

Documented Evidence Relating to the Implementation of the *Mulukī Ain* in Mid-19th-Century Nepal¹

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Introduction

Nepal, although geographically situated next to British India, was among the few kingdoms in the region that were not colonized—a fact that enabled it to maintain its autonomy from both British India and China. There were several attempts, especially on the part of the East India Company, to conquer and colonize it, but they all came to nought. Thus, the country could define its own social-legal practices without direct external interferences. For example, the referents of the Nepali vernacular term *kṛstān* (Christian) are explicitly categorized as an Untouchable caste in the *Mulukī Ain* (hereafter MA) of 1854 (see MA-Ed1 1854: 87 §2).² This indicates that the British had little if any say when it came to the legal code of mid-19th-century Nepal. Had they had, the status of Christians would have been comparatively greater.

Such legal practices in Nepal before the mid-19th century, however, are not clearly traceable, even though there were some efforts to set down legal practices in written form starting from the 14th century onward.³ King Jayasthiti Malla (r. 1382–1395) was the first ruler to take initial steps, by introducing the *Nyāyavikāsinī* (NyāV) in Sanskrit and Newari, towards the written law. Since the Sanskrit version of the

1 I should like to thank Manik Bajracharya, Simon Cubelic, Axel Michaels, Ramhari Timalina, Astrid Zotter, and Christof Zotter for their useful comments, and Philip Pierce for both useful suggestions and going through the English.

2 The MA of 1854 is quoted by article and section.

3 Precisely saying, the legal history of Nepal starts with Licchavi period through around two hundred inscriptions: see Vajracārya 1967 (VS 2024): 345–355 and 1973 (VS 2030) for further discussions.

NyāV⁴ was merely a commentary on the 4th canto of the *Nāradasmṛti* (see the colophon of the text in NyāV, p. 327), little similarity to positive law can be observed in it.⁵ The Newari version, shrouded in the complexity of the mediaeval Newari language, is still untranslated, so that its contents will be known in detail only to future research.⁶ After unification but before the Rāṇā regime, the king was the highest authority in all matters. He was assisted by the royal priests (*rājagurus*) and members of the royal assembly (*bhāradārī-sabhā*) as well as *dharmādhikārins*. However, *dharmādhikārins* were acting as the main judges only during impurity trials (Michaels 2005: 11–12). They were responsible for enforcing traditional Brahmanical regulations relating to penance and other religious practices and for granting expiation (Nep. *patiyā*, Skt. *prāyaścitta*)⁷ as well, issuing a short note—a kind of certificate—for reinstatement into one’s own caste when that person had been polluted by an impure act as defined in the customary practices. Moreover, they did not have any explicit role in civil and criminal cases (ibid.: 20).

Emergence of the *Mulukī Ain*

After the Kot Massacre in 1846, Jaṅga Bahādura Rāṇā declared himself prime minister and commander-in-chief of the army. From that time on, both positions were reserved for members of the Rāṇā family, with the Śāha kings being reduced to ceremonial rulers. Although the Rāṇā rulers continued to follow in many respects the path of cultural isolationism and conservatism, they also showed

4 According to D.R. Panta the exact date of the composition of the text is not known. However, the colophon of one manuscript which he used to prepare the diplomatic edition of the text mentions that the text was copied by Lumtabhadra Vajrācārya on Thursday, the 3rd of the bright fortnight of Phālguna in the Nepal Era 500 (*śrīnepālikavatsare khakhaśare pakṣe site phālgune(!) māse cāgnitithau girāmpatidīne bhaktāpurīpaṭṭane(!) [...] likhitā lumtabhadreṇa vajrācāryeṇa dhīmātā*; transcr. in D.R. Panta 2008: 328). This colophon provides us with the date *ante quem*, which is before 1379 CE.

5 See Larivière 2004: 612 for the further discussion regarding the concept of positive law.

6 The Newari scholar Kashinath Tamot assisted by his student Jivankumar Maharjan has prepared a diplomatic edition of the *Nepālanyāyapālaviddhi*, a Newari version of the *Nyāyavikāsinī* (see Tamot 2006 [NS 1127]). In a personal communication (January 2013), he characterized its language as complex, but he hopes to undertake a translation of it in the future.

7 For further discussions of these terms, see Höfer 2004: 161–162 and Michaels 2005: 35–39.

a certain openness to Western forms of conspicuous consumption, political aesthetics, and governmental strategies (Toffin 2008: 163). This led to considerable legal and administrative reforms (Edwards 1977: 161–162; Regmi 1988: 77–90 and 122–179). One major example for the greater willingness to engage with foreign ideas is Jaṅga's state visit to England and Paris in 1850, which was the first trip of a South Asian prime minister to Europe (see Cubelic/Khatiwoda 2017: 72). As soon as Jaṅga Bahādura Rāṅā returned from his state visit, he formed a Law Council consisting of 218 members (MA-Ed1 1854: Preamble, pp. 2–7) to discuss the nature of the purported law code and set standardized forms for the previously existing legal documents (*ain, lālamohara, savāla, sanada, rukkā, ādeśa* etc.). The MA was promulgated during the reign of Surendra Vikrama Śāha (r. 1847–1881), on Thursday, the 7th of the bright fortnight of Pauṣa in VS 1910⁸ witnessed by the Father King Rājendra and Crown-Prince Trailokya (MA-Ed1 1854: 1–2).⁹

As pointed out by K.K. Adhikari (1976: 107), although it is controversial whether the MA was a result of the influence of the British legal system on Jaṅga Bahādura during his state visit to England in the 1850s, no direct reference to British legal documents can be detected in the MA. Moreover, the MA neither refers directly to any Brahmanical scriptures of law nor any western or Islamic law (Michaels 2005: 7). Thus, the inspiration to draft the MA can be attributed to the journey of Jaṅga and his exposure to Western legal ideas, but the exact circumstances have to be re-investigated. However, what is known is that Jaṅga Bahādura, the country's de-facto ruler, established a strong foundation for the unification of diverse judicial practices by promulgating the first systematic and sophisticated legal code.

Jaṅga Bahādura Rāṅā's aim was to unify the penal code by prescribing clear guidelines for meting out punishment. Since the legal system had not been uniform, two offenders from two different territories or ethnic groups could easily have received different punishments for the

8 According to J. Fezas, the mentioned date given in the Vikrama Era is equivalent to 1853 Common Era (MA-Ed2: xx). However, A. Höfer converts this date into Common Era as the 6th of January, 1854 (Höfer 2004: 3) whereas, A. Michaels converts it as the 5th or 6th of January, 1854 (Michaels 2005: 7).

9 The inspiration to draft the MA is often attributed to this journey of Jaṅga's and his exposure to Western legal ideas (see Whelpton 1991: 218 for the further discussion), even though the exact circumstances remain obscure (see Cubelic/Khatiwoda 2017: 72).

same crime.¹⁰ Other aims were to establish a national caste hierarchy for the multiplicity of Nepal's ethno-cultural groups, a homogeneous legislative process and a uniform system of administration, and so, by such standardized legal means, to rule over and control remote areas and diverse ethnic groups more smoothly. The MA of 1854 is unique inasmuch as it

has the great advantage of offering the representation of an entire traditional society—not as a utopia of the moralists and not as reflections of the learned, but as law for immediate application. (Höfer 2004: xxxvi)

It is a codification of traditional social conditions, a code of civil and penal regulations dealing with, for example, land-ownership, revenue administration, matters of inheritance, deposits, debts and obligations, marriage regulations and rules of purity, and killing (not only of human but also of animals), thievery, witchcraft, slavery, sodomy, rape, arson, street cleaning, etc. It also classifies the hierarchy of the caste system by bringing the various castes and ethnic groups to five main categories (see *ibid.*: 9–10): “Cord-wearers” (*tāgādhārī*), “Non-enslavable Alcohol-Drinkers” (*namāsinyā matuvālī*), “Enslavable Alcohol-drinkers” (*māsinyā matuvālī*), “Impure, but Touchable castes” (*pānī nacalnyā choī chiṭo hālno naparnyā*), and “Untouchable castes” (*pānī nacalnyā choī chiṭo hālno parnyā*). The MA was repeatedly amended and supplemented and is still in use today, even if in a form that is totally different from the first version. However, the question remains:

10 This can be extracted from the preamble itself (MA-Ed1 1854: Preamble): [...] *maramāmilā gardā ekai bihorāmā kasailāi kami kasailāi baḍhatā sajāya huna jānyā hudā tasartha aba uprānta choṭā baḍā prajā prāni sabailāi śata jāta māphika ekai sajāya havas ghaṭī baḍhī nāparos bhannānimitta tapaslila bamojimkā bhārādārasameta rāsi kausala gari kausalamā ṭhāharyā bamojimkā ain tayāra garnu bhani śrī 3 mahārāja jaṅga bahādura rānā ji. si. bi. prāim miniṣṭara yāṅḍa kamyāṅḍara ina cīphalāi hokum baksī baṅyākā aina [...]* “[...] since there have been dissimilarities [lit. less than enough for some and more than enough for others: *kasailāi kami kasailāi baḍhatā*] in punishment [imposed] in the same [kinds of] lawsuit [*ekai bihorā*] until today, therefore, in order to achieve uniformity of punishment in accordance with the crime committed, this is the *ain* prepared in response to the following order to the thrice venerable Mahārāja Jaṅga Bahādura Rānā G.C.B. Prime Minister and Commander-in-Chief [...].”

Was the *Mulukī Ain* Ever Implemented in Juridical Decisions?

Before discussing the aspects of the implementation of the MA, I shall briefly present some scholarly observations regarding the question of implementations of the Brahmanical scriptures of law (Dharmasūtras and -śāstras and -nibandhas). There has already long been investigation on the implementation of Brahmanical legal scriptures in social and legal practice as law codes.¹¹ However, it is still not clear to what extent Hindu society was administered according to customary practices (*ācāra*) or according to legal practices grounded in the Dharmasāstra texts. It could be possible that one of the sources of the dharmashastric texts were customary practices (Lariviere 2004: 616; Davis 2005: 314), but it is not convincing to imagine that the Brahmanical *dharma*-texts could have entirely incorporated the practiced customs from all the geographically and culturally diverse territories and societies of the Indian subcontinent and at the same time could have resulted in a universally acceptable code. Moreover, although piles of such Brahmanical jurisprudence of the ancient Indian subcontinent are transmitted to us, there is almost no historical material on the legal practices survived (Michaels 2010: 61). R.W. Lariviere points out that the Dharmasāstra was never supposed to be codified law but only to provide guidelines for legal practice:

The application of all law is context sensitive. It is a delusion to think that the law can be proclaimed for all time and in every circumstance. The authors of the *dharma* literature understood this context sensitivity of *dharma*. It was never their intention to exhaustively record and codify all law applicable for all time. It was their intention to provide a means whereby law could be “discovered” in each specific context. In an Indian context there was never the idea that any two crimes or civil wrongs were identical, so there was no reason to be concerned with precedent. Each dispute was unique and what was needed was a general set of guidelines for procedure and for classification of the dispute. This is what the *dharmasāstra* provided for dispute settlers of ancient India. (Lariviere 2004: 615)

11 See, for example, Rocher 1993, Lariviere 2004, Davis 2005 and Michaels 2010 (cp. the introduction to this volume).

Davis's conclusion regarding the issue of implementing sacred dharmashastric texts is similar to Lariviere's opinion that "[s]acred texts were not normally sources of positive law, but rather of jurisprudential training" (Davis 2008: 317). One clear strand of opinion, then, is that the Dharmaśāstras are more theoretical exercises that paint a series of fictional constructs and could not possibly or reasonably have been meant, as they stand, to be put into practice as strict law codes. They are books of law—or rather, books of laws—containing, as Ludo Rocher states, "a mass of floating verses of rules and observations 'that were, indeed, at some time and in some place' governing the life and conduct of people" (Rocher 1993: 267).

To illustrate the point that Dharmaśāstras are more normative and theological than practice-oriented in nature—in the sense that they do not lay down concrete judicial responses to the whole gamut of possible concrete circumstances and thus could not be used as positive legal texts—I shall present the example of a document that I came across while working for the project *Documents on the History of Religion and Law of Premodern Nepal* of the Heidelberg Academy of Sciences and Humanities. Preserved in the Nepalese National Archives, it serves as a concrete documentary evidence for the current hypothesis (see NGMPP DNA 4/100). The document is a letter sent from Raṇavīra Siṃha, a government employee, to General Bhīmasena Thāpā in 1835 (VS 1892) from the Pālpā frontier. It mentions the reciprocal treaty signed between the East India Company and the Nepalese government to control cross-border crime, especially theft and robbery, which was—and still remains—a significant problem. Although Brahmins and women are always exempted from capital punishment in accordance with the dharmashastric regulations (see, for example, *Mānavadharmasāstra* 11.55–59) and Hindu customary practice (*Edicts of Rāma Śāha*, no. 15), an exception is made in this very explicitly formulated treaty, to the effect that if, irrespective of caste and gender status, anybody commits an act of cross-border robbery, he or she shall be put to death by the authority in power where the crime took place. It is stated that the core reason for such strict punishment is in order to ensure the mutual diplomatic friendship between the two governments. This is a typical example illustrating that the legal practices tended to be based either on customary practices or on various other practical concerns. Despite the fact that Brahmins and women were customarily exempted from capital punishment in 18th–19th-century Nepal, such punishment was meted out for purposes of ensuring

smooth diplomatic relations regardless of what the Dharmaśāstras and customary practice enjoined.

Coming to the MA, it has always posed a riddle whether the MA was really made the basis of legal practice or whether it, too, remained a kind of Dharmanibandha composed in the vernacular. Scholars who have dealt with different aspects of the MA have not focused enough on the issue of its actual implementation.¹² As pointed out by T.R. Manandhar (1999: 25), scholars¹³ argue that the MA did not bring any fundamental change in the courts of law of 19th-century Nepal due to the reason that Rāṇā aristocracy ignored whatever court procedures were written down in the MA. As observed by these scholars the Council which was the supreme executive body and court of appeal was a mere shadow of powerful Rāṇā prime ministers. H.N. Agrawal even argues that the Council was used only once in 1847 by Jaṅga Bahādura Rāṇā to declare “the abdication of King Rajendra Bikram Shah” (Agrawal 1976:12). Such arguments are made by the scholars without paying enough attention to the large corpora of documents available in private and public archives of Nepal. The unstudied corpus of documents is a basis for the still largely unexplored history of the practice of the MA in mid- and late 19th-century Nepal’s jurisprudence.

In this paper, I shall therefore present two such pieces of documented evidence—one dealing with a criminal case and one with civil law—as examples which prove that the MA was in fact not a Dharmanibandha-like legal tome but rather reflected current realities and so must be regarded as the basis and point of reference of the legal system of the Rāṇā administration.

Two Documented Evidences on the Implementation of the *Mulukī Ain* of 1854

The first document (NGMPP DNA 14/4 see Appendix, Doc. 1) is an order (*rukkā*) issued by Surendra in VS 1937 (1880 CE) to Captain Mvāna Siṃ Svāra Chetṛī which lays bare formal procedures for carrying out the death penalty on Hari Goḍīyā, who was found guilty of committing a homicide. The offender, Hari Goḍīyā, a resident of Maujye Bajjahī Pallāpura, Baharāica, Mogalānā,¹⁴ killed Vadala Siṃ Thāpā

12 See, for example, Höfer 2004, Adhikari 1984, Fezas 2000 and Michaels 2005.

13 See, for example, Agrawal 1976: 12 and Regmi 2002: 4.

14 This refers to territories of Hindustān (see Turner 1931 s.v. *muglān*).

and then fled. After more than a year he was arrested and brought before a court, where, on Thursday, the 7th of the dark fortnight of Phāl-guna in VS 1935 (1879 CE), he confessed his guilt in writing at the Aminī, Adālata and Kacaharī courts. This confession is quoted in the document:

It is true that on Sunday the 1st of the bright fortnight of Śrāvaṇa in VS [19]34 (1877 CE) I, a member of the Goḍiyā caste, killed Vadala Siṃ Thāpā during the night while he was sleeping by stabbing him in the throat twice with a *khukurī*¹⁵ and then fled with 1 *tolā*¹⁶ of gold and Kaṃpanī Rs. 40 which he had at his waist.

Another year passed, and on Saturday, the 30th of the dark fortnight of Śrāvaṇa in VS 1936 (1879 CE), Lieutenant (*lephten*) Vālanarasim Svāra Chetrī and Bicārī Kāśinātha of the Aminī court submitted a report to a higher court, the Iṭācapalī, also quoted in the document:

Since Hari Goḍiyā, out of greed for property, killed Vadala Siṃ Thāpā at his place of residence by stabbing him in the throat twice during the night while he was sleeping, we have determined to sentence him to death; to take him to the grounds called Pāhāra Pokharā where the public can witness his beheading—the taking of life for life—at the hand of a local Untouchable caste member in accordance with the Section 9 on Homicide¹⁷ and section 7 on Executing, Shaving and Branding (*dāmala*).¹⁸

Then Subbā Paṇḍita Caṃdrakāṃta Arjyāla on behalf of the Iṭācapalī court submitted a request to Prime Minister Raṇoddīpa and Commander-in-Chief Dhīra Śamśera to approve the death penalty in the following words:

15 The curved knife carried by the Nepalese (see Turner 1931 s.v. *khukurī*).

16 A unit of weight equal to 0.01 kilogram (see M.C. Regmi 1978: 229)

17 See MA-Ed1 1854: 64 §9 and MA 1870 in NGMPP E 1223/17, p. 520 §9.

18 The term *dāmala*, inf. *ḍāmmu*, literally “to brand” (see NBS s.v. *dāmala*) refers to a form of punishment which substitutes the capital punishment for those offenders who cannot be sentenced to death (such as Brahmins, certain groups of ascetics or women) (MA-Ed2 1854: 64 §1, §3 and §5). The left cheek of the offender is branded with the mark *dāmala/ḍāmala* and the offender is sent for life imprisonment (MA-Ed2 1854: 42 §2 also Vaidya/Manandhar 1985: 20). See MA-Ed1 1854: 42 §4 and MA 1870 in NGMPP E 1223/17, p. 413 §4 and §7.

Regarding the trial which came to our attention through a request sent by the Iṭācapalī court, we give the order to sentence Hari Goḍīyā to death as punishment for his having committed the crime; to take [him] with sounding cymbals throughout the new territory of Kailālī district and to the grounds called Pāhāra Pokharā and there to behead him at the hand of a local Untouchable caste member in accordance with the Sections 9 on Homicide and 9 (sic!) and 11 on Executing, Shaving and Branding (*dāmala*)—Hari Goḍīyā, who out of greed for property killed Vadala Siṃ unlawfully during the night while he was sleeping by stabbing him twice in the throat with a *khukurī*.

The second document is a complaint (*ujura*) made by Śamaśera Bāhādura Pāḍe, an inhabitant of Naradevī Tola (Kathmandu), against his *kākī* (the wife of his father's brother) Rājakumārī Pāḍenī. She is accused of meeting her by then incestuous husband, Pṛthī Bahādura Pāḍe, accepting rice from him and having sexual intercourse with him.¹⁹ This trial thus deals with a family dispute between Rājakumārī Pāḍenī (the lawfully married wife of Pṛthī Bahādura Pāḍe) and the complainant (her brother-in-law's son Śamaśera Bahādura Pāḍe) (see NGMPP K 175/18, Doc 2. in the Appendix). This dispute arose in VS 1918 (see NGMPP K 175/33) after Pṛthī Bahādura committed adultery with the non-widowed wife (*sadhavā*) of a fourth-generation cousin and with a similarly distantly related female cousin (*cāra pustākī didī ra bhāujyū*). After committing adultery, he fled to the Terai (Madhyadeśa) with his entire family and household personnel (see NGMPP K 172/58). Later, Rājakumārī returned from the Terai and initiated a court case to get her legal share of the inheritance. Śamaśera Bahādura and his family tried to avoid giving her any property, accusing her of being guilty of willingly accepting rice from her incestuous husband and having sexual intercourse with him. Rājakumārī Pāḍenī for her part insisted on her just claim, mentioning the expiation she had undertaken by order of authorities and offering further evidence.²⁰ Here, I shall discuss only the first paragraph of the complaint made by Śamaśera Bahādura as an example:

19 There is a series of documents relating to the same issue, some 70 manuscripts in all filmed in the NGMPP K-series, including K 118/32, 39, 40–41; K 172/57–58, 63; K 175/32–34, 39, 42–44, 47, 49, 52, 57, 60, 66, 68–69, 71–73, 76–77 and 79–80.

20 See NGMPP K 175/33–34 and other documents mentioned in n. 19.

There is no law (*ain*) that grants rice expiation to such a person who accompanies and willingly eats rice with [someone] who has fled after committing adultery with the non-widowed (*sadhavā*) wife of a fourth-generation [male] cousin or with a fourth-generation female cousin. [Such expiation] has never been granted to anyone up till today.

Two issues are seen to be addressed in this statement: (1) adultery committed with either an affinal or blood relation (in this case, with the non-widowed wife of a fourth-generation male cousin or with a fourth-generation female cousin), (2) the impossibility of granting expiation to anybody who willingly has eaten together or had sexual intercourse with an incestuous person.

These two issues are dealt with in the MA of 1854: Adultery committed by a Cord-wearing Kṣatriya is the subject of the 116th article of the Ain (see MA-Ed1 1854: 116), consisting of 21 sections. Section 2 addresses adultery committed with blood relations (*hāḍamā*) traceable back to within seven generations. The punishment for this offence is prescribed as confiscation of the offender's share of property (*aṃśa-sarvasva*), removal of the sacred thread, shaving of the head, forced consumption of liquor and pork, downgrading of caste and exile—towards the west if the guilty party is from the east and vice versa—across the river. Further, rice may not be received from the offender, nor expiation granted him. Water, however, can be received.

The second issue is addressed in the 89th Article of the Ain, on Religious Judges (*dharmādhikāra*).²¹ Section 2 of this article, as argued by Śamaśera Bahādura in the first paragraph of his complaint, explicitly directs the *dharmādhikārin* not to grant expiation to those who have deliberately polluted themselves, only to those who have not (*bhorako mātra patiyā dinu*). Further, he should grant expiation to any offender if ordered to do so in a *lālamohara*. For granting expiation to an offender who was not entitled to such, the *dharmādhikārin* could expect to pay a Rs. 500 fine and be dismissed from his post (MA-Ed1 1854: 89 §2).

21 See MA-Ed1 1854: 89 and Michaels 2005: 67–68 and 92.

Conclusion

As discussed above, the first document was issued to authorize the death penalty imposed on a murderer who had killed someone during an act of theft. It recounts the procedures required for imposing the death penalty in detail. The local court has first to investigate the crime committed and prepare a report suggesting proper punishment after carefully consulting the pertinent articles and sections of the MA. This report is afterwards sent to the king through a higher court called the *Iṭācapālī*, which adds its own considered observations. It is then approved by the king and is sent on to the commander-in-chief and prime minister. After their approval, a red-seal document is issued by the king to the person in the local court authorized to carry out the death penalty. The court procedures discussed above and direct citations of the pertinent articles and sections of the MA prove that the law code had in fact legal force and was used as a basis for making court decisions. The second document proves that the MA not only was read carefully and applied by judges in the courts but was also consulted by local actors. As shown in the example, Śamaśera Bahādura is very familiar with the MA, each point of his eight-paragraph complaint being made with reference to the relevant articles and sections of the MA. Thus, I conclude that the above-discussed documents answer the question: the MA was not simply a theoretical work like the *Dharmaśāstra* or *Nibandha* texts but was indeed meant to serve down-to-earth, practical ends. Further, the MA cannot be understood as a restoration of the Brahmanic moral law. On the contrary, barring the articles on caste hierarchy and impurity, it is much more modern, secular and in line with positive law than the 18th-century Sanskrit law texts in British India.

Appendix

Editorial Conventions

The texts have been transcribed as faithfully as possible; the orthography, for instance, has not been changed into modern Nepali. Nepali case endings are treated as true suffixes, and Nepali compound verbs have been joined. The *nukta*-sign (as in ऋ, ॠ) and middle dot (•)²² have been silently ignored in the editions. The *daṇḍa* (।) has been supplied to the text as a sentence breaker where necessary. The various types of macrons and lines are uniformly represented by “---”.

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Editorial Signs

[]	editorial addition
{ }	editorial deletion
[...]	lacuna, breakage
< >	scribal addition

22 This sign in many cases functions as a word separator but it is sometimes also used without any obvious purpose.

Document 1: A Rukkā from King Surendra Ordering the Execution of Hari Goḍīyā for an Act of Homicide

Dated VS 1937, Sunday the 1st of the dark fortnight of Vaiśākha (1880 CE); NAK Ms. no. 425; microfilmed as NGMPP DNA 14/4; for the digital edition, see DOI: <https://doi.org/10.11588/diglit.39465>.

Facsimile:

Recto, part 1:



Verso:

The image shows a single page of an ancient manuscript, oriented vertically. The text is written in a dark ink using the Devanagari script. The paper is heavily aged, with significant staining, particularly in the lower half, and several horizontal tears. The text is organized into approximately 15 horizontal lines. On the right side of the page, there are several vertical lines of text, likely serving as a margin or a separate column of notes. The overall appearance is that of a well-used and well-preserved historical document.

Edition:

[Recto]

श्रीः \

[royal seal]

- 1 श्रीमद्वृत्तीप्रचण्ड-
भुजदण्डेत्यादि-
श्रीश्रीश्रीमहारा-
जरणउदीपसिं-
- 5 हराणावहादुर-
केसीयसआइ-
थोङ्ग्लीन्पी-
म्माकोकाङ्वा-
इस्यान्प्राइम्-
- 10 मीनीष्टरया-
ण्डक्क्यांडरइ-
नचीफ् --- ?²³

- 1 स्वस्ति श्रीमन्महाराजाधीराजकस्य रुक्का ---
आगे कप्तान् स्वानसिं स्वाँर छेत्री प्रती । म आफु गोडीया जात भै ३४ साल्का थ्रा-
वण सुदी ३ रोज १ का राती पाहाड पोषरा सीमलटोल् वस्न्या वद-
लसिं थापालाई राती सुती निदायाका वषत पारि वेहक्मा षुकु-
- 5 रिले २ चोद् घोक्रामा हानी काटि मारि नीजका कम्बरको सुन तोला
१ कंपनी रू ४० स्मेत् ली म भागी गयाको साचो हो भनी मोगलाना
जील्लै वहराईच ईलाके पल्लापुर मौज्ये वन्नही वस्न्या हरि गोडीया-
ले ३५ साल् फागुण वदि ७ रोज ५ मा अमिनी अदालत् कचहरि-
मा कायल्नामा लेषी दियाका मुद्दामा धनमाल्का लालचाले भ-
- 10 यो वा अरू केही ईवीले अर्कालाई हतीयार गैह्ले हानी रोपी मा-
नीस मार्यो भन्या मान्या नकाटीन्या जातका लोग्न्या मानीस भ-
या ऐनवमोजिमको अंससर्वस्व गरि स्वास्नि मानीस भया सर्व-
स्व नगरि दामल गर्नु काटिन्या जातको लोग्न्या मानिस भया [ज्या]-
नको वदला ज्यान काटि मारिदीनु भंन्या ज्यानमाराका ९ लम्ब-
- 15 र वेहक्मा मानीसको ज्यान् मार्या मानीसमा ऐनले ज्यान लि-
नुपर्दा अव उप्रांत फलानु टक्सीर²⁴ गर्न्या फलानालाई उसले ज्या-

23 This has been written in the left-hand margin.

24 For *taksīra*.

- न मार्याका फलाना ठाउमा लगी ज्यान काटी मारु वा फासि दी मारु भंन्या लालमोहरमा लेषाई सो लालमोहरमा जौन जगामा लगी मारु भंन्या लेषीयाको छ उसै जगामा लगी उसै ठाउका छोइ छोटी हालनु पर्न्या जातका हातवाट कटाई मराउनु वा फासी दीलाई मारु भंन्या ज्यान लीदाको र मुद्दा दामल् गर्दा ग- 20 न्याको ७ लम्बर ज्यान जान्या मानीसको ज्यान मारन पठाउदा र मुद्दु पर्न्यालाइ मुडी धपाउदा यसले फलानु टक्सीर²⁵ गर्यो र यस्को ज्यान मारिन्या भयो अथवा मुडीयाकालाइ मुडीयो भंन्या
- 25 सहरका टोल् टोल्मा झाज पीटाइ लैजानु भंन्या सोहि महल्का ? ? लम्बरका ऐनवमोजीम् नीज हरि गोडीयाले वदलसी थापा- लाई धनमाल्का लालचाले राती सुती निदायाका वषत पा[रि वे]- हकमा षुकुरिले २ चोट् घोक्रामा हानी काटि थलैमा मार्यामा नीजलाई पाहार पोषर भंन्या सवैले देशन्ये चौरमा लगी ताहिका
- 30 छोइ छोटी हालनु पर्न्या जातका हातवाट ज्यानको वदला ज्यान काटी मारिदीन्या ठहराज्युं भनी नत्रा मुलुक जिह्लै कैलाली अमी- नीका लेफ्टेन् वालनरसीं स्वार छेत्री वीचारि कासिनाथ [...]- रिले ३६ साल् श्रावण वदि ३० रोज ६ मा अदालत् इटाचप[लि]- मार्फत् चह्यायाको रपोट्मा हुकुम् मर्जिले स्मेत् सदर भै आया-
- 35 वमोजीम् माल्का हाकीम् कपटान् म्वानसिं स्वार छेत्रीका ना- उमा लालमोहोर लेषाई सो लालमोहर रमाना गरि पठाइ- दीन्या ठहराज्युं जो हुकुम् मर्जि भनि अदालत् इटाचपलीवाट सु- व्वा पंडीत् चंद्रकांत अज्यालिले --- ? ---का र श्रीमद्राजकुमार कुमारा- त्मज श्री कम्यांडर इन चिफ् जनरल धिर संम्सेर जइ राणा वहादुर-
- 40 का हजुरमा वीति पार्दा र नीजहरूवाट पनी हाम्रा हजुरमा वीति पारि जाहेर गरायाकामा नीज हरि गोडीयाले धनमाल्का लाल- लचाले वदलसीं थापालाइ राती सुती निदायाको वषत पारि वे- हकमा षुकुरिले २ चोट् घोक्रामा हानी थलैमा मार्यावावत सो- ही ज्यानमाराका ९ ज्यान लीदाको र मुद्दा दामल गर्दाको [...]
- 45 ? ? लम्बरका ऐनवमोजीम् नीज हरि गोडीयाको ज्यान मारन पथाउदा²⁶ यसले यो कसुर गर्दा यसको ज्यान सजाय हुन्या भयो भनी झाज पीटाउन लगाइ नत्रा मुलुक कैलाली जील्लाभर घुमाइ निज हरि गोडीयालाइ चाहार²⁷ पोषरा भंन्या जगाका चौरमा लगी ताहीका छोइ छोटी हालनु पर्न्या जातका हातवा-
- 50 ट ज्यानको वदला ज्यान काटि मारिदीनाको हुकुम् वक्स्यौ । इ- ती सम्वत् १९३७ साल् मीती वैसाष वदि १ रोज १ शुभम् ।

25 For *taksīra*.

26 For *pathāudā*.

27 For *pāhāra*.

[Verso]

मार्फत् राजगुरु द्विजराज पण्डित ज्यू
मार्फत् सुव्वा चन्द्रकान्त अज्याल्
मार्फत् गुरु प्रोहित षजांचि वामदेव पण्डितज्यू
मार्फत् कम्यान्डर कर्णैल सनकसिं टंडैलाहुरि छेत्री

Translation:

[Recto]

Śrī²⁸

[royal seal]

The thrice venerable great king, who is mighty and has an arm like a staff etc., KCSI, Thong Ling Pinma-Ko Kang-Wang-Syang, Prime Minister and Commander-in-Chief Raṇoddīpa Siṃha Rāṇā Bahādura²⁹ ---1³⁰

Hail. [This is] a *rukkā* (missive) of the supreme king of great kings.

To Captain Mvāna Siṃ Svāra Chetrī.

Āge:³¹ Regarding the trial of Hari Goḍiyā, residing in the *maujye*³² of Bajhahī, Pallāpura, Baharāca, Mogalānā: On Thursday, the 7th of the dark fortnight of Phālguna in the [Vikrama] era year [19]35 (1879 CE), [the accused] confessed his guilt in writing at the Aminī, Adālata and Kacaharī [courts], stating: “It is true that on Sunday, the 1st of the bright

28 Word of blessing, can be used as *apprecatio*, in which case it means “good fortune” (Pant/Pierce 1989: 12), can be used as a prefix to names, in which case it means “venerable”. The number of *śrīs* used varies, depending on context.

29 The text reads Rana Uddīpa.

30 According to R. Shaha (1990: II, 257) this title was first awarded to Prime Minister Jaṅga Bahādura Rāṇā in 1871 by the Chinese Emperor and means: “... the Highly Honoured Commander and Instructor (disciplinarian) of the Army, the Aggrandizer of the Country and the Satisfier of the Low and High by Increasing the Reputation and Revenue of the Country” (Shaha 1990: II, 257–258).

31 Lit. “henceforward”. It is especially used in administrative and legal documents to mark the beginning of a text or paragraph. In its function, it is similar to *uprānta*.

32 Unit of land revenue administration in the Tarai revenue subdivision constituted by a group of villages in some hill districts and the Kathmandu Valley.

fortnight of Śrāvaṇa in the [Vikrama] era year [19]34 (1877 CE) I, a member of the Goḍīyā caste, killed Vadala Siṃ Thāpā, residing in Sīmala Ṭola, Pāhāra Pokharā, during the night while he was sleeping by stabbing [him in] the throat twice with a (*khukurī*) and then fled with 1 *tolā* of gold and [East India] Company Rs. 40 which he had at his waist”. On Saturday, the 30th of the dark fortnight of Śrāvaṇa in the [Vikrama] era year [19]36 (1879 CE), Lieutenant (text: *lephṭen*) Bālanarasim³³ Svāra Chetrī and Bicārī Kāśinātha [...]ri of the Kailali Aminī, [in] the new territory, submitted the following report through the Iṭācapalī Court [to the king]: “Since Hari Goḍīyā, out of greed for property, killed Vadala Siṃ Thāpā at his place of residence by stabbing [him in] the throat twice during the night while he was sleeping, we have determined to sentence him to death: to take him to the grounds called Pāhāra Pokharā where the public can witness his beheading—of taking life for life—at the hand of a local Untouchable caste member in accordance with the following law: ‘[1] Section 9 of [the article] on homicide: If a person kills another person out of greed for property or for any other reason by striking or stabbing him with a weapon or the like, the offender—if he is a man from a caste whose members cannot be put to death—shall in accordance with the *Ain* have all his property confiscated and undergo the *dāmala* punishment; whilst if the offender is a woman, she shall undergo the *dāmala* punishment but without having her property confiscated; whilst if the offender is a man from a caste whose members can be put to death, he shall be executed.’ [2] Section 7 on executing, shaving and *dāmala*: ‘When the law calls for putting an offender guilty of homicide to death, from now on a *lālamohara* shall be issued stating that such and such a person who has committed the crime shall be executed by beheading or hanging in such and such place, [the place] where he took [the other’s] life. The offender shall be taken to the place mentioned in the *lālamohara* and executed by beheading or hanging at the hand of a local Untouchable caste member.’”

[Then] Subbā Paṇḍita Candrakānta Arjyāla (text: *Caṃdrakāṃṭa*) on behalf of the Iṭācapalī Court submitted a request to -1- (i.e. Prime Minister and Commander-in-Chief Raṇoddīpa Siṃha) and Venerable Prince born of a prince and Commander-in-Chief Dhīra Śamsēra Jaṅga Rāṇā Bahādura, stating: “[The above-mentioned] report has

33 Text: Bālanarasim.

been approved by order [of the king], so that we have decided that a *lālamohara* shall be issued to the chief of the Māla [Aḍḍā], Captain (text: *kaptāna*) Mvāna Siṃ Svāra Chetrī, and to send it off. Whatever you wish, [please] order.” [Deciding upon the request submitted,] they too have ordered as follows: “Regarding the trial which came to our attention [through the request sent by the [Iṭācapalī Court], we have given the order to sentence Hari Goḍīyā to death as punishment for his having committed the crime: to take [him] with sounding cymbals throughout the new territory of Kailali district and to the grounds called Pāhāra Pokharā and [there] to behead him at the hand of a local Untouchable caste member in accordance with Sections 9 on homicide and 9 (sic) and 11 on executing, shaving and *dāmala*—Hari Goḍīyā, who out of greed for property killed [Vadala Siṃ Thāpā] unlawfully during the night while he was sleeping by stabbing him twice in the throat with a *khukurī*.”

On Sunday, the 1st of the dark fortnight of Vaiśākha in the [Vikrama] era year 1937 (1880 CE). [May it be] auspicious.

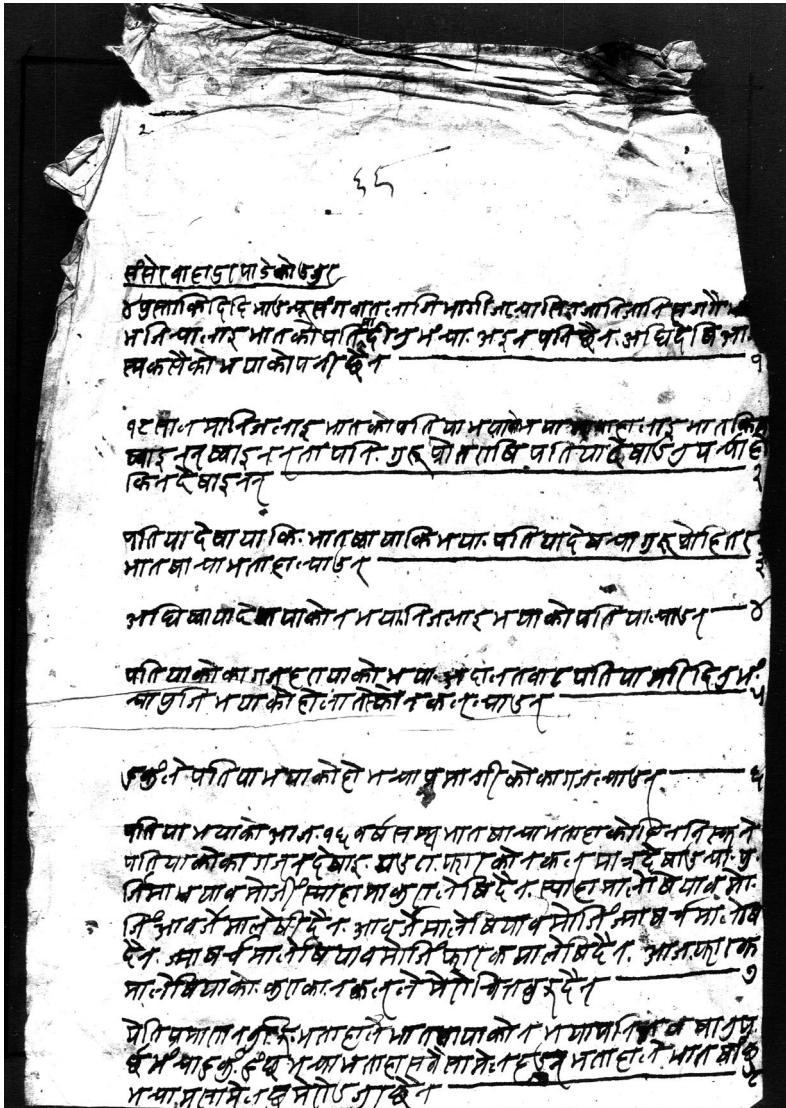
[Verso]

Through (*mārphat*) Rājaguru Dvijarāja Paṇḍita
 Through Subbā Candrakānta Arjyāla
 Through Khajāncī Vāmadeva Paṇḍita
 Through Commander Colonel Sanaka Siṃ Taṃḍālāhūrī Chetrī

**Document 2: A Complaint Made by Śamaśera Bahādura
Pāḍe re the Rājakumārī Pādenī Case**

Undated, ca. VS 1934 (ca. 1877 CE); Guṭhī Saṃsthāna card no. 2; Guthi Jamina Vivāda; Ka. Po. 15 Gu. Bam; microfilmed as NGMPP K 175/18; for the digital edition, see DOI: <https://doi.org/10.11588/diglit.39466>.

Facsimile:



Edition:

६६³⁴

- 1 संसेर वाहादुर पाडेको उजुर
 ४ पुस्ताकि दिदि [र] भाउज्यूसंग वात लागि भागी जान्यासित जानि जानि सग गै [भातमा]
 भतिन्यालाइ भातको पति<या> दीनु भन्या अइन पनि छैन अधिदेषि आ[ज]-
 स्म कसैको भयाको पनी छैन ---१
- 5 १८ सालमा निजलाइ भातको पतिया भयाको भया भताहालाइ भात किन
 ष्वाइनन्³⁵ | ष्वाइनन्³⁶ तापनि गुरुप्रोहित राषि पतिया देशाउनु पर्न्या हो
 किन देशाइनन् ---२
 पतिया देशायाकि भात ष्वायाकि³⁷ भया पतिया देशन्या गुरुप्रोहित र
 भात षान्या भताहा ल्याउन् ---३
- 10 अघि ष्वाया³⁸ देशायाको नभया निजलाइ भयाको पतिया ल्याउन् ---४
 पतियाको कागज हरायाको भया अदालतवाट पतिया गरिदिनु भं-
 न्या पुजि³⁹ भयाको होला तेस्को नकल् ल्याउन् ---५
 हुकुंले पतिया भयाको हो भन्या प्रमान्गीको कागज ल्याउन् ---६
 पतिया भयाको आज १६ वर्षसम्म भात षान्या भताहा कोहि ननिस्कने
- 15 पतियाको कागज् नदेशाइ यउटा फार[क]को नकल्मात्र देशाउन्या पु-
 र्जिमा भयावमोजीं स्याहामा कुरा लेषिदैन स्याहामा लेखियावमो-
 जिं आवर्जेमा लेषीदैन आवर्जेमा लेषियावमोजिं ज्माषर्चमा लेषि-
 दैन ज्माषर्चमा लेषियावमोजिं फारकमा लेषीदैन आज फारक-
 मा लेषियाको कुराका नक्कले मेरो चित्त वुइदैन ---७
 येति प्रमाण नवुझि भताहाले भात षायाको नभया पनि अव षानु प-
 30 छ् भंन्या हुकुं हुंछ भन्या भताहा सवै सामेल हउन् भताहाले भात षांछु
 भन्या म सामेल छु मेरो उजुर छैन ---८

34 This has been added by a second hand in the upper margin.

35 For *khvāinan*.36 For *khvāinan*.37 For *khvāyāki*.38 For *khvāyā*.39 For *purjī*.

Translation:

66

A complaint made by Śamaśera Bahādura Pāḍe.⁴⁰

There is no *Ain*⁴¹ that grants rice expiation (*patiyā*) to such a person who accompanies and willingly eats rice with [someone] who has fled after committing adultery with the [non-widowed] (*sadhavā*) wife of a 4th-generation cousin and with a 4th-generation female cousin. [Such expiation] has never been granted to anyone up till today. ---1

If the rice expiation was granted to her in [VS 19]18, why has she not fed rice to someone of the same caste (*bhatāhā*) [since then]?⁴² She has not fed [any such person], but still she should have borne witness to the expiation by inviting a Brahmin priest (*guru purohita*) [to accept rice from her]. Why has she not borne witness to [it]? ---2

If she has borne witness to the expiation [or] fed rice to someone of the same caste, let her bring forward [as corroborators] the witnessing Brahmin priest and fellow caste member who ate [her] rice. ---3

If there is no one whom she fed or bore witness to earlier, let her bring the expiation [certificate] (*patiyā-purjī*) issued to her. ---4⁴³

If the official document (*kāgaja*, i.e. the certificate) of expiation has been lost, there should be a *purjī* (an official short note) issued by the court ordering that she be granted expiation. Let her bring a true copy of it. ---5

40 The complaint made by Śamaśera Bahādura in this document is confusing without knowledge of the other documents mentioned above, since he only sets forth the substance of his complaint without mentioning the accused's name.

41 The term *Ain* here refers to the code of 1854.

42 *Bhatāhā* is a person with whom one can eat rice without being contaminated (i.e. a fellow caste member; see Turner 1931 s.v. *bhatāhā*).

43 Rājākumārī Pādenī later did show the expiation certificate as demanded by Śamaśera Bahādura (see NGMPP K 175/34). However, this certificate, while stating that she has undertaken the expiation, does not specify whether the expiation was granted in terms of rice or only of water.

If the expiation was undertaken by official order (*hukumale*), let her bring the official document (*kāgaja*) of the *pramāṅgī*.⁴⁴ ---6

No fellow-caste member who has eaten rice [with her] has showed up until today, 16 years after the expiation took place. [Is it enough] to show a copy of the *phāra*⁴⁵ without showing the official document relating to the expiation? The matter is not recorded in the *syāhā*⁴⁶ the way it is in the *purjī*, nor is it recorded in the *āvarje*⁴⁷ the way it is in the *syāhā*. [Furthermore,] it is not recorded in the [account book containing] total expenditures (*jammā kharca*) the way it is in *āvarje*, nor is it recorded in the *phāra* the way it is in the [account book containing] total expenditures. Now, I cannot be satisfied only with a copy of what is written in the *phāra*. ---7

If, irrespective of whether a fellow caste member has eaten rice with her or not, you [still] give [me] an order to eat [rice with her] without having made an inquiry into the [above-mentioned] evidence, I will, assuming all fellow caste members are present there and are ready to eat rice with her, also be present. I have no complaint [in that case]. ---8

[In VS 1934].⁴⁸

- 44 A *pramāṅgī* is an order or authorization letter from the king or a high-ranking government official. As discussed above in the Notes, such documents are issued when something is to be done that is not in accordance with the law. Such orders have to be in written form and approved. In one instance (NGMPP K 499/41), the *pramāṅgī* was approved with the signature and stamp of a *Pramāṅgī* Kaptan, which indicates that there was a position specifically responsible for such kinds of orders.
- 45 The meaning of this term is not entirely clear. It may refer to a written receipt or acquittance, releasing the party from all claims (see NGMPP DNA 11/35).
- 46 Adhikari 1984: 357 defines this term as “Account book, Cash book.” To what stage of account keeping it exactly refers remains unclear.
- 47 According to Wilson (1855: 40 s.v. *awārija*), this term denotes “a diary, a ledger, a rough note-book, an abstract account of receipts and disbursements.” This suggests that the term *jammā kharca* designates account books recording income and expenditures over a longer period of time, whereas *āvarje* may have been a list recording income on a daily basis.
- 48 Though the date of this document is not mentioned, it can be ascertained. The expiation of Rājakumārī Pādenī took place on Tuesday, the ninth of the dark fortnight of Mārga in VS 1918 (see the 2nd and 6th paragraphs of this document, NGMPP K 175/32 and NGMPP K 175/34) and Śamaśera Bahādura submitted his complaint 16 years after the expiation, that is, in VS 1934.

Abbreviations

MA	<i>Mulukī Ain</i>
NBŚ	<i>Nepālī Bṛhat Śabdakośa</i>
NGMPP	<i>Nepal-German Manuscript Preservation Project</i>
NyāV	<i>Nyāyavivikāsinī</i>
VS	<i>Vikrama Saṃvat</i>

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