



JUDICIAL AND LEGAL SYSTEMS II. PARTHIAN AND SASANIAN JUDICIAL SYSTEMS

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ii. Parthian and Sasanian Judicial Systems

Parthian Period

In regard to the administration and organizations of justice in the Parthian period, we are uninformed, except that, in keeping with Parthian tribal tradition, criminal offenses among family members—such as capital crimes committed by brother against sister or father against daughter or among male family members—were settled within the family (Justin, 41.3); they were not subject to judicial process in the law-courts. It is also reported by Philostratus (*Life of Apollonius of Tyana* 1.25) that the Parthian kings sat in judgement in a specially decorated Babylonian hall in which four revolving golden wheels hung from the ceiling. It was believed that the wheels represented the passage of time, reminding the king that, if he forgot that he is just a human being and thought himself to be more than that, he would rouse the anger of Nemesis (goddess of retributive justice). Although the fabric of the story is based on popular fantasy, reflecting the aspiration for justice rather than a royal, sanctimonious expression of probity, it nevertheless attests the Parthian king's



holding court in special cases, such as, perhaps, capital offenses against the state. However, a certain measure of late Parthian legal practice and judicature may be appraised from the judicial state prevailing under their heirs, the early Sasanians, although Pārs, even under the Parthians, had her own specific religious and social environment.

Sasanian Period

In Sasanian times, and by extrapolation in previous periods, there were courts of justice at various levels all over the empire, in every rural area (*rōstāg*) every district (*tasūg*; *Mādayān*, pt. 2, p. 72), and city (*šahrestān*, *šahr*). We know only that the name of the bench of *mōbeds* was called *diwān* (e.g., *diwān ī mōbed ī Ardašīr-Xwarrah* “the court of the mōbed of the province] Ardašīr-Xwarrah”; *ibid.*, p. 40). Lawsuits were tried either by judicial process in the courts of law (*hamēmālih*, *paykār radīh* “settling of dispute”) or exceptionally by the jurisdiction of the high priest (*mōbedān mōbed*) or by ordeal (*war*) in ordeal tribunal (*xwarestān*). The parties in a suit, the plaintiff (*pēšēmāl*) and the defendant (*pasēmāl*), had to meet before the judges (*dādwarān*; *pēš ī dādwarān dēmān kunēnd*, *ibid.*, pt. 1, p. 73) and state their complaints and pleas, which were recorded in a document (*pursišn-nāmag*) and signed and sealed by the parties. The litigants named their lawyers (one or two) and witnesses (two or three), who were summoned to appear before the judges (*Dēnkard [Dk.]*, pt. 2, p. 724; West, p. 79). The judge (*see DĀDWAR*; *Mādayān*, pt. 2, pp. 25-26) fixed the time of the trial (*zamān*) after minutely registering the identity and characteristic features of the parties and assessing the eligibility of the witnesses and the lawyers. All parties—judges, witnesses, and lawyers—had to appear in court. Default by any one of them constituted an obstruction of justice (*azišmānd*; *Mādayān*, pt. 1, p. 73). The judge(s) listened to the parties stating their cases (*saxwan ud passaxw* “statement of claim and defense”). The judge announced his decision (*wizīr kardan*). The proceedings were recorded, and the parties declared their consent or dissent. The parties had full right of appeal: if one of them appealed against the verdict of a junior (*keh*) judge (*ahunsandīh ī pad wizīr* “dissatisfaction with the verdict”), the case would be taken to a higher court administered by a senior judge (*dādwar ī meh*; *ibid.*, p. 3); and if the complainant’s objection was not removed, the case was taken to the bench of the mōbed for a hearing and the final decision. The record of judicial process had to be signed and sealed by the litigants (*ibid.*, p. 9). The judge had to hand over a copy of the minutes of the trial (*saxwan-nāmag*) and his decision (*wizīr*) to the court’s archivist (*dīwānbān*); he had



legal authority to hold a condemned person under arrest (*dārišn ī pad widāšt*) or under surveillance (*widāšt ī nē pad dārišn*), or to hand him over to the warder (*zēndānbān*; *Mādayān*, pt. 2, p. 26). If the accused was acquitted of a crime, he received a deed of acquittal (*bōxt-nāmag*; the term is preserved in Syr. bwktnmg; *EIr.* II/3, 1986, col. 261a, s.v. ARAMAIC iii).

Any crime that constituted a capital offense was entered into the judicial records (*Mādayān*, pt. 1, p. 34), but lesser misdemeanors could be omitted from the record of inquiry (*pursišn-nāmag*; *ibid.*, p. 34). When a more serious offense was registered in the court records, the criminal's previous record (*āšnāgīh*) and notoriety (*dušsrawīh*) had to be noted, with the statement "the person is infamous and has behaved wickedly (*dušmardīhā raft ēstēd*) in the country" (*ibid.*, pt. 2, pp. 34-35).

The Pahlavi *Nikātum Nask* treats of the types of lawsuits. It states that all "settling of disputes" (*paykār-radīh*) by resort to judicial procedure (*dādestānōmandīhā ēstādan*) involves two kinds of statements of claim (*nimāyišnīg*): declarative (*gōwišnīg*) and demonstrable (*nimāyišnīg*), with four modes of combining these two aspects. The passage continues with a detailed discussion of four types of declarative and six types of demonstrable cases (*Dk.*, pt. 2, p. 693; West, p. 36).

The *Mādayān* (pt. 1, pp. 91-92) recounts twenty-two erroneous procedures in delivering the statement of claim that render it null and void, some of which are: failure to describe the nature and characteristics of the case, false or confused or distorted statements (*gumēzag saxwanīh*), confusing the judge in his judgement, and the like (*Dk.*, pt. 2, p. 711). If a party first made conflicting statements and later spoke the truth (*ēwarīh*), he was not reprimanded; the jurist Ādur-Hormizd even maintained that, even if the person did not correct himself, no offense is committed (*Mādayān*, pt. 1, p. 9).

The legal process could be obstructed (*azišmānd*) in variety of ways, such as the default of any of the required participants (as noted above) or the advocates of one party contradicting each other. In certain cases the party responsible for obstruction had to lay in pledge a property or sum of money equal in value to the object in dispute, for example, 500 *stērs* in the case of a slave or woman (*Mādayān*, pt. 1, pp. 11-12). The same pledge would be repeated if the obstruction was reviewed at the end of the agreed term, and again if the court ruled in favor of the wronged party.



The cases that could not be decided by judicial process were relegated to ordeal (*war*) tribunal (*xwarestān*; *Mādayān*, pt. 1, p. 8). The trial by ordeal was superintended (*abarmad*) by the *rad* (see below) and executed by the ordeal-master (*war-salār*); it was not assigned to the judges or mobēds (*Mādayān*, pt. 2, p. 12). The trial by ordeal was a prevalent means of resolving a case. There were essentially two modes of ordeal: the cold (*war ī sard*), such as drinking sulphurous water (*sōgand xwardan*, by extension “swear on oath”), and the warm (*war ī garmōg*), such as passing through fire, as in the case of the legendary hero Siyāvūš related in the *Šāh-nāmā*, or submitting to the ordeal by molten brass, as experienced by *Ādurbād ī Māraspandān*. The form of ordeal was chosen in accordance with the person’s social standing. It did not bear upon men or repute (*husrawān wehnāmān*; *Dk.*, pt. 2, p. 709). In uncertain cases, in order to dispel doubt, the ordeal was repeated three times (*ibid.*, p. 708).

Public prosecution. We are in possession of the title of a royal decree, namely *dib ī pādixšāy-kard ud xwēškārth-nāmag ī kārframān ī šahrīhā* “decree on executive power, and edict assigning duties in regard to the management of public affairs in the provinces,” appointing a high dignitary to be public prosecutor, in order to confiscate the property of the heretics (*zandīk*) and hand it over to the royal treasury (*šāhīgān*; *Mādayān*, pt. 2, p. 38). Such an inquisitorial public prosecution was organized by the order of Weh-Šāpur, the mōbedān-mōbed of Kōsrow Anuširavān (531-79), who as attorney general was to hold an inquiry into the cases of offense against god (*yazdān dušmenīh*), rebellion against the sovereign (*xwadāy dušmenīh*), breaking of contract (*mihrdrozīh*), heresy (*ahlamōgīh*), and unbelief (*anāst-gōwišnīh*), the proceeding of which had to be recorded and a memorandum (*ayādgār*) drawn up (*ibid.*, p. 34). Another document on public prosecution is the decree of the same monarch according to which courts of inquisition had to be set up in every village (*rōstāg*) of the province of Ardašir-xwarrah, composed of spiritual dignitaries (*radān*) and other officials (*kār-framānān*) in order that they should, in consultation with the local residents (*mānāgān*), the people of good repute (*čašmagān*), and citizens (*šahrīgān*), expose the trespassers, investigate their crimes, and draw up new records of proceedings (*Mādayān*, pt. 1, p. 78). The high priest Kirdēr, who in his inscription (KKZ [Ka’ba-ye Zardošt] 10; Back, pp. 414-15) prides himself upon suppression of the non-Zoroastrian religious minorities, acted in the capacity of an attorney general. Even a just judge could have acted as a public prosecutor in ordinary cases, such as theft and maltreatment of honest people (*Dk.*, pt. 2, p. 720; West, p. 72).



It seems that generally the religious and legal authorities—except for special cases—acted as public prosecutors in their own right rather than upon official order.

The following will bring out some of the fundamental features of Sasanian judicature so highly extolled by later authors. The punishment (*pādifrāh*) was to fit the kind (*pāyag*) and the degree (*kār warzišnīh*) of the crime (*Dk.*, pt. 1, p. 444). It should be noted that the Iranian penal code since the Achaemenian era had been judiciously benignant in the administration of punishment. Before pronouncing a harsh verdict, the judge had to set the offender's wrongful acts against his good deeds; if his merits outweighed his demerits, he would not be punished for just one crime. Herodotus (1.137) reports that the Persians have “a praiseworthy law which does not permit even the king to put a man to death for one offense . . . not till it is found that the offender's misdeeds are more than his services may a man give vent to his anger.” This principle is in accord with the just god Rašn's balancing the good deeds against the wrongdoings of the souls of the dead on the Day of Judgement at the [Bridge of the Separator](#) (Činwad Puhl) in order to reckon the preponderance of their meritorious or evil deeds, hence their salvation or doom (*Dādestān ī dēnīg*, chap. 20; *Mēnōg ī xrad* 2.119). The *Letter of Tansar* (tr. M. Boyce, Rome, 1968, p. 42) attributes the giving of a respite to the offender to Ardašīr-e Bābakān: “as against the previous practice the offender was not put to death straight away for apostasy . . . but was given time to repent and redress his wrongs.”

Some cases required the accused to repeat his confession two or three times (*Dk.*, pt. 2, p. 772). In the absence of positive evidence, condemnation of the thief was conditional upon his confession (*ibid.*, p. 717). However, the judge was authorized to get a confession by putting the accused to the torture in order to supply information (see *dādwar*; *Mādayān*, pt. 2, p. 26). If a person gave himself up on his own accord, admitting to a crime without presenting a witness, no charge was brought against him (*Mādayān*, pt. 1, p. 92). An accomplice was held equally guilty as the principal offender (*Mādayān*, pt. 2, p. 719). According to some jurists the husband was not allowed to punish his wife, or the master his slave, for breaking the law of the land (*wināh ī šahr*; *Mādayān*, pt. 1, p. 98). The nomads (the manuscript refers to them as Kurds; see Shaki, 1975, p. 259), whenever they encamped in their migration, were subject to the jurisdiction of the local judiciary (*Dk.*, pt. 1, p. 99). The religious minorities in the Sasanian empire were subject to all civil and penal laws of the land, except those specific Zoroastrian legislations that dealt with *sturīh*



(*čakar*) and the maintenance of lineage (ibid., p. 60; Išō'bōxt, *Corpus Iuris*, tr. Sachau, pp. 99, 309). In the *Nikātum Nask* the fee scale for cases is set at one *spln* (Av. *aspārāna*, traditionally assessed at one drachma), one sheep, one draft animal (*stōr*), and one human being (*wīr*; *Dk.*, pt. 2, p. 702; West, p. 50). This is evidently a survival of ancient Avestan legislation, no longer practiced in the Sasanian period (see [CONTRACT ii](#)).

Lawyers. The Sasanian judicature knows two categories of lawyers: *jādaggōw* and *dastwar*. The distinction between the two may be surmised from the circumstance that a *jādaggōw* at times, out of piety, acted free of charge for the worthy poor (*driyōš*; see [DĀDWAR](#)). He was a lawyer by moral obligation, whereas the *dastwar* “one having authority” (see [DASTŪR](#)) may have been a sort of counsel serving as trial lawyer. (In the following, “lawyer” applies to both; when a distinctive function of one or the other is referred to, the appropriate Middle Persian term is cited.) The parties in a suit were entitled to appoint their own lawyers, who were obligated to start an action in the presence of their clients (*mādag*; *Mādayān*, pt. 1, p. 7) and plead whatever their clients claimed (ibid., p. 75). Sasanian civil law (*dādestān*) permitted each party to take two lawyers, or counsels (ibid., p. 7), but the traditional law (*kardag*) admitted only one (ibid., p. 75). If a lawyer failed in his defense, his client was entitled not to abide by its consequence and to take over the plea himself (*xwad pad saxwan ēstēd*; *Dk.*, pt. 2, p. 720; West, p. 72). Even in cases of trial by ordeal, a lawyer could be employed to plead one’s case, as well as to draw up the ordeal document (*yazišn-nāmag*; *Mādayān*, pt. 1, p. 78). In the event a lawyer was to be replaced by another, the opposing party had to be duly notified, and the new lawyer had to resume the pleading at the point where his predecessor left off (ibid., p. 75). If two lawyers were engaged, both of them had to be present during the trial in order to avoid obstruction of justice (*azišmānd*; ibid.). To assume the advocacy (*jādag gōwīh*) of a person uninitiated in judicial matters was the binding duty, not only of the judges, who could simultaneously act as judge and lawyer (*jādaggōw ud dādwar, dādwar*, *Dk.*, pt. 2, p. 717), but also of the high-ranking people (*padān*), and the lords (*sālārān*), including even the king of kings (ibid.). The latter case implies the moral obligation of all men of power and influence towards the defenseless people in distress, rather than an actual point of legal practice. The oppressed complainants (*mustōmandān*) could even turn to foreigners (*anērān*) for assistance in legal matters (ibid., p. 724). A witness could act simultaneously as lawyer (*Mādayān*, pt. 1, p. 76).



The Sasanian jurists were divided on the validity of the testimony of women. The traditional law (*kardag*) disapproves of their evidence as that of a child's or slave's (*Mēnōg ī xrad* 39.37), but the civil law allows the testimony of a woman who is her own guardian and has freedom over her own person (*Dk.*, pt. 2, p. 708), or of a legitimate (*pādixšāyīhā*) wife who has no interest in the dispute (*ibid.*, p. 706). Some jurists approved of the testimony of two legitimate wives (*Mādayān*, pt. 1, p. 98).

Legal officials. The king of kings and the rulers (*dehbedān*) possessed supreme legal authority; their decrees were incontrovertible (*Mādayān*, pt. 2, p. 27). All decisions of the heads of estates (*pēšag-sālārān*) had to be sanctioned by them (*Mādayān*, pt. 1, p. 2). While punishment for ordinary crimes was meted out by judicial authorities, capital punishment and corporal injuries, except in wartime, were not permitted except by the order of the sovereign (*Dk.*, pt. 1, p. 444). For example, the persecution of Christians was initiated and carried out by the order of Šāpur II (309-79); Mānī was put to death by Bahrām I (273-76) on the instigation of the high priest Kirdēr and some influential courtiers; and Mazdak and his followers were put to sword by Kōsrow I (531-79) at the verdict of an inquisitorial scrutiny. The most momentous laws were promulgated by the decree of the king of kings. The law legalizing the community of women (*āmēxtag zanīh* "mixed marriage") propounded by Mazdak ī Bāmdādān was decreed by Kawād I (r. 498-531 [Ar. Qobād]; Joshua the Stylite, § 20).

Next to the king the *mōbedān mōbed*, the high priest of Zoroastrian community, was considered infallible, and his decisions conclusive (*Dk.*, pt. 2, p. 711). He could confirm or overrule any decision except that of the sovereign (*Mādayān*, pt. 2, p. 27). His decisions had even greater force than the verdict of ordeal (*ibid.* p. 28). The high priest tried special cases by himself without the participation of the parties.

The *rads* were eminent spiritual leaders whose legal function was essentially connected with trial by ordeal, in which they superintended (*abarmad*) the procedure, and were assisted by their pupils (*radunē*), perhaps in the capacity of assessors (*Dk.*, pt. 2, p. 724; West 80), and by the ordeal-master (*war-sālār*), who was authorized to execute or postpone the ordeal, and to execute the ordeal document (*yazišn-nāmag*) by sealing it with the validating official seal (*muhr ī wābarīgān*) as well as with his own (*muhr ī xwad*; *Mādayān*, pt. 1, p. 99).



The extensive jurisdiction of the *mōbeds* had been codified in the “Book of Functions of the Mōbeds” (*xwēškarīh-nāmag ī mowbedān*; *ibid.*, pt. 2, p. 26), which has not survived. The *mōbeds* were competent for everything that was within the authority of judge. Moreover, they administered the ecclesiastical courts, tried all offenses against the church and state, and heard the appeal from the court of the judges. They also dealt with ordinary secular cases such as marriage (*pādixšāyihā* and *sturīh*; *ibid.*, p. 26), adoption, divorce, inheritance, contracts, agreements, and the like (*ibid.*, pt. 2, p. 18).

A specific feature of Sasanian judicial practice was administration of justice by two judges, who either adjudicated in common (*āginēn*; *Dk.*, pt. 2, p. 724) or individually, each acting for his client as lawyer (*jādaggōw*), and judge, prosecuting the other party (*ibid.*, p. 717; see [DĀDWAR](#)). In the *Sakātum Nask* they are ranked in accordance with their proficiency, assessed by the years of experience. There were thus various grades of senior (*meh*) and junior (*keh*) judges (*ibid.*, p. 718) with separate courts. In momentous cases more judges sat in judgement in a judicial assembly (*hanjamanīg*; *ibid.*, p. 725; West, p. 80). The judges were not authorized to interpret the canon law or its commentary; this was reserved for the eminent religious authorities (*dastwarān, mōbedān*), who in this capacity are often referred to as *wēhān* “men of knowledge” (from Av. *vaēd-* “know,” not “good” [= *weh*], as it is erroneously interpreted), that is, those who know the Mazdean doctrine. Thus the judges had to try a case either from the Avesta and its commentary (*zand*), or from the enacted laws that had met the unanimous consent of the learned authorities (*pad hamdādestānīh ī wēhān*; *ibid.*, p. 712; see [DĀDWAR](#)).

The *frēzwān* “inspector” was a legal officer with the competence of a judge, who was entitled to institute a suit (*hamēmāhīh kardan*; *Mādayān*, pt. 2, p. 27). The jurist Abarak maintained that the *frēzwān* was authorized to verify the identity of the detainee/accused and the authenticity of the seals for which he was held responsible (*ibid.*, p. 30).

The jurists differed on the competence of the warder (*zēndānbān*). Some held that his only duty is to guard the prisoners, whereas others maintained that he is also entitled to verify the identity of the prisoners by checking up their names, physical features, and guilt (*hamnāmīh, hamtanīh, hamwināhīhi*; *ibid.*, p. 28).

Of the police force the *Mādayān* mentions only the *kōy-bān* (lit. “street-keeper”) and the *gizīr* “patrol.” The *kōy-bān* was a policeman whose duty was



to keep law and order in the cities. He is implicitly described as an officer who can order people about and reprehensively say to a wrongdoer: “I told you and you heard!” viz. “You heard what I said!” (ibid., p. 29; *Dk.*, pt. 2, p. 733). The *gizīr* (Aram. loanword in Mid. Pers.) denotes “guard” or “patrol,” who goes his rounds (*rawišn ī gizīrān*; *Mādayān*, pt. 2, p. 26).

See also [DĀD](#); [DĀDWAR](#); [DĀDESTĀN](#).

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