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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 i frāskard) 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 progeny.

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 pasčaēta (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

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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"\textsuperscript{2}. West and Dhabhar following the
traditional reading have suggested respectively \(yūkān\)\textsuperscript{3} and \(ayōk-āin\)
"only child". The idea of an "only child" has also led Bulsara to read
\(aēvakān\) "marriage in condition of the only child"\textsuperscript{4}, and de Menasce
\(ēvakēn\) "le mariage de la fille unique"\textsuperscript{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"\textsuperscript{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
\(ἐπικληρος\)\textsuperscript{7} (not in the sense of the "Erbtochter" of Klingenschmitt).
Her explanation of the term as a lost Avestan \(aēno-kaēna-\) "expiator,
redeemer"\textsuperscript{8} is untenable. On examining the late B.T. Anklesaria's transcrip-
tion of the texts of the Rivaiyat i Ėmēt i Ašavahištān and The Pahlavi
Rivaiyat 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 \(ywkyn\) as \(ayōkēn\)\textsuperscript{9}, \(yō hē\)\textsuperscript{10}, and
\(ayōhē\)\textsuperscript{11}, but left unexplained in the translation.

As I have already pointed out in my previous papers\textsuperscript{12} the MP
\(ywkh\), corrupted into \(ywky\) and \(ywkk\) by generations of copyists is coined by the fusion of the beginning words of the original Av.
legal phrase \(yō hē pasčaēta\) in keeping with the rules of the transcrip-
tion of Avestan words into Pahlavi script. The establishment
of the equation \(yō hē (pasčaēta) = ayōk-hē > ayōkēn\) 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 ṛṣ \(yō hē pasčaēta\) or
\(ayōkēn\). In the order of priority they are: a virile (zahāg) pādixšayihā

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\textsuperscript{2} ZsR, V. 27-41.
\textsuperscript{3} SBE, XVIII. 185, n. 3.
\textsuperscript{4} The Laws of the Ancient Persians, p. 153.
\textsuperscript{5} Feux et fondations pieuses dans le droit sassanide, 1964, pp. 35-57.
\textsuperscript{6} Münchener Studien zur Sprachwissenschaft, Heft 21, 1967, pp. 59-70.
\textsuperscript{7} W.B. Henning Memorial Volume, 1970, p. 352.
\textsuperscript{8} Ibid., p. 353.
\textsuperscript{9} REA, Pursišn 1, p. 3.
\textsuperscript{10} Ibid., Pursišn 44, p. 163.
\textsuperscript{12} Some Basic Tenets, ArOr 38, 1970, p. 289 and SMR, p. 332-3.
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son who is, naturally, an immediate and direct male progeny\(^{13}\); a pādixšāyihā 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 deceased\(^{14}\); further, an adopted son (pus i padiriftag)\(^{15}\) and a designate stūr (stūr i kardag)\(^{16}\) instituted by the deceased in his lifetime to his own stūrih succession. In default of these the obligation of stūrih descends either to the eldest pādixšāyihā daughter or sister or to the one who has not yet married\(^{17}\). But if the daughter is already married the majority of decrees disapprove of the dissolution of her pādixšāyihā marriage in order to assume her father’s ayōkēnih\(^{18}\). Perikhanian has concluded, unwarrantedly, to the contrary\(^{19}\).

From what has been said it becomes evident that a yō hē pasčaēta or ayōk-hē or ayōkēni is essentially a person to whom descends the obligation of succession, be it a straight male descent, as is the case with a pādixšāyihā 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 pādixšāyihā 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 dūdag kudag bānūg widired u duxtarān sōy kard stūr [iḥ] gumārtšn. “If the mistress of the house passes away and the daughters are married, a stūr has to be created by appointment”.

\(^{19}\) HMV, 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”, HMV, p. 355. See my SMR, p. 328.

\(^{21}\) Cf. Dd. Pursišn 57: stūr i būdag ēdōn ēĕn zan i pādixšāyihā ud duxt i ayōk-hē *kē pad xe*ad *asītši*nih stūr. “An obligated stur is as a pādixšāyihā wife or an ayōk-hē daughter who is (obliged to assume the) stūrih by her own status”.
association with the verbal phrase *abar ōh māned* “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 property\(^{22}\) 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 *ayökēn* marriage contracted by an obligated *stūr* (*stūr i būdag*) enjoys special proprietary rights discussed by me in *SMR*, p. 333. That is the reason why the *ayökēnih* is regarded as a special form of marriage in the Marriage Contract\(^{23}\) and to which has been devoted a separate chapter in the *MDH*. Since an *ayökēn* daughter succeeds to the *stūrih* of her deceased father as his *pādixsāyiḥā* wife, she inherits like a *pādixsāyiḥā* son, viz. two shares from the estate\(^{24}\). It is only when she is the only heiress that, naturally, inherits all of the patrimony\(^{25}\). A sister succeeding to the *ayökēnih* 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 stūrih, 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 usufruct\(^{26}\).

The following translation of the chapter on *ayökēnih* 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 i ayökēn*\(^a\) *yō hē pasačēta* *ayök hē\(^b\) pasačaita*\(^c\)

\(^{a}\) MS *ywē kyn*, obviously a corruption of *ywēyn*, 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. Purisēn 55*: ... *stūrih ēdōn bowēd ... ku ... *stūr* ... *pad ān i āy nāmāgniḥ ud ṭpaywand rāyēnēd ud xēăstak 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*, *Pursēn* 44.


\(^{26}\) *MHD*, I. 87. 12-13.
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 zanīh bē hilēd a ud pad sālārih abāz ō pid nē dahēd ēg-iš stūrih i pid pad xʷāhišn. ud ka-š pad sālārih abāz padirēd b ēg-iš abar ōh mānēd xʷāhišn 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 optional 27. 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 biyāstān (?) (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, ZeR, V. 30-1, Klingenschmitt bayaspān and adds “Die Begleitumstände ... erinnern an die Definition der altindischen gāndhārva-Ehe”, *MSS*, Heft 21, p. 63, and n. 5; Perikhanian bayaspān “marriage sine manu mariti”, *HMV*, 349 f.; Bulsara biyāstān “immodest”, *Code*, 152-3.

2 MS 'yw kyn'.

Sōšyāns maintained 28: If a beastān daughter is divorced, (or) when her father is dead she is divorced, she shall succeed to the ayōkēnih of her father.

27 From the context it is not quite clear whose wish or desire (xʷāhišn) 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 xʷāhiš may refer to the guardian, i.e. the ex-husband.

28 guftān (lit. to say, speak) should be rendered “to maintain, to profess an opinion” in legal terminology, cf. Arab. qaul.
MDH, I. 21. 10-15:
nibîšt ku\(^a\) ka frazdâd\(^b\) duxt ud zîndag pid šöy kunêd, az
zanih hilêd ud abâz šawêd widard stûrih\(^c\) kunêd\(^d\) ân stûrih abar ân duxt
ôh mânêd. ud ka-s dâdîstan aôn i \(^+\)stûrih i pidar\(^+\)\(^e\) andar abâyêd pad
ân i pid Ôh gumärišn. ud ast ke edön göwêd ku ka-z-îs andar ân i ka stûr
i kardag pad baxt šawêd šöy [kardan] nê hišt ėstêd ėg-iz yô hé
pasçaita\(^f\). Wahrâm guft ku ka-š andar ân i šöy kard edön abâyêd
dâştan čêön ka nê zîndag hê.

\(^a\) 'YK is written over 'MT.
\(^b\) MS YLYDWN-yêt, but cf. 'HL YLYDWN-t, MHD, I. 47. 1, and MHD, I. 21. 15-16.
\(^c\) MS has a defective stwl for stwlyh.
\(^d\) MS krt', better kunêd for concord of tense.
\(^e\) 'BYtl Y stwl, evidently by copyist's mistake.
\(^f\) MS gives ywk hy psêyt' which when compared with the 'ywk h<\(y\)> psêyt'
of the heading the equivalence of yô hê = yôk hê = ayôk-hê 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 stûrih of a deceased person, that stûrih remains
the duty of that daughter. And if her juridical case is such that she
should of necessity assume the stûrih of the father, she ought to be
instituted to that stûrih. And there is one (jurisconsult) who maintains
thus: Even if the husband has not divorced her when the designate\(^29\)
stûr passes away, she shall assume the ayôkënih\(^30\) (i.e. obligated
successorship) of her father. Wahrâm maintained: While she is
married it must be so considered, as if she were not alive.

MDH, I. 21. 15-22. 1:
duxt i pas-zâd kê stûrih abar mânêd az čêôn x\(e\)ş, ka stûr <\(ih\)> \(^a\) abarmând
i pas <\(-zâd\)\(^b\) nê bawêd andar-iz abarmând i pad stûrih abarmând i pad
x\(e\)şih bûd nê šâyêd.

\(^a\) 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
stûrih (of her father) is like (the father's) own (pâdixšâyihič wife)\(^a\).

\(^29\) Because a designated stûr has priority over a daughter in assuming the succes-
sorship, i.e. contracting a stûrih marriage for the deceased.
\(^30\) i.e. yô hê pasçâêta.
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.

a The sentence is rather obscure. I cannot think of any better explanation. On her proprietary rights as a pādixšāyiḥā 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 i dastwārān aōn nibišt ku yō hē pasčaita a ka zindag pid šoy kunēd xūb šud, u-š ān stūrih pad ān dastwarih awiš nē rasēd.

a MS jwtk hy pww sēyr’ 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 i pid andar kas kunēd ku tā 10 sāl zan i tō hom ud pid pēš az 10 sāl mirēd pid tā 10 sāl stūr uziśn a ud ka 10 sāl uzid duxt zanih i kas nēst ud *ayōkēn i [ud] pid.

a MS YNPKksīn for the correct YNPKWN-šīn, uziśn. Bulsara has read yopsēshn (!), Code, 161, and Klingenschmitt gowsiśn (!), SSM, 21, 61. The emendation, suggested by the following YNPKWN-t’, uzid, 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:
abōg ān i guft ku duxt i pid kard ku zanih i Mihrēn kun ka zanih i Mihrēn nē kunēd *ayōkēn i pid abar ōh mānēd, 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 wifehood of Mihrēn, she shall succeed to the ayōkēnīh of the father; she shall become the successor 31.

31 Abarmānd, pass. pt. of abar māndan, literally means “left over”, however, in our
MHD, I. 24. 3-7:

būd kē guft ku duxt i andar xānag i pidarān zād ēstēd ka-š mād andar zindagih i pid i mād ēy ayard kard *ayōkēn i pid i mād abar nē mānēd. Māhwindāḏa guft ku duxt i pad ān ēwēn ca-š mād andar zindagānīh i pid i mād ēy āyāb margarzān ayāb paratačaiti4 (paratačaita) kard kā-š nēm bahrag i mād abar nēmēnēd ēg-iše ca pad *ayōkēn andar abāyēd ā-š *ayōkēn abar ōh mānēd.

a MS m’hwend’d, Bartholomaei Māhāndāt, ZsR, V, 33, is a corrupt spelling for m’hwend’t, “Māhwindād”, retraced by an unskilled hand. The name of this famous commentator and jurisprudent appears in many Pahlavi books, see Vyt, 3, 3; Py, 9, 33; S n-S (Tavadia), App. 2, 2; MHD, I. 65. 14, etc.

b Bartholomaei reads l.
c MS ‘ywlyn’ which with Bartholomaei I emend to ‘dwyn’.
d Written in Avestan characters followed by its transcription in Pahlavi script.
e Bartholomaei reads ēvācē, 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 (stūrīh) 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 (stūrīh).

text not in the sense of “legacy”, but “successor”, “one who maintains succession”. Cf. MHD, I. 22. 3: duxt abarmānd i 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 stūrīh. The use of abarmānd in the sense of “uninterrupted tradition, sequence”, Skr pāramparyam (Neryosang, SGV) attests our interpretation. Bartholomaei’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 i pidarān zād is the same as andar dādag zād “a child born of stūrīh 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 stūrīh or ayōkēniḥ marriage of her mother to maintain the lineage of her grand-father.

33 Av. paratacaiti (lit. runs away) may be an Avestan term for breach of promise of stūrīh, i.e. running away from one’s obligation to assume stūrīh, which is considered a grave margarzān sin: az wināh i mardomān kunēnd ... garāntar ... kē stūr rāyēntārīh ḫāned, MX, 36 Nyberg, A Manual of Pahlavi I, p. 82. 4-8: For Bartholomaei’s translation of this passage see ZsR, V. 32-3 and that of Klingenschmitt SSM, 21, 67.
MHD, I. 22. 8-9:
yō(κ)he pasčaita\textsuperscript{a} abar pus ud duxt i pādixšāyihā i zahāg mānēd.
\textsuperscript{a} MS gives in Pahlavi script ywk hy psēyt'.

The obligation of successorship\textsuperscript{a} descends to a pādixšāyihā son and/or daughter capable of begetting children.
\textsuperscript{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\textsuperscript{a} nibišt ku yō(κ)he pasčaita ka duxt abarmānd i pid nē bawēd ud ka pus ā-s bawēd.
\textsuperscript{a} ZNH-č is superimposed on 'wgwn'.

It is also so written: Concerning the institution of ayōkēnīh, if a daughter cannot become a successor\textsuperscript{a} of the father, a son, if (there is one), is (always) liable to it.
\textsuperscript{a} For abarmānd in the sense of “successor” cf. MHD, I. 89. 17-90. 1.

MHD, I. 23. 13-14:
pid kē-s pus ast *ayōkēn abar duxt nē mānēd.

(In the case of a) father who has a son, (his) daughter does not succeed to his ayōkēnīh (successorship)\textsuperscript{a}.
\textsuperscript{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 [ś] brād 2 ud xʷaḥ-e ān gyāg ud ān [ud] xʷaḥ abāg brād-e hambāy u-s brād-e did abar sālār, ud brād 2 har pad ē jār pad baxt ūsavēnd\textsuperscript{a} pad čāstak i Abarak sālār, pad ān i Mēdōgmāh hambāy\textsuperscript{b} gōwēnd ku ka-s ast ā-s abar mānēd.
\textsuperscript{a} For the translation of this part of the sentence by Bartholomae see ZsR, V, 26.
\textsuperscript{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
succession\textsuperscript{37}. If (after) they have distributed the estate, the brother with whom she had gone shares\textsuperscript{36} and the brother who had become her guardian in accordance with the canon laws relative to succession both die\textsuperscript{38}, she succeeds to the ayökënih 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.

\textit{MHD, I. 23. 4:}

\begin{center}
\textit{u-š ēn-iz aön nibišt ku xʷah *ayökën i brād andar hambāyih i brād abar mānēd.}
\end{center}

And he\textsuperscript{a} also wrote thus: A sister who is the ayökën (stūr) of (her) brother also succeeds to (his ayökënih) as his associate.

\textsuperscript{a} This sentence following a pronouncement of Wāyayyār (\textit{MHD, I. 23. 1-4}) must also belong to him.

\textit{MHD, I. 23. 14-17:}

\begin{center}
\textit{brād-iz ka brād i hambāy ast *ayökën <ih> abar xʷah nē mānēd. Bōzišn\textsuperscript{a} aön dāšt ku hambāy i zindag\textsuperscript{b} ō kardag nē kard\textsuperscript{c} ēstēd hamē sālārih kār ... }\textsuperscript{d} ud ka brād i mih mīrēd ēg-iš *ayökën abar mānēd ud ka ān i kih mīrēd ā-š nē mānēd.}
\end{center}

\textsuperscript{a} MS bwhš'n hardly be-sān, Klingenschmitt, MSS, 21. 62. It may be a new name Bōxšān. Av. baxša-, Bulsara, Code, 163, not met with anywhere else. In all likelihood it is a corruption of Bōzišn, the well-known Pahlavi commentator occurring in \textit{MHD}, II. 12. 3 "Dādfarrox i Farroxdurwān Bōzišn", and \textit{MHD, I. 40. 3 "Bōzišn". "Bōzan" (?)}, Nisā 1949/4.


\textsuperscript{c} MS KBYWN-τ for 'BYDWN-τ by copyist's error.

\textsuperscript{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 \textit{MHD, I. 22. 13-23.1}.

Also if a brother has a partner-brother (his) *ayökën (stūrih) does not descend to (his) sister. Bōzišn so maintained: A partner (brother) who has not been established as a designate (stūr)\textsuperscript{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 ayökën (stūrih), and if the younger one dies (first), she does not.

\textsuperscript{37} On abarmānd in the sense of "succession" see above \textit{MHD, I. 89. 17-90. 1.}

\textsuperscript{38} Lit. went aloft.
a On *kardag* “designate” see SMR, 328.

Pagliaro interprets the phrase *d 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, spetta tutta la potesta”, 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 *stūrih* is to be instituted, and *d 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 i pus-ē pad ān dūdag xāstagh 60 ast, duxt sālārīh pad pid, ud ka pid frāz rawēd *ayōkēn i brād ēe widard pid < duxt> a abāg dūdag i 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*) 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 *stūrih* marriage see SMR, 328-30; Perikhanian, HMV, 357.

MHD, I. 69. 12:
duxt i padirīftag *ayōkēn i brād abar nē mānēd.

An adopted daughter does not succeed to the ayōkēn (*stūrih*) of her brother 39.

MHD, I. 49. 2-3:
zan i čakar ka barwar *ā-s* *ayōkēn abar ōh mānēd. b tā dād i 50c sālāg pad barwar dārišn.

a *blwil* is explained by FP, Junker 1955, p. 20 as “brother”, not attested in any other text. Bartholomae reads *barwar* but interprets “nurzbringend”, ZsR, V. 29. Bulsara reads correctly *barwar* “fruitful”, Code, 298. The word is synonymous with *barōmand* explained by FO, 2f as Av. *barātra-* “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 *LAX*, 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 čakar⁴⁰ woman is able to bear children, then the ayökên (stûrih) descends to her. She should be considered able to bear children till the age of 50 (?).

*MHD*, I. 87. 1-2:

ka göwed ku <m tä 10 sâl> a tan pad zanih ò tî dâd ëg-iš andar 10 sâl *ayökên abar òh mànêd.

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 ayökên (stûrih) for those 10 years⁴.

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

*MHD*, I. 23. 10-13:

ka brâd 2 ud xʷah-ë an gyâg xʷah sâlârih pad brâd i mih ud bûd kë guft ku ka xʷâstagh nêst ëg-iz hamây òh bawêd ud ka⁸ ast ëg-iz pad râh i ham-windïsîhîh abâz gumêxtëd. abâg-iz êd ku *ayökên xʷâstagh xʷâst nê ëmâr.

b 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 ayökên’s⁴² demanding property (from the capital) cannot be taken into account.

*MHD*, I. 47. 7-14:

Wâyayâyr nibîšt ku ka mard-ë xʷâstagh pad stûrih i xʷēš⁹ paydâq kard ud pad dâștan har sâl ë⁸b sâl o Farrox <ud> ë⁹ c sâl o Mîhrên dâd Farrox ud Mîhrên jud jud pad ân xʷâstagh yô hê pasçaita⁴ d òh bawêd,

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

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

⁴² i.e. a would-be ayökên (successor by stûrih), in our case the sister.
OBLIGATED SuccessorShip

čě ēd-iz pādíxšāy ka frāz az xʷēš be dahēd jud jud zan padiš kard xūb, čě ēd-iz pādíxšāy ka be o zanān dahēd. yō hē pasčāita ān bawēd i pad ān sāl zāyēd ka-š stūrih pad o zan pad ān sāl kumšān. kas-š stūrih padiš ēstēd ka az kūst i būdag be bawēd ud andar būdagīn pad xʷēšīn be o mard-ē rasēd az ēn kūst pad xʷēšīn ud az kūst i 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 ḤN, ēd, frequently used for ē “one”.

d MS sēyēt’ miswritten for psēyēt’, in Pahlavi script.

Wāyayār wrote: If a person has appointed a property to be used for his own stūrih and has given it to be administered (held) of every two years one year by Farrox and one year by Mihrēn, (thereupon) Farrox and Mihrēn separately become his ayōkēn (stūri) instituted by that property. 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, or to assign it for stūrih to the (stūr) women. (Then) the obligated stūr- successor (yō hē pasčāita or ayōkēn) would be the one who begets (a son) in that year (term) which he has instituted a woman to stūrih. If the stūrih rests with (both of) them, and if one side (party) is a būdag, 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. Tāriḵ-e Bal‘ami, 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, ē... ē here means “whether (either)... or”, as in NP.

47 Bartholomae’s translation of this sentence runs: Als “yō hē pasčēta” 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 i būdag “stūr at-law” holding the property assigned for stūrih in absolute ownership (xʷēšīh) see SMR, 329.
MHD, I. 69. 3-9:

abag än i nibišt ku ka kunêd ku-m ên anšahrig har 2 säl êa säl o Mihrên dâd än anšahrig bê pad ham-dâdistânîh i øginên ènyâ ëzâd kardan nê pàdixsáy ud ka yak bahr i xêêš pad hûrsandih b i ôy i id ëzâd kunêd hamëwêrë ëzâd—nigiridan. +ud ka+ d e säl pad stûrîh o Farrox ud e säl o Mihrên dâd Farrox ud Mihrên jud jud pad än xêêšag yô hê pasçaita òh bawêd. ud ka az kûst i bûdag be bawêd c andar bûdagih pad xêêših o mard-ê rasêd az ên kûst pad xêêših ud az kûst-ê did pad stûrîh rasêd-nigiridan.

a Missing in MS Modi, but preserved in DJ HD, ê, èw, Bulsara, Code, 385.

b The SW form is hûrsand as against the NW hûnsand, Paz. hûnsand. Cf. hûrsand = hûlsand, FP, Chap. 31. 5 where the r is spelt î.

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 YHWiW-t for YHWiWN-yr.

In conjunction with that it is written: If a person settles: I have given this slave to Mihrên one year of every two years, that slave may not be set free except by mutual agreement 49. 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 Mihrên for stûrîh, Farrox and Mihrên shall separately become ayêkên (stûrs) by that property. And if one side is a bûdag, the slave passes to that man in absolute ownership for him being a bûdag (stûr), (thus) (the slave) passes to one side in private ownership and to the other side (in trust) for stûrîh 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 stûrîh is to be held in alternate years by the bûdag stûr (stûr at-law) in ownership and by the other in usufruct, see SMR, 329.