

THE CONCEPT OF OBLIGATED SUCCESSORSHIP IN THE MĀDIYĀN Ī HAZĀR DĀDISTĀN

The social relations and proprietary demands of the patriarchal Sasanian society which considered every effort towards the maintenance of succession and preservation of private property a categorical imperative had given rise to a most elaborate system of civil laws regulating succession by substitution or proxy, generally called *stūrih*. It is for this purpose that the preservation of the generations of the Iranian *wēh-dēns* till the Restoration (*paywand ī fraškard*) is set forth as one of the fundamental commandments of Zoroastrianism. Without man, as an ally of Ohrmazd and instrument in the fight against the Evil Spirit, the victory of Good over Evil cannot be achieved.

It is, therefore, incumbent upon every man to have male issue in the absence of whom his soul will be unable to pass the Činvat Bridge. The great importance attached to the maintenance of succession by the Zoroastrians may be seen from the space devoted to it in Sasanian law, comprising by far the greater chapter of their code, partially preserved in the *Mādiyān ī Hazār Dādistān*.

Thus, the problem which must have engaged the attention of many a Sasanian jurisconsult was the creation of a substitute successor (*stūr*) for an adult Zoroastrian man having died without a male progeny. This implied a marriage institution contracted preferably by one of his nearest agnates, financed by his estate, in order to provide the deceased with a male successor regarded as his legitimate progeny¹.

Within the general system of *stūrih* the concept of obligated successorship forms a special category in which the *stūr* is called in Avestan legal terminology *yō hē pascaēta* (lit. he to whom afterwards [i.e. after the decease of the issueless person] descends the obligation of *stūrih*) and in MP literature *ayōk-hē*, *ayōkēn*, *ayōk*, etc. which is here of concern.

The etymon of the word and partially its denotation had already

¹ See. my *Sasanian Matrimonial Relations*, *ArOr* 39. 1974, p. 326, and A. Perikhanian, *On Some Pahlavi Legal Terms*, *W.B. Henning Memorial Volume*, p. 353f.

become obscure by the ninth century. Bartholomae who initiated the first serious study of the *MHD* did not propose a reading, but interpreted it "Nadelgeld"². West and Dhabhar following the traditional reading have suggested respectively *yūkān*³ and *ayōk-āin* "only child". The idea of an "only child" has also led Bulsara to read *aēvakkîn* "marriage in condition of the only child"⁴, and de Menasce *ēvakēn* "le mariage de la fille unique"⁵. Klingenschmitt in his otiose translation of this chapter of the *MDH*, gives a transliteration of its defective form, 'ywkkyn, and takes it in the sense of "Erbtochter"⁶. is also pointed out by Perikhanian who has come very near to its true signification, but, unfortunately, has restricted it to its main aspect *ἐπίκληρος*⁷ (not in the sense of the "Erbtochter" of Klingenschmitt). Her explanation of the term as a lost Avestan *aēno-kaēna*- "expiator, redeemer"⁸ is untenable. On examining the late B.T. Anklesaria's transcription of the texts of the *Rivāyat ī Ēmēt ī Ašavahištān* and *The Pahlavi Rivāyat of Āturfarnbag and Farnbag-Srōš* it came to my knowledge that he had shrewdly observed the correct etymology of our term in as much as he had transcribed 'ywkyñ' as *ayōkēn*⁹, *yō hē*¹⁰, and *ayōhē*¹¹, but left unexplained in the translation.

As I have already pointed out in my previous papers¹² the MP 'ywkhyn, corrupted into 'ywkyñ' and 'ywkkyn by generations of copyists is coined by the fusion of the beginning words of the original Av. legal phrase *yō hē pasčāēta* in keeping with the rules of the transcription of Avestan words into Pahlavi script. The establishment of the equation *yō hē (pasčāēta) = ayōk-hē > ayōkēn* not only dispels unnecessary conjectures about the origin of the word but greatly elucidates its actual legal import. Let us first turn to Pahlavi texts and find out the status of persons referred to *āš yō hē pasčāēta* or *ayōkēn*. In the order of priority they are: a virile (*zahāg*) *pādxšāyihā*

² *ZsR*, V. 27-41.

³ *SBE*, XVIII. 185, n. 3.

⁴ *The Laws of the Ancient Persians*, p. 153.

⁵ *Feux et fondations pieuses dans le droit sassanide*, 1964, pp. 35-57.

⁶ *Münchener Studien zur Sprachwissenschaft*, Heft 21, 1967, pp. 59-70.

⁷ *W.B. Henning Memorial Volume*, 1970, p. 352.

⁸ *Ibid.*, p. 353.

⁹ *REA*, *Pursišn* 1, p. 3.

¹⁰ *Ibid.*, *Pursišn* 44, p. 163.

¹¹ *Pahl, Riv. A-F and F-S*, *Pursišn* 22, p. 107.

¹² *Some Basic Tenets*, *ArOr* 38, 1970, p. 289 and *SMR*, p. 332-3.

son who is, naturally, an immediate and direct male progeny¹³; a *pādxšāyihā* widow who is bound by duty to enter into *stūrih* marriage (in her case called *čakarih*) in order to beget male *stūr* children for the benefit and in the name of the deceased¹⁴; further, an adopted son (*pus ī padīrīftag*)¹⁵ and a designate *stūr* (*stūr ī kardag*)¹⁶ instituted by the deceased in his lifetime to his own *stūrih* successorship. In default of these the obligation of *stūrih* descends either to the eldest *pādxšāyihā* daughter or sister or to the one who has not yet married¹⁷. But if the daughter is already married the majority of decrees disapprove of the dissolution of her *pādxšāyihā* marriage in order to assume her father's *ayōkēnih*¹⁸. Perikhanian has concluded, unwarrantedly, to the contrary¹⁹.

From what has been said it becomes evident that a *yō hē pasčaēta* or *ayōk-hē* or *ayōkēn* is essentially a person to whom descends the obligation of successorship, be it a straight male descent, as is the case with a *pādxšāyihā* son, or a female descent (daughter), or a female member of family (sister, wife) or anyone else instituted a substitute-successor (*stūr*) by the testator himself (a designate *stūr* or adopted son). As all these persons, except the *pādxšāyihā* son and designate *stūr*, are referred to as *būdag stūrs* "obligated, responsible or lawful substitute-successors"²⁰ the concept of obligation is inherent in *ayōkēnih*²¹. It is to be noted that in contradistinction to *ayōkēnih*, the institution of *stūrih* includes all forms of substitute-successorships: obligated (*būdag*), designate (*kardag*) and appointed (*gumārdag*). This distinguishing feature of *ayōkēnih* as a special category of *stūrih* is emphasized by our texts, since the term almost everywhere occurs in

¹³ MHD, I. 22. 8-9; I. 22. 2-3.

¹⁴ MHD, I. 87. 1-2; I. 49. 2-3; Dd. Pursišn 55: REA, Pursišn 1.

¹⁵ REA, Pursišn 1.

¹⁶ MHD, I. 47. 7-14; REA Pursišn 1.

¹⁷ MHD, I. 41. 11-13.

¹⁸ MHD, I. 22. 1-2; I. 23. 1-4; Dd. Pursišn 53: *ka būdag kadag bānūg widīred ud duxtarān šōy kard stūr [ih] gumārišn*. "If the mistress of the house passes away and the daughters are married, a *stūr* has to be created by appointment".

¹⁹ H MV, p. 352, n. 12.

²⁰ Pagliaro was the first to explain *būtak*, unwarrantedly, as "naturale", RSO, 23. 64, followed by de Menasce "naturel", *Feux et fondations*, 35, and Perikhanian "natural", H MV, p. 355. See my SMR, p. 328.

²¹ Cf. Dd. Pursišn 57: *stūr ī būdag ēdōn čēōn zan ī pādxšāyihā ud duxt ī ayōk-hē *kē pad x*ad *astišnīh stūr*. "An obligated stur is as a *pādxšāyihā* wife or an *ayōk-hē* daughter who is (obliged to assume the) *stūrih* by her own status".

association with the verbal phrase *abar ōh māmēd* "she/he shall succeed or is bound to remain (a successor)".

Of great interest is the stress laid not only on the preservation of the name (renown) and lineage of the deceased but also on his private property²² a factor that as often as not lies at the very basis of social laws no matter how far-off they may seem from our material aspects of life. This has found a direct expression in the privilege attached to association in regard to successorship.

An *ayōkēn* marriage contracted by an obligated *stūr* (*stūr ī būdag*) enjoys special proprietary rights discussed by me in *SMR*, p. 333. That is the reason why the *ayōkēnih* is regarded as a special form of marriage in the Marriage Contract²³ and to which has been devoted a separate chapter in the *MDH*. Since an *ayōkēn* daughter succeeds to the *stūrih* of her deceased father as his *pādxšāyihā* wife, she inherits like a *pādxšāyihā* son, viz. two shares from the estate²⁴. It is only when she is the only heiress that, naturally, inherits all of the patrimony²⁵. A sister succeeding to the *ayōkēnih* of her brother becomes his associate; a part of his estate, apparently, passes to her in absolute ownership and the other part in trust to be held for the management of his *sturih*, which is revertible to the *stūr* son on his coming of age. The property made over to a designate *stūr* by the testator will be held by him in usufruct²⁶.

The following translation of the chapter on *ayōkēnih* and other passages concerning this subject, occurring in the *MHD*, is a part of my work bearing upon the social and economic relations of the Sasanian era. I have rearranged the paragraphs in order to present them in a more coherent sequence.

MDH, I. 21. 3:

dar ī ayōkēn^a yō hē pasčāēta ayōk hē^b pasčaita^c

^a MS 'ywk *kyn*, obviously a corruption of 'ywkyn', which occurs throughout the manuscript.

^b MS *h* for *hy* by copyist's error.

²² Cf. *MHD*, I. 22. 3-6; I. 23. 14-24. 2; *Dd. Pursišn* 55: ... *stūrih ēdōn bawēd... ku... stūr... pad ān ī ōy nāmagānih ud* + *paywand rāyēnēd ud x^wāstag dārēd.* + "*stūrih* is such that the *stūr* should maintain his name and lineage and administer his property".

²³ *Pahl. Texts*, II. 141. 3.

²⁴ *REA*, *Pursišn* 44.

²⁵ *Ibid.*, 2, 3, 18.

²⁶ *MHD*, I. 87. 12-13.

^c MS *psēpyt'* for *pšc'yt'*. The last phrase is a transcription of the Av. formula in Pahlavi script.

Chapter on *ayōkēn* "who to him afterwards".

MHD, I. 21. 5-8:

nibišt ku mard zan ud frazand bē duxt-ē kas nēst ud ān i ān duxt šōy ān duxt az zanih bē hilēd^a ud pad sālārih abāz ō pid nē dahēd ēg-iš stūrih i pid pad x^wāhišn. ud ka-š pad sālārih abāz padirēd^b ēg-iš abar ōh mānēd x^wāhišn pad kār <nē> ^c abāyēd.

^a MS *ŠBKWN-x*.

^b MS *MKBLWN-x*.

^c *L'* is essential to a logical sense.

It has been written: A man has no wife and children but a daughter; and the husband of that daughter divorces that daughter, but he does not place her again under the guardianship of the father, thereupon, her assumption of the father's *stūrih* is optional²⁷. And if he (i.e. the father) takes her back under his guardianship, thereupon, she shall succeed to his (*stūrih*); her consent is not necessary.

MDH, I. 21. 8-10:

Sōšyāns guft ku duxt i beastān^a ka-š bē hilēd, ka-š murd pid bē hilēd, ēg-iz-iš ayōkēn² abar ōh mānēd.

^a MS *by'st'n*, to my mind from *be-ast-ān*, pronounced *biyastān* (?) (lit. out of the house), a daughter who having come of age marries without the consent of her father or guardian, *REA*, *Pursišn* 30 (fourth definition); see *SMR*, 334-5. Bartholomae reads *baydēspān* "Götterbote", a euphemism for bastard, *ZsR*, V. 30-1, Klingenschmitt *bayaspān* and adds "Die Begleitumstände ... erinnern an die Definition der altindischen *gāndharva-Ehe*", *MSS*, Heft 21, p. 63, and n. 5; Perikharīan *bayaspān* "marriage *sine manu mariti*", *HMV*, 349 f; Bulsara *biyāstān* "immodest", *Code*, 152-3.

² MS *'ywk kyn'*.

Sōšyāns maintained²⁸: If a *beastān* daughter is divorced, (or) when her father is dead she is divorced, she shall succeed to the *ayōkēn* of her father.

²⁷ From the context it is not quite clear whose wish or desire (*x^wāhišn*) is meant, the daughter's or guardian's. Since divorce is not considered valid without dissolution of guardianship (cf. *MHD*, I. 4. 9-10 : I. 87. 5-6 : I. 87. 6-9 and my *Sasanian Matrimonial Relations*, *ArOr* 39, 1971, p. 340) the *x^wāhišn* may refer to the guardian, i.e. the ex-husband.

²⁸ *guftan* (lit. to say, speak) should be rendered "to maintain, to profess an opinion" in legal terminology, cf. Arab. *qaul*.

MDH, I. 21. 10-15:

nibišt ku^a ka frazand ī pas-zād^b duxt ud zīndag pīd šōy kunēd, az zanih hilēd ud abāz šawēd widard stūrih^c kunēd^d ān stūrih abar ān duxt ōh mānēd. ud ka-š dādistān aōn ī +stūrih ī pidar^e andar abāyēd pad ān ī pīd ōh gumārišn. ud ast kē ēdōn gōwēd ku ka-z-iš andar ān ī ka stūr ī kardag pad baxt šawēd šōy [kardan] nē hišt ēstēd ēg-iz yō hē pasčaita^f. Wahrām guft ku ka-š andar ān ī šōy kard ēdōn abāyēd dāštan čēōn ka nē zīndag hē.

^a 'YK is written over 'MT.

^b MS *YLYDWN-yr*, but cf. 'HL *YLYDWN-t*, MHD, I. 47. 1, and MHD, I. 21. 15-16.

^c MS has a defective *stwly* for *stwlyh*.

^d MS *krt'*, better *kunēd* for concord of tense.

^e 'BYtl *Y stwl*, evidently by copyist's mistake.

^f MS gives *ywk hy psčyt'* which when compared with the 'ywk *h<y> psčyt'* of the heading the equivalence of *yō hē* = *yōk hē* = *ayōk-hē* becomes evident.

It is written: If the last born child is a girl who marries in the lifetime of the father, the husband divorces her and she goes back and assumes the *stūrih* of a deceased person, that *stūrih* remains the duty of that daughter. And if her juridical case is such that she should of necessity assume the *stūrih* of the father, she ought to be instituted to that *stūrih*. And there is one (jurisconsult) who maintains thus: Even if the husband has not divorced her when the designate²⁹ *stūr* passes away, she shall assume the *ayōkēnih*³⁰ (i.e. obligated successorship) of her father. Wahram maintained: While she is married it must be so considered, as if she were not alive.

MDH, I. 21. 15-22. 1:

duxt ī pas-zād kē stūrih abar mānēd az čēōn x^wēš, ka stūr <ih> ^a abarmānd ī pas<-zād> ^b nē bawēd andar-iz abarmānd ī pad stūrih abarmānd ī pad x^wēših būd nē šāyēd.

^a MS *stwl* for *stwlyh*.

^b *YLYDWN-t* as the second element of the compound 'HL-*YLYDWN-t* is omitted by copyist's error. Klingenschmitt suggests 'BYtl for 'HL which is hardly convincing.

The last born daughter who succeeds to the management of the *stūrih* (of her father) is like (the father's) own (*pādxšāyihā* wife)^a.

²⁹ Because a designated *stūr* has priority over a daughter in assuming the successorship, i.e. contracting a *stūrih* marriage for the deceased.

³⁰ i.e. *yō hē pasčaita*.

If the *stūrih* is not a transmitted obligation of the last-born (daughter) neither there may be an inheritance in absolute ownership included in the inheritance which is to be held for *stūrih*^b.

^a The sentence is rather obscure. I cannot think of any better explanation. On her proprietary rights as a *pādixšāyihā* wife see *REA*, *Pursišn* 44; *SMR*, 333.

^b i.e. the legacy which is to be held in trust for the management of *stūrih*.

MHD, I. 22. 1-2:

pad guft ī dastwarān aōn nibišt ku yō hē pasčaita^a ka zīndag pid šōy kunēd xūb šud, u-š ān stūrih pad ān dastwarīh awiš nē rasēd.

^a MS *ywk hy pww sc̄yr* by copyist's error.

From the dictums of the religious authorities it is so written: If an *ayōkēn* (daughter) marries in the lifetime of the father, her going away is legally sound, and that *stūrih* on that authority does not devolve upon her.

MHD, I. 23. 1-4:

*Wāyayyār nibišt ku ka duxt pad dastwarīh ī pid andar kas kunēd ku tā 10 sāl zan ī tō hom ud pid pēš az 10 sāl mirēd pid tā 10 sāl stūr uzišn^a ud ka 10 sāl uzīd duxt zanīh ī kas nēst ud *ayōkēn ī [ud] pid.*

^a MS *YNPKsšn* for the correct *YNPKWN-šn*, *uzišn*. Bulsara has read *yopsēshn* (!), *Code*, 161, and *Klingenschmitt gowsišn* (!), *SSM*, 21, 61. The emendation, suggested by the following *YNPKWN-t*, *uzīd*, is essential to the coherent sense of the sentence.

Wāyayyār has written: If a daughter with her father's sanction promises a person: "I shall be your wife for 10 years", and the father dies before the termination of those 10 years, thereupon the *stūrih* of the father should be suspended till the end of those 10 years, and when the term of 10 years elapses, the daughter is in no one's wedlock and is the *ayōkēn* of the father.

MHD, I. 89. 17-90. 1:

*abāg ān ī guft ku duxt ī pid kard ku zanīh ī Mihrēn kun ka zanīh ī Mihrēn nē kunēd *ayōkēn ī pid abar ōh mārēd, abarmānd ōh bawēd.*

In conjunction with that which is said: A daughter whose father has prescribed her: "Enter into marriage with Mihrēn", if she does not assume the wifhood of Mihrēn, she shall succeed to the *ayōkēnīh* of the father; she shall become the successor³¹.

³¹ *Abarmānd*, pass. pt. of *abar mārēd*, literally means "left over", however, in our

MHD, I. 24. 3-7:

*būd kē guft ku duxt ī andar xānag ī pidarān zād ēstēd ka-š mād andar zindagih ī pid ī mād šōy kard *ayōkēn ī pid ī mād abar nē mānēd. Māhwindād^a guft ku duxt ī^b pad ān ēwēn^c ka-š mād andar zindagānih ī pid ī mād šōy ayāb margarzān ayāb paratačaiti^d (paratačaita) kard kā-š nēm bahrag ī mād abar nēmānēd ēg-iš^e ka pad *ayōkēn andar abāyēd ā-š *ayōkēn abar ōh mānēd.*

^a MS *m'hwd't*, Bartholomae *Māhāndāt*, *ZsR*, V, 33, is a corrupt spelling for *m'hwnd't*, "Māhwindād", retraced by an unskilled hand. The name of this famous commentator and jurispudent appears in many Pahlavi books, see *Vyt*, 3, 3; *Py*, 9, 33; *Š n-Š* (Tavadia), *App.* 2, 2; *MHD*, I. 65. 14, etc.

^b Bartholomae reads *I*.

^c MS *'ywky'n'* which with Bartholomae I emend to *'dwy'n'*.

^d Written in Avestan characters followed by its transcription in Pahlavi script.

^e Bartholomae reads *ēvāē*, perhaps inadvertently.

There was a jurisconsult who maintained: A daughter who is born in the house of the ancestors³² if her mother marries in the lifetime of the father of (her) mother, she will not succeed to the *ayōkēn* (*stūrih*) of the father of (her) mother. Māhwindād maintained: If the mother of such a daughter either marries in the lifetime of the father of (her) mother, or commits a *margarzān* (death-deserving) sin, or breach of promise³³ (?) then the half share of her mother does not pass to her; thereupon, if it is binding on her to become the *ayōkēn* (of her grand-father), she should succeed to (his) *āyōkēn* (*stūrih*).

text not in the sense of "legacy", but "successor", "one who maintains succession". Cf. *MHD*, I. 22. 3: *duxt abarmānd ī pid nē bawēd*, which obviously does not imply that the daughter is not the father's legacy, but rather her not being liable to assume the successorship of the father, i.e. to maintain his lineage by undertaking his *stūrih*. The use of *abarmānd* in the sense of "uninterrupted tradition, sequence", *Skr pāraṃparyam* (Neryosang, *ŠGV*) attests our interpretation. Bartholomae's translation "Erbschaft" is hardly justifiable in this context, *ZsR*, V. 4, 27-8. On *abarmānd* as "residuary legacy" see *SMR*, 341-2.

³² The expression *andar xānag ī pidarān zād* is the same as *andar dūdag zād* "a child born of *stūrih* marriage for the maintenance of the family", see *SMR*, 331, n. 4: *MHD*, II. 35. 11-16. Therefore, "a daughter born in the house of her ancestors" is in our case a girl born of *stūrih* or *ayōkēnih* marriage of her mother to maintain the lineage of her grand-father.

³³ Av. *paratačaiti* (lit. runs away) may be an Avestan term for breach of promise of *stūrih*, i.e. running away from one's obligation to assume *stūrih*, which is considered a grave *margarzān* sin: *az wināh ī mardōmān kunēnd ... garāntar ... kē stūr rāyēnūtārīh škanēd*, *MX*, 36 Nyberg, *A Manual of Pahlavi I*, p. 82. 4-8: For Bartholomae's translation of this passage see *ZsR*, V. 32-3 and that of Klingenschmitt *SSM*, 21, 67.

MHD, I. 22. 8-9:

yō(k)hē pasčaita^a abar pus ud duxt ī pādixšāyihā ī zahāg mānēd.

^a MS gives in Pahlavi script *ywk hy psčyr*.

The obligation of successorship^a descends to a *pādixšāyihā* son and/or daughter capable of begetting children.

^a Lit. who to him/her afterwards [(i.e. after the death of the father) descends the obligation of successorship]. In the case of a *pādixšāyihā* (one's own) son the succession is maintained by his natural status, and in the case of a daughter through her undertaking the father's *stūrih*.

MHD, I. 22. 2-3:

ēn-iz aōn^a nibišť ku yō(k)hē pasčaita ka duxt abarmānd ī pid nē bawēd ud ka pus ā-š bawēd.

^a *ZNH-č* is superimposed on 'wgn'.

It is also so written: Concerning the institution of *ayōkēnih*, if a daughter cannot become a successor^a of the father, a son, if (there is one), is (always) liable to it.

^a For *abarmānd* in the sense of "successor" cf. *MHD*, I. 89. 17-90. 1.

MHD, I. 23. 13-14:

*pid kē-š pus ast *ayōkēn abar duxt nē mānēd.*

(In the case of a) father who has a son, (his) daughter does not succeed to his *ayōkēnih* (successorship)^a.

^a i.e. she is not bound by duty to assume his *ayōkēn stūrih*, because of his secured succession.

MHD, I. 22. 3-6:

ka [š] brād 2 ud x^wah-ē ān gyāg ud ān [ud] x^wah abāg brād-ē hambāy u-š brād-ē did abar sālār, ud brād 2 har pad ē jār pad baxť šawēnd^a pad čāštag ī Abarak sālār, pad ān ī Mēdōgmāh hambāy^b gōwēnd ku ka-š ast ā-š abar mānēd.

^a For the translation of this part of the sentence by Bartholomae see *ZsR*, V, 26.

^b MS *hmb'gyh*.

If there are two brothers and one sister, and that sister is an associate of one of the brothers, and the other brother is her guardian, and both brothers die at the same time, then in accordance with the doctrine of Abarak it is the guardian and that of Mēdōgmāh

succession³⁷. If (after) they have distributed the estate, the brother with whom she had gone shares³⁶ and the brother who had become her guardian in accordance with the canon laws relative to succession both die³⁸, she succeeds to the *ayōkēnīh* of the brother who had been her guardian; and if she had gone shares with both brothers, her case is clear from what has been said before.

MHD, I. 23. 4:

*u-š ēn-iz aōn nibišt ku x^wah *ayōkēn ī brād andar hambāyīh ī brād abar mānēd.*

And he^a also wrote thus: A sister who is the *ayōkēn* (*stūr*) of (her) brother also succeeds to (his *ayōkēnīh*) as his associate.

^a This sentence following a pronouncement of Wāyayyār (*MHD*, I. 23. 1-4) must also belong to him.

MHD, I. 23. 14-17:

*brād-iz ka brād ī hambāy ast *ayōkēn <ih> abar x^wah nē mānēd. Bōzišn^a aōn dāšt ku hambāy ī zīndag^b ō kardag nē kard^c ēstēd hamē sālārīh kār ...^d ud ka brād ī mīh mīrēd ēg-iš *ayōkēn abar mānēd ud ka ān ī kih mīrēd ā-š nē mānēd.*

^a MS *bwhšⁿ* hardly *be-šān*, Klingenschmitt, *MSS*, 21. 62. It may be a new name Bōxšān. Av. *baoxšna-*, Bulsara, Code, 163, not met with anywhere else. In all likelihood it is a corruption of Bōzišn, the well-known Pahlavi commentator occurring in *MHD*, II. 12. 3 “Dādfarrox ī Farroxzurwān Bōzišn”, and *MHD*, I. 40. 3 “Bōzišn”. “Bōzan” (?), *Nisā* 1949/4.

^b MS *zywndk*, cf. *hambāy ī zīndag*, *MHD*, I. 24. 2: Bulsara *zīvandak*, Code, 163, Klingenschmitt *dinīy* (!), *MSS*, 21. 62.

^c MS *KBYDWN-t* for ‘*BYDWN-t*’ by copyist’s error.

^d A sentence must be missing here, since the following sentence has no bearing on the preceding subject. This is, in fact, the concluding sentence of *MHD*, I. 22. 13-23.1.

Also if a brother has a partner-brother (his) **ayōkēn* (*stūrīh*) does not descend to (his) sister. Bōzišn so maintained: A partner (brother) who has not been established as a designate (*stūr*)^a in the lifetime (of the deceased) is only liable to the guardianship (over the family of the deceased)... and if the elder brother dies first, thereupon, she succeeds to his *ayōkēn* (*stūrīh*), and if the younger one dies (first), she does not.

³⁷ On *abarmānd* in the sense of “succession” see above *MHD*, I, 89. 17-90. 1.

³⁸ Lit. went aloft.

^a On *kardag* "designate" see *SMR*, 328.

Pagliari interprets the phrase *ō kartak kartan* "actio in ius", *RSO*, 23. 67, and the whole passage of the *MHD*, I. 23. 15-16 as "Da Boxšān era ritenuto che al socio, al quale da vivo non è stata fatta ingiunzione formale, spettava tutta la potestà", *ibid.*, 65-6. However, other considerations apart, *zindag* does not refer to the associate (*hambāy*), but to the principal, i.e. the deceased brother for whom an *ayōkēn stūrīh* is to be instituted, and *ō kardag kardan* should be rendered "to establish as designate (*stūr*)", otherwise, the sentence would make little sense. On the obligation of guardianship by a partner-brother see *MHD*, II. 26. 10-12.

MHD, I. 23. 17-24. 2:

*ka pid <ud> duxt-ē ud dūdag ī pus-ē pad ān dūdag x"āstag 60 ast, duxt sālārīh pad pid, ud ka pid frāz rawēd *ayōkēn ī brād ēē widard pid <duxt> a abāg dūdag ī pus hambāy.*

^a The context requires the emendation.

If there is a father, a daughter and the family of a son, and there is a property worth 60 (*satērs*)^a in that family, the guardianship over the daughter rests with the father. And if the father passes away (the daughter succeeds to) the brother's *ayōkēnīh*, since on (her) father's death she becomes an associate of the brother's family.

^a On 60 *satērs* as the minimum capital for establishing a *stūrīh* marriage see *SMR*, 328-30; Perikhanian, *HMV*, 357.

MHD, I. 69. 12:

*duxt ī padiriftag *ayōkēn ī brād abar nē mānēd.*

An adopted daughter does not succeed to the *ayōkēn* (*stūrīh*) of her brother³⁹.

MHD, I. 49. 2-3:

*zan ī čakar ka barwar^a ā-š *ayōkēn abar ōh mānēd.^b tā dād ī 50^c sālāg pad barwar dārišn.*

^a *blwl* is explained by *FP*, Junker 1955, p. 20 as "brother", not attested in any other text. Bartholomae reads *barwar* but interprets "nutzbringend", *ZsR*, V. 29. Bulsara reads correctly *barvar* "fruitful", *Code*, 298. The word is synonymous with **barōmand* explained by *FO*. 2f as Av. *barōra*- "pregnant", cf. NP *bārvar*, *bārdār*.

^b MS *YHWWN-yt*, apparently rewritten by an unskilled hand. The idiomatic phrase requires *QDM KN KTLWN-yt*, *abar ōh mānēd*. Bartholomae *apar ō bovēt*, *ibid*.

^c Modi restores the missing word as *LXX*, but according to the context this cannot be more than *L*, 50, the maximum age for a woman to bear children.

³⁹ i.e. her brother german.

Bartholomae's translation of this sentence is untenable, *ZsR*, V. 29.

If a *čakar*⁴⁰ woman is able to bear children, then the *ayōkēn* (*stūrih*) descends to her. She should be considered able to bear children till the age of 50 (?).

MHD, I. 87. 1-2:

*ka gōwēd ku <-m tā 10 sāl> ^a tan pad zanīh ō tō dād ēg-iš andar 10 sāl *ayōkēn abar ōh mānēd.*

^a A gap just wide enough for *m* 'D *X ŠNT* is recovered in accordance with the tenor of the context.

If one declares: "I give myself to you in marriage for 10 years", thereupon, she succeeds to his *ayōkēn* (*stūrih*) for those 10 years^a.

^a i.e. if the husband dies within those 10 years, she is liable to assume his *ayōkēn* (*stūrih*), in this case *čakarih*, till the end of that period when her marriage contract ends.

MHD, I. 23. 10-13:

*ka brād 2 ud x^wah-ē ān gyāg x^wah sālārīh pad brād ī mih ud būd kē guft ku ka x^wāstag nēst ēg-iz hambāy ōh bawēd ud ka^a ast ēg-iz pad rāh ī ham-windīšnih abāz gumēxtēd. abāg-iz ēd ku *ayōkēn x^wāstag x^wāst nē āmār.*

^a Better 'MT'-š, where the enclitic pronoun refers to the guardian-brother.

If there are two brothers and one sister, the guardianship over the sister rests with the elder brother. And there was (a jurisconsult) who maintained: If (his) is no property, thereupon, he shall become (her) associate, and if (he) has property, then, it shall, by way of profit-sharing, not be mixed⁴¹. Also in conjunction with this (case): an *ayōkēn*'s⁴² demanding property (from the capital) cannot be taken into account.

MHD, I. 47. 7-14:

Wāyayyār nibišt ku ka mard-ē x^wāstag pad stūrih ī x^wēsš^a paydāg kard ud pad dāštan har sāl ē^b sāl ō Farrox <ud> ē^c sāl ō Mihrēn dād Farrox ud Mihrēn jud jud pad ān x^wāstāg yō hē pasčaita^d ōh bawēd,

⁴⁰ On *čakar*, a widow assuming the *stūrih* (in this case levitation) of her issueless deceased husband see *SMR*, 331. Should she be fruitful the obligation of her husband's successorship (*ayōkēnih*) remains binding on her till the age of 50 (? 70).

⁴¹ It is to be noted that in the second case the profit (*windīšn*) and not the capital is mixed.

⁴² i.e. a would-be *ayōkēn* (successor by *stūrih*), in our case the sister.

čē ēd-iz pādixšāy ka frāz az x^wēš be dahēd jud jud zan padiš kard xūb, čē ēd-iz pādixšāy ka be ō zanān dahēd. yō hē pasčaita ān bawēd ī pad ān sāl zāyēd ka-š stūrih pad ō zan pad ān sāl kunišn. kas-š stūrih padiš ēstēd ka az kūst ī būdag be bawēd ud andar būdagih pad x^wēših be ō mard-ē rasēd az ēn kūst pad x^wēših ud az kūst ī did pad stūrih rawēd.

^a MS *NPŠH*, Bartholomae unwarrantedly emends to *NYŠH* in order to lend credence to his misinterpreted conception of *stūrih*, *ZsR*, V. 39.

^b MS *HD*, *ē*, *ēw*.

^c MS *HN*, *ēd*, frequently used for *ē* "one".

^d MS *šcyt* miswritten for *psčyt*, in Pahlavi script.

Wāyayyār wrote: If a person has appointed⁴³ a property to be used for his own *stūrih*⁴⁴ and has given it to be administered (held) of every two years one year by Farrox and one year by Mihrēn, (there-upon) Farrox and Mihrēn separately become his *ayōkēn* (*stūrs*) instituted by that property⁴⁵. It is also possible for him either to assign it to be held after his death in order that they may, one at a time, (i.e. in alternate years) take to themselves a (*stūr*) wife by that (property), which is legally sound, or⁴⁶ to assign it for *stūrih* to the (*stūr*) women. (Then) the obligated *stūr*- successor (*yō hē pasčaita* or *ayōkēn*) would be the one who begets (a son) in that year (term) which he has instituted a woman to *stūrih*⁴⁷. If the *stūrih* rests with (both of) them, and if one side (party) is a *būdag*⁴⁸, the (property) passes to (this) man in absolute ownership for him being a *būdag*, (thus) the property passes to one side in private ownership and to the other side (in trust) for *stūrih* (in alternate years).

⁴³ The verbal phrase "*paydāg kardan*" used in legal MP terminology in the sense of "assign, appoint, specify" as well as "show, prove" (*MHD*, II. 6. 1) has continued in classical NP in all these meanings, cf. *Tārīx-e Bal'amī*, ed. Bahar, p. 1050, and *Šāhnāme*, ed. Moscow, Vol. 8, p. 183. M. Boyce has taken it in the sense of "to devise" (*BSOAS*, 31 1968 p. 274, n. 25) which, although fitting in reference to a deceased, is not its proper sense.

⁴⁴ Bartholomae translates: "für die Pflege seiner Frau", *ibid.*, 39.

⁴⁵ Bartholomae's translation ends here.

⁴⁶ *QDM ... QDM, čē ... čē* here means "whether (either) ... or", as in NP.

⁴⁷ Bartholomae's translation of this sentence runs: Als "*yō hē pasčaita*" gilt das, was in dem Jahr anfällt, in welchem Jahr von ihm die Pflege für jene Frau zu führen ist: *ZsR*, V. 40.

⁴⁸ For a *stūr ī būdag* "*stūr at-law*" holding the property assigned for *stūrih* in absolute ownership (*x^wēših*) see *SMR*, 329.

MHD, I. 69. 3-9:

abāg ān ī nibišt ku ka kunēd ku-m ēn anšahrīg har 2 sāl ē^a sāl ō Mihrēn dād ān anšahrīg bē pad ham-dādistanīh ī āginēn ēnyā āzād kardan nē pādixšāy ud ka yak bahr ī x^wēš pad hursandih^b ī ōy ī did āzād kunēd hamēwēn^c āzād—nigīrīdan. ⁺ud ka⁺ d ē sāl pad stūrih ō Farrox ud ē sāl ō Mihrēn dād Farrox ud Mihrēn jud jud pad ān x^wāstag yō hē pasčaita ōh bawēd. ud ka az kūst ī būdag be bawēd^e andar būdagih pad x^wēših ō mard-ē rasēd az ēn kūst pad x^wēših ud az kūst-ē did pad stūrih rasēd-nigīrīdan.

^a Missing in MS Modi, but preserved in DJ *HD*, ē, ēw, Bulsara, *Code*, 385.

^b The SW form is *hursand* as against the NW *hunsand*, Paz. *hōnsand*. Cf. *hwrsnd* = *hwlsnd*, *FP*, Chap. 31. 5 where the *r* is spelt *l*.

^c Repeated, the first in a corrupt form.

^d MS *ŠNT*, so Bulsara, *Code*, 385, a copyist's mistake when retracing the obliterated *W* 'MT.

^e MS *YHWWN-t* for *YHWWN-yr*'.

In conjunction with that it is written: If a person settles: I have given this slave to Mihrēn one year of every two years, that slave may not be set free except by mutual agreement⁴⁹. And if one of them sets his own share (of the slave) free with the consent of the other, he shall be free accordingly—(it is to be) deliberated. And if he assigns him one year to Farrox and one year to Mihrēn for *stūrih*, Farrox and Mihrēn shall separately become *ayōkēn* (*stūrs*) by that property. And if one side is a *būdag*, the slave passes to that man in absolute ownership for him being a *būdag* (*stūr*), (thus) (the slave) passes to one side in private ownership and to the other side (in trust) for *stūrih*⁵⁰ (in alternate years).

⁴⁹ This section has been translated by Bartholomae, *ZsR*, III. 56.

⁵⁰ i.e. the slave as a property assigned for *stūrih* is to be held in alternate years by the *būdag stūr* (*stūr* at-law) in ownership and by the other in usufruct, see *SMR*, 329.