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CHILDREN

iii. Legal Rights of Children in the Sasanian Period

Although the corpus of Sasanian civil law was designed primarily to regulate matters among the lower classes, that is, the common people and slaves, the portions on adoption, inheritance, guardianship, and the like were equally applicable to the upper classes (see class system ii). Several kinds of filial status were recognized: legitimate (*pādixšāyīhā*), adopted (*padīriftag*), *stūr* (born through substitute marriage, or *stūrīh*), illegitimate, and unfree. Of special importance was the *stūrīh*: In Zoroastrian family law, if a "judicious Zoroastrian Iranian" man died without male issue, in order to maintain his lineage, his near relatives were required to institute a marriage by proxy called *stūrīh* (a kind of levirate) and beget a son who would be considered as the legal successor of the deceased and have all the rights and obligations of a legitimate (*pādixšāyīhā*) offspring. For legal purposes these categories of offspring were in turn differentiated according to sex and age; the age of majority for both boys and girls was set at fifteen years, on the authority of the Avesta (*Yt.* 9.5, the ideal age for a male during the rule of Yima; *Vd.* 14.15).

Stūrīh and adoption. Two main instruments for ensuring family lineage and succession, as well as performance of filial duties, were provided in Sasanian law: substitute marriage and adoption. The children born to a substitute marriage belonged to a special category, as they were begotten expressly in order to maintain the succession (*paywand*) of their mother's deceased husband, administer his estate (*xwāstag-dārīh*), and observe commemorative rituals (*nāmagānīh*; *Dādestān ī dēnīg* 55, p. 201), all vital concerns for Zoroastrians, who had developed an elaborate system of laws and precepts for arranging them. If a man died without a son, the obligation of providing him with a male successor fell first upon his widow, then upon his next of kin: daughters, brothers, sisters, nephews, and nieces in the male line, and then other relatives (*Dādestān ī dēnīg* 55, p. 202; *Mādayān*, pt. 1, p. 41; See AYŌKĒN; BŪDAG; ČAKAR). If he had daughters, the obligation of assuming the father's *stūrīh* rested on the oldest one still unmarried (*Mādayān*, pt. 1, p. 41; Shaki, 1975, p. 229; *Dādestān ī dēnīg* 55, p. 203; *Rivāyat ī Ēmēd* 18, pp. 72-74); if she had received property from the father to be used for the management of his *stūrīh*, she could not refuse the obligation (*Mādayān*, pt. 1, p. 101; cf. ayōkēn). If, however, the father had transferred the guardianship of the daughter, his *stūrīh* was no longer binding on her (*Mādayān*, pt. 1, p. 22). A sister was obligated to assume the *stūrīh* of her deceased brother if he had left no wife and children of his own or had been her partner (*hambāy*) or guardian (*Mādayān*, pt. 1, p. 23). The children born of *stūrīh* marriage (*pus/duxt ī stūr* "*stūr* child" or *pad dūdag zād* "born for the family") had all the filial rights and obligations of legitimate offspring in relation to the deceased father in whose name they were begotten. After the birth of a son the *stūrīh*, but not the guardianship (*sālārīh*), might be liquidated (*kanišn*; *Mādayān*, pt. 1, p. 48; Shaki,1971, p. 326). As soon as the first *stūr* son came of age, the object of *stūrīh* was regarded as accomplished; he had to take over from the *stūr* father the guardianship of the family of the deceased father, with all concomitant responsibilities.

In adoption a formal contract (*pašt*) was concluded between the adoptive father and either the adult to be adopted or the legitimate father of a minor (*Mādayān*, pt. 1, p. 42). This agreement, in which the adoptive father declared "I have taken you in adoption as a son (daughter)" (*Mādayān*, pt. 2, p. 40), was drawn up, signed, and sealed before a magistrate priest (*dādwar*). It is noteworthy that it was not only for want of progeny that children were adopted, for even men who had sons or daughters of their own adopted others. According to historical sources the political or moral support accorded by a

sovereign to another royal house was often quite broad and could be called "adoption" as a term of courtesy. Examples include the supposed guardianship of Yazdegerd II over the Byzantine prince Theodosius II; Kavād I's request that Justin I take his son Ḵosrow I in adoption (Garsoïan, pp. 578-79; see BYZANTINE RELATIONS WITH IRAN); and the "adoption" of Ardašīr, son of Pābag, by Tīrī (Baḷʿamī, ed. Bahār, p. 876). Such patronage apparently had nothing in common with adoption as a family institution. The legal provisions for the latter reveal the claimed genealogy of Ardašīr reported in *Kārnāmag ī Ardašīr ī Pābagān* to be fictitious: Had Ardašīr been a son of Sāsān and adopted by Pābag, his genealogy would have been reckoned from the side of Pābag, not from that of his supposed natural father, Sāsān (Shaki, 1987, p. 288; idem, 1990).

Familial dispositions. Parents and children were bound by strict mutual responsibilities. The father was both guardian and owner of his children, who were obligated to obey him; in particular, a daughter was required to pay verbal obeisance to her father or guardian three times a day, standing before him with arms folded and vowing compliance with his wishes, requests, and demands (*Pahlavi Rivayat*, ed. Dhabhar, p. 120). If a child failed in his filial duties or disobeyed the father three times, he was considered "punishable by death" (*margarzān*; *Pahlavi Rivayat*, ed. Dhabhar, p. 108). The mother's role was simply to bear children, and she had no ownership rights.

In ancient (Zoroastrian) Iran both parents were required to begin caring for a child as soon as conceived, whether legitimate or not, and women were cautioned against the crime of abortion (*Vd.* 15.9-14, tr. Darmesteter, II, pp. 222-24). Minor children in all categories were entitled to protection and support within the family. According to the Avesta, a father's failure to maintain both mother and child was construed as willful bodily injury (*bōdōwaršt*, Av. *baoδō.varšta-*; *Vd.* 15.15-19, tr. Darmesteter, II, pp. 224). In the Sasanian period, however, a father who neglected to care for his minor children, including unmarried daughters, was required to reimburse the expenses of whoever had done so (*Mādayān*, pt. 1, p. 33).

Every citizen (see citizenship ii) was obligated to help and protect abandoned minor children; failure to do so was tantamount to robbery (*duzīh ud appārīh*; *Dēnkard*, ed. Madam, II, p. 716; ed. Dresden, p. 286; tr. West, in *Pahlavi Texts* IV, SBE 37, chap. 20.110, p. 68). According to the jurist Mardag, every profitable (*pad nīrmad*) property belonging to the family was to be regarded as designated for the welfare of minors and could thus not be alienated

(*Mādayān*, pt. 1, pp. 19-20, 30). Some jurists even insisted that property required for support of a wife and minor children could not be taken away even if the father was under sentence of death (*Mādayān*, pt. 1, pp. 97-98). A minor could neither dispose of nor pawn his property (Yišōʿ-buxt, III, p. 137); his share in an inheritance remained in the control of his mother or other family members (*Mādayān*, pt. 1, p. 52) during his infancy, for the income from it belonged to the family as a whole (Yišōʿ-buxt, III, p. 321). The father was not entitled to disinherit his children (*Mādayān*, pt. 1, p. 20; *Dādestān ī dēnīg*, p. 53), unless they had been refractory or ungodly (Yišōʿ-buxt, III, p. 133). He was also obligated to make special provisions for an infirm or disabled (*armišt*) child and to arrange for the elders of the family to administer it before the remainder of the estate was distributed (Yišōʿ-buxt, III, p. 250; *Mādayān*, pt. 1, p. 53). Property that a daughter had already received from her father was not considered part of her inheritance after his death (*Mādayān*, pt. 1, p. 61).

The proprietary equality of adopted children was provided in law. They were ranked with legitimate offspring in their right to enter into partnership (*hambāyīh*) with their adoptive fathers (*Mādayān*, pt. 1, p. 28), and adopted children and their adoptive fathers were mutually entitled to inherit each other's estates (*Mādayān*, pt. 1, p. 70), though a daughter had this right only if she had been given in adoption by her natural father (*Mādayān*, pt. 1, p. 70). Any grant offered by a father to his blood children was also extended to his adopted sons (*pus ī padīriftag*) and daughters (*duxt ī padīriftag*; *Mādayān*, pt. 1, p. 71), who shared equally with the legitimate progeny in the father's estate (*Rivāyat ī Ēmēd*, chaps. 18, 23). Although an adopted son enjoyed all the rights and obligations of a legitimate son and was explicitly recognized as the adoptive father's rightful successor and as a vehicle of his lineage (*Mādayān*, pt. 1, p. 70), this legal status did not become fully operative until he was able to assume the concomitant responsibilities. If an adopted son died his natural family had a claim to his residuary estate (*abarmānd*) from the adoptive father (*Mādayān*, pt. 1, p. 69; for the distinction between *abarmānd* lit. "left over" and *bahr* "ordinary legacy" lit. "share," see Shaki, 1971; *Mādayān*, pt. 1, p. 61). The instance of a father's acknowledging his *stūr* children did not fall under the category of adoption, for the children thus became legitimate (see ČAKAR). Some of the qualifications for eligibility for *stūrīh* set forth in *Dādestān ī dēnīg* (p. 202) also may be supposed to have had juridical relevance to adoption, however: An adoptive son was thus to be "of good religion" (*hudēn*), "of sound mind" (*ōšyār*), "a subject of the Iranian king" (*šāhānšāh bandag*), and innocent of any sin punishable by death; an adoptive daughter could not be a slave

(*bandag paristār*), a non-Iranian (*anēr*), or of evil religion (*ag-dēn*) and also could not be charged with a sin punishable by death. The distinction between the prerequisites for sons and daughters was occasioned by the status of women, who were not considered to be fully judicious, entirely free, actively religious, or entitled to be subjects of the king of kings.

A legitimate father could share his parental right with another person by giving his son in partial adoption (*Mādayān*, pt. 1, p. 70), in which case he retained priority in claiming the undertaking of his son's *stūrīh* (*Mādayān*, pt. 1, p. 70). When a daughter was given in partial adoption, neither contracting party could subsequently transfer the adoption without the consent of the other (*Mādayān*, pt. 1, p. 69). The father was also entitled to transfer guardianship of minor children to whomever he pleased (*Mādayān*, pt. 1, p. 28), but an inefficient guardian who mismanaged the child's property would be relieved of his duties (*Mādayān*, pt. 1, p. 28). In one instance the guardianship of a minor who had converted to Zoroastrianism was offered to the person who had brought about his conversion (*Nīrangestān*, ed. Sanjana, p. 16). In adverse circumstances, that is, when threatened by extreme indigence, the sin of withholding sustenance from the famished, *adbadād* (from Avestan *aδβaδāiti–*, lit. "to be set out on the road"; see *Farhang i oīm* 25b, ed. Reichelt, p. 32, ed. Klingenschmitt, pp. 224-25; *Air. Wb.*, col. 61; and Shaki, 1971, p. 337 n. 5), death, or exhaustion (*margīh ud raxtagīh*), the father was authorized to sell his wife and his legitimate or adopted minor children or to relinquish the management of *stūrīh* or guardianship (*Mādayān*, pt. I , p. 33; Shaki, 1971, p. 337; Perikhanian, 1973, pp. 98-99, partly incorrect). If a father (*pādixšāyīhā* or *stūr*) was indigent, his legitimate or *stūr* sons were obligated to support him (*Mādayān*, pt. 1, p. 32).

Filial rights and obligations. If a father died intestate, the oldest son was obligated, upon reaching his majority (*pus ī tanīg-zād ī 15-sālag*), to assume guardianship of the family (*dūdag*, *sālārīh*); trusteeship (*stūrīh*) of the family's Wahrām fire (see ĀTAŠ); and administration (*xwāstag-dārīh*) of the paternal estate, including settlement of bequests and discharge of liabilities, for which purpose he should have received property from the father in trust (*Rivāyat ī Ēmēd*, question 5, pp. 14-15; *Mādayān*, pt. 1, pp. 26, 42, 61; *Dādestān ī dēnīg*, p. 201). It was also his duty to administer the property set aside for cultic services for his father's soul (*yazišn nihādag*; *Mādayān*, pt. 1, p. 29). A daughter could not become executor of the family estate as long as there was a son to fill this role; if there was no male offspring, however, then the oldest unmarried

daughter was required to discharge her father's liabilities (*Mādayān*, pt. 1, pp. 62, 63). Property that an unmarried daughter, sister, or minor child had received in lawful ownership from the state (*šāhān-šāh* "king of kings") or the father before his death was not, however, subject to this requirement (*Mādayān*, pt. 1, p. 30). A daughter could be appointed guardian of the family fire (*Mādayān*, pt. 1, p. 110) only by her father's will (*Mādayān*, pt. 1, p. 25).

When the father died intestate, the shares allotted to a legitimate or adopted son and to the legitimate wife who undertook the *stūrīh* of her husband were each twice that of a daughter (*Wizīrkard ī dēnīg*, tr. E. West, in *SBE* 37, p. 489; *Mādayān*, pt. 1, p. 170; *Dādestān ī dēnīg*, question 53, p. 199). A child born after the distribution of patrimony (*pus/duxt ī pas-zād* "last-born child") was entitled to a share drawn from various family resources, for example, from property made over to the lady of the house by the deceased father during his lifetime (*Mādayān*, pt. 1, p. 51).

At the death of his adoptive father a minor son was considered by the jurisconsults Wahrāmšād and Rād-Hormizd as "on the side (in the line of descent) of the adoptive father" (*az kust ī pid ī padīriftag*; *Mādayān*, pt. 1, p. 69). A master of the house without male progeny who adopted a son had no need of *stūrīh* (*Rivāyat ī Ēmēd*, chap. 2; *Dādestān ī dēnīg*, chap. 55). The adopted son was reckoned among the four guardians-at-law (*sālār ī būdag*; see BŪDAG) upon whom the guardianship (*sālārīh*) of the family devolved: the legitimate son, the adopted son, the partner-brother (*brād ī hambāy*), and the designated *stūr* (*Mādayān*, pt. 1, p. 26; *Dādestān ī dēnīg*, chap. 57; *Rivāyat ī Ēmēd* , chap. 5). In contradiction to prevailing opinion and practice, however, the jurisconsult Mardag argued that an adoptive son could be eligible for guardianship of the family or assumption of the father's *stūrīh* only when there were no near relatives (*pad rāh ī a-kasīh*; *Mādayān*, pt. 1, p. 71; the reading by Perikhanian, p. 213, is incorrect).

There were special rules for guardianship (*sālārīh*) in connection with partnership or joint ownership (*hambāyīh*). For example, if a daughter and her younger brother received a joint share in the inheritance, he, rather than the oldest brother, became her guardian. According to the jurist Mēdōgmāh, if both brothers died, the sister was obligated to *stūrīh* for the younger; in the opinion of Abarag, on the other hand, she was obligated for the older, whom he also classed as a guardian (*Mādayān*, pt. 1, p. 22; Shaki, 1975, pp. 235-36). Minors given in adoption who had not yet assumed their full obligations remained under the guardianship of their legitimate fathers until they came of

age; should such a minor die before achieving his majority, his estate passed to his legitimate father (*Mādayān*, pt. 1, pp. 70, 110). An adopted daughter succeeded to the obligatory *stūrīh* of her adoptive father but not to that of her brother-german (*Mādayān*, pt, 1, p. 69).

Before marriage a daughter's income and savings belonged to her father (*Mādayān*, pt. 2, p. 1). After she married the property that she brought from her father's house, including her share of previously distributed inheritance (*abarmānd*), her dowry (*kābēn*, **pēšīgān* or **passāzagān*), and other private property (*wāspuhragān*; Shaki, 1974, pp. 327-36), was rightfully hers (*Mādayān*, pt. 1, pp. 2, 51). Having become the lady of the house (*kadag-bānūg*) and a member of an alien family, she had, however, no claim to undistributed patrimony (Yišōʿ-buxt, III, pp. 95, 236). A woman who married her father was entitled to inheritance as a wife, rather than as a daughter (*Mādayān*, pt. 1, p. 44). A young woman who indulged in illicit intercourse was not deprived of her inheritance or right to a guardian, but she forfeited both inheritance and her own earnings if the relationship lasted (*pad ān ī hamēīg*; *Mādayān*, pt. 1, p. 24). The existence of such permanent illegal cohabitation was not recognized in traditional law (*kardag*), but some liberal jurists acknowledged it as a point of civil law (*dādestān*; *Mādayān*, pt. 1, p. 36; Shaki, 1970, p. 334).

Daughters and sisters enjoyed legal protection from sexual abuse (including "swapping of daughters and sisters"; *Dēnkard*, ed. Madan, II, p. 714; ed. Dresden, p. 288, tr. West, chap. 20.93, p. 66) and injury or maltreatment by their fathers, brothers, or guardians (*Dēnkard*, ed. Madan, II, p. 739; ed. Dresden, p. 267, tr. West, chap. 31.10, p. 100).

Children born by a fugitive (*xwarāyēn*, see Shaki,1988, p. 96) daughter, that is, to a man of her choice whom her father had prevented her from marrying, were entitled to support by her father but without owing any filial duties. The oldest son of such a union, upon attaining his majority, assumed guardianship of the minor children (*Rivāyat ī Ēmēd* 43; Shaki, 1970, pp. 333-34; 1988, pp. 96-98), who had no legal claim to inheritance from their father (Yišōʿ-buxt, III, p. 115).

The laws affecting the status of children from marriages between free men and slaves were changed during the rule of "Bahrām" (perhaps Bahrām V [r. 420-38]). Previously this status had depended upon that of the father, but subsequently that of the mother became determinant (*Mādayān*, pt. 1, p. 1). According to the Syriac lawbook, however, if a free woman married a slave,

her children would also be slaves (Yišōʿ-buxt, III, p. 77); nor were children born to a slave woman and a free man entitled to inheritance (ibid., p. 246) unless the father had given them certificates of manumission (ibid., p. 244). The children of a slave (*anšahrīg*) who was partly free (one-tenth, one-half, etc.) were free to the same degree (*Mādayān*, pt. 1, pp. 6, 9; Yišōʿ-buxt, III, pp. 177,179); the obligation of a person (*bandag*) dedicated to the service of a particular fire temple descended to the same degree to his sons (*Mādayān*, pt. 1, p. 101). The wife, daughter, and slave who had been found guilty of a crime had to be supported by their master or guardian (*Mādayān*, pt. 1, p. 33).

Marriage. From a phrase in the *Vd.* (14.15), "a sister or a daughteṛ . . . after the age of fifteen," it may be inferred that in ancient (Zoroastrian) Iran a girl had to have reached her majority to marry (*Avesta*, tr. Darmesteter, II, p. 218); presumably it was then, rather than at puberty (which usually occurs in Persia between the ages of nine and twelve years), that she was considered to have attained her physical prime. In contrast, Middle Persian civil law provided that a girl might marry at the age of nine years and that consummation of the union need be delayed only until she reached age twelve years, "especially if she had carnal desire" (*Pahlavi Rivayat*, ed. Dhabhar, p. 107). In the opinion of the jurist Sōšyāns the marriage might even be consummated at age nine years, provided that the girl was physically mature (*Nīrangestān*, p. 15; ed. and tr. Humbach and Elfenbein, pp. 52-53). At all events, she was supposed to be married before she turned fifteen; if she refused marriage after that, she had committed a capital sin (*Rivāyat ī Ēmēd*, p. 114, question 31). If her father or guardian failed to arrange her betrothal after she becomes fifteen, he also committed grave sin (*Dēnkard*, ed. Madan, II, p. 714; ed. Dresden, p. 288; tr. West, chap. 20.95, p. 66).

The consent of the girl to marriage was essential, for the prevalent law, as stated by the jurist Zurwāndād ī Juwānǰam (or Gušnǰam?), was that she could be given neither in legitimate nor in (*stūrīh*) marriage against her will (*Mādayān*, pt. 1, p. 36), although, as already noted, some jurists held that in the case of *stūrīh* the daughter had to abide by her father's choice, because her remuneration from the conduct of *stūrīh* belonged to the father (*Mādayān*, pt. 1, p. 36). If a brother willingly undertook the conduct of *stūrīh* (instead of his sister), he was authorized to give his sister in marriage against her will (*Mādayān*, pt. 1, p. 43). On the other hand, marriage had also to be sanctioned by the girl's father or guardian.

A minor could enter legitimate or *stūrīh* marriage (*Mādayān*, pt. 1, pp. 41, 49),

and a minor son could even be married to his own legitimate mother if she had divorced his father (*Mādayān*, pt. 1, p. 87). The jurists Abarag, Mēdōgmāh, and Weh-Hormizd disagreed, however, on a child's right after majority to disregard prearranged marriages (*Mādayān*, pt. 1, p. 50). The prevalent practice seems to have been that he or she made his or her own choice (*Mādayān*, pt. 1, p. 89).

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