

## **Islamic Views on Concubinage: Exploring the Rights and Status of Female Slaves**

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### **Abstract**

One of the objections raised against Islam is the abuse and oppression of women. A recurrent objection in this regard is that Islam treats female slaves inhumanely. Addressing this objection, the present paper explores the rights of female slaves in Islam. It finds that female slaves have been enjoying privileged protection in the Muslim society that is uncommon to any other system of slavery in history. Concubines have been exploited through corrupt systems of slavery all over the world. The vice of such exploitation eventually entered the Muslim society as well. The farce face of the later Muslim society cannot be taken as a true picture of Islam, because many of its exploitative operations did not match the teachings contained in original Islamic sources.

**Keywords:** Islam, objections, women, concubines, rights

### **Introduction**

Why Islam reduces one class of human beings to a lesser being by pulling off certain human rights and declaring them slaves to the free? This issue can only be understood by pondering over what other punishments could

have been exercised on a group of people who arm themselves to fight, kill and conquer the enemy, its land and its family. Most governments and regimes will put such criminals on death penalty or keep them in daunting and inhumane conditions, beat them up, torture them and place them in extreme confinement. Enslavement is a middle option between setting a captive free and killing him. Female prisoners of war are more vulnerable to exploitation. Islam promises many rights to these slaves. Legal rights of Concubines and the limitations put on Concubinage in Islam are comprehensively discussed below:

### 1. Right to Marriage and Dowry:

This right of the female slaves has been mentioned in the *Quran*. Interpreting <sup>1</sup> وَأَنْكِحُوا الْأَيَامَى *Al-Baidāwī* asserts: “And in it is evidence of the obligation of marrying the free and the slaves.”<sup>2</sup> A female slave cannot marry but by the consent of her master, but that does not mean that she is deprived of the right to marriage itself.<sup>3</sup> Once a female slave has asked her master for settling a marriage, the master is then forced by the aforementioned verse of to establish his slave’s marriage to a suitable partner. The master is thus like a guardian for his female slaves in their marriages just like a father is in marrying his daughters. A female slave just like a male could get married and have a family but the permission of the master was incumbent upon her as was the case (according to most

<sup>1</sup>See: al-Nūr 24 :32.

<sup>2</sup> Nasīr al-Dīn Bayḍāwī, *Anwār al-Tanzīl wa-Asrār al-Tā'wīl* ( Dār Tayyibāh lil Nashr wa -al-towzī‘ ,n.d) 468.

<sup>3</sup> Burhān al-Dīn Abu'l-Ḥasan ‘Alī Ibn Abī Bakr al-Farghānī Marghīnānī, *Al-Hidāyah fī Sharh Bidāyat al-Mubtadī* (Maktaba al-Bushrā, 2007), Kitāb al-Nikāh, bāb fil Awliya wa-akfa‘, 3 :49.

scholars) with male slaves.<sup>4</sup> In Islam, female slaves are also entitled to dowry from their husbands just like free women are from theirs.<sup>5</sup>

**Khyār al-Itq:** When a female slave got married to a slave and was freed by her master later on, she had the option to either stay in her marriage with that slave, or revoke it. This privilege of a freed female slave is called *Khyār al-itq* (خيارالعق).<sup>6</sup> According to some scholars, this rule also applies when a slave girl gets married to a free man, and is later on freed.<sup>7</sup>

**Marriage of a master to his slave girl:** According to some scholars a master could get married to his own slave girl. According to a narration three persons will have a double reward: 1. A Person from the people of the scriptures who believed in his prophet (Jesus or Moses) and then believed in the Prophet Muhammad (i.e. has embraced Islam). 2. A slave who discharges his duties to Allah and his master. 3. A master of a woman-slave who teaches her good manners and educates her in the best possible way and manumits her and then marries her."<sup>8</sup> However, according to the *Hanafi* School "Neither can the master marry his slave girl nor a female master her slave boy."<sup>9</sup> To marry his slave girl, master is forced to free her. It is, however, permissible (for a free man) to marry a slave woman, if she is a Muslim or from the people of the book.<sup>10</sup>

## 2. Right of a Female slave to not be forced into Prostitution

<sup>4</sup>al-Marghīnānī, *Al-Hidāyah*, 3:94.

<sup>5</sup>al-Marghīnānī, *Al-Hidāyah*, 3:95.

<sup>6</sup>al-Bukhārī, *al-Jāmi' al-sahih*, H: 5283, 944.

<sup>7</sup>Abū Dā'wūd Sulaymān al-Sijistānī, *Al-Sunan* (Riyadh : Dār al-Salām lil al-Nashr wa-al-towzī', 1999), Kitāb al-talāq, H:2235, 323.

<sup>8</sup>al-Bukhārī, *al-Jāmi' al-sahih*, H: 97, 22.

<sup>9</sup>al-Marghīnānī, *Al-Hidayah*, 3:14.

<sup>10</sup> al-Marghīnānī, *Al-Hidayah*, 3:14.

Before Islam, female slaves were treated as prostitutes when the entire household considered it legal to have intimacy with them even if it was to occur by force. Islam protected the honor of the female slaves and prohibited all forms of fornication against them. Quran says: “And do not compel your slave girls to prostitution, if they desire chastity, to seek [thereby] the temporary interests of worldly life. And if someone should compel them, then indeed, Allah is [to them], after their compulsion, Forgiving and Merciful.”<sup>11</sup> If a female slave is forced into prostitution by her master such forced prostitution shall only burden the master and she will be free from blame as “the sin is upon the person who has forced them (into prostitution)”<sup>12</sup>

### 3. The right of a female slave to not be separated from her child

It is from the rights of a female slave that she should not be separated from her child as a narration: “whoever separates between a mother and a child, Allah will separate him from his beloved on the Day of Judgment.”<sup>13</sup> Regarding the issue of separation between a mother and a child amongst slaves, *Allāma Khattābī* says: scholars have no difference of opinion on the prohibition of separating young child from its mother.”<sup>14</sup>

### 4. Right to basic necessities of life:

Basic necessities of life should be provided to the female slave by her master. Prophet Muhammad (ﷺ) said: “It is essential to feed the slave,

<sup>11</sup>al-Nūr 24:33.

<sup>12</sup> ‘Imād al-Dīn Isma‘īl Ibn ‘Umar Ibn Kathīr, *Tafsīr al-Qur’ān al-‘Aẓīm* ( Dār Tayyibāh lil Nashr wa -al-towzī‘, 1999), 4:54.

<sup>13</sup>Abū ‘Īsā Muḥammad Ibn ‘Īsā Tirmidhī, *al-Jāmi‘ al-Ṣaḥih al-Sunan* ( Riyadh: Dār al-Salām lil al-Nashr wa-al-towzī‘, 1999) , H: 1544, 381

<sup>14</sup>Hammād Ibn Muḥammad al-Khattābī, *Ma‘lim al-Sunan Sharh Sunan Abī Da‘wūd* ( , Beirut: Dār al-Kutub al-Ilmiyyah, 2005), Kitāb al- Jihād, Bāb wa min bāb u tafrīq bainas sabbīyī, H: 777, 2: 253.

clothe him (properly) and not burden him with work which is beyond his power.”<sup>15</sup>; “It is obligatory on the master to spend on his slave boy and girl.”<sup>16</sup> If the master doesn’t feed his slave or fulfill his basic necessities the *Qāzī* can force him to sell his slave to another.<sup>17</sup>

### 5. Right to use wealth of the master on basic necessities

It is not permissible for a slave to give anything from the wealth of his master to anyone, free his slave or give charity on his behalf. However, a slave has the right to take food and clothing from his master’s wealth according to custom.<sup>18</sup>

### 6. Right to establish the contract of Manumission

In Islam, a slave can enter into a contract of freedom with their master by agreeing to pay a stipulated sum of money to him. When a female slave agrees to pay her master a stipulated sum of money in return of her freedom, it is called *Mukātaba* (مكاتبة).<sup>19</sup> The evidence for the permissibility of the contract of manumission comes from the Quran.<sup>20</sup> According to some scholars it is obligatory on the master to sign the contract of manumission once the slave has asked him for it.<sup>21</sup> However most scholars agree that the ruling is not of an obligation (امر للوجوب) but for permissibility (اباحة) and preference (ندب) is given to manumission when

<sup>15</sup> Muslim ibn al-Ḥajjāj, *al-Jāmi’ al-Sahīh*, (Riyadh: Dār al-Salām lil al-Nashr wa-al-towzī’, 2000), H: 4316, 732

<sup>16</sup> Samīr ud Din Qasmī, *Al-Sharh al-Sameeri ‘ala al-Mukhtasir al-Qudūrī* (London: Khatam-e-Nubuwwat Academy), Kitāb al-Nafaqāt, 3: 233.

<sup>17</sup> Qasmī, *Al-Sharh al-Sameeri*, 3: 234.

<sup>18</sup> Abd al-Razzāq Ibn Hammām Ibn Nāfi’ al-San’ānī, *Musannaf* Beirut: Dār al-Kutub al-Ilmiyyah, 2000), Kitāb al-Zakāt, Bāb la Sadaqata lil ‘abd, H: 7045, 4: 61.

<sup>19</sup> Al-Marghīnānī, *Al-Hidayah*, 6: 338.

<sup>20</sup> Al-Nūr 26:33

<sup>21</sup> Mahmūd Ibn ‘Umar al-Zamakhsharī, *Al-Kushāf ‘an Haqa’iq at-Tanzīl* (Beirut : Dār al-Ma‘rifat lil Tabā’t wa-Nashr, n.d), 3: 66.

the condition of *khair* (خير) is present in the slave.<sup>22</sup> *Khair* means money or the ability to earn it by the slaves seeking manumission. *Khair* can also mean loyalty and truthfulness.<sup>23</sup> Helping a slave secure freedom by paying off his manumission money is one of the eight ways mentioned in the Quran for the payment of compulsory yearly Muslim charity (*zakāt*).<sup>24</sup> Putting debilitating conditions on the contract of manumission such that the freedom of the slave is delayed unnecessarily is disliked. A narration speaks that a slave in manumission (مكاتب) who had entered the contract of manumission decided to pay all his money required for manumission in wholesome. His master said to him: "I will take it in installments only." Caliph *Uthmān* Ibn 'Affān released orders of that slave's freedom, took that money from him and said to his master: "I will pay you the money in installments." When the master saw this, he accepted the slaves money for freedom in wholesome."<sup>25</sup> Moreover, Prophet Muhammad (ﷺ) also used to encourage masters of slaves that they should forgive some of the money from their agreed upon money for manumission (بدل الكتابة) in the contract.<sup>26</sup>

### 7. Right to give amnesty to an enemy of Muslims in a Muslim state

The amnesty given by a slave to an enemy of Muslims in a Muslim state has legal force. This right springs from the general rule, that all Muslims are equal in blood. Therefore, bondage doesn't restrict a slave's power to give amnesty to an enemy of Muslims. Moreover, there is no discrepancy

<sup>22</sup> Al-Marghīnānī, *Al-Hidayah*, 6: 338.

<sup>23</sup> Abū Bakr Aḥmad Ibn 'Alī al-Rāzī al-Jaṣās, *Aḥkām al-Qur'ān* (Beirut :Dār al-Fikr lil Tabā'at wa- towzī', 1988),3: 398.

<sup>24</sup>See: At-Tawbah9:60.

<sup>25</sup>Abu Bakr 'Abdullāh Ibn Muhammad Ibn Abī Shaybah, *Musannaf Ibn Abī Shaybah* (Multan: Tayyab Academy, n.d), 5: 922.

<sup>26</sup>Hākim Nishāpurī, *Al-Mustadrak 'ala al-Ṣaḥīḥayn* (Riyadh :Maktaba Nazar al - Mustafa, n.d) Kitāb al-Jihād, H: 2448, 922.

between male and female slaves in their power to give amnesty.<sup>27</sup> In another narration it mentioned that, "As far as a slave is concerned, if he gives amnesty to an enemy person, then if he was permitted by his master to fight in Jihad, his amnesty will also be permissible."<sup>28</sup>

#### 8. The right to file a suit against master in court of Law

There are numerous traditions narrated about slaves pursuing suits against tyrant masters in courts of law. It is their legal right to seek justice if a master refuses them their basic rights. The following tradition about a female slave seeking justice against her master through Prophet Muhammad is particularly enlightening: "If a female slave among the people of Medina were to take the hand of the Messenger of Allah (ﷺ) he would not take his hand away from hers, until she had taken him where ever she wanted in Medina, so that her needs may be met."<sup>29</sup> T.W Arnold in his book says: "The slave like other citizens had rights and it's even said that a slave might summon his master before the *Qādī* for ill usage, and that if he alleged that their tempers were so opposites, that it was impossible for them to agree, the *Qādī* could oblige his master to sell him."<sup>30</sup>

#### Status of female slaves in Islam

In Islam a slave woman gets close to the rank of a free woman. For example, by having a child from her master, she's immediately freed upon his death. He can even free her as an act of merit or as expiation for his

<sup>27</sup>Ibn Abī Shaybah, *Musannaf Ibn Abi Shaybah*, Kitāb ul Jihād, Bāb:Fi Amānil mar'ati wa al-Mamlūk, 7: 690.

<sup>28</sup> Al-Sarkhasī, *al-Mabsut*(Beirut :Dār al-Fikr lil taba'at wa al-Nashr wa al-Towzī', , 2000), Kitāb al-Siyyar, Bāb al-'abd iza amina ahl al-ḥarb, bāb muāmalat al- jaish ma' al-kuffār, 10: 56-57.

<sup>29</sup>Muḥammad Ibn Yazīd Ibn Mājah, *Sunan Ibn Mājah*, Kitāb al-Zuhad, Bāb al-barā't min al-kibr wa tawāzu', H: 4177, 609.

<sup>30</sup>T.W Arnold, *Preaching of Islam* (Lahore: Ashraf Printing Press, 1979), 175.

sins.<sup>31</sup> A concubine in Islam had certain rights of protection. It was not the same as was the practice in other cultures. In case a master and a female slave cannot form an amicable relationship, it is preferred that he sells her to a man who can establish a good relationship with her.<sup>32</sup> As a means to guard against exploitation of the system of concubinage, certain grounds and limitations are set for the permissibility of concubinage. Below follows a discussion on the conditions on concubinage for it to be legally permissible in Islam:

### **1. Acquisition Through Legitimate War and Legal Sanction by *Amīr al-Mu'minīn***

No human being is enslaved, and no woman given as a slave to a man, unless first acquired through a legitimate Islamic war. In Islam, the fate of the captives of war is decided by the *Amīr al-Mu'minīn*. He could ransom them, free them, punish them in any other way or make them captives. A female prisoner of war could only lawfully become a concubine to a soldier if the *Amīr al-Mu'minīn* gave her to him.<sup>33</sup>

### **2. Dis-Allowance of Rape with Prisoners of War:**

It is prohibited in Islam to rape women or sexually abuse anyone during war or to rape anyone from the prisoners of war. *Al-Shāfā'ī* says: "If a man forcefully acquires a slave girl and then has intercourse with her thereafter

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<sup>31</sup> Ibrāhīm Husaīn Sayyid Qutab, *Fī Zilāl al-Qur'ān* (Cairo : Dār al- Sharūq, 1985), 18: 2455-2456.

<sup>32</sup> Abū Dā'wūd, *Sunan*, H: 161, 725

<sup>33</sup>, Aḥmad Ibn Ḥusain al-Baihaqī, *Sunan al-Kubra* (Bairūt: Dār al fikr, n.d), Kitab al-Sīyyar, Bāb iqamat al-ḥudūd, 9: 104.

while he is not ignorant, the slave girl is taken away from him, and he is fined and punished for adultery.”<sup>34</sup>

### 3. Impermissibility of Intimacy with Married Female Slaves

Masters were barred from having conjugal relations with their female slaves, if their marriages had survived from previous husbands. In Islam, if a woman is made captive together with her husband, her marriage with her husband is acknowledged as intact which bars any other man from practicing conjugal relations with her. However, if the husband of the captured woman has run away to *Dār al-Ḥarb* (Enemy state), and his wife, has been left behind and made captive, this kind of a separation annuls the previous marriage contract the captive woman had with her husband and once enslaved, she becomes lawful to her master. It is also important to understand that in Islam there is consensus of scholars on the rule that, a woman can only be touched by one man at a time.<sup>35</sup> By virtue of this rule, if she has a valid marriage contract, she cannot be touched by her master. Consequently, if she gets married after being enslaved, her master loses his conjugal rights over her which are hence transferred to the new husband. *Al-Baghawī* in the explanation of verse 24 of Surah *al-Nisā'* says: “It is not permissible for other men to marry women who are already in marriage with another man, before those women are separated from their husbands.”<sup>36</sup>

### 4. Impermissibility of Co-Habiting with Wife's Slave Girl

<sup>34</sup> Muhammad Ibn Idrīs Shāfai', *Kitāb al-Umm* (Dār al-m'arifāt lil taba't wa al-Nashr), 3: 246-247.

<sup>35</sup> Muhammad Ibn Ahmad al-Qurtubī, *Al-Jami' li Ahkām al-Qur'ān* (Cairo: Dār al-Hadith, 2002), 3: 112.

<sup>36</sup> Al-Husain Ibn Mas'ūd al-Baghawī, *Ma'ālim al-Tanzīl* (Beirut : Dār al-kutub al-'ilmīyya, 1993), 1: 327.

It is impermissible for a man to co-habit with his wife's female slave. The words <sup>37</sup> مَمْلُوكَتٌ أَيْمَانُهُمْ clearly state that co-cohabitation of this sort is only allowed with a female slave who is under a man's personal ownership. Since women in Islam have their own rights of property and ownership, wife's female slave cannot be generalized to fall under her husband's ownership.

### 5. Impermissibility of Intimacy with a Co-Owned Female Slave

If a slave woman is co-owned and has more than one master, she remains unlawful for all of them. *Ibn Qudāma al-Maqdasī* says: "It is not permissible to have intimate relations with a co-owned slave woman."<sup>38</sup> *Hadrat Juwairiāh*, came as a prisoner of war in the possession of *Thābit Ibn Qais* and his cousin. She was a co-owned slave, who was later manumitted and married to Prophet Muhammad (ﷺ).<sup>39</sup>

### 6. Completion of *Iddāh* (waiting period)

Those female slaves, whose marriages were legally considered annulled due to their separation from their husbands in war, could not become lawful to their new masters unless they had completed their waiting period (*Iddah*).<sup>40</sup> This rule existed to stipulate the father and protect the lineage of the child in case of a pregnancy.

### 7. The Special Status of *Umm Walad* (ام ولد)

When a slave woman gives birth to the child of her master, she is called *Umm Walad*. *Umm walad* has a very special status. She is freed at the death

<sup>37</sup>Al-Mu'minūn 23:6.

<sup>38</sup> Muwāffaq al-Dīn Abū Muḥammad Ibn Qudāmah al-Maqdisī, *al-Mughnī* (Cairo, 1978), 6: 74.

<sup>39</sup>Ibn Sa'd Muḥammad, kātib ul-Wāqidi, *Kitāb at-ṭabaqāt al-kubra*, (Beirut : Dār al-kutub al'Ilmiyyah, 1990), 2: 49.

<sup>40</sup>al-Jaṣṣās, *Aḥkām al-Qur'ān*, 2: 171.

of her master and her child is born free. According to *hidāyah*, *umm walad* cannot be sold, gifted or her ownership given away to another.<sup>41</sup> These bars exist to make sure *umm walad*'s master protects and nurtures both the mother and the child and does not run away from his responsibility to them. Such a child is born legitimate and free and therefore gets share from the inheritance of his father as well.

### 8. Legal mode of concubinage

In Islam, free men and women cannot be enslaved<sup>42</sup> unless they wage a war against Muslims and are captured in the process. In fact, this is the only legal mode of concubinage present in Islam. Qur'ānic words about concubines: <sup>43</sup> مَا مَلَكَتْ أَيْمَانُهُمْ, are interpreted by Muslim scholars as: "Female prisoners of war, who have been separated from their husbands."<sup>44</sup>

### Conclusion

Islam has been demonized as a woman oppressive religion which confers less human right to women and slaves. However, it can be seen that classical sources of Islam point to a welfare state where the institution of slavery existed as only a punishment enforced on the warring enemy, and as a way to establish integration of the prisoners of war in the social fabric of the Muslim society. There is no legal cause to enslavement in Islam but through the sanction of the *Amir al-Mu'minīn* regarding the prisoners of war. Free human beings, Muslim or non-Muslim cannot be enslaved. Law

<sup>41</sup> Muḥammad Ibn Sa'd k̄tib al-Wāqidi, *Kitāb al-ṭabaqāt al-kubra*, 2: 49.

<sup>42</sup> Muḥammad Ibn Ismā'il al-Bukhārī, *al-Jāmi' al-Sahīh* (Riyadh: Dār al-Salām lil al-Nashr wa-al-towzī', 1999), *Kitāb al-bīyū'*, H: 2227, 355.

<sup>43</sup> Al-Mu'minūn 23:6.

<sup>44</sup> See: Abū Ja'far Muḥammad Ibn Jarīr al-Ṭabarī, *Jāmi' al-bayān 'an ta'wīl āy al-Qur'ān* (Moūssūa' Al Risālā, 2000), 8:151. The Arabic text speaks:

"السَّبَايَا اللّوَاتِي فَرَّقَ بَيْنَهُنَّ وَبَيْنَ أَزْوَاجِهِنَّ السَّبَاءُ"

suits could be initiated by slaves, even female slaves and the general well-being of slaves, especially female slaves was a major feature outlined in Islamic law. Female slaves could only be made out of female prisoners of war and that to via a strict process and their exploitation was checked while their freedom was made easy. In Islam female slaves are not exploited as sex-slaves. The purpose of making or keeping concubines was not to satisfy men's desires. If it were such, a woman could be touched despite her surviving marriage and the limitations on concubinage as discussed above would not have existed in the first place. In fact, an impregnated female slave bore free children and was set free on the death of her master. This also shows that conjugal relations were only allowed with the husband and without him, with the master only and that they too brought such a slave only closer to freedom. Like marriage, slavery was also an institution which had the sanction of Islamic law behind it. War brought slaves but unlike the dictates of "everything is fare in love and war", Islam codified laws for war and enslavement to protect the Muslims as well as their enemy from exploitation. Slavery was never promoted in Islam. It was only endorsed because it was the ruling law at that time. Its foul forms were checked. Concubinage had a different meaning and cause in Islam. Likewise it existed under certain protective limitations and as a part of a drastically different system from that of the other historical versions of it.