

Islamic Obligation in Kazakh Customary Law (For Example, the Institution of Family and Marriage)

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Abstract

This article reveals the impact of Sharia law in customary (consuetudinary) law of Kazakh people, which formed the basis for regulations of social and legal relations in Kazakh society in XV-XVIII centuries, including the place and role of Islamic obligations of the institution of marriage and family. After accepting Islam in the Middle Ages, Kazakh people were not fully adopted all the rules of Sharia, but retained its obligations in their consuetudinary law. This influence particularly affected the institution of family and marriage. Islamic obligations formed the basis of many traditions and regulations that were set by this institution.

The purpose of this article is to identify and analyze the mechanisms of the Islamic obligations in consuetudinary law of Kazakh people in XV-XVIII centuries, particularly in the institution of family and marriage. In this regard, authors tried to form an objective view, through a systematic analysis of the place and role of Islam in the institution of the family and marriage in consuetudinary law of Kazakh people.

Keywords: Islamic obligations, Sharia law, Kazakh customary law (consuetudinary or Adat law), the institution of Family and Marriage

1. Introduction

For centuries (XV-XVIII), the consuetudinary law dominated in the traditional Kazakh society, which was the law that contained a set of legal customs, sanctioned and guaranteed by the state authorities, in order to preserve existing social relations. It was called “*Adat law*”. The word “*Adat*” in Arabic language means “*custom*”. Often in scientific literature, the word Adat is used to refer to designate the aggregate of different customs. One of the most famous regulations in social and legal relations in Kazakh society was the compilation of legal norms, such as “The codes of Kasim Khan” (XVI century), “The codes of Yessim Khan” (XVII century), “Seven Charters of Tauke Khan” (XVII-XVIII centuries), which further became valuable in the nomadic civilization.

The consuetudinary law of Kazakh society it is an unwritten law, it was built on a number of key regulatory institutions and on a set of short, easy to remember and expressive statements, containing basic substantive and procedural norms (Zimanov, 1989, p. 16). In addition, the solutions of the Kazakh court in XV-XVIII centuries were based on the consuetudinary law (MKCL, 1948, p. 223). Moreover, the vaults and the laws of the people from other states, which were located on the modern Kazakhstan territory, such as the laws of Turkic states (Turkic kaganate, Western Turkic kaganate, Turgesh kaganate, Kipchak khanate, VI-XII centuries) and Mongolian states (Golden Horde, XIII-XIV centuries). Along with the Sharia law, these laws did not play a leading role, nevertheless still had an impact on the formation of consuetudinary law. Despite the fact that the laws of Sharia played a pivotal role in the establishment of the customs and traditions, it will be a mistake to believe that the laws of Sharia were used wherever Islam was spread. The process of their integration into customs, traditions and beliefs was very long and complicated, because it was based on the natural geographic features and socio-economic relations that existed at that time. Islamic legists had to take into account local customs and traditions, which particularly affected Kazakh society. The penetration of Islam was not a single act, but stretched over several centuries from VIII-IX up to XVIII century, where the question of periodization of the spread of Islam on the Kazakhstan territory in the historiography was still not resolved. The end of the

Islamization in Kazakhstan is associated with the epoch of the Golden Horde. Along with these statements, there is evidence that Islam was initially adopted in Kazakhstan based on the level of mass consciousness and with the significant influence of the ritual institutions only at the 18 century or even at 19 century (Nurtazina, 2009, p.45).

2. Method

The thesis about the role of Islamic law in Kazakh society, i.e. Sharia law, comes from an objective understanding of fiqh – Islamic law and jurisprudence, particularly, the knowledge of the specifics of the legal schools of Islam. In reality, there was not one particular Islamic law, but rather different sets of laws, which were developed in the local Islamic schools, existed and further had an influence on Kazakh society. “As Muslim community has given its way to many other Muslim communities, the same has happened to a common Islamic law that has given its way to a number of other Muslim rights” (Charles, 1959). The majority of western authors, such as Radloff, considered Kazakh people as ordinary Muslims and even strict Muslim Sunnis. The significant number of scientists believed that Sharia law did not play a considerable role in the legal system, despite the fact that Kazakh people considered themselves Muslims. This view comes from the fact that nomads mostly belonged to the Hafini sense of Sunni, where the independence of consuetudinary law was recognized and economic as well as social relations were not consistent with the laws of Sharia. However, we do not fully agree with this opinion, though accepting the fact that Kazakh society has not strictly followed the rules of Sharia as their religious law. However, Islamic commitment complemented the usual law of Kazakh people and further had an impact on the development of the Kazakh law. Islam sanctified many social setting of “Adat”, so that the characteristic of the social and economic life of Kazakh people still can be seen from the combination of Adat and Sharia (Mustafina, 2005, p. 50). Furthermore, in resolving disputes, the Muslim court made their decisions based primarily on Koran, on the opinions of the legists and in the worst cases; customs and traditions were taken into account as well. Kazakh biy court made their decision based on the already established customs and laws of their ancestors, and Koran was used as a tool for making vows. In this regard, it should be emphasized that customs and traditions do not conflict with the requirements of Koran and Sunna, on the contrary they are very close to them. Moreover, the rules of Sharia had an influence on the Institution of Marriage and Family, on the system of taxes and on the property rights in the consuetudinary law of Kazakh people. Especially we cannot deny the influence of Islamic commitments on a social institution of marriage and family in the Kazakh society. Kazakh society accepted Islamic obligations, which exhibited justice and humanity, but did not take those aspects of Islamic religion that have tarnished Islam. Kazakh consuetudinary law is clear in terms of the content of Islamic rules, and at the same time corresponds to the nomadic way of life and freedom loving of the Kazakh people.

3. The Family and Marriage Institutional Problems

3.1 *The Institution of Marriage*

The legal framework of marriage in Kazakh consuetudinary law and “Sharia” laws were closely related, but not identical (Charles, 1959, p. 47). According to the consuetudinary law of Kazakh people “Marriage” was considered an obligations that were voluntarily accepted by the individuals of different genders based on Sharia law in order to get permission for a joint living. The main rules of these commitments: the voluntary agreement, the absence of a close relationship, the number of wives must comply with the Sharia law, the presence of witnesses at the marriage and the payment of dowry, i.e. a gift to the bride. Therefore, Kazakh people followed Sharia rules during marriage procedures. In accordance with the Sharia law, the institution of the “Right of personal status” governed family relations (Imanbaev, 2015, pp. 38-39). Along with the fact that family was considered a small part of the state, it was closely linked with religion, morality and spiritual culture. Hence, for this reason the institution of the family and marriage play very important role in the organization and functionality of the Kazakh society.

According to the consuetudinary law of Kazakh people that was based on the Sharia rules, marriage was considered not only as if a union between two people, but also like a union of two family-related groups that retain their unity even in the case of a divorce or a death of a spouse. In this regard, social and religious views of the families of bride and fiancé were usually taken into account during the marriage procedures. However, this does not mean that there were no exceptions, for example, rich families could take girls from poor families, but more often, these girls were taken as a “third bride” or in the case of widowhood and a divorce of a fiancé. The formation of a family began from the marriage ceremony. Marriage – is the actual transition to the relationship between two spouses, which is the final part of the celebrations. In reality, the marriage was valid only after going through the rite called “Neke”, despite the earlier agreements. Sharia very strictly and responsibly controlled marriage regulations. In order to continue procreation, the permission to marry was given also to the

disabled ones.

Due to the Sharia law, the marriage between two relatives was prohibited and the blood kinship started considering from the second generation. The relatives from the mother's side should not be closer than a second generation (Imanbaev, 2015, p. 40). However, in Kazakh society there were some changes, regarding this rule. Relatives of two individuals who were getting married should not be closer to the seven generation. The vitality of relatives was considered from the seventh generation. In order to clarify the relationships, Kazakh people were divided into tribes and clans, called "Zhuz". In Kazakh society the attitude to these separations were very strict, the reason for this was the desire to preserve the purity of blood between two individuals who were getting married. Nowadays, Kazakh people still follow these rules and the marriage of close relatives is not allowed. Exogamic barrier was strict, but the variation in the choice of a marriage partner was present – it ranged from the fifth to the thirteenth generation, starting from a common ancestor. Based on the available data, the predominant barrier was exogamous within the seven generations. On the eighth generation of both male and female line, the real kinship loses its significance.

According to Sharia, there were three different types of marriages: permanent marriage, temporary marriage and involuntary marriage. In Kazakh society only permanent marriage was used. The evidences of temporary and involuntary marriages were not found (Imanbaev, 2015, pp. 38-39). The institution of permanent marriage in Kazakh consuetudinary law was based on the Islamic obligations, which further had a set of following requirement to be met before the wedding:

1. The choice of a spouse, i.e. the purity and honesty of woman, social origin, intelligence, behavior and character and the ability to run the household were considered as well.
 - a) Virginity, i.e. integrity, there should be no sexual relations. For women, who were getting married second time, this do not apply;
 - b) To be a follower of Islam;
 - c) Good health and the ability for further procreation;
 - d) The absence of a close relationship;

Of course, this information was analyzed with the help of close relatives

2. Consent to marriage, i.e. it should be voluntary, the girl must be an adult and free;
3. There are should be no circumstances hindering marriage:
 - a) Close kinship (as mentioned above);
 - b) The absence of milk kinship;
 - c) A close relationship;
 - d) Do not exceed the number of wives allowed to have (four wives allowed under Sharia);
 - e) The lack of curse on woman (a cursed woman is considered unholy in Arabic community);
 - f) Religious;

According to Sharia system, a woman became a wife only after the wedding ceremony, held in the bride's house, usually on the second day of the wedding procedures. However, based on the certain traditional practices that came before the Islamic influence, indicated that the transition of a girl to a wife began from secret visits of a fiancé to the girl. This statement can be supported by the fact that in case of death of a fiancé, who already made secret visits to his future bride, the village in which this bride lived had to mourn for him, and afterwards she had to marry to one of his relatives (Stasevich, 2009, pp. 98-99).

The marriage ban also related to the relatives of a fiancé and the bride as a potential partner. The widow did not have the right to marry the brothers-in-law, but she could get married according to the customs of levirate to the brothers of a deceased husband and to the sons of his elder brothers. According to the consuetudinary law, husband had no right to marry to the younger sister of his wife, but in case of a death of his wife, it was allowed. A widower could not marry to the older sister of his wife under any circumstances, as she was considered as a second mother to her younger sisters (Argynbaev, 1989, pp. 249-278). Moreover, based on the "Adat" law, it was forbidden for a woman to marry to her siblings and a marriage of a man to his sisters of their mothers. The norms of Sharia gradually penetrated among the nomads, but not all of the Islamic norms of marriage were strictly followed. For example, Kazakh people did not follow the rule that forbade the marriage of brother to their sisters from different families. Supporting this view, this kind of marriage was highly desirable as it was considered as

strengthening the relations between two families (Zagryazhsky, 1876, pp. 155-156). Despite the fact that Sharia law allowed marriages between closely family-related partners, for Kazakh people the exogamic norms, when choosing a partner still remained an insurmountable barrier. The violation of the ban led to a strong public reprimand. These examples further underscore not only the regional peculiarities of the Central Asian Islam, but also the domination of the collective organization relative to the individualism. In addition, the sexual relations between married people before the movement of a bride to her husband's house was considered unacceptable and even led to the invalidation of the marriage (Stasevich, 2009, p. 100). Based on the evidences, even in these cases, the father of the bride had to resolve the problem by paying fines to the husband's family. And the husband, who attended the bride in her parents' house, did not usually advertise the "dishonesty" of his young wife, as this could be a reason for a scandal and father of a bride could also sue a husband in case of a disagreement with the husband's claims. Therefore, with the adoption of Islam by nomads, the validity of marriage was considered after the ceremony of uniting the fiancé and the bride. However, the wedding procedures were not completed at this stage, and the continuation of the ceremony was further held at the husband's family house, to where a young bride was transported a few days after the wedding.

3.2 *The Institution of Matchmaking*

In case of compliance with the above conditions, further transition went to the institution of matchmaking. Matchmaking was fixed in the written form or orally between two sides. The institution of matchmaking played a very important role for Kazakh people as well as for Arab people. The size of redemption for a bride depended on the social status of a family and it usually began with the five camels. However, the size of the redemption in Kazakh society certainly was not regulated. After the matchmaking process and the payment for a bride, the real wedding ceremony began. This institution was considered very important based on Sharia law and gave it a special significance:

- a) "Izhaba Kabul", which means a voluntary agreement to fulfill its obligations on both sides (male or female) and required the presence of witnesses (one male and two females), who should be of a legal age and religious.
- b) The act of marriage. Mullah held it. He asked for a consent of the two parties, afterwards he specified the size of the mahr (the wedding gift for a bride), which depended on the social status of a partner. Mahr further went into full ownership of a bride and she could freely use it.

Mullah read "Qutb", while the act of marriage was filled, showing that the wedding ceremony took place in accordance with the law, further the stamp was put and the witnesses signed the act. The act of marriage was usually given to the women. Mullah had the right to take a gift from a man, but he did not have such rights regarding the bride. After the completion of the marriage, the wedding began. "There was a rule in Sharia, which protected the young bride from the thoughtless act". The adult virgin should take permission for a marriage from her father or grandfather. The permission from mother or brother was not required. In case of the absence of father or a grandfather, and the girl was not a virgin, then she could get married without any permission. The right was also given to a father and grandfather for a matchmaking of their children and grandchildren that were still not adult. However, the termination of the marriage could be done in case of a fraud or malice. In addition, their fathers or grandfathers usually covered all expenses related to the organization of the marriage of still young partners, but these expenses should be returned back when married couple became adults. If there was a certain means on the fiancé's account, then a part of it was spent on marriage and the other part on the payment for a bride (Kerimov, 1978, p. 93).

3.3 *Responsibilities in Marriage*

Male and female after marriage gained equal rights as well as they had to take certain obligations. The most important duty of a male was to provide woman with the housing, clothing and food; woman should respect her husband, carry out his orders, without the permission woman should not go out and does not enter into any contract. If a woman did not listen to her husband and did not run the household properly then the separate living period was allowed. Therefore, Sharia focuses on the strength of the marriage. The permission for a divorce was usually given in the following circumstances:

- The missing of a man;
- Infertility;
- Mental problems;
- An incurable disease;
- The death of a spouse;

The first marriage was considered very important for a man. In case of a girl's behavior was inappropriate, then man had the right for a divorce. In this case, the payment for a girl should be refunded. Sharia permitted daughters in law marriage on children from another marriage, and the marriage of stepbrother and sister. However, according to Kazakh traditions the adopted daughter was also considered to be a biological daughter, hence on this marriage was imposed a strict ban.

3.4 The Institution of Polygamy, Levirate and Sororate

Among Kazakh people polygamy was widely spread. However, polygamy initially indicated the social status of a man, the prestige and the richness of a male, as the size of the dowry was increasing proportionally with every new marriage. Hence, only wealthy man could afford to marry second or third time to a young virgin girl. One of the main reasons for a second and third marriage was the need for man with the big household, which needs to be looked after by several women. In terms of Kazakh wives in wealthy family, they were given a separate household and they had to manage the whole villages at time of husband absence, while he nomadized away from them but with forthcoming winter, the whole family came together for the winter (Stasevich, 2011, p. 61). In addition, under the influence of Islam Kazakh people were allowed to have four wives. In the pre-Islamic period, this condition is not kept up. It should be noted that for a marriage the permission of the previous wives is required, so that polygamy was not an easy thing to do. While the number of wives increased a role of the first wife who was called "baibishe" began to grow and she had more rights. Nevertheless, it was quite problematic to obtain permission from the other wives. In general, the rights of the first wife (baibishe) and younger wives did not have much difference (Alimbetov, 2009, p. 89). In accordance with Sharia it was prohibited to have more than four wives (Alimbetov, 2009, p. 90). The reason to marry for the second time could be infertility of the first wife and the birth of only daughters from her. Kazakh scholar I. Altynsarin uttered well known Kazakh proverb showing the attitude of Kazakh people to the many children family: "a lot of wives, a lot of children" (1870, p. 103). We cannot exclude that a second marriage for a man might be marrying for love, not for the insistence of parents. It was observed often that the youngest wives became the favorite ones of their husbands. Though the first wife remained in the family as baibishe (senior wife). Patrimonial law and public opinion, which played an important role in society, protected woman who had been married with a consent of the parents of the couple, rather than mutual love and from a divorce with her husband who had not been able to love her. Due to Sharia the nomads did not always follow to law, providing for the mandatory consent of the first wife to remarry her husband. Apparently, much depended on the marital status of his first wife, her personal qualities and the influence of her opinion on the decision of the husband. Some senior wives acquired such power that the husband did not dare to contradict them and visited their younger wives secretly. These women became full owner and disposed of the younger wives as mother-in-law. Conversely, sometimes the reverse situation was observed - the leading position in the family occupied the youngest beloved wife, in the tent where he lived, and her husband, and her children had priority in inheriting his property.

The marriages on the base of levirate and sororate laws (married to the sister of his deceased wife, but it was respected more rare) referring to traditional Kazakh customs had pre-Islamic origin. The custom of levirate - Kazakhs called "amengerlik". "Amenger" means "brother of the deceased, he inherits" (Katanov, 1904, p. 96). There was a special name for the widow in the Kazakh language who wanted to remarry after mourning. This woman was called "zhesir" (Argynbaev, 1978, p. 100). Grodekov had distorted "esir" (1889, pp. 85-86). In the Kazakh consuetudinary law is also used the expression "zhesir dauy" (Argynbaev, 1978, p. 101), which means battle, strife because of violations of levirate law. Levirate was traditionally legal nomadic institution and involved not only certain norms of marriage, but also a certain order of succession of property, consisting in the transition of succession not to his son but to the brother of the deceased (Bikbulatov, 1980, p. 570). Representatives of the local clergy, directed in their religious views on the norms of Islam, condemned the custom of levirate as the forced compulsion of widows to marry and referred this tradition to the "Islamic law in prohibition affairs" (Stasevich, 2011, p. 72).

Islam supported pre-Islamic institutions - levirate and sororate. Due to levirate law widow had to marry her deceased husband's brother or his next of kin and according to sororate widower had to do the same with the sister of his deceased wife (Mustafina, 2005, p. 50). The right of levirate was based primarily on economic interest of congeners, regarding the property of the deceased not to leave it to his family (it is based on a system of inheritance of property of the deceased). Then the custom of sororate associated rather with the desire to preserve the already established social ties between the two family-related groups. Therefore, if the father of the bride or wife of the deceased understood that connections of his family and his family-in-law strong and promising, they did not usually refuse to conclude sororate marriage, even in cases if he had full authority. Unlike the levirate marriage, marriage by custom of sororate had not always been mandatory. After the death of

his fiancée or wife a man had the right to declare the father-in-law that he wanted to marry her younger not married sister. Nevertheless, father-in-law without giving any reason could refuse the request. The only condition for compulsory sororate marriage provided with the death of a bride that was completely paid dowry, in the house of his father. Even in this case, the father-in-law might refer to breach custom, according to which the groom and his comrades had come to him immediately after the death of the bride and declare his right to sororate marriage. It should be remind that sororate right extends only to the younger sisters of the deceased. In case of agreement between the father-in-law and the son-in-law the latest paid for the girl “baldyz” dowry - half of the total dowry once paid for the first daughter. There were no lush weddings and the young married quickly, without waiting for the annual mourning for his dead wife or bride.

3.5 Institution of Divorce

The word “talaq” in Arabic language means “divorce” and is a sign of divorcement. The word “talaq” is recorded in the places with a large amount of people, in a balanced state - three times, the interval between each utterance should be a few days, and in that case the divorce is recognized by law. If this word is pronounced in a drunken state, in a state of anger or illness, it does not have the legal force. Many legists-researchers are not fully aware this tradition, deliberately distorting the facts, criticized it. For example, Sharia researcher G. M. Kerimov writes: What is striking is that Islam is so jealously fighting against celibacy and monasticism creates a very light condition for divorce and family breakdown. It is enough for men to say to his wife three times without any explanation: “You are not my wife” or “I swear by Allah, your back to me like the back of my mother”, etc., and the divorce is considered to take place” (Kerimov, 1978, p. 99). It is very difficult to utter three times the word “talaq”. The interval between each utterance should be large. If during this period the man and his wife reconciled, then the word loses its power. Who wants among devout the wrath of Allah? The right to divorce retained not only for men but also for women.

According to Sharia and Kazakh consuetudinary law, the process of divorce is very time consuming. Making a decision about divorce man should notify his wife to stay in a balanced state. Uttering the word can stretch for a few days or months; i.e., if the divorce is made after woman’s critical, then a man should wait for the next critical days until they finish, during this time, he must ensure the woman, not to hurt her and to sleep separately. Only after these conditions, spouses could be considered as divorced. Forms of marriage and divorce are similar. Man must repeat three times before the judge “I divorce you ...” which will serve as a confirmation abovementioned his words. In most cases, the woman is charged with treason and a man to prove it must provide four witnesses (men), if one of the witnesses doesn’t confirm the words of other witnesses and her husband, they will be punished according to Sharia.

Russian researcher N. I. Grodekov noted that “in imitation to Sharia the consuetudinary law of Kazakh people allows “akymar”, property, determined in favor of the wife in case of divorce (1889, p. 91). Akymar may consist of livestock, property and money. “Based on the materials cited by Grodekov N. I., akymar of a bride was arranged before the marriage, however, did not represent any documents, and then this part of the property was not separated from the family ones. Thus, woman did not get the personal rights of ownership of the property, as it should be according to Sharia, and

divorce had no guaranteed rights to akymar. It depended entirely on the will of her husband and his relatives. Furthermore, let me remind you that the sources from N. I. Grodekov mainly refers to southern Kazakh legal system, which, in contrast to other Kazakhs had strong political, economic and cultural links with the city center and have been early enough exposed to Islamization. Islam has established itself among the settled population of Semirechye and Syr Darya by the X century. Therefore, the influence of Sharia on the consuetudinary law of Kazakh people in this area was felt most strongly. The practice of paying out of akymar was a local phenomenon and was not widespread among the nomadic tribes of the steppes - it has not been recorded in other groups of Kazakhs (Stasevich, 2011, pp. 85-86).

Divorce “razha” gives possibility to divorce without the permission of his wife and get off with her two times. In the third case, to marry a woman is only after she had been married to another man. In such cases, due to Sharia law a man must give the woman the property, which belongs to her. After a divorce the woman should wait for the critical days, this time was called “Iddah”, for pregnant women it continues until birth. After the commitments of divorce, underage children remain with their mother. The third type of divorce is made at the request of the woman, so she pays her husband a certain amount. Terms of the divorce are as follows: a man in front of witnesses should say the following words: “In order to give you a divorce I give you halaa” and demonstrates the resulting fee. The fourth type of divorce involves a divorce by mutual consent of the two parties. A divorced woman, as well as the widowed cannot immediately get married. This prohibition does not

apply to women over 50 years of age and under-age girls, proposed to, but had not managed to marry. Other types of divorced women must wait for the expiry of 3 months. The widowed woman may marry only after four months and ten days.

Despite the fact that after the divorce, the children usually stayed in the family of her husband, a woman had the right to receive part of his family property. What did this part include? After marriage, the husband had the right to dispose of his wife's property, but after the divorce, was obliged to return, "All property belonged to her" these were, the few things that were in the personal property of women (Grodekov, 1889, p. 91). Personal property of a woman consisted of personal property bridal headdress, some jewelry, one of the suits, the dowry and the bed linen. These were all things that made up part of the dowry; in the case of the death of a woman - her relatives received them as a memory of the deceased. Other movable and immovable property which constitutes the dowry of women, immediately after marriage passed into the possession of the husband and his relatives and distributed among those who participated in the collection of funds for the payment of bride price (Stasevich, 2011, p. 86). If the divorce was accomplished through the fault of the husband, and his fortune allowed without compromising the economy to allocate his former wife a saddled horse and camel, he could do: provide woman with the necessary minimum for the first time, allowing her to get to her parents or relatives of her potential new husband. However, this provision was based solely on the desire of the man and did not represent a mandatory rule. Husband often allocated money to his wife on clothes and most necessary things from the dowry, which was returned to him by his wife's relatives. There are cases when the husband is not getting all the dowry and property constituting the difference between the consideration paid and the dowry the bride money (Stasevich, 2011, p. 86).

The analysis of the legal framework of divorce shows that divorce, like marriage, was not a personal matter of spouses. Issues related with the transfer or retention of property solved at the level of the two family-related groups - the husband's family and relatives of his wife. After the divorce and the settlement of property claims woman was legally free and could go to live with her parents or other relatives, as well as marry at will, without consulting with the relatives of her husband, as it happened in the case of death of a spouse. Following the law, a divorced woman, as a widow, had the right to marry an unlimited number of times. However, in this concern different cases were documented when the right of levirate had power even under divorce, in the presence of husband's disability then his relatives could demand that a woman would marry to someone of his relatives. In the Holy Quran, Allah obliges people to live in marriage, creating a good family, to respect each other. Allah does not encourage that polygamy, giving permission to marry two, three, four women he points to the causes and consequences of such an act. The necessity of this could be explained by infertility of a woman, the impossibility to keep the house or her illness.

4. Conclusion

In traditional Kazakh society, Islam was adopted in the middle Ages and the rules of Sharia have not been fully accepted as law. Islamic obligations just completed Kazakh traditions and customs; they left their trace on the Institution of family and marriage, in the system of taxes and duties, on the rights on property in the Kazakh consuetudinary law. The majority of the traditions and customs, requirements and prohibitions against marriage and family were based and strictly kept by the rules of Sharia. The Institution of family and marriage in consuetudinary law, which was based on Islamic obligations, was retained until becoming soviet power in Kazakhstan in 1917. In this regard, at the end of the 30th of the twentieth century Islamic obligations and consuetudinary law of Kazakh people were destroyed completely. Lifestyle changes contributed to the erosion of religious traditions and the formation of an atheistic view of the world. However, Islamic obligations and rites continued to live in the family household sector, but not on a legal base. However, in the 90th years of the twentieth century, due to the collapse of the Soviet Union, the Institution of marriage and family began to apply Islamic obligation. Nevertheless, law in the Code of Republic of Kazakhstan "On Marriage and Family" does not fix them.

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