



# FAMILY LAW I. IN ZOROASTRIANISM

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## i. IN ZOROASTRIANISM

Mazdean family law is the most extensive and involved section of the civil code as set forth in the few surviving Middle Persian legal texts, especially the Sasanian lawbook entitled *Mādayān ī hazār dādestān*. It comprises a medley of orthodox legislation (*kardag*) and revisions (*dādestān*) enacted by more liberal jurists and dignitaries (*dastwarān*, *wēhān* “sages”); such revisions were a source of continual controversy and led to the emergence of opposing schools of jurisprudence. In these disputes a remarkable attempt at improving the social status of women, minors, and to a lesser extent bondsmen is apparent (see citizenship ii).

The salient feature of Zoroastrian social organization in the Sasanian period was the patriarchal agnatic family (*dūdag*, *kadag*), in which the master of the household (*kadag-xwadāy* “paterfamilias,” *pid(ar)* “father,” *šōy* “husband”) was seconded by his wife (*kadag-bānūg* “materfamilias,” *mād(ar)* “mother,” *zan* “wife”). Members of the family, usually an extended family, who were related either by kinship (*nabānazdišt*, *hamnāf* “kindred,” *xwēšāwand*, *paywand* “kinsman, relative,” *kas*, lit., “person,” in certain contexts clearly also “relative”) or by affinity, through marriage, adoption (see children iii), or *stūrīh* (marriage by proxy), were bound by a highly developed set of legal prescriptions, as well as by a strict moral code and a strong set of conventions.



Even the relationship between master and bondsman was controlled by established rules and restrictions (*ēwēn ī šahr* “custom of the land”) and patriarchal tradition.

#### TYPES OF MARRIAGE

In Zoroastrianism there were essentially two types of marriage (*zanīh*): *pādixšāyihā* (lit., “with authorization, authorized”) and *stūrīh*, each with several subtypes and irregular forms. Owing to gradual obscuration and modification of Middle Persian terminology in the Islamic period, however, five types of marriage were recognized in the *Persian Rivayats* (tr. Dhabhar, I, pp. 180-81).

*Authorized marriage.* Authorized marriage (*zanīh ī zan pādixšāyihā* “marriage of a woman in authorized condition”; *Mādayān*, pt. 1, p. 36) was the legal union of a husband and wife; it may be interpreted as “legitimate” wedlock, a counterpart to Islamic or Christian marriage. Members of the family were known as *šōy* “husband,” *zan* “wife,” *pus* “son,” and *duxt* “daughter” *ī pādixšāyihā*. This type required the authorization of the father or guardian of the bride, as well as a detailed marriage contract (*paymān ī zanīh*; *Pahlavi Texts*, ed. Jamasp-Asana, pp. 141-43), of which a specimen has survived from the Islamic period (1278 C.E.; see contracts ii). In *pādixšāyihā* not only the sanction of the guardian but also the consent of the bride was essential (*Mādayān*, pt. 1, p. 36). Ādurbād ī Mahrspandān (q.v.) advised young men to plead for the hands of their brides themselves (*xweštan rāy zan xwad xwāh*; *Pahlavi Texts*, ed. Jamasp-Asana, p. 61), from which it follows that in the Sasanian period marriages were usually arranged by parents or matchmakers, as is still customary in Persia. It was the duty of the father to decide for which son to seek a wife and which daughter to give in marriage (*Dēnkard*, ed. Madan, II, p. 744).

Appearing before the magistrate (*mowbed*) were the two fathers, the bride (*wayōg*) and bridegroom (*dāmād*), and three witnesses (*gugāy*), whose identities were registered. When married the bridegroom assumed the status of master of the household and the bride that of mistress of the house, with accompanying rights and obligations (*Dēnkard*, ed. Madan, II, p. 739).

The ancient custom of receiving a sum of two thousand *drahms*’ “security” (*pāyandanīh*) for the bride, a euphemism for marriage portion, was observed. It may be surmised that among the upper classes the marriage portion was not



restricted to this traditional sum but also included movable or real property transferred to the bride's family in return for a rich dowry (*\*passāzagān*). Such transactions may have been the primary reason for preferring marriage with kin, in order to prevent property from leaving the family. In fact, the most meritorious type of marriage, regarded as a panacea for all deadly sins except sodomy (*Rivāyat ī Ēmēd*, chap. 29), was what modern Parsis call "next of kin" union (*xwēdōdah*, Av. *xvaētvadaθa-*; *AirWb.*, col. 1860; Nyberg, *Manual* II, p. 224), described in the *Dēnkard* (ed. Madan, I, p. 73) as "union of father and daughter, son and mother, brother and sister" (*hampaywandīh ī hast pid ud duxt, ud pus ud burdār, ud brād ud xwah*). Already in the Yasna (12.9) the righteous *xvaētvadaθa-* was praised. Consanguineous marriage, originally practiced by the nobility among many peoples, was later commonly contracted in all sections of the Iranian community, high and low. Many Persian monarchs married their sisters or daughters (Boyce, *Zoroastrianism* I, p. 254 n. 24, II, pp. 75-77; idem, 1979, s.v. *khvāetvadatha*), and the Magians were reported by Xanthus of Lydia to have cohabited with their mothers and daughters (Jackson, pp. 152-57). In the Sasanian period the priest Ardā Wīrāz (q.v.) took all his seven sisters to wife (*Ardā Wīrāz Nāmag*, chap. 2). Next-of-kin marriage among the common people is dealt with in most Middle Persian lawbooks, especially the *Rivāyat ī Ēmēd* (chaps. 22, 24, 27-30; cf. de Menasce, 1985, pp. 138-44; Shaki, 1971, pp. 335-36; Nyberg, *Manual* II, p. 224).

*Pādixšāyihā* marriage could be temporary, for a mutually agreed period, and could thus function as a form of companionate marriage. Upon termination of the stipulated period the wife's dowry and private belongings (*wāspuhragān*) reverted to her, but, if she had died, her property belonged to the husband (*Mādayān*, pt. 2, p. 2).

*Irregular unions*. In contrast to authorized marriages, there were a few irregular types, the common feature of which was the bride's disregard for her father's sanction (cf. Ind. *svayaṃvara*, lit., "self-choosing"). In *Frahang ī Oīm* 2.f a *xwarāyēn* (lit., "self-guardian") is defined briefly as "a daughter who marries on her own" (*duxt-ē kē šōy xwad kunēd*, corresponding to *xvad-rāy* or *xvad-sālār* in *Persian Rivayats*, tr. Dhabhar, p. 181). The *Rivāyat ī Ēmēd* (chap. 43) contains an illuminating chapter on the legal and social status of such a runaway daughter: "The *xwarāyēn* is explained as misunion (*jud āyōzišn* "un[authorized] union"). It is the case when a man has a daughter who has come of age (i.e., is marriageable) and her father is guilty of keeping her in the house (i.e., he does not give her in marriage), and the maiden takes to herself a



guardian without the sanction of the father and marries him. That woman is called *xwarāyēn*” (Shaki, 1971, pp. 343-44; idem, 1988, pp. 96-99). In the lost Sasanian orthodox lawbook *Dādestān-nāmag* the validity of this kind of marriage was not acknowledged; on the other hand, “There was a jurist who maintained (that in accordance with the) civil law it is legal, but traditional law does not approve of it” (*būd kē guft dādestān dahišn, bē pad kardag nē dārēnd; Mādayān*, pt. 1, p. 36).

Another irregular type of marriage was connected with the term *bēastān*, which occurs twice in the *Mādayān* and in corrupt form in the *Rivāyat ī Ēmēd* (chap. 30), where four different definitions are given for it, all embodying the idea of the daughter’s leaving the paternal house. It may thus be read “out of the house.” The greater esteem expressed in the *Mādayān* for *bēastān* than for *xwarāyēn* suggests that in the former the daughter, upon coming of age, simply rejected the father’s candidate, in order to marry a man of her choice (pt. 1, fols. 21, 36, 41; Shaki, 1971, p. 335).

A singular instance, which actually falls under concubinage, was that of a widow who took to herself a bedfellow (*gādār* “fornicator”) and cohabited with him under his guardianship; if there were minors or other women in the family, no guardian would have been appointed for her but for the minors and other people who happened to be in the household (*Mādayān*, pt. 2, p. 14; *Rivāyat ī Ēmēd*, chap. 5). It was specified that the woman seeking such cohabitation should be without a guardian and free from the obligation of *stūrīh*, but the bedfellow was by duty bound to maintain her and her children until they came of age (*Mādayān*, pt. 1, fol. 36).

Although the extant Middle Persian lawbooks, which reflect the legal norms of the community, rarely include references to bigamous practice, polygamy was an ancient privilege of the aristocracy and spiritual dignitaries (*Mādayān*, pt. 2, p. 1; “Letter of Tansar,” p. 1630; tr., p. 44), attested by lexicological evidence (Av. *hapaθnī*– “cowife”; *Frahang ī Oīm* 2.f; *AirWb.*, col. 1765; Old Pers. \**hapašnī* > Mid. Pers. *hambašn* [*Zādspram*, pp. 163, 143]; NPers. *āmvasnī, vasnī* [Moʿīn, I, p. 62; II, p. 2283]; Mid. Pers. *abōg* > NPers. *havū* “cowife” [Henning, p. 18]). The number of wives as a reflection of wealth and dignity tended to increase with the husband’s standing. Kōsrow II (590-628, with interruption) is said to have had, apart from his queens and legal wives, ten thousand concubines in his harem (*šabestān; Xosrow ud Rēdag*, p. 84). Although the ancient Iranians were endogamous as a people, some monarchs married foreign, non-Zoroastrian women. The Parthian king Phraates IV (ca. 40-3/2 B.C.E.) married the Italian



slave girl Thesmouša, Yazdegerd I (399-420) the Jewish Sošandukt, and Ƙosrow II the Byzantine princess Maria and the Armenian Širēn.

*Proxy marriage.* The second type of recognized Zoroastrian marriage was *stūrīh* (Av. *stūriia-*; *Pahlavi Rivāyat of Āturfarnbag*, p. 27), translated into Arabic by Ebn Moqaffa' as *badal* (substitute; "Letter of Tansar," p. 1630; tr., p. 46). It was the counterpart of the Mosaic levirate (Deuteronomy 25:5-10; Syr. *ybmwt'*; *Syrische Rechtsbücher*, p. 96), defined, incorrectly, by the Parsis and thus by many scholars as "adoption" (West, pp. 188-89) and by Christian Bartholomae as "care, trusteeship, guardianship" (1920, p. 48; 1922, p. 51). The word is of obscure origin with a variety of specialized meanings, which are not always easy to differentiate or assess. Generally it denotes "custodianship, safeguarding the cause of someone or something" (*Dēnkard*, ed. Madan, II, p. 537: *u-æān ēn-iz aōn dāšt ku myazd stūrīh ī yazdān, ud ātaxš ī Warahrān stūrīh ī Gayōmard, ud gāhānbār stūrīh ī dēn* "And they so held that the *myazd* ceremony is safeguarding [the cause of] the gods and the fire of Warahrān (Wahrām) is safeguarding [the cause of] Gayōmard and the *gāhānbār* festivals are to safeguard [the cause of] religion," where *stūrīh* could equally be rendered "trust"; Shaki, 1971, p. 325). In reference to fire it may be rendered "trusteeship" (*ka ātaxš pad stūrīh nišānēd* "if someone establishes a fire in trusteeship," i.e., to be maintained by generations of trustees in succession; *Mādayān*, pt. 1, p. 50). In the sense of "substitute, proxy" (*Dēnkard*, ed. Madan, I, p. 407: *ud hamistīhā kard pad weh-dēn nimūdārīh ēn ī nāmēnīd pad stūrīh mānāgīh ī az ān wuzurg bun dēnkard hazār-darag* "and I [Ādurbād ī Ēmēdān] compiled this book, called the *Dēnkard* of a thousand chapters, as a substitute from that great original *Dēnkard* for the guidance of the people of the good religion") it was applied by Zoroastrian legislators to marriage by proxy. The "Letter of Tansar" is quite explicit: "When a man dies without a male issue, his widow, if he has left one, was given in marriage to one of his closest next of kin. If he has no wife, but a daughter, the same was done. If there were neither of these two, they would provide a woman from the dead man's property and give her to his nearest kinsmen, and every son who was born they assigned to the man who had left the legacy." The author commented that "anyone who disregarded this custom had in fact slain innumerable souls, since he had cut off the dead man's lineage and memory to the end of time" (p. 1630; tr., pp. 46-47). Further details are provided in *Dādīstān ī dēnīg* (ed. Christensen, chap. 55): "When a man of the good religion passes away without issue, the relatives of the deceased should find someone as his substitute (*guhārīg*), who is called *stūr*, in order to observe the commemorative rituals for his soul (*nāmagānīh*),



maintain his lineage, and administer his property” (*pad ān ī ōy nāmagānīh ud paywand rāyēnēd ud xwāstag dārēd*, word order rearranged). Male issue was indispensable to salvation (daughters were not vehicles of lineage), for a person without a son was unable to cross the bridge to the next world (see Činwad puhl; *Wizīrkard ī dēnīg* 26.17; *AirWb*, col. 910; Shaki, 1971, p. 326). *Stūrīh* was a religious obligation (*paywand ī frašgerd*; *Dēnkard*, ed. Madan, I, p. 168; II, p. 492), for it helped the *Weh-dēns*, assistants to Ohrmazd to attain the restoration of the world.

In this type of matrimony the family included husband, wife, son, and daughter (*šōy, zan, pus, duxt ī stūr*). On the authority of the Avesta, then extant (*Mādayān*, pt. 1, p. 43), the free half of a slave (for partial slavery, see *barḍa* and *BARBADĀRĪ* ii) or an authorized wife not already serving as *stūr* was eligible for *stūrīh*; the authorized wife had first to be granted freedom over her own person and made her own guardian by her husband (*Mādayān*, pt. 1, p. 3). A widow undertaking *stūrīh* for her deceased husband was called *čakar* (q.v.; see *AYŌKĒN*). There were jurists who held that the procedure should, however, be supervised by eminent religious dignitaries (*ka dastwarān abarmad kard*; *Mādayān*, pt. 1, p. 49). In contrast to authorized marriage, in this type the couple was not bound by ties or obligations other than cohabitation, guardianship of the husband over the wife, and obedience (*tarsāgāhīh* “reverence”) of the wife to the husband. It should be stressed, however, that *stūrīh* did not resemble Roman *matrimonium sine manu*, in which the wife was free in her sexual relations (pace Perikhanian, 1970, p. 355).

A *stūrīh* was also to be instituted for any deceased free Iranian Zoroastrian who had left no authorized wife, male issue (*frazand*), adopted son (*pus ī padīgriftag*), or associate brother (*brād ī hambāy*) and had left a minimum profitable (*barōmand*) estate of 60 *stērs* (*Dādestān ī dēnīg*, ed. Christensen, chap. 55; see below). In the Sasanian caste system *stūr* and deceased were to be of similar social class, wealth, and standing. According to the “Letter of Tansar” (p. 1630), the proxies of princes were to be princes (*Mādayān*, pt. 2, p. 14; Shaki, 1987, p. 192). As the purpose of *stūrīh* was to beget at least one son, providing the deceased with a successor, premature dissolution was a grave sin (*tanāpuhl*; *Pahlavi Rivayat*, ed. Dhabhar, pp. 122-23). Once a son had been begotten, the *stūrīh* marriage, though not the guardianship over the woman, could be terminated (*Mādayān*, pt. 1, p. 48) without divorce (q.v.), as the *stūr* couple was by definition divorced (*pad xwad ēstišnīh abēzār*; *Rivāyat ī Ēmēd*, chap. 21; Shaki, 1983, p. 47). An exception was made when a limited term was



stipulated for *stūrīh* (*Mādayān*, pt. 1, p. 46; pt. 2, p. 17). *Stūrīh* was not limited to a single person, the widow, sister, daughter, or brother of the deceased; rather, both parties to the marriage or even several couples could take part in *stūrīh* for a single deceased person (*Mādayān*, pt. 1, pp. 50, 105). In contrast to Parsi practice, not only the first son but all children born to a proxy marriage belonged to the deceased (*Persian Rivayats*, tr. Dhabhar, II, p. 428); when the first son came of age he succeeded to the guardianship of the family (*Rivāyat ī Ēmēd*, chap. 43; Shaki, 1988, p. 98).

In the *Mādayān* (pt. 1, p. 97) it is briefly stated that the *stūr* must be innocent of *margarzānīh* (lit., “death deserving” sin; *tanāpuhl*). The 9th-century sources are more informative. According to *Dādestān ī dēnīg* (ed. Christensen, p. 202), a *stūr* could be any adult (*purñāy*) Zoroastrian (*weh-dēn*) who was sane (*ošyār*), virile or fruitful (*frazand-ēmēdag*), an Iranian subject (*šāhānšāh-bandag*), and free of *margarzān* sin. A slave woman (*bandag paristār*), eunuch (*šābistān*), prostitute (*zan ī rōspīg*), non-Iranian (*anēr*), infidel (*ag-dēn*), or a *margarz’an* person was not fit for *stūrīh*. A minor boy or girl might be nominated to undertake *stūrīh* on coming of age (*Mādayān*, pt. 1, p. 87). The jurists disagreed on the eligibility of a man to contract more than one *stūrīh* (*Mādayān*, pt. 1, p. 43), but in the late *Persian Rivayats* (tr. Dhabhar, II, p. 46) it is prescribed that a man may undertake as many as forty *stūrīhs*, a serious modification of the law prompted, it seems, by the dwindling number of Zoroastrians in the Islamic period.

The *stūrīh* was financed from the estate of the deceased for whom it was established. The proprietary right of the *stūr* depended on his or her legal status. An authorized widow who undertook the obligatory *stūrīh* of her deceased husband inherited as a son, that is, twice a daughter’s share, in absolute ownership (*xwēšīh*). The same rule applied to a daughter who assumed the *stūrīh* for her father at her own request (*Mādayān*, pt. 1, p. 62; *Dādestān ī dēnīg*, ed. Christensen, chap. 53; *Rivāyat ī Ēmēd*, chap. 23). A childless widow, a single daughter, or a single sister who assumed the *stūrīh* of the master of the household inherited the entire patrimony (*Rivāyat ī Ēmēd*, chaps. 2, 3). Property settled on the designated *stūr* was treated as an inheritance (*stūr ī kardag pad ān xwāstag abar mānēd*; *Mādayān*, pt. 1, p. 87; see below).

## RIGHTS AND OBLIGATIONS WITHIN THE HOUSEHOLD

*The master of the household.* The master of the household was to support his



wife as long as she lived, his daughters until they married, and his sons until they came of age. He was to support even a guilty daughter or slave (*Mādayān*, pt. 1, pp. 32-33) and any woman cohabiting without a guardian or marital obligation and her children until they came of age (*Mādayān*, pt. 1, p. 36). He was not allowed to share his wife and food with a coreligionist, even if intimidated (*ka-z pad bīm*; *Dēnkard*, ed. Madan, II, p. 715; Shaki, 1971, p. 338). An authorized husband could, however, designate his wife, even without her consent, as *stūr* for a coreligionist who was in need (*niruzd*) of a son and was blameless in not having produced one (*Mādayān*, pt. 1, p. 101; cf. *Vd.*, chap. 4.44); such a grant was deemed meritorious (*ahlawdād*), “a present to the amount of one human being” (*dāsr ī wīr-masāy*; *Dēnkard*, ed. Madan, II, p. 715). The husband might designate his wife as her own guardian and give her freedom over her own person, so that she might marry a coreligionist in *čakarīh* and provide him with male progeny (*Mādayān*, pt. 1, p. 3). The husband was obligated to provide his wife with food during monthly sequestration for menstruation; if she was forced to steal food he would be held guilty of the crime and branded in accordance with the country’s customs (*ēwēn ī šahr rāy be drošišn*; *Mādayān*, pt. 2, p. 35). It was considered meritorious for the master of the household to educate women, minors, and slaves from the people of the good religion (*Dēnkard*, ed. Madan, II, p. 699). He could relinquish his guardianship over his women and sell his minor children if he was threatened by extreme indigence involving the sin of *adbadāt* (being unable to support his family; see *Frahang ī Oīm*, fol. 25b; *AirWb.*, col. 61), death, or exhaustion (*margīhud raxtagīh*; *Mādayān*, pt. 1, p. 33; Shaki, 1971, p. 337). If possible, a son was to provide for the family in these circumstances and should be reimbursed by the father (*Mādayān*, pt. 1, p. 32). The master of a household was not entitled to punish his wife or slave for an offense against the state (*wināh ī šahr*; *Mādayān*, pt. 1, p. 98). He was also not entitled to give his daughter in authorized marriage without her consent, but in the instance of *stūrīh* she had to abide by his decision, the reason being that her income from *stūrīh* went to him. The liberal jurist Zurwāndād, son of Gušn-/Juwānjam, supported the daughter’s option in both instances, however (*Mādayān*, pt. 1, p. 36).

*The guardian.* After the death of the master of the household, the most authoritative member of the family was the guardian (*sālār*), who was responsible for the care and protection of women and minors. Juridically three categories of guardians, or *stūrs*, were distinguished: *būdag* (q.v.) “lawful, at law,” *kardag* “designated,” and *gumārdag* “appointed.” Family



guardianship devolved on the guardian at law through obligation or kinship status: father, eldest brother, or husband. Should a son hold and administer the estate of the father he had to undertake guardianship over the minors (*Mādayān*, pt. 1, p. 26). A widowed authorized wife and an unmarried or single daughter were reckoned among *stūrs*-at-law. As a family member the guardian at law was entitled to a portion of the inheritance (*abarmānd*) and thus received no stipend.

The designated guardian was chosen by the master of the household or the guardian at law to serve after his own death; if no appropriate close relative was available, he could choose from among the nearest agnates or even outside the family. Transfer of guardianship to another person was the privilege of the guardian at law and, according to some jurists, also of the designated guardian (*Mādayān*, pt. 1, p. 28).

Should the master of a household fail to designate a *stūr* in his lifetime or should the designated *stūr* not accept the undertaking, so that the women and minor children were left without a guardian or neglected by their family, it was the duty of the citizens to assume guardianship and extend care and attention to them (*Mādayān*, pt. 1, p. 33). The close kin or members of the extended family assembled and appointed (*gumārdagīhā*) a *stūr* to serve under their joint supervision (*ō hamsālārīh*). If there were no next of kin or other relatives the widow was entitled to devolve, in the event of her death (*pad be widērišnīh*), the *stūrīh* of her deceased husband on whomever she pleased (*Mādayān*, pt. 1, p. 87). Should she also die intestate or turn apostate (*anēr*), the obligation to appoint a *stūr* devolved on the judges (*dādwarān stūr gumārišn*; *Mādayān*, pt. 1, pp. 43-44). An appointed guardian received as stipend the income from 60 *stērs* (240 *drahms*), held by him in usufruct; it was set at one *srēnag-masāy* and one *bāzāy-masāy* (i.e., up to the amount of one rump and one shank of a sheep), an idiomatic expression for 18 *drahms* of standard purity (*drahm ī purr*; *Mādayān*, pt. 1, p. 27; *Dādestān ī dēnīg*, ed. Christensen, chap. 55; *Rivāyat ī Ēmēd*, chap. 23; *Frahang ī Oīm* 25 f., corrected; Shaki, 1971, p. 330; see [CONTRACTS ii](#)). The institution of *stūrīh* was not binding on relatives for less than 60 *stērs*, though the deceased was nevertheless entitled to a *stūr*; in such a situation the relatives themselves were to set up his *stūrīh* (*Mādayān*, pt. 1, pp. 43, 50; *Dādestān ī dēnīg*, ed. Christensen, chap. 59). If an appointed guardian caused a financial loss, he forfeited his right to guardianship (*Mādayān*, pt. 1, pp. 27-28).

*The status of women.* There was a noticeable disparity between the social and



the legal status of women in the Sasanian period as set forth in Middle Persian literature; it was occasioned, as mentioned above, mainly by opposition between orthodox precepts and reformist views. Generally speaking, women, especially of the lower classes (*amaragān*, “commonalty”), were regarded as property, each valued at 500 *stērs*, that is, one *wīr-masāy* (the price of a man). They were often ranked with slaves and minors (*Mādayān*, pt. 1, pp. 33, 58) but had some limited freedom of choice and action, for example, in the right of consent to marriage. A mistress of the household (*kadag-bānūg*), especially if fruitful (*zahānag* < *zah-* “give birth,” present participle *zahān-*, lit. “prolific”; it renders Av. *vantu-* “loved wife,” mistranslated “young woman”; Shaki, 1975, p. 263; idem, 1971, p. 325 n. 1), was loved, enjoyed respect and certain privileges. According to Sasanian jurists, a girl reached her majority and became marriageable at the age of nine years and was to be given in marriage between then and the age of twelve years, especially if she had carnal desire (*Pahlavi Rivayat*, ed. Dhabhar, p. 107). Upon marriage the property she brought to her husband, whether as dowry or received from her father or the state (*šāhānšāh*) before marriage, remained her absolute possession, not liable to the discharge of her husband’s or father’s liabilities (*Mādayān*, pt. 1, p. 30). The jurist Wahrām maintained that a wife is entitled to her income (*windišn*); the followers of the school of Medō(g)māh recommended deliberation on this point (*Mādayān*, pt. 1, p. 17). She assumed a partial right to manage her husband’s property, and, as a reverent (*tarsāgāh*) wife, every year, with the acquiescence of her husband, she could dispose of his property, except for land, watercourses, plants, houses, and two full slaves. She could be authorized by the husband to barter (*guharēn rāst kardan*) or sell at a profit (*guharēn kardan*; *Mādayān*, pt. 2, pp. 12, 37). A destitute husband was to be supported by his well-to-do wife, children, or *stūr* son (*Mādayān*, pt. 2, p. 7). On the death of the husband his widow was entitled to manage the family affairs, provided that the family guardian (*sālār*) assisted her as advocate (*Mādayān*, pt. 1, p. 75). She was entitled to give her daughter in marriage (*Mādayān*, pt. 1, p. 22). In orthodox law (*kardag*) the testimony of a woman, like that of a slave or minor, had no standing (*Mēnōg ī xrad*, ed. Anklesaria, chap. 39. 37), but in the opinion of liberal jurists an authorized wife could bear witness if she had been made her own guardian and given freedom over her own person (*Dēnkard*, ed. Madan, II, p. 708); similarly the testimony of two women from a single household was accepted in civil law (*Mādayān*, pt. 1, p. 98). The reformers also allowed the mistress of a household who was her own guardian to give evidence and even sit in judgment (*Dēnkard*, ed. Madan, II, p. 708). In Mazdean worship it was not incumbent upon women to pray to god



(*niyāyišn*). Instead, in reverence (*tar̥sāgāhīh*) for her husband, a woman was supposed to stand before him three times a day with arms crossed as if in prayer and to say “Tell me what you desire me to think, say and do, and what not to think, say and do, that I should act upon it” (*Pahlavi Rivayat*, ed. Dhabhar, p. 120; *Saddar Bundahesh*, p. 138).

## INHERITANCE

An inheritance (*baxtīgīh [kardan]* “distribution of heritage/estate”) might be received either as an ordinary (*bahr*, lit., “portion, share”) or a residuary (*abarmānd*, lit., “left over”) legacy. Recipients of the former were in duty bound to administer (*xwāstagdārīh*) the estate. According to the *Mādayān*, “If the father allots (*pad bahr dahēd* “gives in shares”) the estate (to the heirs) in his lifetime . . . they shall become thereby ordinary legatees to that property (*pad ān xwāstag xwāstagdār hēnd*), and they should discharge the loan/liabilities (*abām*) that he had incurred before allotting that property. . . . If the master of the house on passing away gives property to the wife and children in such a way that it should come down to them in residuary legacy (*pad abarmānd rasēd*), it shall be so, but if he allots them in shares (*pad bahr dahēd*) they will become ordinary legatees (*xwāstagdār bawēnd*)” (pt. 1, p. 61).

If the father died intestate the share of an authorized or adopted son, as well as that of the widow who assumed the *čakarīh*, was twice that of a daughter (*Dādestān ī dēnīg*, ed. Christensen, chap. 53; *Rivāyat ī Ēmēd*, chap. 23; *Mādayān*, pt. 1, p. 65). The domestic fire was primarily the responsibility of the husband and wife, and therefore if the wife established a fire and died intestate it descended to the father not to the son. When allotting inheritance, the share of the domestic fire was to be settled first, a portion equal to that of a son (*Mādayān*, pt. 1, pp. 27, 51; de Menasce, p. 12); the jurist Pusānwehī Āz’admardān maintained that the fire ought to be held in joint custody (*stūrīh*) by the legatees. The head of the family could dispose by testament of family property at his discretion, except for the shares of his wife and children, who could not be disinherited unless they had become irreverent (*atarsāgāh*) or ungodly (*Mādayān*, pt. 1, p. 20; *Dādestān ī dēnīg*, ed. Christensen, chap. 53; *Syrische Rechtsbücher*, p. 133). Should the master of the household assign his estate to another citizen (*mard ī šahr*), upon the death of the latter the portions of the original owner’s wife and children, as well as of ailing and infirm members of his family, would revert to them and the rest be disposed of in accordance with the terms of the assignment (*Mādayān*, pt. 1, p. 20). If there was only one son and the father assigned him property in any fashion, he was



responsible for administering it, and he was obligated to undertake guardianship of the minors in the family (*Mādayān*, pt. 1, pp. 59, 26). The legacy to the widow in absolute ownership (*bahr ī xwēšīh*) was her share for the management of *čakarīh* (*bahr ī stūrīh*). A daughter married to her father and assuming his *čakarīh/stūrīh* after his death inherited only the share falling to a *čakar* daughter, that is, as a son, not as a wife (*Mādāyān*, pt. 1, p. 44). If the father willed a property to a few children in absolute ownership (*xwēšīh*), it did not fall under administration and was not subject to the discharge of liabilities (*Mādayān*, pt. 1, p. 62). If a husband died without relatives, even an irreverent wife whom he had not expressly disinherited received all his estate on the strength of want of relatives (*pad rāh ī akasīh*), but if he had emphatically disinherited her she received no share, even if he had no relatives (*Mādayān*, pt. 2, p. 6). The widow and adult children had jointly to declare their satisfaction (*kāmag dōsišn*) of their portions in ordinary legacy for the allotment to be valid (*Mādayān*, pt. 1, p. 67). The *stūr* couples were not entitled to inherit from each other (*Rivāyat ī Ēmēd*, chap. 23; Shaki, 1983, p. 49).

#### OFFENSES AND PUNISHMENTS

The penalty for rape of a married woman was 300 *stērs* (1,200 *drahms*, the fine for one *tanāpuhl* or *margarzan* sin, which was nevertheless not subject to capital punishment); 700 *drahms* were for the violation and 500 for the theft or kidnaping (*Mādayān*, pt. 1, p. 73; *Nērangestān*, fol. 7r). The penalty for raping a daughter or married woman entitled to her own income was paid to the father or husband, but the woman received the fines for other offenses against her (*Mādayān*, pt. 1, p. 36). If a *čakar* woman was raped the fine belonged to her (*čakar gāyēd duzīh ī čakar xwēš*; *Nērangestān*, fol. 7v). Anyone who openly united with a woman out of wedlock, even in love (*došāramīh rāy*), was a robber (*apparag*); if he did so in secret, he was a thief (*duz*; *Nērangestān*, fol. 6v). The fine for deflowering a girl who had not come of age (*aburnāyag rūnēd*) was also 1,200 *drahms* (*Rivāyat ī Ēmēd*, chap. 42; *Mādayān*, pt. 1, p. 73; 1,500 *drahms*, a copyist's error; *Šayest nē šāyest* I, p.2). Sexual intercourse that might involve admixture of semen from different men (*šusr gumēzišnīh*), especially that of Iranians with non-Iranians, or with those with whom intercourse was forbidden (e.g., married or non-Iranian [*anēr*] women) was a grave sin (*Dēnkard*, ed. Madan, II, pp. 486, 739). On the other hand, free cohabitation with a woman without a guardian (guardianship being entrusted to herself) and the obligation of *stūrīh* was not a crime but imposed certain obligations on



her partner to support her and her children (*Mādayān*, pt. 1, p. 36). In the *Dēnkard* (ed. Madan, II, p. 714) interchanging women under guardianship for purposes of illicit intercourse is, however, identified as a sin, though no punishment is specified.

Reverence or dutifulness (*tarsāgāhīh*) by the wife and children toward the master of the household or guardian was an imperative in Sasanian family law. Withholding it (*atarsāgāhīh*) was defined in the *Mādayān* as “not performing the righteous deeds that the master of the house bids them to do” and was liable to punishment after three episodes. As the wife was under her husband’s guardianship, his allegation of irreverence was incontrovertible; her plea of not guilty had no validity. An authorized wife’s disobedience to her husband also vitiated the filial rights of her children; if they were born during the period of their mother’s breach of discipline their claim to inheritance was forfeit (*Mādayān*, pt. 2, pp. 6-7).

See also [divorce ii](#).

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