

**Custodianship of the Right Hand:
Concubinage, Rape, and 'Sexual Slavery' in Islam
By Justin Parrott (Abu Amina Elias)**

Updated December 8, 2023

Table of Contents

- [Introduction](#)
- [Consent in sexual relationships](#)
- [The prohibition of sexual harm](#)
- [Masculinity in Islam](#)
- [Punishment for rape in Islam](#)
- [Are slavery and concubinage still valid in Islam?](#)
- [Why did Islam allow slavery?](#)
- [Treatment of enslaved people in Islam](#)
- [Consent in concubinage and 'sexual slavery'](#)
- [Misinterpretation of texts mentioning concubines](#)
- [Conclusion](#)

Acknowledgments

I am indebted to several of my colleagues who reviewed this paper and suggested substantial corrections and improvements.

Abstract

The issues of slavery, concubinage, and the rape of women in warfare throughout history are subject to fierce intellectual, philosophical, and psychological discussion. They are issues that have led to painful doubts within many faith communities, including the Muslim community. This paper addresses the allegations that the early Muslims permitted and encouraged the rape of women in warfare and their exploitation as 'sex slaves.' These claims are based upon citing a set of historical facts and Islamic texts out of context, sometimes in the service of hardline anti-immigration politics intended to demonize and dehumanize Muslim immigrants on the whole as sexual predators. The legal status of sexual relationships

within the historical institution of slavery (or more accurately in Islamic terms, the “custodianship of the right hand”) is explained in detail, and the firm prohibition of rape and sexual harm in early Islam is documented. It is also demonstrated that Islam, having inherited an historical system of economic slavery in Arabia, proceeded to humanize slaves and grant them rights and inherent dignity, with several indications in the law that logically resulted in universal emancipation. Finally, it will be proven that sexual consent, while difficult to define in law even today, was certainly a moral requirement as understood by the early Muslims and later scholars, including consent within the concubine relationship.

Introduction

“If a female slave is purchased and she dislikes to be touched, or slept with, then he may not touch her, lie with her, or have intercourse with her unless she consents.”¹

Abū ‘Abd Allāh al-Ḥalīmī (d. 1012)

Consent in sexual relations is an important component of a lawful, healthy marital relationship. Sex is the exclusive means of generating new life, building a family, and ensuring the continuation of humankind, as well as an act of love between a husband and wife. But is the importance of mutual consent, as understood today, found in classical Islamic sources? And were Muslim men allowed to force their wives, and specifically their female slaves or concubines, into sexual engagement against their will?

Slavery, and therefore concubinage, is no longer legally enforceable in Islam ever since Muslim countries unanimously signed onto the UN Slavery Convention treaties.² These agreements were made in

¹ Abū ‘Abd Allāh al-Ḥusayn ibn al-Ḥasan al-Ḥalīmī, *Al-Minhāj fī Shu‘ab al-Īmān* ([al-Qāhirah]: Dār al-Fikr, 1979), 3:267.

² See for example Pakistani Muslim scholar Mufti Taqī Usmani: “...most of the nations of the world have today formed a pact between them, and have agreed that a prisoner

accordance with the logical progression of the Prophet's teachings ﷺ and the consensus of contemporary Muslim leaders, being consistent with traditional Islamic legal theory. The abolition of slavery by treaty was an achievement "clearly rooted in arguments that stretched back to the origins of the faith."³ Islam did not invent these archaic and now-obsolete institutions. The Old Testament, accepted by Jews and Christians, states that Hagar was the concubine of Abraham.⁴ Concubinage, defined as sexual or domestic relations with slave women, was practiced all over the world: in India, China, Rome, Ancient Greece, and even in the United States. The abolition of slavery (and thus concubinage) was not socially or economically imaginable until the early modern period. It was simply inconceivable to most societies throughout history, granted that there was no readily viable economic alternative besides what had always existed, but clear indications in Islamic law paved the way for eventual universal emancipation. The historical Islamic jurisprudence of slavery is no longer directly relevant for Muslims, as long as the United Nations holds together, yet it is important for us to discuss because it bears upon perceptions of the nature of Islam itself.

One of the most egregious claims against Islam on the internet, and sometimes in academia, is that the Prophet ﷺ considered wives and concubines to be mere 'property,' subject to the whims of cruel husbands and masters who simply exploited them for sex in demeaning and humiliating ways. Some even claim that Islam weaponized rape in warfare, sanctioning sexual violence against female prisoners in order to intimidate the enemy. Some terrorist organizations, by very selectively and cynically citing the Qur'an and

from the captives of war will not be put into slavery, and most of the Islamic lands today are participants of this agreement, particularly the members of the United Nations, so it is not permissible for an Islamic country today to put a captive into slavery as long as this pact remains." ("Slavery in Islam," *Deoband.org*, January 26, 2013)

www.deoband.org/2013/01/hadith/hadith-commentary/slavery-in-islam/

³ W. G. Clarence-Smith, *Islam and the Abolition of Slavery* (New York: Oxford University Press, 2006), 19.

⁴ Gen. 16:1-2.

Islamic texts without any regard to historical context or traditional interpretive principles, further validated every horrible anti-Islam stereotype in the minds of thousands, if not millions, of people around the world. Could Islam, our religion of peace, really permit such atrocities?

These salacious claims are unsettling, to say the least, and the trouble is compounded by the fact that most people, including many Muslims, are unable to read classical Arabic texts in their social and historical contexts. Many texts are poorly translated, and some key texts have not been translated at all. Since concubinage no longer exists in its historical form and has not existed for a while, the vast majority of contemporary readers have no mediating frame of reference to understand the texts referring to concubines. So, they naturally refer to their modern notions of sexual ethics and consent to interpret such texts, superimposing these biases upon the past and thereby inaccurately concluding that concubinage in the early Muslim community must have amounted to rape and ‘sexual slavery.’ Of course, the harm and abuse people associate in their minds with these undeniably criminal acts have always been absolutely forbidden in Islam, without a doubt. The Prophet ﷺ said, “The Muslim is the one from whose tongue and hand people are safe.”⁵

Compounding the challenge are the limitations of our English vocabulary in accurately describing slavery in general, and concubinage in particular, as it appears in Islamic texts. Most Americans are familiar with only one manifestation of slavery – racial chattel slavery – which was brazenly unjust and barbaric. However, “slavery” in the time of the Prophet ﷺ and his companions was qualitatively very different: slaves had rights and protections, they had human dignity, they had many paths to freedom, major sources

⁵ Al-Nasāʾī, *Sunan al-Nasāʾī* (Aleppo: Maktab al-Maṭbūʿāt al-Islāmīyah, 1986), 8:104, #4995, *kitab al-iman wa sharaʾihī bab sifat al-muʾmin*; declared authentic (*ṣaḥīḥ*) by Al-Albānī in *Ṣaḥīḥ sunan al-Nasāʾī* (Riyadh: Maktabat al-Maʾārif, 1998), 3:342, #5010.

of the slave trade were cut off, and there was no racial element to it. This makes the word “slavery” as applied to Islamic texts problematic, according to Jonathan Brown and Abdullah Hamid Ali, “Ultimately, the word ‘slavery’ can mean so many things that it’s not very useful for accurate communication.”⁶ When describing slavery in Islamic texts, we are limited to English words like “master,” “slave,” and “concubine,” which tend to wrongly conflate the system of racially-based, brutal plantation slavery in the Americas with the tradition of *riqq* (the Arabic legal term translated as slavery) in Islamic history. For this reason, it is best to understand “slavery” in the Islamic context using the term stated in the Qur’an: “those under the custodianship of your right hand” (*mā malakat aymānukum*). The term “custodian,” which some might disparage as a euphemism, is nevertheless more accurate because it reflects the sense of duty to maintain and care for slaves as suggested by the phrase *mā malakat aymānukum*. The right hand, after all, was and still is considered a noble symbol in Arabic literature and culture.

Profound cultural changes in the modern world also affect, and sometimes distort, our interpretation of the past. Some readers of Islamic texts are confused about concubines because they do not appreciate the significant paradigm shift that occurred in the West when adultery and extramarital sex were decriminalized. Lawful sexual intercourse had long been defined as sex that occurred exclusively within marriage, that is, a formally recognized relationship. When extramarital sex was deemed legally and socially acceptable in the West, the legal criterion shifted to the notion of ‘consent.’ The defining feature of modern liberal sexual morality and law is mutual consent between two parties, not a contracted marriage. Back-projecting this contemporary understanding of consent *as a matter of law* onto people living hundreds of years ago does not do justice to how concubinage was understood and

⁶ Jonathan Brown and Abdullah Hamid Ali, “Slavery and Islam: What is Slavery?,” *Yaqeen Institute for Islamic Research*, February 7, 2017, <https://yaqeeninstitute.org/jonathan-brown/slavery-and-islam-what-is-slavery/>.

practiced in their cultures, and it may unfairly demonize them for doing things that were viewed as normal, even benign, in their own times.

Our purpose here is not to call for the re-establishment of slavery and concubinage, nor to deny abusive acts committed by some wayward Muslims throughout history and today. Rather, we put forth this research in order to defend the honor of our religion, our Prophet ﷺ and his companions, to proclaim confidently and without shame that what they did, in their particular socio-historical context, was not only appropriate but morally distinguished. Our mandate, as Muslims, is not to literally imitate all of their behavior (e.g., we not obligated to seek treatment from classical Arabic medicine), but rather to identify the universal ethical precepts underpinning their actions and to apply them by analogy (*qiyās*) to our current situation. Some things they did were cultural or customary at the time, and there is no religious obligation for us to do the same.

Islam, from the very beginning, was concerned with the good treatment of wives and, by extension, concubines. It outlawed all sexual activity except within these two narrowly defined legal relationships. It preached the virtues of love, justice, kindness, and gentleness. Allah said, “Verily, Allah orders justice and the best conduct.”⁷ Islam prohibited prostitution and rape, in society and on the battlefield, using some of the firmest legal mechanisms available. It highly incentivized the freeing of enslaved people, while at the same time significantly restricting the acquisition of new slaves. Islam humanized women, concubines, and slaves, and gave them rights and protection by law, as well as equality in human dignity and within the fellowship of faith, long before the bloody wars that formally ended racially-based chattel slavery in the West.

In this article, we examine Islamic texts in regard to the moral and legal status of consent within a healthy sexual relationship. We

⁷ Qur’an 16:90.

discuss the legal prohibitions that Islam placed upon rape and other forms of sexual violence. Lastly, we demonstrate how these teachings are applied to the historical institution of concubinage.

Consent in sexual relationships

The idea of sexual consent as a specific *legal* requirement, not simply a moral necessity, is plagued by many problems. How can it be concretely defined in terms of law without a publicly recognized, documented, consent-based marriage? How can it be established as a fact in court if there is no physical evidence? Alan Wertheimer notes the ambiguity of the idea:

Is consent (solely or primarily) a state of mind or is it an action? Can one consent to sexual relations by adopting the relevant mental state? If an act of consent is necessary, is it sufficient? Can one give (valid) consent to sexual relations that is not accompanied by the relevant mental state? If consent is an action, what sorts of actions are required? Is verbal consent required? Is tacit consent possible?⁸

Likewise, Joseph Fischel points out several flaws in the current consent paradigm:

One key problem with the primacy of consent in our sex politics is that its conceptual thinness has been remedied by increasingly more robust, sometimes ridiculous redefinitions of consent as enthusiastic, imaginative, creative yes-saying. But the unfortunate corollary is the cultural coding of non-enthusiastically desired sex as sexual assault, which generates conservative and sometimes feminist backlash (“Bad sex is not *rape*, after

⁸ Alan Wertheimer, *Consent to Sexual Relations* (New York: Cambridge University Press, 2003), 3.

all,” sings this chorus) and perhaps exacerbates one’s sense of injury when sex goes awry.⁹

This legal disorientation plays out in many scenarios of he-said-she-said sexual encounters, a new problem that exists primarily because sex has been validated outside of legally-binding, written marriage contracts. The confusion is made even worse by the widespread use of alcohol and intoxicating drugs, as at least 50% of sexual assaults in the United States involve the use of alcohol or other drugs by the perpetrator, the victim, or both.¹⁰ Policy-makers are left with the unenviable task of reconciling the legal protection afforded to alcohol use and extramarital sex with the intangible nature of ‘consent’ as the fundamental legal condition.

Since liberal societies in the West have not completely resolved the problems of sexual consent as a matter of law, it is not surprising that classical Muslim scholars say little about it. The legal discourse on consent is a very modern discussion, in a very modern and libertine social context. Transposing the current zeitgeist onto texts from the past will inevitably lead to a mistaken perspective on those communities who lived before us.

On the other hand, the Prophet ﷺ and his companions, following divine guidance, were wise to confine sexual relations to formally recognized relationships: marriage and concubinage. Consent was morally necessary for sexual intercourse but not sufficient in itself as a matter of law. The latter jurists did not enshrine consent into law, except in cases of rape in which a woman’s lack of consent protected her from the charge of adultery, led to the punishment of her attacker, and provided her with compensation for her suffering. The inherent difficulty of defining consent as a general legal condition,

⁹ Joseph J. Fischel, *Screw Consent: A Better Politics of Sexual Justice* (Oakland: University of California Press, 2019), 4.

¹⁰ Christopher P. Krebs, Christine H. Lindquist, Tara D. Warner, Bonnie S. Fisher, and Sandra L. Martin, “The Campus Sexual Assault (CSA) Study,” National Criminal Justice Reference Service, December 2007, viii, www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf.

among other things, precluded it from becoming part of the law. However, consent was a *moral* requirement within a proper sexual engagement, as part of a healthy domestic relationship.

In Islam, marriage is an ideally spiritual act of worship by which one grows closer to Allah, with important legal and social ramifications. It was understood by the early Muslims that sexual intercourse within these unions is based upon mutual love, not conquest, dominance, or animalistic passion. The relationship between a husband and his wife, and by analogy a custodian and his concubine, is to be rooted in compassion; it is not appropriate to merely utilize one another as sexual objects. Allah said, "Among His signs is that He created mates from yourselves to dwell in peace with, and He has placed between you affection and mercy. Verily, in that are signs for those who reflect."¹¹ Qatādah (d. 736) interpreted "affection and mercy" in the verse to mean "compassion for one another."¹² Al-Hasan al-Baṣrī (d. 728) said, "Affection and mercy is compassion in their hearts for one another." Al-Suddī (d. 745) said, "Affection is love and mercy is empathy." And, interpreting the two terms in a more specific sense, Ibn 'Abbās (d. 687) said, "Affection is sexual intimacy, and mercy is children" and that "affection is the love of a man for his wife."¹³

Hence, sexual intimacy in Islam is based upon these fundamental moral values. It should take place within a legal, dignified, and mutually agreeable relationship pleasing to both parties. The Prophet ﷺ said, "When one of you comes to their spouse for intercourse, let them cover themselves and not approach each other like two wild mules."¹⁴ Imām al-Ghazālī (d. 1111) explains this narration, writing

¹¹ Qur'an 30:21.

¹² Al-Ṭabarī, *Jāmi' al-bayān 'an ta'wīl al-Qur'ān* (Beirut: Mu'assasat al-Risālah, 2000), 20:86, verse 30:21.

¹³ Al-Qurṭubī, *Jāmi' li-aḥkām al-Qur'an* (Cairo: Dār al-Kutūb al-Miṣrīyah, 1964), 14:17, verse 30:21.

¹⁴ Ibn Mājah, *Sunan Ibn Mājah* (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 1975), 1:618, #1921, *kitab al-nikah bab al-tasattur 'ind al-jima'*; declared fair (*ḥasan*) by Al-Suyūṭī as cited in *Al-*

“it means be not like two donkeys, but rather let them approach with kind words and kisses.”¹⁵ The sexual act should not be a purely physical and carnal release of hormones. It includes emotional and spiritual components that bring the souls of two believers closer together. Another classical scholar, Ibn al-Qayyim (d. 1350), elaborates, “As for sexual intercourse and intimacy, the Prophet’s ﷺ guidance was the most perfect of guidance. It preserves health, it fulfills pleasure and personal happiness, and it achieves the purposes for which it was made.”¹⁶

The lawful sexual act between a husband and wife, or a man and his concubine, in which *both* experience pleasure, is, in reality, an act of worship. The Prophet ﷺ said, “In a man’s intimate relations with his wife is charity.” The companions said, “O Messenger of Allah, is there a reward for one who satisfies his passions?” The Prophet ﷺ said, “You see that if he were to devote himself to the forbidden, it would be a sin. Likewise, if he were to devote himself to the lawful, he will have a reward.”¹⁷ As such, when two legal partners please one another in sexual intercourse, this is an act of charity for which they will be rewarded by Allah in the Hereafter.

The prohibition of sexual harm

Since mutual pleasure is one of the acknowledged purposes of lawful sex, it naturally cannot be attained by force, compulsion, or violence. Imam al-Shāfi’ī (d. 820) has an interesting passage that can possibly shed light upon the unstated views of the earliest jurists. As noted earlier, the jurists did not discuss the issue of consent as a legal matter, so we must ‘read between the lines,’ so to speak, to infer what

Tanwīr sharḥ al-jāmi’ al-ṣaghīr (Riyadh: Muḥammad Ishāq Muḥammad Ibrāhīm, 2011), 1:490, #339.

¹⁵ Al-Ghazzālī, *Iḥyā’ ‘ulūm al-dīn* (Beirut: Dār al-Ma’rifah, 1980), 2:50.

¹⁶ Ibn Qayyim al-Jawzīyah, *Zād al-ma’ād fī ḥady khayr al-’ibād* (Beirut: Mu’assasat al-Risālah, 1994), 4:228.

¹⁷ Muslim, *Ṣaḥīḥ Muslim* ([Beirut]: Dār Iḥyā’ al-Kutub al-‘Arabīyah, 1955), 2:697, #1006, *kitāb al-zakat bab bayan in ism al-sadaqah*.

they might have thought about it from a moral perspective. Al-Shāfi'ī was asked questions about a man's responsibility to spend time with his wife or wives, and specifically whether he is required to have intercourse with her at regular intervals. He answered:

Likewise, if he has only one wife or an additional concubine with whom he has intercourse, he is commanded to fear Allah Almighty and to not harm her in regards to intercourse, although nothing specific is obligated upon him. He is only obligated to provide what benefits her such as financial maintenance, residence, clothing, and spending the night with her. As for intercourse, its position is one of pleasure and no one can be forced into it (*la yujbaru aḥadun 'alayhi*).¹⁸

The main legal takeaway of this passage is that a husband cannot be forced by law to have intercourse with his wife on a consistent basis because a man does not necessarily have control over his ability to achieve an erection. A careful reading of this paragraph, however, reveals a little bit more about how sex was conceived. Al-Shāfi'ī commands the husband "to fear Allah" and "to not harm her in regards to intercourse" by abandoning her completely. Ibn Qudāmah (d. 1223) and others were stricter than him, saying a husband is obligated to satisfy his wife's sexual needs on a regular basis.¹⁹ Al-Shāfi'ī and these jurists acknowledged that not being intimate with her at all would be emotionally harmful.

Furthermore, Al-Shāfi'ī's broad wording at the end of the paragraph ("*no one may be forced into it*") seems to be a general observation on the nature of marital sex as a mutually pleasurable activity, especially since he acknowledges that a husband abstaining from sex completely would be harmful to his wife. It was not uncommon for jurists to make a wider point when discussing a specific case or relate it back to their social or moral values. Al-Shāfi'ī's habit was to

¹⁸ Al-Shāfi'ī, *Al-Umm lil-Shāfi'ī* (Beirut: Dār al-Ma'rifah, 1990), 5:203.

¹⁹ Ibn Qudāmah, *Al-Mughnī* (Egypt: Maktabat al-Qāhirah, 1968), 7:300.

admonish men to treat women in the best way. When discussing the matter of divorcing a menstruating wife just a few pages earlier, for instance, he says, "Allah Almighty has commanded good conduct, to release in the best manner, and He has prohibited harm. Divorcing a menstruating woman is harmful to her."²⁰ He delivers the legal verdict not as an empty mechanical rule, but rather as one that is rooted in the values of good custom (*al-ma'ruḥ*), excellent behavior (*al-iḥsān*), and avoiding harm.

Similarly, we can infer that such values would have informed his answer if he had been asked point-blank about a man physically forcing an unwilling wife or concubine into intercourse. Indeed, a major jurist writing in the Shāfi'ī school, Abū 'Abd Allāh al-Ḥalīmī (d. 1012), was explicit about the need for consent in the concubine relationship, "If a female slave is purchased and she dislikes to be touched, or slept with, then he may not touch her, lie with her, or have intercourse with her unless she consents."²¹ He bases this ruling on Allāh's command to "behave well" with servants and slaves.²² Al-Ḥalīmī follows the moral weight of the verse to its natural conclusion. It is inconceivable that one is treating their slaves in the best manner while at the same time forcing them into intimacy, much less harming them.

The principle that developed in Al-Shāfi'ī's school is that any sexual activity resulting in harm is by definition unlawful, even if it occurs in an otherwise valid relationship. Al-Nawawī (d. 1277) expresses this important general rule in the context of consummating a marriage with a petite woman, "If it is possible to have intercourse with her without harming her, then he may do that. If it is not possible for him to have intercourse with her except by harming her, then he does not have permission to have intercourse with her."²³

²⁰ Al-Shāfi'ī, *Al-Umm lil-Shāfi'ī*, 5:193.

²¹ Abū 'Abd Allāh al-Ḥalīmī, *Al-Minhāj fī Shu'ab al-Īmān*, 3:267.

²² Qur'an 4:36.

²³ Al-Nawawī and Al-Subkī, *Al-Majmū' sharḥ al-muhadhdhab* ([Beirut]: Dār al-Fikr, 1991), 16:409.

Physical violence, of course, was always forbidden, and the jurists were likewise concerned with emotional harm. But how can we legally define sexual harm, especially in a psychological context? Would such a definition change according to different times, places, and societies?

Most types of physical harm, such as bruises or scars, are easy to identify and are therefore clearly outlawed. Other types of harm are subtler and may differ according to a society's customs. For this reason, the Qur'an regulates sexual relationships according to what is customarily good, which accounts for different social circumstances. Ibn Taymīyah (d. 1328) mentions this principle in the context of a husband being intimate with his wife:

It is similar to what is obligatory for the wife of provision and clothing according to what is customarily good, which is what people know to be good in their circumstances... Likewise, what is required of him of intimacy and companionship, he must spend the night with her and have intercourse with her according to what is customarily good, and that differs according to their different circumstances. It is more correct of the two opinions on the obligation of intercourse that it is determined by what is customarily good.²⁴

Some harmful sexual acts are inherently forbidden in Islam, such as anal sex for both men and women. Other acts are permissible or unlawful depending on their effects on people and on society. Lack of whole-hearted and enthusiastic sexual consent in every single intimate encounter may not have seemed as emotionally harmful to our ancestors as people see it today; we cannot assume what is customarily good to us was exactly the same for them. Even so, consent was still viewed by early Muslims as a morally necessary component of an ideal sexual relationship based on happiness,

²⁴ Ibn Taymīyah, *Majmū' al-fatāwā* (Medina: Majma' al-Malik Fahd li-Ṭibā'at al-Muṣṣḥaf al-Sharīf, 1995), 34:85.

mutual pleasure, love, and compassion. The importance we place on consent in our modern understanding of good custom only makes it even more critical for us to discuss as it relates to a healthy sexual relationship.

Masculinity in Islam

Al-Shāfi'ī's sensitivity to the concerns of women were likely influenced by his understanding of traditional Islamic masculinity, as he said, "Manhood (*al-muru'ah*) is based upon four pillars: good character, generosity, humility, and devotion."²⁵ The righteous predecessors did not conceive of masculinity as involving 'alpha-male' or 'pick-up-artist' behaviors. A true man in Islam is honorable to women, selfless, humble, and gentle, not domineering or abusive. It was said to al-Aḥnaf ibn Qays (d. 687), "What is manhood?" Al-Aḥnaf said, "Forbearance in a time of anger and forgiveness in a time of power."²⁶ Muḥammad ibn al-Naḍr al-Ḥārithī (d. ≈ 800)²⁷ said, "The first part of manliness is a cheerful face. The second part is loving-kindness (*tawaddud*) to people. The third part is fulfilling the needs of others."²⁸

The measure of a man's character is directly related to his degree of chivalry towards the women in his life. Allah said, "Live with them honorably."²⁹ The Prophet ﷺ said, "The most complete of the believers in faith are those with the most excellent character, and the

²⁵ Al-Bayhaqī, *Manāqib al-Shāfi'ī* (Cairo: Maktabat Dār al-Turāth, 1970), 2:188.

²⁶ Ibn al-Marzubān, *Al-Murū'ah wa mā jā'a fī dhalika 'an al-nabī wa 'an al-ṣaḥābah wal-tābi'īn* (Beirut: Dār Ibn Ḥazm, 1999), 60.

²⁷ There is no confirmed date for the death of Muḥammad ibn al-Naḍr al-Ḥārithī. He lived in Kufa, Iraq in the 8th century and was known for his devotional worship. He narrated from Al-Awza'ī (d. 774) and others. See the classical biographical dictionary by Shams al-Dīn al-Dhahabī, *Siyar a'lām al-nubalā'* (Cairo: Dār al-Ḥadīth, 2006), 7:227.

²⁸ Aḥmad ibn Marwān Al-Dīnawarī, *Al-Mujālasah wa jawāhir al-'ilm* (Beirut: Dār Ibn Ḥazm, 1998), 3:189, #828.

²⁹ Qur'an 4:19.

best of you are the best in behavior to their women.”³⁰ And the Prophet ﷺ said, “I order you to be good to women.”³¹ In another version of this tradition, the Prophet ﷺ said, “Verily, Allah orders you to be good to women, for they are your mothers, your sisters, and your aunts.”³² Exhortations of this nature are plentiful in the Sunnah, as stated by Ibn ‘Asākir (d. 1176), “Many prophetic traditions have been related in regards to ordering good treatment of women and the command to protect them and care for them.”³³ Male believers, then, are judged by Allah according to how they treat women. If this is so, how can a man who fears Allah even consider harming or exploiting a vulnerable woman?

To recap, sexual activity in Islam is only lawful in a recognized legal relationship, which in our times is exclusively marriage. Every other type of sexual relationship is unlawful, as adultery and extramarital sex are among the major sins. Lawful sexual relations should be based on love, compassion, and mutual happiness. Coercion or ‘rape’ defeats this fundamental purpose to begin with, in addition to unlawfully harming the victim. Moreover, the righteous predecessors understood that a true man in Islam was honorable to women, strong but gentle, protecting but humble, forgiving and not cruel, merciful and not abusive.

Punishment for rape in Islam

The jurists classified rape as “compulsion to commit adultery” (*al-ikrah ‘alā al-zina*), and thus it was prosecuted under the laws related to extramarital sex and adultery. If a woman had been forced into an

³⁰ Al-Tirmidhī, *Sunan al-Tirmidhī*, 2:457, #1162, *kitab al-rida’ bab ma ja’a fi haq al-mar’ah ‘ala zawjiha*; declared authentic (*ṣaḥīḥ*) by Al-Tirmidhī in the comments.

³¹ Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 4:133, #3331, *kitab al-ahadith al-anbiya’ bab khalq Adam*.

³² Al-Ṭabarānī, *Al-Mu’jam al-kabīr* (Cairo and Riyadh: Maktabat Ibn Taymīyah, Dār al-Ṣumay’ī, 1983), 20:274, #648; declared authentic (*ṣaḥīḥ*) by Al-Albānī in *Silsilat al-aḥādīth al-ṣaḥīḥah* (Riyadh: Maktabat al-Ma’ārif, 1996), 6:873, #2871.

³³ ‘Abd al-Raḥmān ibn ‘Asākir, *Kitāb al-arba’in fi manāqib ummahāt al-mu’minīn* (Damascus: Dār al-Fikr, 1986), 110.

illegal sexual relationship, this fact absolved her from any guilt in the crime. In this specific context, consent was an important legal factor in determining the outcome.

To clarify our terms at the outset, the English word 'rape' is derived from the Latin *rapere*, meaning to seize, to carry off by force, or to plunder. In ordinary linguistic usage today, 'rape' means "to force someone to have sex when they are unwilling, using violence or threatening behavior."³⁴ The word brings to mind a coercive sexual assault, whether it occurs within a marriage or not. This type of attack is always sinful regardless of the context in which it is committed.

It is reported with a weak chain of authority that the Prophet ﷺ was presented with a woman who was raped (*al-mustakrahah*), so he punished only the rapist. Despite weakness in the chain, Al-Tirmidhī notes that "people of knowledge among the companions of the Prophet ﷺ and others acted upon this, that there is no punishment upon the woman who was raped."³⁵ This was his way of stating a consensus on the matter. Nāfi' reported that a man was invited as a guest of a family, then he forced himself upon one of their women. It was referred to the first Caliph Abū Bakr (d. 634), so he flogged him and expelled him, and he did not punish the woman.³⁶ The second Caliph, 'Umar ibn al-Khaṭṭāb (d. 644), was presented with a servant-girl who was raped by one of the young men, so 'Umar flogged the man and he did not flog the woman.³⁷ And Ḥajjāj reported that a man forced himself upon a woman among them. It was referred to the

³⁴ *Cambridge Dictionary*, s.v. "rape,"

<https://dictionary.cambridge.org/dictionary/english/rape>.

³⁵ Al-Tirmidhī, *Sunan al-Tirmidhī*, 3:107, #1453, *kitab al-hudud bab ma ja'a fi al-imra'ah istukrihat 'ala al-zina'*.

³⁶ Ibn Abī Shaybah, *Al-Muṣannaf* (Riyadh: Maktabat al-Rushd, 2004), 5:505, #28422, *bab fi al-mustakrahah*.

³⁷ Ibn Abī Shaybah, 5:505, #28421.

Caliph ‘Umar ibn ‘Abd al-‘Azīz (d. 720) and he applied legal punishment on the rapist.³⁸

As we can see, there was an unbroken precedent (*sunnah*) of outlawing rape, from the Prophet ﷺ through the first righteous Caliphs until the laws of Muslim countries today. Classical scholar Ibn ‘Abd al-Barr (d. 1070) summarizes the ruling of Islamic law in regards to rape as follows:

The scholars agreed that the rapist must be given *ḥadd* punishment if there is clear evidence against him that he deserves *ḥadd* punishment or if he confesses to it. If the evidence is not as clear, then he is given a discretionary punishment. There is no punishment upon her if it is true that he forced her and overpowered her... We do not know of any difference between the scholars that the woman who is raped is not punished.³⁹

Unlike cases of adultery, which require the strict and unlikely condition of being seen in public by four credible witnesses, Ibn ‘Abd al-Barr notes that cases of rape had a lower standard of evidence for prosecution, such as people hearing her cries for help (*istighāthatuha*). Neither the Prophet ﷺ, nor any of the Caliphs previously cited, ever obligated a rape victim to produce four witnesses.

Consent is the decisive factor distinguishing a case of adultery or extramarital sex, in which both the man and woman are punished, from a case of rape, in which the woman or victim is not liable. The victim’s lack of consent to an illegal sexual relationship protected them from prosecution. Al-Ḥasan al-Baṣrī said, “There is no legal punishment upon a woman who has been forced.”⁴⁰ Ibn Qudāmah notes that a woman could only be prosecuted for adultery if she did so “by choice.” He writes, “If she was forced to do so, there is no

³⁸ Ibn Abī Shaybah, 5:505, #28423.

³⁹ Ibn ‘Abd al-Barr, *Al-Istidhkār* (Beirut: Dār al-Kutub al-‘Ilmiyah, 2000), 7:146.

⁴⁰ Ibn Abī Shaybah, *Al-Muṣannaf*, 5:505, #28424, *bab fi al-mustakraḥah*.

legal punishment for her.”⁴¹ And Ibn al-Qayyim writes, “There is no legal punishment for the woman coerced into adultery.”⁴² In sum, any type of violent or compelled sexual activity outside of a legally recognized relationship was considered an act of rape (*al-ightisāb*) and the victim was not held responsible. If an assault occurred within a marriage, it was considered an unlawful act of domestic violence. Needless to say, a husband may not abuse his wife for any reason, in accordance with the legal maxim of no harm.

Now, is it true that Muslim men were allowed to rape female prisoners of war? The reality of warfare throughout history was that men, women, and children were taken as prisoners or ‘slaves.’ A female prisoner could become incorporated into a Muslim household and the wider Muslim society if she either embraced Islam or was from the ‘people of the Book’ (*Ahl al-Kitāb*); i.e., Jewish or Christian. This properly constituted and legally recognized relationship with her custodian made a female prisoner of war a concubine, which granted him the right to have sexual relations with her on the condition that he provided for her and did not abuse her.

Due to legal considerations in the treatment of a concubine entering a household, this type of relationship was similar, though not equivalent to, a marriage to a free woman. The word for ‘concubine’ (*al-surriyah*) is linguistically related in classical Arabic to the word for a marriage contract (*al-nikāḥ*). As put by leading lexicographer Ibn Manẓūr (d. 1311), “As they say ‘a concubine,’ the origin is from the word ‘privacy,’ which is marriage.”⁴³ If a concubine bore children with her custodian, her children would be born free and she would be automatically set free upon his death, if not earlier. She was not to be sold off or separated from her children, either born from her custodian or before him, in any circumstances. Imām Aḥmad (d. 855)

⁴¹ Ibn Qudāmah al-Maqdisī, *Al-Kāfi fī fiqh al-Imām Aḥmad* (Beirut: Dār al-Kutub al-‘Ilmiyah, 1994), 4:86.

⁴² Ibn Qayyim al-Jawziyah, *Al-Ṭuruq al-ḥukmīyah fī al-siyāsah al-shar’īyah* (Damascus: Maktabat Dār al-Bayān, 2005), 1:49.

⁴³ Ibn Manẓūr, *Lisān al-‘Arab* (Beirut: Dār Ṣādir, 1994), 4:304.

was direct in his view that it was absolutely forbidden to separate an enslaved woman from her children, even if they both agreed to it.⁴⁴ The exclusion of polytheists and idolaters from concubinage also indicated that the relationship must be spiritually compatible as if it were a marriage.⁴⁵ If these women were truly considered ‘sex slaves’ or property, there would have been no prohibition on having idolatrous concubines.

Concubinage in early Islam thus resembled marriage in several ways, with later jurists making such legal analogies explicit. As such, it is more appropriate to understand the custodian-concubine relationship in terms of social contract law, rather than property law.⁴⁶ People under custodianship were not viewed by early Muslims as mere commodities, as if the custodian held ultimate rights over them and they had no rights whatsoever. Enslaved people had rights and duties and inherent human dignity in Islam, as detailed in a later section. A custodian simply slapping a slave on the face was moral grounds for their emancipation, as the Prophet ﷺ had commanded.⁴⁷ That said, sexual relations between a custodian and his concubine, who was formerly a prisoner of war, were only valid on the condition that the leader or commander authorized their relationship. If a Muslim man forced a female prisoner into sex, or even if they had consensual sex without properly legalizing their relationship, it was prosecuted as adultery.

⁴⁴ Ibn Rajab, *Jāmi’ al-‘ulūm wal-ḥikam* (Beirut: Mu’assasat al-Risālah, 2001), 1:186; see also *The Compendium of Knowledge and Wisdom* (London: Turath Publishing, 2007), 94.

⁴⁵ Al-Ḥajāwī, *Zād al-mustaqni’ fi ikhtisār al-muqni’* (Riyadh: Dār al-Waṭan lil-Nashr, 2002), 1:165. Al-Ḥajāwī writes, “For whoever it is forbidden to have intercourse by marriage contract, it is forbidden to have intercourse by custodianship of the right hand, except for a woman among the people of the Book.”

⁴⁶ Intisar A. Rabb, *Doubt in Islamic Law: A History of Legal Maxims, Interpretation, and Islamic Criminal Law* (Cambridge: Cambridge University Press, 2015), 151.

⁴⁷ Muslim, *Ṣaḥīḥ Muslim*, 3:1279, #1658, *kitab al-ayman bab suhbah al-mamalik*. Suwayd ibn Muqarrin said, “I was the seventh of my brothers during the lifetime of the Messenger of Allah ﷺ and we had only one servant. One of us became enraged and slapped him, so the Prophet ﷺ commanded us to set him free.”

Harūn ibn al-Aṣimm reported that 'Umar ibn al-Khaṭṭāb dispatched Khalīd ibn al-Walīd (d. 642) with the army. Khalīd sent Dirār ibn al-Azwar along with a company of horsemen and they raided a district belonging to the tribe of Asad. They captured a woman who was a beautiful bride-to-be and she amazed Dirār. He asked his companions for her and they gave her to him, then he had intercourse with her. When he returned from the expedition, he regretted what he had done and he collapsed in dismay. His commander sent a letter to the Caliph 'Umar asking if what he had done was a crime, and the Caliph replied that it was as a *ḥadd* offense. Dirār, however, had died of natural causes before his sentence could be carried out; as mentioned by the narrator, "Allah did not humiliate Dirār ibn al-Azwar."⁴⁸

In this case, Dirār had not acquired formal recognition of a legal relationship with this young woman and, whether their intercourse was consensual or not, 'Umar judged that he be given the maximum penalty for adultery. If he had forced himself on her, it would have made his crime all the worse. Muslim soldiers could not simply pick up slave girls or prisoners off the battlefield and have sex with them, consensual or otherwise. Based on this precedent, the early jurists categorically prohibited rape on the battlefield, or any kind of extralegal sexual intercourse, in the strongest terms. Al-Shāfi'ī said, "If a man usurps a slave woman and then has intercourse with her thereafter, and he is not ignorant, the slave woman is taken away from him, he is fined, and he is punished for adultery."⁴⁹ Even if the slave woman or prisoner had consensual sex with a soldier, but without their concubine relationship being recognized by law, it was still considered adultery. The lack of consent only made it an even greater crime. Rape, then, was never allowed in Islam as a weapon of war or, indeed, in any situation at all.

⁴⁸ Al-Bayhaqī, *Al-Sunan al-kubrā* (Beirut: Dār al-Kutub al-'Ilmiyah, 2003), 9:177, #18222.

⁴⁹ Al-Shāfi'ī, *Al-Umm li'l-Shāfi'ī*, 3:253.

Lastly, physical violence was not considered necessary for an act of rape to be committed. A man who threatened a woman into sex, or otherwise exploited her vulnerability, was likewise guilty of rape even if he did not physically harm her. 'Umar was asked to judge a woman who had been suffering from thirst. She passed by a shepherd and asked him for water. The man refused to give her anything unless she offered herself to him, so she had intercourse with him. 'Umar consulted his advisors as to whether she should be punished for adultery. 'Alī ibn Abī Ṭalīb (d. 661), who would later become the fourth Caliph, said, "This is compulsion. I believe you should set her free." Thus, 'Umar set her free and, presumably, the shepherd was punished.⁵⁰

In sum, Islam prohibited all forms of extramarital coerced sex, whether violent or non-violent, as these acts were classified as a type of adultery. A female victim's lack of consent absolved her from any prosecution. Moreover, the rape of female prisoners of war, and even consensual sex with them but without legal recognition, was strictly forbidden as equivalent to adultery. This legal schema sought to prevent all sexual acts outside of marriage and concubinage, as well as to prohibit all types of sexual harm.

But what of sexual violence in an otherwise lawful relationship? Is a man allowed to 'rape' his wife or, for the purpose of this research, his legally acquired concubine? Before we answer this question, we first need to contextualize slavery in Islam, which is the now-defunct social institution in which concubinage operated.

Are slavery and concubinage still valid in Islam?

Slavery was a social and economic custom that Islam inherited; it was never considered an act of worship, nor praiseworthy in itself. The

⁵⁰ Al-Bayhaqī, *Al-Sunan al-Kubrā*, 8:411, #17050; declared very good (*al-jayyid*) by Al-Albānī in *Irwā' al-ghalīl fī takhrīj al-aḥādīth manār al-sabīl* (Beirut: al-Maktab al-Islāmī, 1985), 7:341, #2313.

sale of existing slaves and the acquisition of new slaves by capturing prisoners of war was regarded as a social reality for which rules needed to be established. Taking new slaves was never considered an inherently virtuous act and it was constricted by law, while freeing slaves was encouraged in several ways and was legally expanded. Indeed, Muslim scholars always acknowledged that slavery was harmful (*ḍarar*) because a slave was not free to make their own choices or fully enjoy the fruits of their labor.⁵¹ Nonetheless, it was a reality that had to be managed with rules.

Slavery is invalid in Islam today on the basis of the essential legal maxim, “Custom is a basis for judgment.”⁵² This principle is extracted from the statement of the senior companion ‘Abd Allāh ibn Mas’ūd (d. 650), “Whatever the Muslims view as good is good in the sight of Allah, and whatever they view as evil is evil in the sight of Allah.”⁵³ Of course, this does not mean that Muslims can violate the clear rules and guidelines of the Shari’ah simply because something is now customary or seems good to them. Rather, this principle has always been understood as affirming that society’s notions of right and wrong are authoritative in instances in which the Qur’an and Sunnah defer to these values (e.g., what is the appropriate monetary amount of a groom’s dowry to his bride?) or for those details of law that Muslim jurists had to elaborate without clear evidence from divine revelation (e.g., who is liable for an injury when someone slips in a bathhouse?).

Custom (*al-’urf*) complements the Shari’ah and allows Muslims to benefit from greater flexibility and adaptability to the ever-changing human condition. But could custom be authoritative enough to prohibit what Allah and His Prophet ﷺ had allowed? The answer was yes. A Muslim ruler or state could administratively restrict or

⁵¹ Jonathan Brown, *Slavery & Islam* (London: Oneworld, 2019), 180–81.

⁵² Al-Suyūṭī, *Al-Ashbāh wal-naẓā’ir fī qawā’id wa furū’ fiqh al-Shāfi’iyah* (Beirut: Dar al-Kutub al-’Ilmiyah, 1990), 1:7.

⁵³ Aḥmad ibn Ḥanbal, *Musnad al-Imām Aḥmad ibn Ḥanbal* (Beirut: Mu’assasat al-Risālah, 2001), 6:84, #3600; declared fair (*ḥasan*) by Al-Arnā’ūṭ in the comments.

outlaw something otherwise permissible, provided that this advanced a common good consistent with the higher objectives of the law (*maqāṣid al-sharīʿah*). This legal principle is known as 'restricting the permissible' (*taqyīd al-mubāḥ*). From the mid-nineteenth century onward, Muslim scholars began applying this legal procedure to restricting and abolishing slavery. Muḥammad 'Abduh (d. 1905) and Rashīd Riḍā (d. 1935) are among the most notable 20th-century proponents of this position.⁵⁴

The Ottoman Empire took steps to abolish slavery during the *Tanzimat* reform period (1839-76), eventually signing the anti-slavery Brussels Conference Act of 1890. Muslim nations are now party to the 1956 United Nations treaty, 'Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.' This is a valid and binding treaty that is beneficial to both Muslims and humankind at large. The laws that prevent Muslims from acquiring new slaves are the same laws that protect Muslims from being enslaved.

We can also draw a comparison between these anti-slavery treaties and the treaty of al-Ḥudaybiyah. In that treaty, the Prophet ﷺ agreed with his enemies that new Muslims who fled from Mecca to Medina would be returned to Mecca in exchange for ten years of peace.⁵⁵ In ordinary circumstances, this would appear to disallow something that was otherwise permissible, even virtuous (emigration or *hijrah* to the Prophet ﷺ), yet it was conditionally forbidden for the sake of the greater good. The wisdom of the treaty at al-Ḥudaybiyah was eventually vindicated by divine revelation, "We have given you a clear victory,"⁵⁶ as well as history, although in the moment it may have seemed like a capitulation. Likewise, a beneficial reciprocal agreement with non-Muslims is valid even if it prohibits a custom that was once permissible in another context. As Allah said, "O you

⁵⁴ Brown, *Slavery & Islam*, 224-27.

⁵⁵ Muhammad al-Ghazali, *Fiqh-us-Seerah* (Doha: Dar ul Thaqafah, 2018), 365.

⁵⁶ Qur'an 48:1.

who have faith, fulfill your contracts.”⁵⁷ It is not far-fetched to imagine the Prophet ﷺ respecting anti-slavery treaties if he were alive today.

Why did Islam allow slavery?

Why did Islam allow slavery in the first place if it is undesirable? We can understand from history that the road to universal emancipation was long and bloody. In America alone, slaves were forcibly emancipated only after a civil war that cost the lives of over half a million people as well as immeasurable property damage; even thereafter, the oppression of African-Americans endured, and continues to endure, in new forms. Uprooting such an entrenched institution cannot be done very quickly, which is why even Jesus ﷺ and the early Christians did not support outright abolition.

According to the classic *Encyclopaedia of Religion and Ethics*, the “immediate abolition or attempted abolition of slavery in the Roman empire would probably have led to the collapse of the fabric of the society.”⁵⁸

Slavery before Islam was also deeply embedded in the economy and culture of the pre-modern Mediterranean and Near East. It would have been difficult for people in that era to conceptualize the economy working any other way, as it had always been this way before Islam and in kingdoms around the world. Consider a village whose food supplies were sustained by slave labor. If all enslaved people were freed overnight and slavery became illegal, immediately these people would have become homeless and their custodians, having suffered a steep commercial loss, would have been unable to pay wages to their former slaves. The turmoil in this village would have rippled through neighboring villages with whom they traded,

⁵⁷ Qur'an 5:1.

⁵⁸ James Hastings, John A. Selbie, and Louis H. Gray, *Encyclopaedia of Religion and Ethics* (New York: Scribner, 1908), 11:602.

and it would have ushered in a region-wide economic crisis, not to mention that most masters would have fiercely resisted any sweeping legal decree against their financial interests. It was not until the 18th-century Industrial Revolution that this older economic order became functionally unsustainable.

By appreciating these facts, we can understand that abolition was not socially or economically conceivable prior to the early modern period. As Aristotle said, one could only imagine dispensing with slave labor if looms powered themselves.⁵⁹ He turned out to be correct. It was simply not possible for the Prophet ﷺ to abolish slavery outright. A wiser approach to avoid such a violent reconfiguration of the culture and economy would be to progressively incentivize emancipation and restrict the slave trade, in the way that Islam gradually outlawed alcohol in stages instead of all at once. Likewise, most diseases and medical conditions require a long-term treatment plan, rather than a single operation or a single dose of medication.

Let us draw an analogy to the modern problem of fossil fuel consumption, pollution, and climate change. Fossil fuels are deeply embedded in the modern economy, for transportation, electricity, and as commodities. Yet, we know with a high degree of certainty that burning these fuels harms the planet and the ecosystem. Despite this knowledge, it would be literally impossible to outlaw fossil fuels by decree overnight, even if every country in the world agreed to do so. The global economy would collapse, food supplies would dwindle, and people would suffer terribly. Perhaps 500 years from now, future generations harmed by climate change will look back on us with contempt. How could we have been so selfish and immoral? Was it not clear how harmful these fuels were? But those of us living in this situation today know that we have little or no influence over the configuration of the global economy, and we have no choice but to participate in the use of fossil fuels, directly or indirectly, for the

⁵⁹ Aristotle, *Politics*, 1253b.

time being. Our only realistic option is to gradually support phasing out fossil fuels from the global economy by providing incentives to businesses and individuals, like subsidies for electric cars and clean renewable energy technologies.

In the same manner, the Prophet ﷺ could not have realistically abolished slavery in Arabia simply by decree. Instead, he instituted important paradigm shifts and rules that spiritually and legally incentivized Muslims to emancipate slaves, while at the same time limiting the legal avenues to acquire slaves and mitigating its potential for abuse, eventually leading to the universal abolition adopted by Muslims today.

The companions understood that the natural and default state of a human being is freedom. 'Umar once famously reprimanded one of his governors for abuses under his watch, saying, "Since when did you enslave people while they were born from their mothers free?"⁶⁰ The classical jurist al-Sarakhsī (d. 1090), expressing the view of many jurists in his time, defined human beings as a single species born free, while slavery was an incidental aberration, "The free and the slave are of the same species, for the human being is regarded in his original state as free. Then, he is exposed to slavery and emancipation nullifies the slavery to which he was exposed."⁶¹ Freedom is the original condition of humankind, and slavery is an anomaly.

The Qur'an, in the earliest revelations, praised the freeing of slaves as a means to enter Paradise. Allah said, "What will let you know what is the most difficult pass? It is the releasing of a slave."⁶² True righteousness is to spend money "for freeing slaves."⁶³ The penalty for unintentional manslaughter was "freeing a believing slave and a compensation payment."⁶⁴ Likewise, breaking one's oath was

⁶⁰ Ibn 'Abd al-Ḥakam, *Futūḥ Miṣr wal-Maghrib* (Cairo: Maktabat al-Thaqāfah al-Dīniyah, 1995), 1:195.

⁶¹ Al-Sarakhsī, *Al-Mabṣūṭ* (Beirut: Dār al-Ma'rifah, 1993), 5:83–84.

⁶² Qur'an 90:12–13.

⁶³ Qur'an 2:177.

⁶⁴ Qur'an 4:92.

amended by “freeing a slave.”⁶⁵ The obligatory Muslim charity (*al-zakaṭ*) could be used to help free slaves.⁶⁶ Those who insulted their wives by likening them to their mother’s “back” (which was a crude type of quasi-divorce) and then later regretted their actions had to “free a slave before they touch one another,” but if they were not wealthy enough to free a slave, they were required to fast for two consecutive months or feed sixty poor people.⁶⁷ Freeing slaves was also the first type of expiation for someone who intentionally broke their fast during Ramadan by having intercourse in the daytime and, according to some views, for anyone who broke their fast without an excuse. A man came to the Prophet ﷺ and he said, “I am ruined, O Messenger of Allah!” The Prophet ﷺ said, “What has ruined you?” The man said, “I was intimate with my wife during the daytime of Ramadan.” The Prophet ﷺ said, “Can you find a slave to set free?”⁶⁸ The Prophet ﷺ even ordered his companions to free slaves on the occasion of a solar eclipse.⁶⁹

Slaves could also negotiate a contractual agreement with their custodians that they would be freed after a certain amount of earnings (*mukāṭabah*) or after the custodian’s death (*mudabbbar*), as Allah said:

Those who seek a contract of emancipation among those under the custodianship of your right hands, then make a contract with them if you know there is good in them and give them from the wealth of Allah which He has given you.⁷⁰

⁶⁵ Qur’an 5:89.

⁶⁶ Qur’an 9:60.

⁶⁷ Qur’an 58:3.

⁶⁸ Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 3:32, #1936, *kitab al-sawm bab idha jama’a fi Ramadan wa lam yakun shay’*.

⁶⁹ Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 2:38, #1054, *kitab al-kusuf bab man ahabb al-’ataqah fi kusuf al-shams*.

⁷⁰ Qur’an 24:33.

With concubines in particular, their status could be upgraded to ‘mother of the child’ (*umm al-walad*) if they birthed a child to their custodian. According to juristic consensus, her children would be born free, she could not be separated from them, and she would be automatically freed upon her custodian’s death. ‘Umar said, “When a servant woman gives birth from her custodian, then he may not sell her, or bestow her, or bequeath her. He may enjoy her and she becomes free when he dies.” Muḥammad al-Shaybanī (d. 805) commented on this tradition, saying, “We adhere to this. It is the opinion of Abū Ḥanifah and the majority of the jurists.”⁷¹ And al-Zurqānī (d. 1688) writes, “This was said by ‘Uthman, most of the successors, the four Imams, and the majority of jurists. When ‘Umar prohibited selling them, it became prohibited by consensus.”⁷²

Protecting the integrity of the family unit, another path to freedom for the mother and her children, should also be noted. As a matter of fact, the separation of prisoners of war or slaves from their family members was prohibited, as the Prophet ﷺ said, “Whoever separates a mother from her child (and in another narration between a father and his child), then Allah will separate him from his loved ones on the Day of Resurrection.” Al-Tirmidhī added, “The people of knowledge among the companions of the Prophet ﷺ and others acted upon this. They disapproved of separating a woman and her child, or a father and his son, or siblings.”⁷³

As we can see, there were several routes through which existing slaves could be freed, while new slaves could only be acquired as prisoners of war or as children born to two slave parents. In the unfortunate case of a battle against an enemy aggressor, Allah instructs Muslims to “secure their bonds, and thereafter show

⁷¹ Mālik ibn Anas and Muḥammad ibn al-Ḥasan al-Shaybānī, *Muwaṭṭa’ al-Imām Mālik* (Beirut: al-Maktabah al-‘Ilmiyah, 2003), 1:282, #799.

⁷² Al-Zurqānī, *Sharḥ al-Zurqānī ‘alā Muwaṭṭa’ al-Imām Mālik* (Cairo: Maktabat al-Thaqāfah al-Dīniyah, 2003), 4:144, #1509.

⁷³ Al-Tirmidhī, *Sunan al-Tirmidhī*, 3:186, #1566, *kitab al-siyar bab fī kirahiyyah al-tafriq bayna al-sabbi*; declared fair (*ḥasan*) by Al-Tirmidhī in the comments.

generosity or seek ransom, until the war has laid down its burdens.”⁷⁴ According to al-Suyutī (d. 1505), to show generosity means “to release them without getting anything in return.”⁷⁵ If prisoners of war could be freed without endangering the community or losing leverage against the enemy in negotiations, then that was the recommended course of action, as the Prophet ﷺ said, “Feed the hungry, visit the sick, and release the captives.”⁷⁶ And even if prisoners are retained, they must be treated with dignity as commanded by the Prophet ﷺ said, “I order you to treat the captives well.”⁷⁷

The most deplorable source of acquiring slaves – outright kidnapping and human trafficking – was condemned by Islam. Al-Bukharī and Muslim, the leading compilers of prophetic traditions, both had chapters dedicated to the virtue of emancipating slaves (*al-’itq*).⁷⁸ In a chapter entitled “the sin of selling a free man (into slavery),” Al-Bukharī recorded that the Prophet ﷺ said, “Allah said: There are three whom I will oppose on the Day of Resurrection: a man who gives his word by Me but proves treacherous, a man who sells a free person and consumes his price, and a man who employs a worker and receives a completed job but he does not pay him his wages.”⁷⁹ This tradition forbids kidnapping and enslaving people who are already free, thereby cutting off and denouncing one of the major sources of the slave trade.

By providing several mechanisms to free slaves and restricting the creation of new slaves, and noting that the natural human state is freedom, the thrust of these rules logically leads to the ideal of

⁷⁴ Qur’an 47:4.

⁷⁵ Al-Suyutī and Al-Maḥallī, *Tafsīr al-Jalālayn* (Cairo: Dār al-Ḥadīth, 2001), 1:673, verse 47:4.

⁷⁶ Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 7:67, #5373, *kitab al-at’amah bab qawl Allahu ta’ala kulu min al-tayyibat*.

⁷⁷ Al-Ṭabarānī, *Al-Mu’jam al-kabīr*, 22:393, #977; declared fair (*ḥasan*) by Al-Haythamī in *Majma’ al-zawā’id wa manba’ al-fawā’id* (Cairo: Maktabat al-Qudsī, 1933), 6:86, #10007.

⁷⁸ Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 3:143; Muslim, *Ṣaḥīḥ Muslim*, 1:1139.

⁷⁹ Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 3:82, #2227, *kitab al-buyu’ bab ithm man ba’a hurran*.

universal emancipation. But what treatment did Islam prescribe for already enslaved people?

Treatment of enslaved people in Islam

The direction towards emancipation is obvious enough, at least in hindsight. However, we need to understand how Islam envisioned the treatment of people it inherited as slaves or prisoners. Allah said:

Worship Allah and associate nothing with Him, and behave well to parents, and to relatives, orphans, the needy, the near neighbor, the far neighbor, the companion at your side, the wayfarer, and those under the custodianship of your right hands. Verily, Allah does not love those who are arrogant.⁸⁰

This verse commands Muslims to treat slaves, or “those under the custodianship of your right hands,” in the “best manner” (*al-ihsān*), just as they should be good to parents, neighbors, community members, and so on. It also prohibits arrogance towards slaves and servants, interpreted to mean “one who boasts over people for what he has been given.”⁸¹

According to Al-Qurtubī, the symbolic imagery of the right hand conveys a sense of responsibility and care:

...that ownership of the right hand, in justice, provides maintenance by obligation of good custodianship and gentleness with slaves. The Almighty attributed ownership to the right hand as it is a praiseworthy attribute, and the right hand specifically has the best qualities to carry it out.⁸²

⁸⁰ Qur’an 4:36.

⁸¹ Al-Suyūṭī and Al-Maḥallī, *Tafsīr al-Jalālayn*, 1:107, verse 4:36.

⁸² Al-Qurtubī, *Jāmi‘ li-aḥkām al-Qur’an*, 5:20, verse 4:3.

It was also encouraged to describe slaves as ‘servants,’ young men and women, and other such non-derogatory terms. The Prophet ﷺ said, “Let not one of you say: My slave boy and my slave girl. All of you are slaves of Allah and all of your women are slaves of Allah. Rather, let him say: My young man and my young woman.”⁸³ By this description, enslaved people were no longer conceived of as merely dehumanized property to be used, abused, and discarded at whim, but rather they were now brothers and sisters in faith, like family members, entitled to equal food and clothing as their custodian and protection from harm.

The companion Abu Dharr was once asked why he wore the same clothes as his servant, and he responded that the Prophet ﷺ told him, “They are your brothers and your attendants. Allah has placed them in your hands. Whoever has his brother under him should feed him with the same food he eats, clothe him with the same clothes he wears, and not burden him beyond his ability. If you burden him, then help him.”⁸⁴ Ibn Ḥajar al-ʿAsqalānī (d. 1449) commented on this tradition, “The placement of the word ‘your brothers’ before ‘your attendants’ indicates the importance of fellowship.”⁸⁵ In a different narration from Jābir, the Prophet ﷺ ordered good treatment of those under custodianship and he would say, “Feed them from the same food you eat, clothe them from the same clothes you wear, and do not torture the creation of Allah Almighty.”⁸⁶ These traditions simultaneously encouraged equality in faith and dignity, while prohibiting abuse. Although scholars did not interpret these statements to mean a slave had literally equal social status as the custodian, they nevertheless recommended such equality as

⁸³ Muslim, *Ṣaḥīḥ Muslim*, 4:1764, #2249, *kitab al-alfaz bab hukm itlaq lafzah al-ʿabd*.

⁸⁴ Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 1:15, #30, *bab al-maʿasī min amr al-jahiliyyah*.

⁸⁵ Ibn Ḥajar al-ʿAsqalānī, *Fath al-Bārī bi-sharḥ al-Bukhārī* (Beirut: Dār al-Maʿrifah, 1959), 5:174.

⁸⁶ Al-Bukhārī, *Kitāb al-adab al-mufrad*, 1:100, #188, *bab iksuhum mima talbisun*; declared authentic (*ṣaḥīḥ*) by Al-Albānī in the comments.

mentioned by Ibn Hajar, "Whoever would adhere to the most perfect way, such as Abu Dharr, he should act equally and this is better."⁸⁷

Good deeds towards slaves were counted as rewardable acts of charity. The Prophet ﷺ said, "Whatever you feed to your servant is charity for you."⁸⁸ They were not to be overworked or burdened, but rather dealt with gently and with dignity. A man came to the Prophet ﷺ and he said, "O Messenger of Allah, how many times should I pardon my servant?" The Prophet ﷺ said, "Seventy times each day."⁸⁹ On the other hand, those who were evil to their slaves are threatened with no less than banishment from Paradise, as the Prophet ﷺ said, "He will not enter Paradise who is an evil custodian."⁹⁰ The early scholar al-Husayn ibn Harb (d. 860) included traditions such as these, among others, in a chapter of his book entitled, "What has been reported regarding the rights of slaves (*ḥaqq al-mamluk*) and good custodianship (*ḥusn milkatihi*)."⁹¹

Because slaves had rights, those who failed to uphold their end of the social contract would lose their custodianship. The Prophet ﷺ said, "Whoever strikes his slave sharply or slaps him, then the expiation for the sin is to emancipate him."⁹² Abū Umāmah al-Bahilī (d. 700) said, "The ingrate is one who refuses to provide living support, who lives alone, and beats his slaves."⁹³ Allah will take retribution in the Hereafter against abusive custodians, as 'Ammār ibn Yāsir (d. 657)

⁸⁷ Ibn Hajar, *Fath al-Bārī*, 5:174.

⁸⁸ Aḥmad ibn Ḥanbal, *Musnad al-Imām Aḥmad*, 28:417, #17179; declared authentic (*ṣaḥīḥ*) by Al-Albānī in *Ṣaḥīḥ al-jāmi' al-ṣaḥīḥ wa ziyādatihi* ([Damascus]: al-Maktab al-Islāmī, 1969), 2:971, #5535.

⁸⁹ Al-Tirmidhī, *Sunan al-Tirmidhī*, 3:400, #1949; declared fair (*ḥasan*) by Al-Tirmidhī in the comments.

⁹⁰ Aḥmad ibn Ḥanbal, *Musnad al-Imām Aḥmad*, 1:209, #31; declared authentic (*ṣaḥīḥ*) by Al-Suyūṭī as cited in *Al-Tanwīr sharḥ al-jāmi' al-ṣaḥīḥ*, 11:181, #9948.

⁹¹ Al-Husayn ibn Harb, *Al-Birr wal-silah* (Riyadh: Dār al-Waṭan, 1998), 177.

⁹² Muslim, *Ṣaḥīḥ Muslim*, 3:1278, #1657, *bab saḥbah al-mamalik*.

⁹³ Al-Bukhārī, *Kitāb al-adab al-mufrad*, 1:86, #160, *bab su' al-milkah*.

said, “None of you strikes his slave unjustly but that the slave will be granted retaliation on the Day of Resurrection.”⁹⁴

Unethical abuse was not simply limited to beatings and excessive work either. It also included harsh and degrading words. Abū Bakr once cursed some of his slaves, so the Prophet ﷺ said, “O Abū Bakr! Are you among those who curse or those who are true? No, by the Lord of the Ka’bah!” On that day, Abū Bakr freed some of his slaves and the Prophet ﷺ said to him, “Do not do it again.”⁹⁵ Even small indignities against slaves, by comparison, were taken very seriously by the companions. ‘Umar once passed by a man who was sitting to eat while his servants were standing. He became very angry and he said, “What is the matter with people who prefer themselves over their servants?”⁹⁶

Furthermore, the Prophet ﷺ was aware that slaves, servants, and concubines were among the most vulnerable classes of people in society, so he issued dire warnings against exploiting and mistreating them, “It is enough sin for a man to withhold from those who are dependent upon him.”⁹⁷ That is, withholding provision from slaves and servants was enough by itself to doom oneself in the Hereafter. In fact, Abū Dāwūd recorded in his chapter “on the rights of slaves” that one of the last things that the Prophet ﷺ said on his deathbed was, “The prayer, the prayer! Fear Allah in regards to those under custodianship of your right hands!”⁹⁸ The worst sin against Allah is to neglect the prayer, and the worst sin against people is to exploit the weak and vulnerable, who at the time were enslaved persons. Muslims ought to take heed that such concerns were running through the mind of the Prophet ﷺ in his last moments on earth.

⁹⁴ Al-Bukhārī, *Kitāb al-adab al-mufrad*, 1:97, #181, *bab qisas al-‘abd*; declared authentic (*ṣaḥīḥ*) by Al-Albānī in the comments.

⁹⁵ Al-Bukhārī, *Kitāb al-adab al-mufrad*, 1:164–65, #319, *bab man la’ana ‘abdahu fa’taqahu*; declared authentic (*ṣaḥīḥ*) by Al-Albānī in the comments.

⁹⁶ Ibn Kathīr, *Musnad al-Fārūq* (Faiyum: Dār al-Falāḥ, 2009), 2:246–47, #582.

⁹⁷ Muslim, *Ṣaḥīḥ Muslim*, 2:692, #996, *bab fadl al-naḥaqah ‘ala al-‘iyal*.

⁹⁸ Abū Dāwūd, *Sunan Abī Dāwūd* (Sidon, Lebanon: al-Maktabah al-Aṣṣīyah, 1980), 4:339, #5156, *bab fi haqq al-mamluk*; declared authentic (*ṣaḥīḥ*) by Al-Albānī in the comments.

Consequently, we are similarly responsible to protect the weak and vulnerable in today's societies, including employees, the working class, the poor, the disabled, and refugees.

These facts about slavery in Islam are important to appreciate not because they are directly applicable to modern life per se, but rather because they testify to the universal moral values taught by Islam. They say something about the nature of Islam as a merciful and enlightened religion. Slavery and concubinage are no longer legally valid, but in its socio-historical context, Islamic teachings were far and away more compassionate and dignified than what most people had ever known before. Having then established the ethical teachings that underpinned the laws in which concubinage operated, we will now investigate the moral status of sexual consent in the concubine relationship.

Consent in concubinage and 'sexual slavery'

There are no legal texts in classical Islam from the 8th to 10th centuries that assert a concubine's consent was necessary for sexual relations or not required at all. They are simply silent on this issue.⁹⁹ The earliest text found mentioning consent in relation to concubines was from the 11th century jurist Abū 'Abd Allāh al-Ḥalīmī, cited earlier. The concept of consent was never debated as a matter of law, but rather the maxim of no-harm remained the key operative principle in this context. The absence of the discussion as a *legal* matter, however, does not prove anything about the *moral* status of consent. Some things are so ubiquitous in a culture as to go without saying. We have already seen that some of the companions and successors understood sexual intercourse to be an act of mutual love and affection, not an act of domination, conquest, or animalistic passion, and that their conception of masculinity was informed by the Islamic values of

⁹⁹ Kecia Ali, "Concubinage and Consent," *International Journal of Middle East Studies* 49, no. 1 (2017): 148–49.

mercy and gentleness. Coercion into sex directly contradicts these divinely-revealed teachings.

In contrast, some writers in academia reduce the custodian-concubine relationship to mere 'property law,' as if these women were considered to be chattel. Not only does this disregard the well-documented ethical injunctions underpinning the law, it belies the many important ways in which concubines were humanized in a contractual relationship that resembled consensual marriage. Intisar Rabb, professor of Islamic law at Harvard University, asserts that "the master-slave relationship created a semblance of a contractual family law association that, like a marriage contract, established legal entitlements to sexual enjoyment in cases of mutual consent."¹⁰⁰ Concubines were not merely pieces of property to be used, exploited, and discarded; they had rights similar, but not entirely equivalent, to a free wife.

The concubine relationship was described in detail in Islamic legal texts, signifying the gravity of ensuring the rights of a woman in this relationship and the duties of her caretaker. As mentioned earlier, the word 'concubine' is closely related to the word for 'marriage' in classical Arabic, "Privacy (*al-sirr*) is marriage, as it is kept confidential... A concubine (*al-surrīyah*) is a maidservant who is taken for custodianship and sexual intimacy."¹⁰¹ A legally constituted concubine relationship did not at all mean that the concubine was a piece of property, to be shared with others in the way one shares a piece of clothing or livestock. The concubine relationship was analogous to marriage in that it was *exclusive*; she could not be forced into prostitution, nor shared with other men for the purpose of sex. Allah said, "Do not force your servant-girls into prostitution, if they desire chastity, seeking the temporary interests of worldly life. If someone forces them, then after their compulsion Allah is Forgiving

¹⁰⁰ Intisar A. Rabb, *Doubt in Islamic Law*, 151.

¹⁰¹ Ibn Manẓūr, *Lisān al-ʿArab*, 4:358.

and Merciful (to them).”¹⁰² This verse was revealed because ‘Abd Allāh ibn Ubayy, who was a hypocrite pretending to be a Muslim, had forced his slave girls into prostitution.¹⁰³

Further to this point, jurists forbade Muslim men from having a concubine relationship with idolaters, but they permitted it with women among “the people of the Book,” although al-Ḥasan al-Baṣrī was alone in discouraging the practice. Ibn Qudāmah justifies this because “their free women are lawful to marry, so it is lawful to have them as concubines.”¹⁰⁴ This discussion on concubines takes place in his “book of marriage.” Again, concubinage is legally analogous to marriage, as Allah allows Muslim men to marry “chaste women among those given the Book before you.”¹⁰⁵ The jurists also forbade a man from having intercourse with the mother or daughter of his concubine, and forbade the concubine from having intercourse with his father or sons, because “intercourse by virtue of custodianship of the right hand is in the same position as the marriage contract.”¹⁰⁶ These analogies hold true because of the similarities between a concubine and a wife. If a concubine was viewed solely as property by law, jurists would not have derived such rules by explicit comparison with marriage.

The jurists discussed at length the case of a man who had sexual relations with a maidservant under the custodianship of his wife. Ḥabīb ibn Salīm reported that a man had sexual intercourse with the maidservant of his wife, so the matter was referred to al-Nu‘man ibn Bashīr (d. 684). Al-Nu‘man said, “I will judge them with the judgment of the Messenger of Allah ﷺ. If she had given him permission, I will lash him one hundred times. If she did not give

¹⁰² Qur’an 24:33.

¹⁰³ Muslim, *Ṣaḥīḥ Muslim*, 4:2320, #3029; *bab fi qawl ta’ala la tukrihu fatayatikum ‘ala al-bigha’*.

¹⁰⁴ Ibn Qudāmah, *Al-Mughnī*, 7:134.

¹⁰⁵ Qur’an 5:5.

¹⁰⁶ Wizārat al-Awqāf wal-Shu‘ūn al-Islāmīyah, *Al-Mawsū‘at al-Fiqhīyah al-Kuwaytīyah* (Kuwait: Wizārat al-Awqāf wal-Shu‘ūn al-Islāmīyah, 1992), 11:300.

him permission, I will stone him.”¹⁰⁷ Although there is some dispute over the authenticity of this tradition, all of the scholars agreed that a man who had intercourse with his wife’s female servant had committed a criminal offense; they only disagreed to what extent he should be punished. Al-Tirmidhī comments on this tradition, saying, “It was narrated from more than one of the companions of the Prophet ﷺ, among them ‘Alī and Ibn ‘Umar, that he must be stoned. Ibn Mas’ūd said that he should not be stoned, but rather should be given a discretionary punishment. Aḥmad and Ishāq adopted the opinion as narrated by al-Nu’man ibn Bashīr from the Prophet ﷺ.”¹⁰⁸

This tradition, and its surrounding legal discussion, further demonstrates that a concubine was not a piece of property. If she were merely considered to be property, there would be nothing wrong with sharing one’s property with others and especially with one’s own spouse. Rather, the *exclusivity* of the sexual relationship between a custodian and a concubine is evidence that it operated as a social contract, with reciprocal rights and duties. Although concubines were ‘owned’ (or more accurately, “under the custodianship of the right hand”), a custodian who violated his responsibilities by harming his concubine would lose his custody, in accordance with the practice of the Prophet ﷺ cited earlier.

Concubinage was also implicitly discouraged by several recommendations for custodians to marry their concubines and slaves, thereby upgrading their social status, or to allow their concubines to marry others, thus ending their conjugal relationship. Allah said, “Marry the unmarried among you and the righteous among your male and female slaves. If they should be poor, Allah will enrich them from His bounty, for Allah is Encompassing and Knowing.”¹⁰⁹ And the Prophet ﷺ said, “If a man teaches his servant-girl good manners, educates her in the best way, then emancipates

¹⁰⁷ Al-Tirmidhī, *Sunan al-Tirmidhī*, 3:106, #1451, *bab ma ja’a fi al-rajul yaqa’u ‘ala jariyyah imra’atihi*.

¹⁰⁸ Al-Tirmidhī, *Sunan al-Tirmidhī*, 3:106, #1451.

¹⁰⁹ Qur’an 24:32.

her and marries her, he will have a double reward.”¹¹⁰ The Prophet ﷺ himself led by example, freeing his slave Ṣafīyah, then marrying her and holding a banquet for her.¹¹¹ Once a concubine was married to another man, it was no longer permissible for her custodian to have any sexual contact with her. Ibn Qudāmah writes, “If he offers his concubine in marriage to another, it becomes forbidden for him to enjoy her... There is no doubt or difference of opinion, as she has become permissible for her husband. A woman cannot be lawful for two men.”¹¹²

When a concubine relationship was legally established, it had to be consummated in the same manner as a marriage and the concubine would become part of the custodian’s household as a family member. When ‘Alī ibn Abī Ṭalīb entered into a concubine relationship, he said that “she became part of the household of the Prophet ﷺ, then she became part of the family of ‘Alī, and I have consummated it with her.”¹¹³ Just as a husband may not prostitute his own wife out for others, a custodian was likewise not allowed to permit or force his concubines into sex with others. This fact, among others, supports Intisar Rabb’s thesis that concubinage more closely resembled contract and marriage law than property law.

Wives and concubines were legally protected from injurious abuse under the comprehensive legal principle of no-harm, as the Prophet ﷺ said, “There is no harm or returning harm.”¹¹⁴ This principle is one of the five essential maxims of Islamic law, “Harm should be removed.”¹¹⁵ If a custodian seriously injured his concubine, such as by severely beating her, burning her, cutting her, or mutilating her,

¹¹⁰ Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 4:167, #3446, *bab fī qawl Allah wa adhkuru fī al-Kitāb Maryam*.

¹¹¹ Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 7:24, #5169, *bab man ja’ala ‘itqa al-amah sadaqaha*.

¹¹² Ibn Qudāmah, *Al-Mughnī*, 7:101.

¹¹³ Aḥmad ibn Ḥanbal, *Musnad al-Imām Aḥmad*, 38:66, #22967; declared authentic (*ṣaḥīḥ*) by Al-Arnā’ūṭ in the comments.

¹¹⁴ Al-Bayhaqī, *Al-Sunan al-kubrā*, 6:114, #11384, *bab la darara wa la dirar*; declared fair (*ḥasan*) by Albānī in *Aḥkām al-janā’iz* (Beirut: al-Maktab al-Islāmī, 1986), 1:7.

¹¹⁵ Al-Suyūṭī, *Al-Ashbāh wal-nazā’ir*, 1:7.

many scholars ruled she would automatically be set free and the authorities could punish her abuser.¹¹⁶ 'Umar was presented with a maidservant who had been struck by her custodian with a piece of hot iron or had been injured by it, so he ordered him to emancipate her.¹¹⁷ If a custodian was not permitted to abuse his concubine, how could he be allowed to sexually assault her?

The previously discussed case of a man having illegal intercourse with the maidservant of his wife is instructive in this regard, as an alternate wording of the incident provides strong evidence that compelled sex was understood to be morally reprehensible in itself, if not unlawful altogether. In another narration, the Prophet ﷺ judged the case by saying, "If she had done so willingly, then she belongs to him and he must pay her price. If he had forced her, then she is free and he must pay her price."¹¹⁸ This was a more merciful ruling, as it allowed the man and woman who committed illegal, but consensual, sex to enter into a formally recognized relationship.

Some scholars said this narration was abrogated by the report from al-Nu'man ibn Bashīr cited earlier, which mandated an even harsher punishment upon the man. In any case, his crime of illegal intercourse is made even worse if he had compelled her (*istikrah*) into it. Logically, then, the act of sexual compulsion was itself independently immoral and perhaps illegal. In other words, if illegal fornication is sinful and compulsion makes it even worse, then this is a strong indication that compulsion by itself is sinful. That she is set free after being raped is also consistent with the established principle that a deliberately injured slave in a severe manner must be emancipated.

¹¹⁶ Al-Nawawī, *Sharḥ Al-Nawawī 'alā Ṣaḥīḥ Muslim* (Bayrūt: Dār Iḥyā' al-Turāth al-'Arabī, 1972), 11:127.

¹¹⁷ Mālik ibn Anas and Abū Muṣ'ab al-Zuhri, *Muwatṭa' al-Imām Mālik* (Beirut: Mu'assasat al-Risālah, 1993), 2:403, #2729, *bab jami' al-qada' fi al-'itaqah*.

¹¹⁸ Aḥmad ibn Ḥanbal, *Musnad al-Imām Aḥmad*, 33:252, #20060; declared fair (*ḥasan*) by Ibn al-Qayyim in *I'lām al-murwaqqi'īn*, 2:19.

Ibn al-Qayyim has written some tough words in condemnation of this act, "As for if he had forced her, then this is a type of violation, as compulsion into sexual intercourse is a serious violation (*muthlah*). Indeed, such intercourse is carried out in the manner of a criminal offense, so, for this reason, he is not absolved from a fine or legal punishment."¹¹⁹ He describes the rape as *muthlah*, which literally means torture or mutilation. Like al-Shāfi'ī, he appears to express an aversion to involuntary sex in general, not simply adulterous rape, by using the broader phrase "compulsion into intercourse" (*al-ikrahā 'alā al-waṭ'*) instead of the more common phrase "compulsion into adultery." This also agrees with his understanding, quoted earlier, that sexual intercourse is fundamentally based upon mutual pleasure.

Misinterpretation of texts mentioning concubines

Let us briefly examine the way in which some texts about concubines are cited on the internet to 'prove' that Islam sanctions rape. As a general rule of hadith interpretation, one must gather all the texts on a particular topic to get the full picture of a given event or concept. Individual hadith are only snapshots in a much larger picture, so looking at only one hadith misses the forest for the trees, so to speak. The narration most commonly used to condemn Islam as sexually violent is the following:

Abu Sa'īd al-Khudrī reported that at the battle of Hunayn, the Prophet ﷺ sent an army to Awtās and they encountered the enemy and fought them. Having overcome them and taken them prisoner, the companions refrained from having intercourse with the captive women because their husbands were idolaters. Then, Allah revealed the verse: (Prohibited for you) are married

¹¹⁹ Ibn Qayyim al-Jawzīyah, *I'lām al-muwaqqi'īn*, 2:21.

women except those under the custodianship of your right hands.¹²⁰

There are some important points missing from this brief, truncated text. The narrators of this tradition, who were in closer proximity to the Qur'an and Sunnah's historical context, in addition to their broader ethical worldview, would have never understood this hadith to permit sexual assault. They knew the bigger picture because they had dedicated their lives to preserving the Prophet's ﷺ teachings. They could fill in the missing details by themselves. But people living far removed from these realities, who do not understand classical Arabic or know much about Islamic sources or even world history in general, understandably find such texts difficult to interpret. Sometimes these texts are honestly misunderstood, and other times they are deliberately weaponized to attack Islam for political reasons.

Implied in this text, as evidenced by other texts, is that the female prisoners of war had willingly converted to Islam and abandoned their idolatrous lifestyle and their abusive husbands. Al-Nawawī writes:

Know that it is the way of al-Shāfi'ī, and the scholars who adopted his opinion, that for the captives among the worshipers of idols and other unbelievers without a divine scripture, it is unlawful to have intercourse with them as concubines until they embrace Islam. As long as they remain upon their religion, they are forbidden. These captives were Arab polytheists, so the interpretation of this tradition and others like it is that they embraced Islam.¹²¹

Ibn Taymīyah further explains, "The principle is that for whomever it is not permissible to marry, it is not permissible to have intercourse

¹²⁰ Muslim, *Ṣaḥīḥ Muslim*, 2:1079, #1456, *bab jawaz wata' al-musibah ba'd al-istibra'a*; Qur'an 4:24.

¹²¹ Al-Nawawī, *Sharḥ al-Nawawī 'alā Ṣaḥīḥ Muslim*, 10:35–36, #1456.

with by virtue of custodianship of the right hand, such as the idolaters. This is the way of Maḥlik, al-Shāfi'ī, Aḥmad, and others."¹²² Rather than being forced to become concubines, the women mentioned in these traditions voluntarily embraced Islam, as Allah said, "There is no compulsion in religion."¹²³ Since polytheists and idolaters could not become concubines, their acceptance of Islam would have been an indication of consent to entering a household within the context of a concubine relationship. These prisoners had the option to keep their original religion but, for a variety of reasons, entering into a concubine relationship offered an alternative that many chose to accept. Moreover, the pre-Islamic Bedouin culture from which these women came was demeaning and dangerous to women. It was their regular practice to disempower women, bury baby girls alive, and to 'inherit' their wives against their will as they would property.¹²⁴

Therefore, by citing the narration of the companion Abu Sa'īd al-Khudrī without any relevant accompanying information, commentary, or context, anti-Muslim writers and even some wayward Muslims inaccurately fill in their own details, from their own biased perspectives, where this isolated and abridged text is silent. This interpretive process is called *eisegesis*, which is to read into the text what it does not actually say, in contrast to *exegesis* or *tafsīr*, which is to accurately extract the broader meaning from a critical reading of the text.

Finally, what does the Sunnah recommend beyond the outward legal question? What *should* a custodian do if he is unable to establish a mutually pleasurable relationship with his concubine? In this regard, the Prophet ﷺ said, "Whoever is suitable for you among your slaves,

¹²² Ibn Taymīyah, *Al-Fatwā al-Kubrā* (Dār al-Kutub al-'Ilmiyah, 1987), 3:105.

¹²³ Qur'an 2:256.

¹²⁴ Maryam al-Dabbagh, Omar Suleiman, Roohi Tahir, and Mohammad AlShinawy, "We Used to Have No Regard for Women: Gender Equity and the Advent of Islam," *Yaqeen Institute for Islamic Research*, January 4, 2018, <https://yaqeeninstitute.org/maryam-al-dabbagh/we-used-to-have-no-regard-for-women-gender-equity-the-advent-of-islam/>.

then feed them from the same food you eat and clothe them from the same clothes you wear. Whoever is not suitable for you, then sell them off and do not torture the creation of Allah.”¹²⁵ In case a custodian and concubine are incompatible, he is to sell her to another man who can establish an appropriate relationship with her, with the aim of eventually elevating her social status or perhaps marrying her. This separation is like a divorce. In no circumstances may he beat her or ‘torture’ her, physically or emotionally, because he must respect her inherent human dignity as ‘the creation of Allah.’

Conclusion

Islam has prohibited all forms of sexual violence against women, even if the relationship has a lawful basis, either by classifying it as “compulsion into adultery” or as unwarranted “harm” in legal, domestic relationships. A concubine relationship “under the custodianship of the right hand” was analogous, though not entirely equivalent, to marriage with a free woman. Slavery or “custodianship,” and therefore concubinage, is no longer legally valid in Islam, due to the logical development of Islamic teachings and the consensus agreement of Muslim scholars, leaders, and nations.

Consent, as *the* primary legal requirement of sexual relationships, is a distinctly modern phenomenon born out of liberal societies’ abandonment of marriage as the defining condition of lawful sexual intercourse. Transposing this new cultural conception of consent onto pre-modern societies and texts has led people, including some misinformed Muslims, to inaccurately claim that sexual violence or rape is approved by Islam.

Although consent in every sexual engagement within marriage and concubinage was not legally defined in early Islam because of its

¹²⁵ Abū Dāwūd, *Sunan Abī Dāwūd*, 4:341, #5161, *bab fi haqq al-mamluk*; declared authentic (*ṣaḥīḥ*) by Al-Albānī in the comments.

inherent ambiguity, it can be understood from the Qur'an and Sunnah that consent was and is an important moral requirement in a healthy relationship. The value of consent is also a function of a society's conception of what is customarily good, which is why it is more important for us to discuss today than it had been in the past.

Success comes from Allah, and Allah knows best.