to the receiver" (p.14).

By dividing society into two folds of pure and impure gives the state immense power over the people. Permanent impurity gave rise to untouchability, which institutionalized discrimination. Also, the power so-called "pure" have over the "impure" is colossal as it is legalized by the state. The state even imposed restrictions on what citizens from different castes can eat (bhaks) and what they cannot eat (abhaks) through the MA.

MA was made by a group of upper-caste people from the hills of Nepal. Upper-caste therefore enjoys plenty of privileges. There are restrictions for every caste-groups however, Brahmins have it comparatively easy. MA is extremely discriminatory towards lower caste groups. Their water is unacceptable and those caste groups are almost de-humanized. Through a legally binding document, MA perpetuated the caste system and gave a green light for institutionalized discrimination. Historically, legal documents have been a tool for institutionalizing discrimination against vulnerable and marginalized groups. Hence, if we look at the MA from a perspective of power it was a mere tool for the rulers to control the population. By dividing the population and ruling over them. The divide and rule politics aided in uplifting the status of already uplifted. This made the vulnerable groups even more vulnerable. Therefore, when the state-endorsed these discriminations MA became a major tool for the despots to control power.

MA also displays a strong sense of the power of men over women. From a feminist perspective, MA is an accumulation of regressive, sexist, and misogynistic rules. Many rules constantly remind women that they need to be protected by a man. Many instances can be seen where rules are merely made to control women's sexuality. On the other end of the spectrum, a man's sexuality is not controlled.

MA states that "if a woman has already been married three times (before her present marriage) or has had intercourse with three men in her life: such a woman is regarded as besya, a whore." A woman's status is degraded because of her sexuality however, a man does not have to face a similar sort of consequence. This degradation of women in MA shows an uncanny resemblance with the Hindu text Manusmriti. Jondhale (1995) critiques Manusmriti for stating that women and Dalits are inferior to others. Robbing women of their autonomy and restraining their sexuality can be an apt critique of MA.

Caste Conundrum

Caste conundrum is perhaps one of the most interesting facets of the book. In terms of caste, Nepal is a heterogeneous society, however, the MA demarcates caste in a very homogenous manner. There is not a single type of Brahmin, there are Deo-Bajus, Tirhut Brahmins, Indian Brahmins, etc. The hierarchical structure of the caste system puts the Upadhyay Brahmins on top however, the other Brahmins do not consider themselves inferior to Upadhyay Brahmins. Since signers and lawmakers were of pre-dominantly hill origin it is no surprise that Upadhyay Brahmins hold the highest spot on the caste hierarchy of the MA.

The caste conundrum also exists among the Newars. Newars have their caste system as they are an intra-ethnic group. Similarly, the caste groups that work with metals are generally deemed lower castes in MA's caste hierarchy. However, in the Newar caste hierarchy, Udas or Urays are high caste Newars who work with metals. For example, Tamrakars and Kansakars are high caste Newars who work in copper, brass, silver, gold, and bronze (Nepali, 2015). The aforementioned fact debunks the idea that the work division dictates the caste status. A Kami person does not have the same status as a person belonging to Uray caste group. Hence, there seems to be an inconsistency between different caste systems.

The book does not offer much perspective on the caste system of Terai. But if different caste systems were to be juxtaposed a clearer picture of caste division could be made. Therefore, it can also be understood that even the caste system is not homogenous, and MA attempted to universalize all the castes from different regions into a singular and uniform caste system.

Ethical Value:

I have followed the ethical guidelines. The paper presents original work not previously published in similar form and not currently under consideration by another Journal.

Competing interests:

None

Funding:

None

References

- Bourdieu, P. (1977). *Outline of a theory of practice* . Cambridge University Press.
- Dixit, S. (2004, September). Nepali Times.
- Dumont, L. (1970). *Homo hierarchicus. The aste system and its implications* . Vikas Publications.
- Foucault, M. (1976). *The history of sexuality*. Éditions Gallimard.
- Grenfell, M. (2008). *Pierre Bourdieu: Key concepts* . Acumen Publishing Limited .
- Höfer, A. (2004). *The caste hierarchy and the state in Nepal* (2nd ed.). Himal Books .
- Jondhale, S. (1995). Theoretical Underpinnings of Emancipation of Dalit Women . In P. Jogdand (Ed.), *Dalit Women in India: Issues and Perspectives*. Gyan Publishing House.
- Messerschmidt, D. A. (1981). HÖFER,” The caste hierarchy and the state in Nepal: A study of the Muluki Ain in 1854”(Book Review). *Journal of Asian Studies*, 40(4), 8-24.
- Nepali, G. S. (2015). *The Newars* . Mandala Book Point .
- Sharma, P. R. (2004). *The state and society in Nepal* . Himal Books .

Prabhas Pokharel, <https://orcid.org/0000-0001-5271-1881> is a post-graduate student at Kathmandu University, School of Arts, currently pursuing a degree in Development Studies. He has a keen interest in the areas of: public policy, development communication, educational policies and exclusion.

Email: pokharelprabhas@gmail.com