Marriage and divorce law in Pre-Islamic Persia. Legal status of the Sassanid’s woman (224–651 AD)

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Abstract: For more than 400 years, the Sassanid Persia was the greatest state in Asia. Zoroastrianism supported by Shahanshahs had an immense influence on the legal principles of the state. The Sassanian society was Patriarchy, based on the society’s gender construction. Because the patriarchal constructions of social practices were legitimized by religion, the basic limitation of the women’s rights in the Sassanian period was the obligation to have the male guardian. Below considerations regard the problem of the civil rights of Sassanian women, based on analysis of the legal status of women in marital unions. In 2018, in the journal Cogent Arts & Humanities 5, 1, an article by Mahmoud Emami Namin “Legal status of women in the Sassanid’s Era (224–651 AD)” was published. In his paper, Dr. Mahmoud Emami Namin, arguments against two theses presented by the researchers studying the Sassanian history. The first thesis is related to the assumption that women lacked a legal entity, and, consequently, could not make use of her rights. The second thesis, challenged by the author is related to the “opinions about the prevalence of incestuous marriage (next-of-kin marriage) and loan marriage (wife lending) among the Sassanids”. The author challenges the arguments regarding the position of the Sassanian women presented by two distinguished orientalists Christian Bartholomae and Arthur Christensen. Obviously, he is right. However, it is necessary to note that the picture of Persia depicted by the above-mentioned researchers was questioned by modern historians a few years ago. Theses made by Professor Christian Bartholomae, presented in German University of Heidelberg, in 1924 (the woman’s rights in the Sassanid Empire), related to the lack of legal status of women in pre-Islamic period, which Dr. Mahmoud Emami Namin

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PUBLIC INTEREST STATEMENT
Although a woman in ancient Iran had a legal personality, her rights were largely restricted. Women’s dependence on men is reflected primarily in pre-Islamic private law, the Sassanid dynasty’s reign. The system of Sassanian law was deeply rooted in a patriarchal type of society. It requires emphasizing that despite the dominant role of men in the patriarchal system, Persian society developed a codified legal system, outlining and securing women’s rights. If we consider the socio-religious realities of Sassanian Iran, we must appreciate the progressiveness of Persian society as regards women, whose rights were written down and legalized.
polemizes with, were refuted by the research conducted by the expert on Sassanid law Professor Maria Macuch (see in References). The second problem, Dr. Mahmoud Emami Namin focusses on, is “the authorization of incest”, which was discussed by Christensen and Bartholomae. This part of the paper is much more interesting and presents interesting conclusions. One must agree with Dr. Mahmoud Emami Namin in that the “incest” was a common practice among Zoroastrians in the Sassanid’s period, and was never deemed “weird and offensive”. The paper lacks the analysis related to factors contributing to the negative picture of Persia in scientific literature written in the previous century. It seems to have predominantly resulted from cultural differences. Orientalists studying the history of the Sassanids were from the “western culture”. Therefore, they did not understand the mentality of the society governed by Zoroastrian principles, which reflected their descriptions of the pre-Islamic Persia. Their ethical assessment and interpretation of sources were determined by the system of values, in which they had been brought up. It should be noted that the manuscript contains extremely interesting passages in the manuscript related to the legal aspects of different types of marriages, financial conditions or children’s rights. In the manuscript, the author presents a slightly different division of marriages that the one proposed by Dr. Mahmoud Emami Namin. It seems that the principal assumption made by the author: “Throughout this paper, the baseless writings of orientalists about the rights of the Sassanid’s women are critically examined” may be described as preaching to the converted.

Keywords: history; women’s rights; Sassanian Iran; incestuous marriage; authorized marriage; proxy marriage

Subjects: History; Family; Child & Social Welfare Law; Equity and Trusts; Islamic Law; Socio-Legal Studies; Cultural Studies

1. Introduction

Gender relations, a culturally and historically defined system that regulates male/female interactions, have been central to the discourses of modernity and counter modernity in contemporary Persia (Milani, 2012, p. 405).

The studies of gender relations in Iran are carried usually from a very male perspective and the relationships between men and women as a divine and unchangeable order. Such an attitude can be observed in the texts written from a historical perspective. The Sassanid Persia was the last great Iranian empire before the Muslim conquest and the adoption of Islam. For more than 400 years (224–651 AD), it was the greatest state in Asia, encompassed all of today’s Iran, Iraq, Eastern Arabia, the Levant, the Caucasus, much of Central Asia (Daryae, 2013). Zoroastrianism had been the religion of the majority of Iranian peoples, closely tied to the interests of the state, under the Sassanians (Boyce, 1996, p. 11–28; Skjaervo, 2011). The religion supported by the courts of the Shahanshah (Kings of Kings) had an immense influence on the habits, culture, and tradition. First and above of all, it influenced the legal principles of the state (Hjerrild, 2003).

The historians who write about the position of women in Sassanid Persia tend to highlight the high status of women in the court of Shahanshahs. They found their research on both the iconography and the contents of the preserved royal inscriptions (Daryae, 2018; Malekān & Mohammadi, 2013, p. 1–21; Rose, 1998, p. 29–54; Maksymiuk, 2019). To support the thesis they quote mainly the examples of two women, Bōran and Āzarmigduxt (r. 631 AD), who succeeded to the throne, in the late Sassanian period (Daryae, 1999, p. 77–81; Emrani, 2009, p. 1–16). This view on the position of women in pre-Islamic Persia is neither full nor true because
the status of the royal family was exceptional and applied to an extremely small part of society. Below considerations regard the problem of the civil rights of Sassanian women, based on the analysis of the legal status of women in marital unions in the Sassanian period.

1.1. Next-of-Kin marriage
In Zoroastrian Middle Persian texts, the term *xwēdōdah* refers to marital unions of members of the nuclear family, mother and son, father and daughter, brother and sister (next-of-kin or close-kin marriage), and was one of the most pious actions possible (Lee, 1988; Macuch, 1991; Skjaervo, 2013). The confirmation of this definition can be found in the third book of the *Dēnkard* (lit., “Acts of the religion”):

That relationship (formed) for (the sake of) offspring which is deserving of most thought, is, in particular, of three kinds: of these one is that of father and daughter, the second is that of son and mother, and the, third is that of brother and sister (*Denkard*, Book 3: 80).

It would seem that the nuclear family incest was not a practice exercised by the entire society but limited to the royal and noble families, the so-called “dynastic incest” (Mitterauer, 1994, p. 235–6). However, examinations of the Sassanian legal texts, e.g. the *Mādayān i hazār dādestān* (lit., “A Thousand Judgements”), by Maria Macuch, confirm that marriages between father and daughter or between brother and sister were not drawn upon exceptions (Thonemann, 2017). It seems surprising that despite credible sources regarding the incestual marriages in Pre-Islamic Persia, this matter is widely contested (Bigwood, 2009; Scheidel, 1996). One needs to agree with the opinion of Macuch, who writes:

In fact, the description of incestuous bonds, its merits and advantages, is so precise in Pahlavi literature that it is impossible to ignore the evidence pointing to a society that not only allowed incest, but even encouraged it in all three forms as the best possible alliance between the sexes (Macuch, 2010, p. 133).

1.2. Polygamy
The act of polygamy among the Sassanids was not unusual. Polygamy was an ancient privilege of the kings and dignitaries (Lenfant, 2019). It is mentioned by both foreign writers, among the others, the Roman historian of fourth century, Ammianus Marcellinus, who writes: “Each man according to his means contracts many or few marriages” (Ammianus Marcellinus XXIII 6. 76), as well as Sassanian texts:

For those who were the most virtuous and pious, he chose out princesses, that all might desire virtue and chastity. He was content with one or two wives for himself, and disapproved of having many children, saying: to have many children is fitting for the populace, but kings and nobles take pride in the smallness of their families (*The letter of Tansar*, 49).

The polygamy of the Sassanian kings resulted, on one hand, from a necessity to produce numerous male offspring, which would allow selection of the most able successor of the throne, on the other hand, from marriages with the high aristocratic families and allies aiming in consolidation of political arrangements.

2. Types of marriage
The pre-Islamic Zoroastrian canon and civil law considered two main types of marriage: *pādixšāyiḥā* (“authorized”) and *stūrīh* (“proxy marriage”). “A term *stūrīh* referring to the situation when any man or woman, not necessarily a relative of the deceased man, puts his/her reproductive capacity into the service of the deceased, entering an ancillary marriage as his proxy” (Yakubovich, 2005). However, according to the *Persian Rivayats* (Randeria, 1993), it is possible to find five different statuses achievable for a woman entering the marital union.
2.1. Authorized marriage

Authorized marriage was the legal union of a husband and wife, a counterpart to Christian marriage. The basic condition of such a union was the consent of the woman (Shaki, 1971). Such marriage required the sanction of the father or of the guardian of the woman and the detailed marital contract. According to the marriage contract, the wife ("mistress of the house") was subdued to the guardianship of the husband, she and her children had the right to be up kept by the husband. In the case of the husband’s death, she and her children had the right to inheritance. The woman was allowed to consent to the marriage of her daughter but only in the case when her husband died and left no son or brother (Emami Namin, 2018, p. 3–4). If the husband died without any offspring, his wife was obliged to make special arrangements ("intermediary succession") in order to ensure him successors. The widow had to marry another man in order to give birth to children which were considered the offspring of the former husband.

when death came upon a man who had no son, his wife, if he left one, was given in marriage to the one among the dead man's relatives who was chief and closest to him. If there were 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 letter of Tansar, 46-7).

The marriage contract stipulated the part of the property of the husband to be handed over to his wife if the husband initiated the divorce (Macuch, 2007). Authorized marriage could be temporary, for a mutually agreed period. After the expiration of the stipulated period, the dowry was returned to the wife, but if she died earlier, the dowry was transferred to the husband (Shaki, 1999).

Authorized marriage provided the most rights (in comparison with other women) unless she was not the only child of the family (she was named Padishah-wife). If the woman was the only child who married outside the family, her rights were limited. She had to transfer her first-born son to her father (father’s family). Thanks to that she gained the status of Padishah-wife. In case she was giving birth to the girls only, then, one of her daughters had to transfer her first-born son to her maternal grandfather, and the other to her own father (Satar-wife). The woman could achieve the status of Satar-wife ("adopted woman"), if the man died before the conclusion of the marriage and his parents chose another man, restricting that half of the offspring belonged formally to the deceased bachelor. The status of Padishah-wife did not change even if the woman was barren. The man chose a second wife (Chagar-wife, i.e. “servant wife”). However, infertility of the woman could become the justified reason for divorce (Emami Namin, 2018, p. 7–8).

The differences in legal statuses of the wives are clearly highlighted in the principles of heritage. Among the wives, only Padishah-wife had the right of the husband’s heirloom. Her right was equal to the rights of the children and what is most important, her share of the inheritance was equal to the share of the son. If the deceased husband did not conceive any children, Padishah-wife succeeded the entire property being simultaneously obliged to take actions to assure “intermediary succession”.

In the case of the deceased did not leave behind Padishah-wife, only the children inherited the property. If the mother was of Padishah-wife status, then the value of the inheritance of her children was twice as high as the children of Chagar-wife. It must be also borne in mind that gender inequality was also evidenced by the fact that the inheritance of the boy was twice as much as the girl. In case if the deceased did not leave any male scion, the daughters could not inherit themselves and then a boy was selected from among the kids to act as “adopted son” of the deceased.

In contrast to authorized marriages, there were several types of unions that all were resulting from the woman getting married without the permission of her father or guardian. The woman
acquired then the status of Khudsar-wife (“a daughter who marries on her own”; “out of the house”) (Shaki, 1988, p. 93–9). It is not certain if such marriages were found legally binding (Shaki, 1971, p. 343–4). A woman entering such a union had no right to inheritance. If she gave birth to a son, he could become a legal heir only after the wedding ceremony of his mother was repeated; she would acquire the position of Padishah-wife.

A widow might remain in a peculiar legal situation similar to modern concubinage, if she entered the relationship with the man described as gādār (“fornicator”). She was not bound by stūrīh duty. The man was not her guardian, but all minors and women of the family were under his protection; hence, he had a duty to upkeep her and her children until coming of age (Shaki, 1999).

2.2. Proxy marriage

The second type of marriage was described in the sources as stūrīh (“substitute”, “custodianship”). In this marriage, the couple was not bound by obligations other than cohabitation, guardianship of the husband over the wife, and obedience of the wife to the husband. This type of union was concluded if a man had no male scion or an “authorized” wife at his death. The goal of stūrīh was providing at least one son to act as the successor of the deceased (Macuch, 2006, p. 585–97).

When a man of the good religion passes away without issue, the relatives of the deceased should find someone as his substitute, who is called stūr, in order to observe the commemorative rituals for his soul, maintain his lineage, and administer his property (The Dātistān-i Dinīk, chap. 55).

Obviously, stūr had to be of comparable social standing to the deceased. “I forbid any man of birth to seek a wife among common people, that rank may remain distinct” (The letter of Tansar, 44). This type of marriage expired with giving birth to a son by the woman without the necessity to carry the divorce.

3. Divorce

The dissolution of marriage (“abandonment”; “repudiation”) could be affected either by mutual consent or by the sole decision of the husband (Badamchi, Ghazanfari, & Davari, 2016/2017). The texts describe in detail the cases when a husband could demand a divorce without his wife’s permission: when she was having sex with another man, disguised her menstruation from her husband (Zoroastrianism forbids sex during menstrual impurity [Secunda, 2015, p. 28–31]), engaged in magic practice, or was barren. If the divorced woman was to be left without the guardianship of another male person, the divorce could be invalidated. Generally, the divorce laws allowed the husband to control over the divorced wife. If the control did not place her under the guardianship of another person, he could make his wife to undertake a stūrīh marriage (Shaki, 1995). If the wife agreed to the divorce, she did not retain the property given by her husband at the conclusion of marriage and she as entitled only to what was brought from her maiden house.

4. Importance of marriage in the Sassanid society

A significant feature of Zoroastrian social organization in the discussed period was the agnatic patriarchal family. Members of such multi-generation families were bound by the highly developed code of laws, as well as a strict moral code and a set of strong religious conventions. There can be no doubt that the Sassanian legal system had its origin in Zoroastrianism and was legitimized accordingly (Macuch, 2009). Marriage was a religious obligation and the pious action, since the male issue was indispensable to salvation, for a person without a son was unable to cross the bridge to the next world (Shaki, 1971, p. 326).

In Zoroastrian society, the most desirable type of marriage, considered the panacea for all sins except sodomy, was xwēddādah (Shaki, 1999). This type of marriage was initially practiced by kings and aristocracy, and with time it also became popular among lower layers of the society (Boyce,
It seems, however, that polygamy remained an ancient privilege of the aristocracy and priests as it primarily depended on the material status of a man. (Rose, 1998).

It seems that from the legal point of view all types of marriage could be concluded by each social class but whether a woman could really make use of the laws depended on her family status. Surviving sources confirm the division of the society into four estates (pešag), by which not only a person’s rank, but also the legal status, were defined. The four estates were: the priests (āsrōdnān), the warriors (artešārān), the scribes (dibīrān), and the others: the husbandmen (wāstaryāsān) and the artisans (hutuxšān). The inscription of Shapur I (242–272) from Naqsh-e Rostam (SKZ) shows the division among Sassanian aristocracy: princes of the royal blood as well as members of royal families (wāspuhragān), vassal kings and dynasts (Șahrđārān), the great noble families (wuzurgān) and other noblemen (āzdādān) (Maksymiuk, 2015). The difference between Iranian aristocracy and lower estates was huge both socially and legally. Extremely high status of women from the royal family (Daryaei, 2018; Maksymiuk, 2019) in comparison with women from lower classes (amaragān) seems to confirm this assumption. The status of the latter ones was similar to the status of under-aged. However, it is necessary to remember that these women were not incapacitated, and their consent upon entering into marriage was required (Shaki, 1999).

5. Conclusion
The Sassanian society was Patriarchy, based on society’s gender construction. In this social system, men hold authority over women, children, and property, leading to female subordination (Joyce, 2006, p. 82–95; Nelson, 2005, p. 127–32). A key feature of Patriarchy is the notion of traditional gender roles, with the men keeping control over women’s reproduction and sexuality. The woman was to remain obedient to her husband in the same way as a slave to the master. Any other behavior was treated as the act against divine order. Such behavior was believed to be inspired by the demons. Such an attitude can be evidenced by the fragment of the source dated sixth century describing the social-religious rebellion in Persia, so-called Mazdakite movement (Crone, 1991).

The populace, like demon set at large, abandoned their tasks and were scattered through the cities in theft and riot, roguery and evil pursuits, until its came to this, that slaves reffled it over their masters and wives laid commands upon their husbands (The letter of Tansar, 40).

Reflections of the Patriarchal system can be traced in cases such as inheritance, guardianship, and even naming (assignment to a male relative appears in their name, such as Shapur Dokht, which means the daughter of Shapur) (Dezhamkhoooy, 2012, p. 1–4). Information on gender discrimination and men’s superiority appear in Sassanian legal texts. They contain specific instructions and regulations emphasizing the sustainability of the nuclear family secured by the lines of male successors, assigning the children to the fathers and assuring the paternal lineage. The system was introduced according to the principles of the Zoroastrian faith according to which the woman cannot guarantee the continuance of the family and lineage. After marriage, a woman had to be obedient to her husband, and all her connections with her family were cut off (Wiesehöfer, 2006, p. 181). The daughter and the parents did not inherit after each other and even the husband’s death did not revive the broken legal link with the patrilineal family. The religious principles enforced the widow, in case of the lack of the male inheritor, to exercise stūrīh, duty in order of the reproduction of a male successor of the deceased.

Because of the fact that the patriarchal constructions of social practices were legitimized by religion, the basic limitation of the women’s rights in the Sassanian period was the obligation to have the male guardian by all women and children who were given the same status legally. At first, the legal guardian was the father of the women and later her husband. In case of the death of the husband her oldest (mature) son or, the closest male relative of the deceased became the guardian. The husband could hand over his wife as well as her properties to another man for
a determined period of time. The husband took control not only over the family property but, first of all, over women’s reproduction and sexuality. In pre-Islamic Zoroastrian canon “wasting semen” was considered a grave sin. Therefore, this deadly “sin” of women is listed in Sassanid legal texts, as a reason for divorce.

the woman is found guilty of a proven sin ... such as ... refusing to submit herself unto the husband, failure to observe the monthly period of confinement, sleeping with her husband when in menses, concealing the menstruation (Rivâyat i Ėmâd i Āsâwâhištân, chap. 7).

Gender inequality, manifested in overwhelming control over women and male dominance enforced the very shape of the Sassanian society (Choksy, 2009, p. 53). The main role of the women was to give birth to male offspring and therefore secure the survival of the patriarchal family and its lineage.

To sum up the above considerations, one needs to emphasize the longevity of the tradition of the Sassanian law in Persia (Ghazanfari & Davari, 2016; Mofidi, 2018), the laws sanctioning the discrimination of women (Farzaneh, 2014). It is difficult to agree with the final conclusion in the paper written by Emami Namin (2018) related to the extension of women’s rights in the Islamic period: “Finally, with the advent of Islam in Iran, the civil rights of the woman with inspiration from the pure divine sources have changed and expanded”, since the regulations of the Sassanian law were incorporated in the current civil code of the Islamic Republic of Iran:

The marriage of a girl who has not married previously is dependent on the permission of her father or her paternal grandfather even if she has reached the full age of majority ... [Article 1043]

In relations between husband and wife; the position of the head of the family is the exclusive right of the husband [Article 1105]

These articles directly correspond with the regulations of patriarchal Persia by sanctioning the “incapacitating” of women which is confirmed by the legally approved domination of the husband in the family and obligation to grant the permission of the father or paternal grandfather for the conclusion of marriage which is an equivalent of having the male guardian by a woman.

It ought to be emphasized that despite the dominant role of men in the patriarchal system, Persian society developed a codified legal system, outlining and securing women’s rights. Extremely detailed regulations related to marriages and divorces confirm the fact that Sassanian women had a legal entity and were allowed to pursue their rights in a court of law. When analysing inequalities between sexes in late antiquity, one must not transfer modern relations between men and women. Having taken the socio-religious reality of Sassanian Persia, one cannot underestimate the progressiveness of Persian society as regards women, whose rights were written down and legalized.

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