The Legal Status of Barren Wives in the Ancient Near East

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Biblical narratives of barren wives such as Sarah, Rebekah, Rachel, Hannah, and the mother of Samson paint a picture of God’s sovereignty and faithfulness to fulfill promises to a burgeoning nation. In these narratives, the modern reader encounters polygyny and polycoity, wife rivalry, preferential treatment of certain wives and their children, and divorce, all of which are seemingly at odds with our biblical notions of marriage, divorce, and ethical treatment of others. Though scripture is mostly silent on the ramifications of barrenness, it is possible to look beyond the biblical witness to the broader ancient culture in order to understand its impact both on the women involved and society as a whole. Ancient legal, mythical, ritual, and medical records not only provide us with the broader cultural understanding of barrenness, but also, at times, mirror some of the personal and spiritual responses found in the biblical material. As a means of further understanding how this malady impacted ancient near eastern civilization, this article focuses on barrenness in legal records.

Akkadian legal material often signifies the biological status of the barren wife with the phrase, the one “who has not born children” (ša mārī lā uldāšūm). Her title is often simply “wife” (aššatum). If she is the first of multiple wives, however, she is often distinguished as “first-ranking wife” or “wife of equal status” (ḫirtum). A barren wife represents a seemingly insurmountable obstacle to one of the primary functions of marriage: to produce heirs capable of assisting with the subsistence and economic stability of the family. One could even say that in some situations, “a childless marriage was not a full-fledged marriage.” What avenues are left for a barren wife to secure her future? While the most obvious solution would be to adopt a child, a variety of legal parameters protecting a first-ranking wife suggest alternative options, such as taking a second wife, to provide a biological heir. However, taking a second wife is far more likely to threaten the status of a first-ranking wife than adopting an heir. Thus it is beneficial to study the marriage allowances and limitations concerning a barren wife found in the extant legal collections. This study is limited to extra-biblical legal material and marital contracts within the broader ancient Near East as a means for determining the status and rights of a barren wife.

Assessing both legal material and contractual agreements is important for establishing an accurate depiction of society. Since the various law collections at times provide only a broad picture of a particular culture’s approach to justice, I view these edicts alongside contractual agreements that provide detailed specifics as to how society functioned. Studies in comparative law affirm the fluidity of interpretation and application of the law within any given society. Rather than uniformly applied as normative, the law collections could have served as guidelines for how society should function.

It is also important to remember that all written laws may be more part of a world of “ought” than of “is.” In other words, the laws project social ideals and expectations. They do not automatically tell us what people were actually doing “on the ground.” Performance, i.e. compliance, always depends upon the powers of government as well as upon the will and internalized values of the population.

Legal texts pertaining to polygyny and polycoity

Although existing within a society that places women under the control of fathers or husbands, a barren wife could utilize various legal precedents as a means to secure her future. One of the options available for a barren wife is to encourage her husband to take a second woman, often “as a wife.” Often this second wife is signified in the textual witness through the use of “wife” (aššatum), “slave-wife” (amītu), or “junior wife/concubine” (šugītum). However, in spite of the often cited polygynous marriage accounts in the biblical ancestral narratives or practices of royalty, monogamy is the far more common practice. No specific law explicitly states a husband may take a second wife. However, the practice of polycoity can be inferred from the use of the term ḫirtum (“first-ranking wife”) in the laws pertaining to divorce, which will be addressed below. The single legal stipulation that allows a husband to take a second wife is in the form of a caveat: in the event that his first-ranking wife becomes sick or diseased to the extent that she is no longer able to fulfill her duties as wife, then he may take a second wife. In this instance, a husband may take a second wife, but is prohibited from divorcing his first-ranking wife. In addition, both LL §28 and LH §149 ensure provision for and protection of the barren wife as long as she remains in her husband’s home. Moreover, should she decide to leave her husband’s home, LH §149 stipulates the return of her dowry to her upon quitting the home. At this point, the dowry would likely follow her back to the home of her father, where he would assume control until able to arrange another marriage. However, in the event that her father has already died, the dowry remains with her as her inheritance. Although barrenness does not seem to be the illness in mind here, the inclusion of this law does establish a precedent for the provision of a financial settlement in the case of divorce due to illness.

Taking a second wife to combat childlessness is more apparent in the contractual agreements. Although the most common reason for a husband to take a second wife is barrenness, some contracts expressly forbid the husband from acquiring a second wife or a concubine regardless of the fertility of the
wife. Obviously, a family would need to be powerful to enforce this type of stipulation. In one contract, for example, it seems that marrying into royalty is enough to pacify the desire for offspring. Another contract may instruct the husband to wait a period of seven years before taking another wife to ensure that his first-ranking wife is barren.

 Occasionally, a husband would marry two sisters to circumvent the possibility of barrenness. While barrenness is not the impetus for Jacob marrying Leah, the biblical account in Gen 29 has some similarities with this practice. According to some Old Babylonian agreements, this practice is likely evidenced in several contracts, where the husband pays a bride-price for both sisters. In some contracts, the language of “sisterhood” indicates artificial sisterhood (i.e. matrimonial adoption) in which the wife (or, in some instances, both husband and wife) purchases or adopts a “sister” as a gift to the husband. The language used in these types of contracts specifies the unique nature of the relationship established between wives. Apparently this type of marriage agreement is beneficial to both wives, for the children born to one sister would become the offspring of both. An additional protection for both women, which we will revisit in the section on divorce below, is that a joint marriage typically also results in a joint divorce, which would be financially devastating for the husband.

 Another option evidenced in some contracts is to “adopt” a woman as a wife to the husband and slave to the first wife, as demonstrated in CT 8:22b: “To Bunene-abi (Husband) she is a wife, to Belessunu (Wife 1) she is an am tum...”. This type of marriage contract is also beneficial to the first-ranking wife, for any children born to the slave wife expressly belong to the first-ranking wife. In addition, the first-ranking wife retains authority over the slave wife, and in the event that the slave wife attempts to overreach her status, the first-ranking wife may remove her from the home. If the slave wife has already provided children, the first-ranking wife may not sell her, but may further reduce her rank and place the “slave mark” upon her. However, the benefits of this type of marriage also extend to the slave wife. Though her status is less than the first-ranking wife, she still enjoys a higher position in the household than that of a house slave or concubine.

 It should be noted that the practice of including special provisions for a first-ranking wife may not have always been observed. A marriage document from Alalakh, near the Mediterranean and the modern border of Turkey and Syria, is structured as a “sisterhood” marriage agreement in which a woman and her niece marry the same man in order to ensure the husband is provided with an heir. However, unlike the “sisterhood” marriages of Babylon, the first-ranking wife in Alalakh does not seem to enjoy the benefits typically associated with that type of marriage arrangement. The tablet, though fragmentary, does seem to indicate that whichever wife produces a child first becomes the preferred wife.

 It should be noted that Paradise asserts that, at least at Nuzi, it is not common practice for a man to have two women in his household who simultaneously hold the rank of wife. Instead, one woman holds the rank of first-ranking wife, while the other woman or women hold a secondary rank of concubine. Moving forward with this premise, Paradise sees a possible solution to taking a second wife indicated in some of the Nuzi contracts. This solution is specified as a “reduction in status” for one of the wives. If Paradise’s assertions are correct, we can infer that in some situations the barren wife’s status is reduced to concubine.

 Although she may retain some rights and privileges, she loses her position as primary wife and “mother” to any children born.

 **Legal texts pertaining to divorce and abandonment**

 Divorce is another option available to the husband of a barren wife, and as evidenced in many societies, a husband may divorce his wife for essentially any reason. While the law collections may not include many explicit stipulations for polygamy, divorce is thoroughly addressed. Although a divorced barren wife would lose the protection of her husband, the law collections do establish a precedent for her financial support. Several law collections imply that the financial burden placed upon the husband is either to prevent capricious divorce or to provide financial restitution to the wife. This principle is elaborated upon in the Hammurabi collection, which seems to imply infertility as a possible cause for divorce. In addition to the divorce settlement, which must equal the bride-wealth originally given by the husband to his father-in-law, the wife is also given full restitution of her dowry. Driver and Miles agree that infertility is the likely cause for such a divorce, and that the high financial cost serves to offset an unjustified divorce. Westbrook, however, views the monetary settlement as too steep to indicate infertility, especially in comparison to the other “illness-induced” situation outlined in LH §148 (quoted in n. 13), which only stipulates the return of the dowry. Instead, he views this as similar to the case presented in LH §156, where double restitution is made due to the future father-in-law taking the bride’s virginity. LNB §12 is similarly structured to LH §138, but it addresses the financial support of a widow. While the case does not involve any divorce proceedings, the stipulation by the court provides insight on practices meant to protect vulnerable women. Here, the court stipulates the return of the dowry as well as any marriage gift that her husband may have awarded her. If no such gift is awarded, the courts should assess her late husband’s estate, “and shall give to her some property in accordance with the value of her husband’s estate.” Regarding awarding an additional monetary settlement, only the Assyrian laws provide no financial support of a wife in the event of divorce. Excluding the Assyrian laws, regardless of whether infertility is the motivating factor behind a husband’s desire to divorce his first-ranking wife, most law collections do seem to establish a precedent that favors the position of the wife by placing a financial deterrent upon the husband. However, the barren wife has another financial weapon at her disposal: her dowry.

 The dowry, often referred to in the legal and contractual material as šeriktu, is a gift given by the parents to the daughter as an inheritance, and it remains vested in her name throughout
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In most instances it is hers to use as financial support for the remainder of her life. The dowry remains intact for her children, or in the case of the barren wife, as part of her family's estate, and returns to the children or family upon her death. According to Roth's work on several Neo-Babylonian marriage contracts, however, ten to fifteen percent of dowry contracts include some type of real estate, so it seems a safe assumption that some childless, divorced, or widowed women could live quite comfortably from the dowry. As with the law collections, several of the contractual agreements also uphold the return of the dowry to the wife (or her family) in addition to the divorce settlement fine, usually payable by the husband. In fact, Roth, Westbrook, and Paradise agree that one of the primary reasons for recording a marriage contract is the protection or delineation of the property. This may explain why, in the event of a divorce, most contracts preserve a clause outlining the delineation of property, fines, or both.

Returning to the "sisterhood" marriage contracts mentioned earlier, the language used to describe the unique relationship between "sisters" is especially pertinent in the event of divorce: "the marrier of one marries the other; the divorcer of one divorces the other ..." (UET 5 87). Again, this unique relationship provides both women an additional layer of protection from capricious divorce. Should a husband decide to divorce one of them, the contract stipulates that they will both leave, presumably with their dowries as well as any children born into the marriage. The concept that a divorced woman could be awarded custody of the children radically expands her rights within the marriage. In two contracts relating to a barren couple adopting a child, the wife is given permission to take the child in the event her husband divorces her. In the slave wife marriage contracts, the result seems to be the same. Since the slave wife is purchased as a slave to the first-ranking wife, in the event of a divorce the slave wife and any children would presumably leave with the first-ranking wife. The prospect of losing both wives and the dowry, as well as any heirs, would be a strong deterrent to any husband wishing to change his marital situation. This precedent demonstrates an exceptional protection for the barren wife placed in the difficult situation of either sharing her home and rank with a second wife (even if that wife is her sister), or facing an imminent divorce due to factors beyond her control.

However, as with the practices of polygyny and polycoity, some contracts do not include any stipulations for the protection of a barren wife. In one contract from the Neo-Babylonian period, once the second wife has given birth, the first-ranking wife is awarded no financial support. In this instance, the protection of a woman is primarily determined by the status of her family. Contracts that provide stipulations to protect a woman from polygyny, polycoity, or divorce are usually initiated by the woman's family, which indicates the high position of that family within the community. Therefore, it follows that families of high status are often able to offer protection in the form of a contract awarding a sizeable dowry. In one contract, for example, the wife owns an orchard which is included as part of her dowry.

In the absence of these factors, the woman is left with a limited number of options for determining her future, one of which includes returning to her paternal home if the dowry is not sizeable enough to allow her independent status.

In the event that a woman has no paternal home and no children to care for, her options for financial support often include either slavery or prostitution. However, some research, primarily by Gelb and furthered by Roth, indicates the existence of a welfare system provided through either the temple or benefactors. Termed the bit mār bānī in a few documents dating to Neo-Babylonian period, scholars have not yet reached consensus regarding what exactly this term indicates, what this welfare system encompasses, or the persons responsible for its continuation. If this program originates with the temple, Gelb's research suggests the makeup of temple personnel includes (among others) the homeless, poor, and orphans—a population which surely encompasses some childless women. However, according to Gelb, while this institution would have alleviated their living conditions, it may also have exploited them as part of the temple workforce. His assessment corresponds with some of the contracts in which the bit mār bānī are mentioned. In one contract, a young girl is presented as the child of a temple, the mother giving up her daughter stipulates that the adopters may not turn the child over to the bit mār bānī. Although information regarding the bit mār bānī is scarce, this option is preferable to a life on the streets. Relevant to our study, the bit mār bānī may have provided shelter and food for divorced barren wives with no family connections or financial support.

Conclusion

In researching any group of women in ancient cultures, the tendency can be either to paint an exaggerated caricature of an overly patriarchal society, or to attempt to create an egalitarian culture from a few sparse texts. Since the biblical material provides only a few narratives on the issue of barrenness, scholars are left to fill in the gaps with inferences. Both positive and negative practices of cultures co-existing with ancient Israel facilitate such inferences by painting an accurate portrait of the status and rights of a barren wife in the ancient Near East. In spite of exceptions in every society, it is plausible to suggest that, at least within the legal structure, specific provisions and precedents were established to provide a barren wife the means with which to secure her future.
Notes

1. Polycoity, a specific kind of polygyny, results when a husband has two or more wives of unequal social status (such as Sarai and Hagar in Gen 16). It should be noted at the outset that this article does not address the naditum/seriktum (temple priestesses); unlike the barren wives under discussion here, these women are childless by choice.


3. CAD vol. 6, H, 200.


5. Gordon R. Driver and John C. Miles, eds., The Babylonian Laws (2 vols.; Oxford: OUP, 1952); COS; ANET; Martha T. Roth, Law Collections from Mesopotamia and Asia Minor (SBLWAW 6; Atlanta: Scholars, 1995).


9. CAD vol. 1, A: Part Two, 80–85.


12. Regarding whether the second wife was actually considered a wife on equal footing with the first-ranking wife, see Paradise, “Marriage Contracts of Free Persons at Nuzi”; 8; Samuel Greengus, “Legal and Social Institutions,” CANE 1:478–79.

13. LL §28: “If a man’s first-ranking wife (loses her attractiveness or becomes a paralytic), she will not be evicted from the house; however, her husband may marry a healthy wife, and the second wife shall support the first-ranking wife.” Roth here acknowledges “second wife” as an alternative translation to “healthy wife.” The final phrase, which stipulates the second wife must support the first, could be rendered, “he shall support the second wife and the first-ranking wife,” a translation more closely aligned with that of S. N. Kramer. Roth, Law Collections, 32; COS 2:413. Kramer, “Lipit-Ishtar Lawcode,” ANET 160: “If a man has turned his face away from his first wife . . . (but) she has not gone out of the [house], his wife which he married as his favorite is a second wife; he shall continue to support his first wife.” According to Kramer’s translation, initially presented in Francis R. Steele, The Code of Lipit-Ishtar (Philadelphia: University of Pennsylvania, 1948), 3–10, 20, the tablet is broken at this section, making it difficult to determine the events surrounding this change of favor. See LH §148: “If a man marries a woman, and later la’bum-disease seizes her and he decides to marry another woman, he may marry; he will not divorce his wife whom la’bum-disease seized; she shall reside in quarters he constructs and he shall continue to support her as long as she lives” (COS 2:345).


15. Contrast with the loss of any divorce settlement in LH §140–41, in which the wife has publicly disparaged her husband.


17. See, for example, HSS § 24, in which a prince named Silwa-tesup writes, “As long as Śuwar-tepa lives, Zike shall not take a second wife. He shall not take a concubine.” Cf. Paradise, “Marriage Contracts,” 12.


19. Westbrook, Old Babylonian Marriage Law, TIM 4 46, TIM 4 49, UET 5 87; 5 274. This practice is also evidenced in TIM 4 47.

20. “Tayatum daughter of Enki-hegal has taken Ali-abi daughter of Urmashum-hazir and Sin-duri from her father Urmashum-hazir and her mother Sin-duri as a sister. Tayatum has given Urmashum-hazir and Sin-duri her mother 5 shekels of silver as her terhatum. Tayatum has given her to her (T’s) husband Imgrurum for marriage” (BIN 7 173). Westbrook, Old Babylonian Marriage Law, 116; see also Meissner, BAP 89, CT 48 57, in Westbrook, Old Babylonian Marriage Law.

21. This language typically includes the clause, “the marrier of one marries the other” (UET 5 87). Westbrook, Old Babylonian Marriage Law, 133.

22. See Westbrook, Old Babylonian Marriage Law, 106–107, on the status of children born to a lesser-ranking wife; also Driver and Miles, Babylonian Laws, 304–305.

23. Westbrook, Old Babylonian Marriage Law, 119; see also Waterman, Business Document 39, TIM 5 1, CT 48 48, in Westbrook, Old Babylonian Marriage Law.

24. See CT 8 22b: “The day that Shamash-nuri says to her mistress Belessumi ‘You are not my mistress,’ she will shave her and sell her.”

25. The exact nature of the “slave mark” is unknown, but for possible options see Driver and Miles, Babylonian Laws, 1306–309.


27. “If Naidu (W1) has not given birth to an heir, then the daughter of her brother, Iwassura (Brother), shall be given (to Iri-halpa) (Husband). If Tatadu (W2) gives birth first for Iri-halpa, and afterwards Naidu gives birth, then the older(? ) woman shall not be given anything . . . ” Hess, “Marriage Customs” (AT 92) (3.101B), COS 3:251–52. C. Niedorf has recently addressed Hess’s translation of this tablet, particularly owing to the fact that (as Hess acknowledges) the text is fragmentary. Because our research does not rise or fall on the basis of this one tablet, I retain Hess’s translation.


29. “If W1 gives birth, then H shall not take another wife in addition to W1 nor reduce her to concubine rank . . .” (HSS 19 85). “If W1 gives birth,
then H shall not take another wife and shall not make her a concubine” (JEN 435). Paradise, “Marriage Contracts,” 13.


31. LU 99: “If a man divorces his first-ranking wife, he shall weigh and deliver 60 shekels of silver.” Roth, Law Collections, 18; see also in Roth LU 10, LNB 12. According to Hittite Law §24, a female laborer could earn a monthly wage of six shekels, so it can be assumed that the total financial settlement from an unjustified divorce could equal a laborer’s annual wage; see Hoffner, “Hittite Laws,” COS 2:108–109; Roth, “Legal and Social Institutions of Hittite Anatolia,” CANE 1:560.

32. LH §518: “If a man intends to divorce his ḫīrtum who did not bear him children, he shall give her silver as much as was her bride-wealth and restore to her the dowry that she brought from her father’s house….” Roth, “Laws of Hammurabi,” COS 2:344.

33. Driver and Miles, Babylonian Laws, 1:296.

34. LH §516: “If a man selects a bride for his son and his son does not yet carnally know her, and he himself then lies with her, he shall weigh and deliver to her 30 shekels of silver; moreover, he shall restore to her whatever she brought from her father’s house, and a husband of her choice shall marry her.” Roth, “Laws of Hammurabi,” COS 2:345.

35. LNB §12: “A wife whose husband takes her dowry, and who has no son or daughter, and whose husband fate carries away—a dowry equivalent to the dowry (which her husband had received) shall be given to her from her husband’s estate. If her husband should award to her a marriage gift, she shall take her husband’s marriage gift together with her dowry, and thus her claim is satisfied.” Roth, “Neo-Babylonian Laws,” COS 2:361.


37. MAL 37: “If a man intends to divorce his wife, if it is his wish, he shall give her something: if that is not his wish, he shall not give anything, and she shall leave empty-handed.” Roth, Law Collections, 167.

38. Cf. LH §140–41. Driver and Miles infer that in the case of a wife publically disparaging her husband, the language implies that she forfeits all property and gifts as a result of her misconduct. Driver and Miles, Babylonian Laws, 273.


40. Some scholars view the inclusion of a fine placed upon the wife as “instigator” of the divorce proceedings as an indication that women could divorce their husbands; cf. BE 6/2 40, Westbrook, Old Babylonian Marriage Law, 115. However, most agree that, if this was a possibility, it was uncommon. See Instone-Brewer, Divorce and Remarriage, 6; Greengus, “Legal and Social Institutions,” 480; Westbrook, Old Babylonian Marriage Law, 79–80; Roth, Babylonian Marriage Agreements, 14.

41. Paradise, “Marriage Contracts,” 1; Roth, Babylonian Marriage Agreements, 25; Westbrook, Old Babylonian Marriage Law, 6.

42. Westbrook, Old Babylonian Marriage Law, 133.

43. "If in the future, H says to W1 ‘You are not my wife,’ she shall take the hand of her sister, W2, and leave” (BIN 7 173). Westbrook, Old Babylonian Marriage Law, 116.

44. Cf. Westbrook, Old Babylonian Marriage Law, PBS 8/2/107; VAS 18 114.

45. “. . . (if W1 does not bear children, all property of H) in city and country, as much as there may be—will belong to W2 and her children.” Roth, Babylonian Marriage Agreements, 42.


47. “. . . should H desire to have another wife, W1 retains orchard which was given as part of her dowry. She may take it and leave.” Roth, Babylonian Marriage Agreements, 46.

48. A literal translation of bit mār bānī such as “house of the free person” is problematic because it fails to capture the phrase’s meaning in the literature.


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