

Levirate marriage throughout the ages

Jan Tranžík

Faculty of Law, Masaryk University

Brno, Czech Republic

Introduction

This paper concerns itself with institute of family law called *levirate marriage* among selected peoples of different countries and times. In the first chapter, I deal with the definition of levirate marriage as an institute of solving widowhood, comparing it with the term “widow inheritance”, showing they are not the same. I also mention the roots and possible purposes of the institute. In the next chapters, I write about the forms of levirate marriage in particular societies from different historical periods and from different parts of the world. First, I concerned with the peoples of ancient Middle East: Assyrians, Hittites, and Hebrews, in whose culture the question of levirate is alive and discussed to this day. Nonetheless, the levirate marriage is not geographically limited to the Fertile Crescent – in the following chapters, I am showing its presence in legal cultures of Livonians in the Baltics in Eastern Europe, of Mongols and Chinese people in East Asia, of some peoples of sub-Saharan Africa and of Kurds living in the Middle Eastern region called Kurdistan. It was not my aim to minutely document the levirate in all cultures where it has been ever present; instead, I selected a handful of them to show some of the different shapes and reasons which the institute of levirate can have in different cultures.

A definition of the levirate

A levirate marriage can be defined as a union between a widow and a brother of her deceased husband. The name itself is derived from Latin word “levir” meaning a brother-in-law.¹

Levirate marriage is similar to an institute of widow inheritance. In some cultures, women were generally treated by law as men’s property. When a woman was born, she belonged to her father, and when she grew up, she got married and started to belong to her husband; wedding was therefore equal to buying a bride. It seemed logical that after her husband’s death, his family inherits her together with his other properties. The heir might be

¹ KNOLLOVÁ, Michaela. *Levirát (u Chetitů a Hebrejců)*. In: Dny práva 2011 – Days of Law 2011 [online]. Brno: Masarykova univerzita, 2012. Page 1.

the husband's brother, father, or any other family member (e. g. cousin). A man who has inherited a widow does not necessarily become her husband, though. On some occasions, he only becomes her guardian, having to support her materially and protect her, as a woman generally cannot live independently in the concerned society.² However, we can speak about a (true) levirate only if the deceased man's brother takes the widow as his wife. In some societies including Hittite Empire other men, e. g. the husband's father, married the widow if there were no eligible brothers – that is not considered to be a true levirate, but it is very similar, as they also took her as their wife.³ The circle of the men eligible varies among cultures: from brothers of the deceased man only to all men from the wider family clan.⁴ In no culture recorded is the widow's son or grandson allowed to take her as a wife, though in some cultures where women do not have full civil rights it is allowed for a son to be his mother's guardian and caretaker.

However, in some cultures, prominently in ancient Jewish society, women were definitely not seen as property, so it was impossible to inherit a widow in terms of inheritance law; they were allowed to possess their own property, some women are mentioned in the Hebrew Bible to have a fairly high social rank, like Deborah who was a judge and prophetess⁵ – and yet, the levirate appears in old Israel under specific occasions, having quite a different social function than elsewhere.⁶

The levirate marriage can be regulated by law in different ways: it can be mandatory, it can be favoured but not required, it can be prohibited, or, finally, ignored (not regulated at all). Nowadays, probably no civil code regulates levirate marriage; the only state where it is subject to legal regulation is Israel, where family law is directly constituted by religious authorities and where Biblical laws are still in practice.⁷ In other places of the world where it is not an obsolete institute, it is regulated only by local customary law – which may nonetheless be much more important for the people than the state law.

It is not known which was the first nation in the world to practice levirate marriage; it can be presumed that the institute itself is connected with the development of traditional patriarchal agricultural society, in which it was important to hold the property within the

² MAURICE, Ogolla. Levirate Unions in both the Bible and African Cultures: Convergence and Divergence. *International Journal of Humanities and Social Science*. 2014, Vol. 4, No. 10(1). Page 288.

³ In the rest of the paper in some quotes, the term “levirate” may be – not absolutely accurately – used for this situation as well.

⁴ MAURICE, 2014, op. cit., p. 289

⁵ Judges 4,4-6

⁶ LEGGETT, Donald A. *The Levirate and Goel Institutions in the Old Testament, With Special Attention to the Book of Ruth*. Cherry Hill (New Jersey), Mack Publishing Company, 1974. Page 27.

⁷ WESTREICH, Elimelech. Levirate Marriage in the State of Israel. *Israel Law Review*. 2003, Vol. 37, No. 4. Page 428.

household.⁸ A man had a duty to engender at least one son who later would become his heir and continue running the family business (which usually included a farm or a handicraft). If he died before fathering a son, his brother was entitled to perform his duty and save the existence of the family. The levirate marriage is often to be found together with a prominent presence of cousin marriage, as it fulfills similar function – to hold the property within the family.⁹ We can divide communities in endogamous (where people marry inside one's clan only) and exogamous ones (where people tend to marry outside their wider family); the levirate is more common in the former ones, but appears also in the latter.¹⁰

Although the institute of levirate marriage can be historically found in agrarian nations all over the world, it is probably best known from the Middle East. The first nations known to practice the levirate are the Assyrians, Hittites, and Hebrews.¹¹ In the next chapter I will describe the institute in those three societies.

Levirate marriage in the ancient Middle East

Assyrians

The Assyrian Empire was a Mesopotamian kingdom which existed approximately from 25th century BC until 609 BC, when it was conquered by Medians and Babylonians. Between 1500 and 1100 BC, a code called The Middle Assyrian Laws (shortened as MAL) was created, being inspired by the earlier Code of Hammurabi from Babylonia.¹² Whilst the Code of Hammurabi does not mention anything like levirate marriage, in MAL, we can find three paragraphs which regulate marriage customs and are concerned with levirate.

In § 30, it deals with the situation of a man who had already given a betrothal gift to the father of a bride for his son, but the marriage was not yet consummated when the groom died. Thus, he (the father of a deceased man) can either marry another of his sons to the same bride as a “substitute” for a deceased one or reclaim the given betrothal gift. However, this is not a true levirate, as the woman involved is not a true widow, but it has a lot in common with it – she marries a brother of her deceased expectant husband. It is interesting that neither the bride herself nor her father nor the brother of the dead groom have any say in the matter – the only person entitled to decide, according to the law, is the groom's father.¹³

⁸ KNOLLOVÁ, 2012, op. cit., p. 5

⁹ SCHWIMMER, Brian. *Levirate marriage* [online]. University of Manitoba; published in September 2003 [cit. 7th March 2020].

¹⁰ MAURICE, 2014, op. cit., p. 290

¹¹ KNOLLOVÁ, 2012, op. cit., p. 1

¹² LEGGETT, 1974, op. cit., p. 12.

¹³ YARON, Reuven. The Middle Assyrian Laws and the Bible. *Biblica*. 1974, Vol. 51, No. 4. P. 553-554.

The rule in § 43 is somehow similar. It reads: “If the seignior¹⁴ either poured oil on (her) head or brought betrothal-presents (and) the son to whom he assigned the wife either died or fled, he may give (her) to whichever he wishes of his remaining sons from the oldest son to the youngest son who is at least ten years old. If the father died and the son to whom he assigned the wife also died, but the dead son has a son who is at least ten years old, he shall marry (her), but if the grandsons are younger than ten years, the girl's father, if he wishes, may give his daughter (to one of them), or if he wishes, he may make an equitable return (of the gifts).”¹⁵

Finally, in § 33 it regulates the rights of proper widows, stating that if a woman is still living in her father's house, her husband died and she has sons, she shall live in a house of theirs; if she has no son, her father-in-law shall marry her to the son of his choice; or if her father wishes, he may give her in marriage directly to her deceased husband's father. If her husband and her father-in-law are both dead and she has no son, she becomes a “free” widow; she may go where she wishes.¹⁶ We can assume that it was possible for a woman to be married to a man, yet still live in her parents' household; it is also visible that the society was indeed strictly patriarchal, letting a widowed woman to marry whoever she wishes freely only if her husband and her father-in-law are both dead and she has no male offspring. Again, the described legal provisions are not a true levirate in the meaning of brother-in-law marriage, but it is very similar in the function of determining whom shall a widow marry.

We can observe that unlike in Israel, where levirate customs were focused on continuity of the family and its name, in the Assyrian Empire the customs were rather of contractual character, reflecting the (erstwhile) nature of marriage as a de facto contract between two families (rather than between the groom and the bride themselves).

Hittites

The Hittite Empire existed in Anatolia in modern Turkey circa from 1600 BC to 1178 BC. At its peak, it reached from Aegean Sea to Damascus in Syria, but its core was located in the central Anatolian plateau, to the east of the modern city of Ankara.¹⁷ The Hittites were an Indo-European nation speaking languages from the Anatolian group (now extinct) and writing cuneiform characters into baked clay tablets; thousands of those were found at

¹⁴ A „seignior“ is the groom's father.

¹⁵ LEGGETT, 1974, op. cit., p. 16.

¹⁶ Ibidem, p. 14. Literally: “(If), while a woman is still living in her father's house, her husband died and she has sons, (she shall live where she chooses in) a house of theirs. (If) she has no (son, her father-in-law shall marry her to the son) of his choice ... or if he wishes, he may give her in marriage to her father-in-law. If her husband and her father-in-law are both dead and she has no son, she becomes a widow; she may go where she wishes.”

¹⁷ ROTH, Martha Tobi, HOFFNER, Harry A., MICHALOWSKI, Piotr. *Law collections from Mesopotamia and Asia Minor*. Atlanta, GA: Scholars Press, 1977. Page 213.

archeological sites. Among them, there was a legal document known to us as “Hittite Laws”. There were multiple revisions of this document found with only minor changes (e. g. § 13 formerly states that anyone who tears off the ear of a slave, shall pay 3 shekels of silver, but later it was changed to 6 shekels of silver). Similar to other legal documents of that era, it is written as case law: „if someone does something, he shall pay...” and features many legal branches, including criminal law, family law, law of torts, labour law or the correct prices of selected goods.¹⁸

The most interesting section in the Hittite Laws for us is the last part, from § 187 to § 200a, where is stated who may have sexual relations with whom. These rules were quite strict and for many offences the death penalty is prescribed, which is otherwise rare in the code – almost all offences (including killing someone) were punished by paying something to the victim or their household: the aim was rather reparation of damages than revenge. Hence, it may be surprising that e. g. according to § 187 for a sexual relation with a cow, a man may be put to death. The forbidden relations included animals, one’s parents, children, siblings, cousins, but also relatives in-law: one’s stepmother, stepdaughter, sister of his wife. However, there were some exceptions. In § 190, we can read that having a sexual relation to one’s stepmother is not an offence – but only if one’s father (husband of that woman) has already died. Similarly, in § 192 it is permitted to take deceased wife’s sister as a wife. And finally, in § 193: “If a man has a wife, and the man dies, his brother shall take his widow as a wife. If the brother dies, his father shall take her. When afterwards his father dies, his (i.e., the father’s) brother shall take the woman whom he had.”¹⁹

This paragraph therefore speaks about true levirate marriage. It seems to be mandatory: there is not mentioned any mean of avoiding the marriage, even if the man was married to another woman (here it should be noted that Hittite society was mostly monogamous), even if the pair actually didn’t wish it. The reasons were mostly economic. A Hittite woman was definitely not socially or legally equal to men²⁰, but she had her own property and when her husband died, she was also the heir of his property. The institute of levirate effectively prevented this property from leaving the deceased man’s household: although she was the owner, the factual possessor of the property was her brother-in-law, her father-in-law or his brother; not her or a man from different family whom she had chosen and married freely.²¹

¹⁸ Ibidem, p. 217 et seq.

¹⁹ ROTH, Martha Tobi, HOFFNER, Harry A., MICHALOWSKI, Piotr, 1977, op. cit., p. 236

²⁰ KNOLLOVÁ, 2012, op. cit., p. 2

²¹ Ibidem, p. 4-5

Hebrews

The culture of ancient Hebrews is closely connected to their religion, Judaism, which is still alive today, and many people follow basically the same rules as their ancestors more than two thousand years ago. The main sources of exploring Hebrew legal and social customs is the Holy Bible, especially Torah, and comments of Jewish scholars. It is highly probable that the levirate marriage was imported to Hebrew society from Canaanic people, who may similarly have imported it from the Hittites.²² Nevertheless, it can be shown that the function of the institute in Hebrew environment was significantly different.

In the first book of Torah, Genesis, we can read the story of Judah's sons: the elder of them, named Er, married a woman named Tamar and then died. His brother Onan was told by Judah to give Tamar offspring. If he had a child with Tamar, he or she would be considered to be a child of Er. Onan did not want to engender "somebody else's" child, so he was interrupting coitus – "spilling his seed on the ground". It is said he was "doing evil" and was slain by God.²³ From this paragraph, we can learn that levirate was practiced in ancient Jewish society and that a child fathered by a brother of a dead husband would still be considered to be the deceased's offspring. The story continues with Tamar having the right to marry another Er's brother, Shelah, whilst his father Judah hesitates to allow this marriage; Tamar finally has intercourse directly with Judah, has twin sons with him and reaches "justice" in terms of her right to have children. Nevertheless, it was not case of "true" levirate²⁴. Tamar's child is not considered to be son of Er, but of Judah.²⁵

The levirate is mentioned later in Tora, in Deuteronomium 25,5-6: "If brothers are living together and one of them dies without a son, his widow must not marry outside the family. Her husband's brother shall take her and marry her and fulfill the duty of a brother-in-law²⁶ to her. The first son she bears shall carry on the name of the dead brother so that his name will not be blotted out from Israel."²⁷ Note that in Leviticus 18,16, it is clearly stated that man's relationship with his sister-in-law is prohibited: "Do not have sexual relations with your brother's wife; that would dishonor your brother"²⁸; the former rule has to be seen as an exception from the latter. Whilst the Hittite Laws allow a levirate marriage but do not say

²² Ibidem, p. 6

²³ Genesis 38,1-30

²⁴ BURROWS, Millar. Levirate Marriage in Israel. *Journal of the Biblical Literature*. 1940, Vol. 59, No. 1. Page 23.

²⁵ LEGGETT, 1974, op. cit., p. 36

²⁶ "The duty of a brother-in-law" is to engender a son in place of his deceased brother.

²⁷ Deuteronomy 25,5-6

²⁸ Leviticus 18,16

anything about the purpose of it, the Bible does: the purpose is preserving the family name and continuity of the lineage.

This institute is called “yibbum” in Jewish law (halacha) and is further dealt with in other sources such as Mishna or Talmud. In the Babylonian Talmud, we can find conditions which need to be met in order to perform yibbum, e. g. the brothers share a common father; the deceased one has no living children (not only sons, but also daughters) from any relationship at the time of death; both of the pair are physically capable of having children.²⁹ In Mishna, it is stated that no wedding ceremony is needed and they become a pair by cohabitation.³⁰ In a quite common situation that the deceased man has multiple brothers allowed and willing to marry the widow, the oldest one is given preference. But if he does not want to marry her or hesitates and any of the younger brothers overtakes him and starts living with the widow, the union between them is valid.³¹

A major difference between Hittite and Hebrew levirate is that – as I showed above – the Hittite laws do not care about the free will of the affected people, whilst Hebrew law allows a man to avoid the levirate marriage even if he is eligible. It requires a ritual called chalitzah (also transcribed as halizah), described in Deuteronomium 25,8-10: “But if it does not please the man to take his sister-in-law, then his sister-in-law shall go up to the gate to the elders and say, ‘My brother-in-law refuses to preserve for his brother a name in Israel: he is not willing to do the brother-in-law's duty to me.’ Then the elders of his city shall call him and speak to him, and if he persists and says, ‘It does not please me to take her,’ his sister-in-law shall approach him in the sight of the elders, take off his sandal from his foot, and spit in his face, and declare, ‘Thus shall it be done to the man who will not build up his brother's house.’ And his name shall be called in Israel, ‘The house of him whose sandal was taken off.’”³²

This ritual as described above seems to be humiliating and was clearly intended to motivate a man not to refuse the levirate (although allowing him to do so). Later, the degrading nature of the chalitzah was weakened. In the times the text of Deuteronomium was written, polygamy was allowed in Jewish society, allowing a man to marry his sister-in-law even when married; later, having more than one spouse was forbidden by rabbinic authorities in practically all Jewish communities. Therefore, it was necessary to perform chalitzah when a married man died childless and his brothers were all also married, as they were not allowed to marry the

²⁹ Talmud Yevamot

³⁰ Mishneh Torah Laws of Yibbum and Halizah 1:1

³¹ Talmud Yevamot

³² Dt 25,8-10

widow. The same situation appeared when the widow and her brother-in-law were relatives (e. g. she was his daughter). An unpleasant situation still may appear if the brother(s) of a deceased husband is not adult yet; the widow may have to wait until he turns thirteen (the age of adulthood in Jewish religious law) and becomes able to decide whether he wants to marry her or not.

Nowadays, the Hebrew Bible (Tanakh) is still a source of law in Jewish society. This means in modern state of Israel, where the family law affairs are controlled by religious authorities, both levirate marriage and chalitzah are practiced. It can be observed that Ashkenazi Jews, coming from Europe, who generally have more progressive views towards women rights, prefer doing chalitzah ritual (which is not considered to be shameful anymore) and allowing the widow to freely marry whoever she wants, whilst Mizrahi Jews originally from Middle Eastern countries (Iraq, Iran, Syria etc.) tend to be more conservative and do practice levirate marriage just as described in the Bible. The Sephardi Jews with roots in North Africa, Southeastern Europe and Anatolia are between these two tendencies.³³

The levirate marriage is practiced also in Bedouin tribes living in Negev desert in southern Israel; it is unclear whether they have adopted the custom from the Jews, or they have developed it independently.³⁴

Levirate marriage outside the ancient Middle East

Apart from ancient Middle East, there are documents confirming presence of levirate customs from many other parts of the world, where they have been developed independently on Jewish or other Middle Eastern cultures.

The Livonians

Livonia is a historical territory in the Baltics, nowadays divided between Estonia and Latvia. The nation of Livonians living there spoke a Uralic language close to modern Estonian or Finnish and had their own pagan religion. Their land was situated on European trade routes and so they had contact with other peoples of Europe, including Russians, Finns, Germans, Swedes, and Danes. From 12th century onwards, attempts were made to convert the pagan Livonian people to Christianity. These efforts were generally successful, but just as in other newly Christianized communities, some institutes of the former religion remained, being deeply rooted in Livonian society. The levirate marriage was among them.

³³ KNOLLOVÁ, 2012, op. cit., p. 12

³⁴ Ibidem, p. 14

An important source of information about the customs of Livonians in the beginning of 13th century is a papal letter “Deus qui ecclesiam”, issued on 19 April 1201 by Pope Innocent III. It was addressed to Christian missionaries in the Baltics and one of its chapters directly mentioned levirate customs. The Pope noted that the marriage practices of the newly converted Livonians were different from what is common in Roman Church: specifically, they allowed men to marry the widows of their deceased brothers. This was, said the Pope, an important issue for Livonians and if they were not allowed to maintain this custom, they would not submit to baptism. For this reason, Pope Innocent allowed levirate marriage in Livonia as long as the union was contracted before baptism and the deceased brother died childless.³⁵ The reasons for this exception were pragmatic: the Pope wanted Livonians to convert to Christianity, but the people of Lithuania married with their brothers’ widows (and there probably were many of them) would not do it if it would cost them their spouses.

We may therefore conclude that levirate was important for Livonian people, but the papal letter does not tell us why. We can find a clue in another document, a chronicle of Henricus de Lettis, a priest who visited the Baltics in 1226-1227. He describes the region as a zone of frequent wars – the Livonians were fighting Estonians, Russians, or Germans. When Henricus describes the warfare, he almost always mentions that (regardless of who won) the defeated men were usually killed while their women and children were saved but captured and dragged away.³⁶ They may as well leave them be, so why were they taking them? We may assume that it is connected to the levirate custom: if a warrior has been killed and his wife stayed at home, his brother could marry her and continue the bloodline. The way to erase the whole enemy family from history (without the unnecessary killing of women and children) therefore was to kidnap the offspring to prevent them growing up into avengers of their fathers, and the widows to prevent them from marrying their deceased husbands’ relatives.³⁷

The Mongols and Chinese

In the long history of China, levirate marriage was not widely practiced until 13th century. Before that, it is possible that some widows may have married their brothers-in-law as it was not forbidden, but it was not a custom either; in fact, the society may even consider the relation to be incest-like and immoral. They usually have returned to their natal family

³⁵ BRUNDAGE, James A. Christian Marriage in Thirteenth-century Livonia. *Journal of Baltic Studies*. 1973, Vol. 4, No. 4. Page 316.

³⁶ HENRICUS DE LETTIS (ГЕНРИХ ЛАТВИЙСКИЙ). *Хроника Ливонии. Введение, перевод и комментарии С. А. Аннинского*. Москва, Ленинград: Издательство Академии Наук СССР, 1938. Page 250.

³⁷ BRUNDAGE, 1973, op. cit., p. 318

(especially young ones), married another man, or remain on their own: not remarrying was seen as a sign of chastity and socially rewarded.³⁸

In Mongolia, on the other hand, levirate marriage was widespread. Usually the younger brother took deceased older one's wife, as Mongolian law demanded the widow's subsequent husband to be younger than the former one; sometimes another man from the family, e. g. husband's cousin or son from another marriage, might have taken the widow instead. Mongolian society saw women as objects rather than subjects of legal relations, and so, once a groom paid a price for his bride, she belonged to him and his family. The bride prices were quite high and "inheriting" a wife through levirate custom was a suitable way to obtain one for free. However, the men were not obliged to accept her, and in some occasions especially in poor families, she might as well be driven out as one more mouth to feed.³⁹

We see that Mongolian and Chinese family laws were differing. When the Mongolian rulers started to conquer northern parts of China in the 13th century, they at first respected local customs. In the T'ai-ho Code valid in northern China and written in 1202, the legal rules were separated by nationality – different laws for Mongols, for "Se-mu" (non-Chinese and non-Mongol nations, mostly Central Asians) and for Han Chinese. In an edict issued by Emperor Khubilai as late as in February 1271, we read: "When people of the various nationalities marry within their ethnic group, they should each follow their own customary laws. Those who marry across ethnic group should follow [the customs of] the husband."⁴⁰

Nevertheless, this respect started to decline soon. In November 1271, T'ai-ho Code was abolished. In the next month, the issue of levirate marriage came before the Central Secretariat. Emperor Khubilai ordered: "One's sisters-in-law or father's secondary wives should be taken in levirate marriage."⁴¹ There may be multiple reasons for this: Khubilai may have wanted to unify the law of the empire; the nationality-based law was getting increasingly impractical since the intermarriage between nations was getting more and more common. Since then, an office of the central government forced widows to remarry within the husband's family, even over objections of themselves and their natal family. In cases where the eligible man was already married, the imperial Ministry of Revenue noted that although bigamy was forbidden to Chinese by both their own customs and Khubilai's previous rulings, the more recent law enforcing the

³⁸ BIRGE, Bettine. Levirate Marriage and the Revival of Widow Chastity in Yüan China. *Asia Major* [third series]. 1995, Vol. 8, No. 2. Page 107.

³⁹ *Ibidem*, p. 115.

⁴⁰ *Ibidem*, p. 119.

⁴¹ *Ibidem*, p. 121.

levirate takes precedence.⁴² The Mongolian family law custom was quickly introduced into a culture where levirate had no tradition before, and was harshly enforced for a certain period of time.

However, the rules changed again quite soon. Five years later, in 1276 the Ministry of Revenue issued a general directive saying: “From now on it should be as follows: If a widow wishes to stay chaste, the man eligible to take her in levirate may not harass her, but must allow her to preserve her chastity. If, however, the woman seeks to remarry⁴³, both she and the prospective husband are to be punished, and the eligible *levir*⁴⁴ is to be allowed to marry her.”⁴⁵ In other words, the widows were allowed to choose between levirate and chastity, i.e. not remarrying anyone. Moreover, since then, the levirate ceased to be allowed in cases of the *levir* being too young or being already married. In 1321, a levirate union between a widow and her husband’s older brother was prohibited, leaving only unions with his younger brothers possible (just like it was common in Mongol tradition). Finally, in 1330, levirate marriage was outlawed for Chinese people by an order of khan Jayaatu (Wenzong): “Among those for whom it is not their original custom, for a man [it is forbidden] to take his elder sister-in-law or a son to take secondary wives in a levirate union.”⁴⁶ Since then, levirate marriage was practiced in China only by Mongols and after their expulsion in 1368, it was slowly forgotten.

Sub-Saharan Africans

The historical roots of levirate marriage in Africa are not well described: little if any research has been done on the African traditional family law until 20th century. Nevertheless, the custom has been widespread through African continent: for example, it is described among the Igbos of Nigeria, the Nandi, Luo and Kambas of Kenya, many communities in Zambia, Uganda and Sudan, the Supyire of Mali, Akan of Ghana and the Yoruba of Nigeria.⁴⁷ It is still present there and only in the last few decades is slowly disappearing together with the major changes African societies are coming through.⁴⁸

The levirate is usually an institute for the care of African widows. It is common that just like in ancient Jewish culture, the eventual children born from the union of a widow and her

⁴² JIANG, Zongyan. Research on the Levirate Marriage for the Han Chinese during Yuan Dynasty. *Asian Social Science*. 2019, Vol. 15, No. 8. Page 105.

⁴³ “To remarry” in this context means to marry a man from outside the former husband’s family.

⁴⁴ Although the word “levir” normally means brother-in-law in Latin, in this context it means anyone eligible for the levirate marriage according to the aforementioned Emperor’s order.

⁴⁵ BIRGE, 1995, op. cit., p. 125

⁴⁶ Ibidem, p. 142.

⁴⁷ MAURICE, 2014, op. cit., p. 287

⁴⁸ KUDO, Yuya. *Why Is the Practice of Levirate Marriage Disappearing in Africa? HIV/AIDS as an Agent of Institutional Change*. Chiba: Institute of Developing Economies, 2017. Page 2.

brother-in-law count as the deceased man's ones, and they have rights to his property. The family identity is thus allowed to be kept. If the widow left the family and had children with a stranger, they may be perceived as illegitimate by her deceased husband's clan. In some societies men would not like to marry a widow anyway, as the custom is to take young women, virgins if possible; the losing of virginity itself (even when caused by rape) means that the woman has difficulties with finding a partner. Widows not taken into levirate union may therefore have to become prostitutes – which is definitely worse option – in order to make money for living, to get sexual satisfaction or to have children.⁴⁹

Having said that, it should be noted that whilst the fading of old customs such as levirate can be seen as a sign of progress and women emancipation in African societies, the actual impacts on the widows may be rather negative. This is particularly true if the widow is somehow handicapped, e. g. if her husband has died of sexually transmissible AIDS (and therefore she is probably infected, too), which is nowadays not uncommon. The risk of also getting infected pushes the *levirs* into avoiding the levirate union, which was previously customary in their society; the widow cannot force them into marrying her. She may remarry anyone else, but the chances she will be actually desired are low. This may throw her into poverty, as a single woman has significantly limited job opportunities in most of Africa.⁵⁰

The Kurds

The Kurdish people live in a region called Kurdistan which is located across Turkey, Iraq, Iran, Syria, and Armenia. They traditionally practice endogamy: only members of one clan may marry other members of it. Marrying one's cousins is practiced in Kurdish society: more precisely, the daughter of one's father's brother (paternal uncle) frequently becomes one's wife, while marrying people from one's mother's side is less common.⁵¹ Paying bride-price to the family of the bride is necessary. However, this is sometimes avoided by direct exchanging of brides between families, which is called *pêguhurk* in Kurdish: a man from one family marries a woman from a second one while his sister marries a brother of the bride.⁵²

Levirate marriage is present in Kurdish society, and even nowadays – despite some liberalization of the traditional rules – it is a common solution in case of widowhood.⁵³ Moreover, Kurds also practice “reversed levirate”: if a married woman dies, her husband

⁴⁹ MAURICE, 2014, op. cit., p. 290

⁵⁰ KUDO, 2017, op. cit., p. 12

⁵¹ SAARINEN, Turja. *General cultural differences and stereotypes: Kurdish family culture and customs* [online]. Kuopio: University of Eastern Finland, 2012 [cit. 8. 8. 2020].

⁵² ÇAKIR, Mihri. *Kurdish Families*. In: *Marriage and Family Encyclopedia* [online]. JRank.org [cit. 10. 8. 2020].

⁵³ SAARINEN, 2012, op. cit.

marries her sister. The institute has its own name – sororate, derived from Latin word “soror” – sister. Its purpose can be seen in strengthening the bonds between the families, allowing their alliance to continue. Sororate marriage cannot be performed if all sisters of the deceased wife are already married, as Kurdish woman cannot have more than one husband; on the other hand, Kurdish man can have up to four wives (according to Islamic rules), so being married does not prevent him from taking the widow.⁵⁴

Conclusion

In this paper, I have analyzed the institute of levirate marriage, its purposes and consequences, compared it with some similar family law institutes and described the form of levirate in selected cultures, first in the ancient Middle East, then in medieval and modern societies from all over the world. This study is not (and cannot be) comprehensive: I did not aim to write about every society in the history which practiced levirate, I rather chose a handful of them to demonstrate that the institute is surprisingly common in the history and still found nowadays across the world. I started with ancient Assyrians, who did not practice a true levirate marriage, but their legislation determined who shall the widow marry and fulfilled social function similar to the levirate marriage in other societies. Among them, I mentioned Hittites and Hebrews and pointed out the different purposes the levirate marriage had in their societies. Then I analyzed selected cases of practicing levirate in different places – in medieval Livonia in eastern Europe, where the levirate marriage was practiced by warrior tribes until they accepted Christianity but even after that, even with papal permission; in Yuan Empire in China under Mongolian rule, where the levirate marriage was imported from Mongolia and after the expulsion of Mongols in 14th century ceased to be practiced again; and in Africa and Kurdistan, where people practice the levirate marriage even today as a mean of social welfare for widows. However, together with the emancipation of women, the weakening of traditional patriarchal social structures, globalization and also the spread of HIV, the levirate is getting rarer – not always to the benefit of the widows. It can therefore be assumed that the institute, that is described in the Bible and has even older roots, has not completely lost its social role even in the 21st century.

⁵⁴ ÇAKIR, op. cit.

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