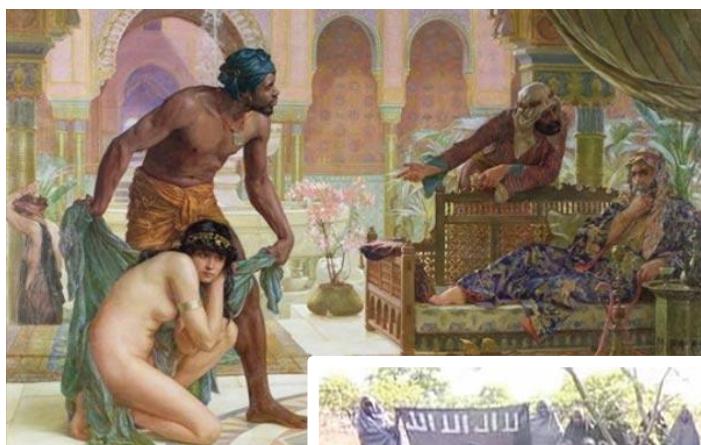




*The Qur'an as Reportedly Practised and Preached  
by Mohammed: Part 9*

***'Sex is permitted with those  
whom one's right hand  
possesses'***



## Introductory notes

### Structure

In this series of papers, ten instructions contained within the Qur'an are considered.

Over the centuries the instructions contained within the Qur'an have been the subject of a range of different applications by different Islamic traditions. Surveying the full range of such interpretations is outside the scope of these papers. Rather the aim is to present clearly and accurately, on the best evidence available, what one might call 'true' or 'primitive' Islam: what the words of the Quran instruct, as it was intended to be understood at the time that it was announced. That is to say the instructions of the Qur'an as it was practised and preached by Mohammed.

To achieve this, and avoid any suggestion of 'cherry picking' or presenting verses out of their original context, in each case the verse or verses containing the instruction will be presented in full within the context of:

### The circumstances in which the verse was said to have been announced

Any report describing the circumstances in which Mohammed came to announce a verse, the **Asbab al Nuzul** (principally those collected by **Ali ibn Ahmed al Wahidi (d. 1075)**) are given to give it its traditionally understood immediate context.

### 16 leading translations

The author principally uses *The Study Quran* (2015). However, this translation is cross-referenced with **fifteen other leading English translations** of the Qur'an from a wide variety of traditions, and compared with:

### related verses of the Qur'an



### The example of Mohammed

Incidents from the recorded life of Mohammed in the *sira* or *hadith* showing how Mohammed wished the verse to be understood, or how he himself applied it.

### Sharia application

Rulings on the application of the verse by the founders of the **four major schools of Sharia jurisprudence** (Hanifa, Maliki, Shafii and Hanbali).

### Tafsir commentary

Commentary from the major **Quranic commentaries**.

## Sources

Information concerning the life, words and deeds of Mohammed comes chiefly from two sources:

**The sira** are the biographies written about Mohammed in the early centuries after his death. Of these the biography of Mohammed, *Sirat Rasul Allah*, by **Ibn Ishaq**, written about 120 years following Mohammed's death for the Abbasid caliph, is by far the fullest extant source of historical information concerning the life of Mohammed and the establishment of Islam.

Although Ibn Ishaq's biography gives a relatively early and full account of Mohammed's life, Muslims traditionally afford greater prescriptive authority to the **hadith**: accounts of the words and actions of Mohammed, each with a proven chain of narration leading back to one of Mohammed's companions. These tend to be fragmentary, often written with little or no context. The first collections of hadith were collected by jurists to establish authority for their rulings on Sharia law. From the mid-ninth century (about a century after Ibn Ishaq completed *Sirat Rasul Allah*) larger collections were compiled. There are six major collections of hadith recognised by Sunni Islam. All Islamic scholars accept that some hadith are forgeries, and scholars and judges differ over which may be considered authentic. However most treat those contained in the two 'sahih' ('trusted') collections of **Bukhari** and **Muslim** as the most reliable evidence available to Muslims of Mohammed's words and actions.

In the eleventh century **Ali ibn Ahmed al Wahidi** (d. 1075) compiled a collection of hadith relating specifically to the circumstances in which individual verses of the Qur'an came to be announced, the **Asbab al Nuzul**. This is widely regarded within Islam as the most authoritative collection of narration hadiths.

## Translation of the Qur'an

All quotations from the Qur'an are, unless otherwise indicated, taken from *The Study Quran* (2015). However, this translation is cross-referenced with the following fifteen other English translations of the Qur'an, representing secular scholarship and the full spectrum of Islamic traditions<sup>1</sup>:

*The Meaning of the Glorious Quran* (1930) by Muhammad Marmaduke **Pickthall**, British convert to Islam;

*The Holy Qur'an: Text, Translation and Commentary* (1934) Abdullah **Yusuf Ali**, a civil servant of the British Raj, said to be the most used English translation;

*The Koran Interpreted* (1955) Arthur John **Arberry**, non-muslim scholar;

*The Meaning of the Quran* (1972) by Syed Abul A'la **Maududi**, the founder of *Jamaat-e-Islami*, the largest Islamic organisation in Asia;

*The Glorious Qur'an* by Abdul-Majid **Dariyabadi** (Indian, d.1977);

*The Holy Quran (Koran)*, Muhammad Habib **Shakir** (the Ahmadiyya Community – a minority Islamic sect - have asserted that Shakir's translation was plagiarised from a translation by a member of their own community, Maulana Muhammad Ali);

*The Holy Qur'an* (1982) by Shaykh Muhammad **Sarwar**, US Shia;

*Al-Quran, A Contemporary Translation* (1984) by **Ahmad Ali**;

*The Noble Qur'an* (1985) by Muhammad Muhsin Khan and Muhammad Taqi-ud-Din al-Hilali (**Khan & Hilali**), said to be Saudi funded and reflecting Wahabi theology;

*The Qur'an, English Meanings* (1997) **Sahih International**, three US born female converts, Saudi published;

*The Meaning of the Glorious Qur'an* (2001) by Grand Shaykh Hasan Qaribullah and Shaykh Ahmad Darwish (**Qaribullah & Darwish**), of Umm Durman University, Cairo;

*The Qur'an With a Phrase-by-Phrase English Translation* (2005) by **Ali Qarai** of the Islamic College of Advanced Studies;

*The Qur'an: A New Translation* (2009) by Maulana **Wahihuddin Khan**, Indian, peace activist, a former member, later critic of *Jamaat-e-Islami*;

*The Clear Quran* (2012) by **Talal Itani**, Lebanese former engineer;

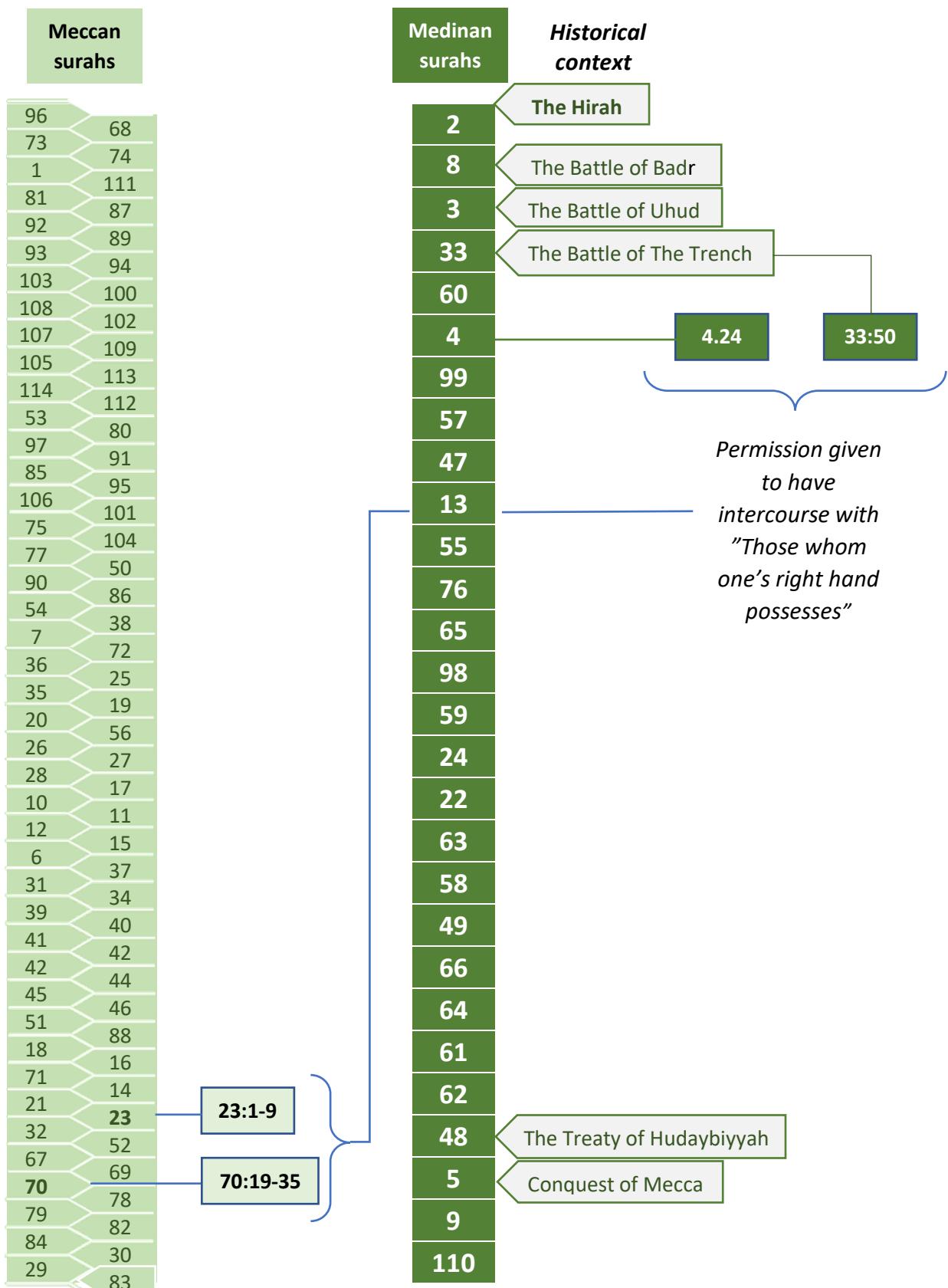
*The Quranic Arabic Corpus*, a collaborative online research project ([corpus.quran.com](http://corpus.quran.com)) administered by the University of Leeds.

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<sup>1</sup> All accessed via QuranX.com

## Verses of the Qur'an in chronological order<sup>2</sup>

## Principal verse considered in this paper



<sup>2</sup> There is no consensus on the exact order of Quran verses. This is a simplified version adapted from *The History of the Quran* by Allamah Abu Abd Allah al-Zanjani.

## The Qur'an on Sex with 'those whom one's right hand possesses'

No less than four verses of the Qur'an instruct that a Muslim man is permitted to have sexual intercourse with those whom his right hand possesses.



### Surah 23 'The Believers'

1. Truly, the believers have prospered,  
[2] who are humble in their prayers  
[3] and who turn away from idle talk  
[4] and who give alms  
[5] and who guard their private parts, [6] save from their spouses or those whom their right hands possess, for then they are not blameworthy - [7] but for those who seek beyond that it is they who are transgressors -  
[8] and who keep their trusts and their covenant  
[9] and who are mindful of their prayers.

### Surah 70 'The Ascending Ways'

19. Truly man was created anxious, [20] when evil befalls him, fretful: [21] and when good befalls him grudging [22] save those who perform prayers, [23] who are constant in their prayers [24] and in whose wealth is an acknowledged due [25] for the beggar and the deprived, [26] those who affirm the Day of Judgment [27] and who are wary of the punishment of their Lord.

[28] Truly there is no security from the punishment of their Lord,  
[29] save those who guard their private parts [30] save from their spouses or those whom their right hands possess [31] for then they are not blameworthy, but for those who seek beyond that it is they who are transgressors,  
[32] those who abide by their trusts and their pact  
[33] who uphold their testimony  
[34] and who are mindful of their prayers  
[35] those shall be in the Gardens, honoured.

## **Surah 33 ‘*The Parties*’**

**50. O Prophet, we have made lawful for thee thy wives to whom thou hast given their bridewealth, as well as those whom thy right hand possess of those whom God has granted thee as spoils of war,**

and the daughters of thy paternal uncles and the daughters of thy paternal aunts and the daughters of thy maternal uncles and the daughters of thy maternal aunts who emigrated with thee who emigrated with thee and any believing woman if she gives herself [in marriage] to the Prophet and if the Prophet desires to marry her - for thee alone, not for [the rest of] the believers.

## **Surah 4 ‘*Women*’**

**24. And married women [are forbidden unto you] save those whom your right hands possess.**

**Thus has God prescribed for you.**

## Translation notes

### ***'Those whom your right hands possess'***

The phrase : مَا ملَكَتْ أَيْمَانُكُمْ / 'ma malakat aymanukum' appears fifteen times in the Qur'an. Eleven of the sixteen translations considered in this series translate the phrase as '*those whom one's right hand possess*'<sup>3</sup>, with Pickthall and Khan & Hilali adding the word '*slaves*' in parentheses for the avoidance of doubt. Three translations (Ali Qarai, Maududi and Sarwar) translate the idiom simply as '*slaves*'.

Only two of the translations used do not explicitly reference slavery: Ahmad Ali translates the verse as referring to '*dependents*' and Wahihuddin uses the word '*servants*'.

It is suggested that this term, used in all four of the above clearly refers to slaves or (explicitly in **{33.50}**) female captives taken as the '*spoils of war*'.<sup>4</sup>

### ***"Guard their private parts"***

The majority of English translations<sup>5</sup> of **{23.4}** and **{70.29}** use the idiom '*guard their private parts*' or some similar words. *The Study Quran* adds a footnote (in relation to a separate verse<sup>6</sup>) that the phrase to '*guard one's private parts*' refers to '*abstaining from sexual misconduct*'.

**Khan & Hilali** and **Wahihuddin Khan** translate this phrase as to '*guard/safeguard their chastity*'.

**Ahmed Ali, Yusuf Ali** and **Sarwar** are more direct translating the phrase as '*guard their sex*', '*abstain from sex*', and '*restrain their carnal desires*' respectively.

**Pickthall** and the **Corpus** translation collective use the more coy phrase '*guard their modesty*'.

From these translations, it is suggested that the phrase in **{23.4}** and **{70.29}** clearly refers to sexual intercourse supported by the more obvious restatement of the instruction in **{33.50}** and **{4.24}**.

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<sup>3</sup> This phrase is the origin of the term '*mamluk*', which became used to refer to the sultanate established in Cairo in 1250 when slave soldiers, overthrew the Ayyubid dynasty descended from Saladin, and which ruled there until Egypt's conquest by the Ottoman Sultanate in 1517.

<sup>4</sup> This phrase is also used in the first instalment of this series, '*10: Owning slaves is part of God's Blessing*'

<sup>5</sup> Arberry, Maududi, Dariyabadi, Shakir, Ali Qarai, Sahih International and Qaribullah & Darwish

<sup>6</sup> Footnote to 24.30

## Narration circumstances

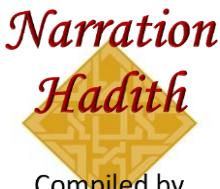
Al Wahidi offers no narration account for **{70.19-35}** or **{33.50}**. He does provide a narration account for **{23.1}** but this casts no light on the verse's context or intended meaning.

For verse **{4.24}** Al Wahidi records three similar versions of essentially the same account, the earliest written version of which is found in the hadith collection of Abu Dawood.

The hadith places the announcement of the verse – the only one of the four which explicitly states that the permission for Muslim men to have sex with captives applies even to captives who are married - within the context of the aftermath of the Battle of Autas. This battle took place about two weeks following Mohammed's conquest of Mecca, when Mohammed led an army to confront the Meccans' long time rivals, the Banu Hawazin. The Hawazin ambushed Mohammed's army at a mountain pass at Hunayn but were routed. Mohammed's army pursued the Hawazins to nearby Autas, where their womenfolk and children had camped, and routed the Hawazin for a second time capturing their families. This was the largest military engagement fought by the Muslim community in Mohammed's lifetime.

The hadith concerning the announcement of **{4.24}** unambiguously addresses concerns by Mohammed's fighters concerning the permissibility of having sex with their captives.

ASBAB AL NUZUL



Compiled by  
Ali ibn Ahmed  
Al Wahidi  
(d.1095)

*[Isnad (chain of transmission)]*

*"When the Messenger of Allah... captured the people of Awtas as prisoners of war we said:*

*'O Prophet of Allah! How can we possibly have physical relationships with women whose lineage and husband we know very well?'*

*And so this verse was revealed ['And all married women (are forbidden unto you) save those (captives) whom your right hands possess'].*

*Abu Sa'id al-Khudri ... reported that on the day of Hunayn the Messenger of Allah... sent an army to Awtas. This army met the enemy in a battle, defeated them and captured many female prisoners from them. But some of the Companions of the Messenger, Allah bless him and give him peace, were uncomfortable about having physical relations with these prisoners because they had husbands who were idolaters, and so Allah, exalted is He, revealed about this ['And all married women (are forbidden unto you) save those (captives) whom your right hands possess'].*

**Abu Dawud (2.2150)**

Ibn Ishaq also records the distribution of captives following the Battles of Hunayn and Autas without abashment.<sup>7</sup>

SIRAT RASUL

ALLAH



Earliest  
biography of  
Mohammed,  
c.760

*"Aby Wajza Yazid bin Ubayd al Sa'di told me that the Apostle gave Ali a girl called Rayta ..., and gave Uthman a girl called Zaynab, and gave Umar a girl whom Umar gave to his son Abdullah..."*

*Uyayna ibn Hisn took an old woman of the Hawazin and said as he took her:*

*'I see that she is a person of standing in the tribe and her ransom may well be high.'*

*When the Apostle returned the captives to at a price of six camels each he refused to give her back. Zuhayr Abu Surad told him to let her go for her mouth was cold and her breasts were flat, she could not conceive and her husband would not care. So he let her go for the six camels when Zuhayr said this. They allege that when Uyayna met al Aqra bin Habis he complained to him about the matter and he said:*

*'By God you didn't take her as a virgin in her prime or even in plump middle age!'"<sup>8</sup>*

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<sup>7</sup> 878. The earlier part of this excerpt is produced in *The Quran as Practised and Preached by Mohammed, 10 'Slavery is a Blessing from God'*

<sup>8</sup> Umar, Uthman and Ali, who are all mentioned in this account, were Mohammed's closes companions and were connected to him by marriage, Umar having married Mohammed's granddaughter, and having given his own daughter, Hafsa, to Mohammed in marriage; Uthman having married Mohammed's daughter Ruqayya and Ali – who was also Mohammed's first cousin - having married two of Mohammed's daughters and thereby being Umar's father in law. Each would in turn become leaders of the Muslim community following Mohammed's death as the second, third and fourth caliph.

## Related verses of the Qur'an

In these four verses the Qur'an limits men's sexual partners to wives and slaves. Within a marriage the Qur'an provides that men should have superior rights to their wives, such that:

- ❖ A man is entitled, subject to certain formalities, to repudiate his marriage (the 'triple *talaq*')<sup>9</sup>. The Qur'an contains no right for a woman to bring a marriage to an end although Islamic jurisprudence has traditionally permitted a sharia court to bring a marriage to an end and to impose a divorce settlement (*khul*) upon a former husband.
- ❖ In **{2.223}** the Qur'an advises men that:

*"Your women are a tilthe [ploughed field] to you. So go unto your tilthe as you will but send forth for your souls. And reverence God and know that you shall meet Him and give glad tidings to the believers."*

The exact meaning of this verse is disputed but it is traditionally interpreted as granting men the right to engage in their preferred method of sexual intercourse.

- ❖ In **{4.34}** the Qur'an instructs men that they may impose sanctions, including physical chastisement upon wives from "*from whom [they] fear discord or animosity*". The scope of the chastisement permitted is considered in a separate instalment in this series, but it is clear that according to the Qur'an, God permits men to insist upon obedience from their wives.

A third category of sexual partner is promised to men after their death, referred to in the Qur'an using the word *houris*. These supernatural beings are promised to men in marriage in the afterlife<sup>10</sup> and are described with physical details: '*fair skinned*' and '*full breasted*' with '*large beautiful eyes like pearls*'.<sup>11</sup> They are invariably understood as having been created by God to provide a reward – unambiguously erotic - to pious Muslim men in paradise.

Consequently, the four verses permitting a man to have intercourse with his slaves or captives exists within a broader context in which all permitted sexual activity referred to in the Qur'an is described from the perspective of the satisfaction of male sexual desire, in relationships in which the male has a position of dominance over the female, and without any reference – and in two of the three contexts explicit disregard to - female consent, pleasure or autonomy.

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<sup>9</sup> 2:229

<sup>10</sup> 44.54, 52.20.

<sup>11</sup> 37:48, 38:52, 44.54, 52.20, 55.56, 55.72, 56.22-3, 56.35-6, 78.33.

## The Example of Mohammed

The Sira describe, and it is traditionally accepted, Mohammed keeping at least two concubines:

**Rayhana**, whom he had selected to be his slave following the siege of the Banu Qurayza as described by Ibn Ishaq:<sup>12</sup>

*"The Apostle had chosen one of the women for himself Rayhana daughter of 'Amr bin Khunafa one of the women of Banu Amd Bin Qurayza and she remained with him until she died, in his power. The Apostle had proposed to marry her and put the veil on her but she said:*

*'Nay, leave me in your power for that will be easier for you and for me'."*

and

**Maryam al Qibtiyya**, who was sent, with her sister as a gift to Mohammed from the ruler of Egypt, and who bore Mohammed a son, Ibrahim, who died in infancy. <sup>13</sup>

Sahih Bukhari records three almost identical accounts of an incident in which Mohammed was asked by his followers whether, whilst having sex with their captives, it is permissible for them to withdraw so as not to impregnate the captives.

The context is given as the second raid by Mohammed upon the people of the Banu Mustaliq who lived near the Red Sea coast of Arabia, and through whose territory Meccan caravans to Palestine travelled. Mohammed had ordered a first raid on the Mustaliq a year after the Muslim defeat at the battle of Uhud. It was a surprise raid and there was no fighting but two hundred women were said to have been captured. The second raid took place a year later in which the whole tribe was captured. The prisoners following the second raid included Barra, renamed by Mohammed Juwariyah, the Mustaliq chief's daughter who married Mohammed in order to secure the freedom for her fellow tribe members.

One account is recorded in Book 46 which deals with questions related to marriage, and the questioners' concerns seem to concern the sexual ethics of 'azl' ie *coitus interruptus*, and possibly the issue of infidelity to their wives.

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<sup>12</sup> 693

<sup>13</sup> Tafsir Al Tabari



[*Isnad (chain of transmission)*]

*"We went with Allah's Apostle, in the Ghazwa of Barli Al-Mustaliq and we captured some of the Arabs as captives, and the long separation from our wives was pressing us hard and we wanted to practice azl. [coitus interruptus]. We asked Allah's Apostle (whether it was permissible).*

*He said:*

*'It is better for you not to do so. No soul, (that which Allah has) destined to exist, up to the Day of Resurrection, but will definitely come, into existence.'*"

**Sahih Bukhari** (46:718)

Slightly different accounts of the same incident appear in Book 62 which deals with issues relating to slaves and Book 34 which deals with the issue of trade. In the latter the principal concern addressed by the account is the circumstance that impregnating a slave would reduce her value as a spoil of war.

[*Isnad: ... "It was narrated by Abu Said al-Khudri that while he was sitting with Allah's Apostle he said:]*

*'O Allah's Apostle! We get female captives as our share of booty, and we are interested in their prices. What is your opinion about coitus interruptus?'*

*The Prophet said:*

*'Do you really do that? It is better for you not to do it. No soul that which Allah has destined to exist, but will surely come into existence.'*

**Sahih Bukhari** (34.432)

(The same hadith appears in **Sahih Muslim** 3371, and in the collections of **Timidhi** and **An-Nasa'i**).

Bukhari also includes the following incident concerning Mohammed's cousin and son in law, Ali<sup>14</sup>:

*[Isnad: ... "Narrated Buraida:]*

*'The Prophet sent Ali to Khalid to bring the Khumus (of the booty) and I hated Ali, and Ali had taken a bath (after a sexual act with a slave-girl from the Khumus). I said to Khalid:*

*'Don't you see this (i.e. Ali)?'*

*When we reached the Prophet I mentioned that to him. He said:*

*'O Buraida! Do you hate Ali?'*

*I said: 'Yes.'*

*He said: 'Do not hate him, for he deserves more than that from the Khumus.'*

**Sahih Bukhari** (59.631)

The Khumus is the one fifth share of the spoils of war that must be 'assigned to Allah' in the form of Mohammed or the Muslim ummah, pursuant to the instruction in the Qur'an **{8:38-41}**.

It appears that Buraida may have been informing Mohammed about Ali having had sex with the slave girl with the intention of angering Mohammed against Ali, since Ali was married to Mohammed's daughter Fatima. However, if this was his intent, his attempt to sow discord between Mohammed and Ali failed as Mohammed declared that Ali was entitled to have his share of the booty, including sex with a captive.

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<sup>14</sup> Ali would become the fourth 'rightly guided' caliph following the death of Mohammed, and the first imam of Shia Islam.

## **Islam After Mohammed**

The century after Mohammed's reported traditional death in 632 saw Arab armies conquer large parts of the Byzantine Empire in the Middle East and North Africa, most of Spain, the whole of the Sassanian Empire (Persia), large tracts of central Asia and as far east as Sindh (in modern Pakistan). .

It is debatable how 'Islamic' these armies were. For sixty years until the building of the mysterious Dome of the Rock in Jerusalem they left no identifiably Islamic monuments and continued to mint coins with crosses on. Up to the Abbasid revolution in 750 there was no Islamic book written and the words Muslim, and Qur'an were not mentioned in the chronicles of the people they conquered: other than a contemptuous account of four books of the Qur'an by a Christian official, John of Damascus.

According to the traditional Islamic narrative this was a period of brutal and bloody power struggles amongst Mohamed's most followers that commenced even as Mohammed was being buried and included his closest companions. Later doctrinal differences would emerge between the parties that would become Sunni and Shia Muslims, but in the beginning there was no sign that the differences were driven by any issue of any doctrine beyond the issue of who possessed the authority to lead the community.

See ***Who Wrote the Qur'an?*** On the IRG website

## **The four great Sunni *Sharia* jurists**

Following the establishment of the Abbasid Caliphate the earliest known attempts to arrange the Quran's instructions into a legal framework were made. Today the vast majority of Muslims follow one of the four schools of *Sharia* law (*fiqh*) that developed from the approaches of Abu Hanifa, Abu Malik ibn Anas, Mohammed ibn Idris al Shafii, and Ahmad ibn Hanbal

## The four great Sunni Sharia jurists

### Jaffar al-Sadiq (c.700-765)

Al Sadiq was a fifth-generation descendant of Mohammed and is revered by most Shia Muslims as the sixth imam.

He is generally regarded as Islam's first legal theorist, although his own ('Jaffari') jurisprudence, placing emphasis on the authority of the imams, is influential only with Shia Muslims.

#### Students of Jaffar al Sadiq

##### Abu Hanifa (c.699-767)

###### Rationalist

A collection of Abu Hanifa's rulings, *Kitab al-Athar Abu Hanifa*, written by his student Mohammed Shaybani, is claimed as the first book written in the Islamic community following the Quran.

The approach of the **Hanafi** school based upon these rulings stresses:

- ❖ the use of reason to interpret instructions in the Qur'an and hadith to achieve their supposed purpose;
- ❖ the judge's duty to consider equity and public interest as factors in applying the law

##### Abu Malik bin Annas (711-795)

###### Traditionalist

Malik compiled the earliest collection of hadith as a lawbook entitled the *Muwatta*

The Maliki approach to Sharia law emphasises imitating the practices of the first three generations of followers of Mohammed (the *salafa*), especially those living in Medina, as evidence of the authentic practice of Mohammed and his companions.

###### Student of Malik

##### Mohammed al-Shafii (767-820)

###### Conservative

Shafii rejected both judicial law-making and Medinan traditions as comprising man-made rather than divine law. His school recognised only the instructions in the Qur'an, example of Mohammed and analogies drawn from these.

###### Student of al-Shafii

##### Ahmad bin Hanbal (820-855)

###### Ultra-conservative

Hanbal's approach to interpreting Sharia reduces the scope for innovation to its minimum by limiting any extension of the literal words of the Qur'an and hadith by analogy to strict categories.

Instead it prefers to rely on hadiths including those that it acknowledges to have weak chains of transmission, where these are the only authority available.

## The four great Sunni jurists and sex with ‘those one’s right hand possesses’.

In *Kitab al-Athar Abu Hanifa*, Shaybani recorded judgments from Abu Hanifa that develop the sharia law based upon the passages permitting sex with slaves, include:



- ruling that the exception in {4.24} to the rule that a Muslim man may not have sex with a woman married to somebody else relates only to “married women... taken in war as slaves” and not purchased or inherited domestic slaves;<sup>15</sup>
- acceptance that a Muslim man is entitled to marry a slave woman whilst retaining her as his slave;<sup>16</sup>
- prohibiting a Muslim having sexual intercourse with a slave who is the sister of a slave with whom he has previously had intercourse, until ‘*someone else takes possession, through marriage or otherwise, of the right to sexual intercourse with the one with whom he has had sexual intercourse*’;<sup>17</sup>
- restricting those whom are permitted to have intercourse with a slave to the slave’s purchaser or one to whom the slave was given<sup>18</sup> and excluding a man’s wife’s slave maid<sup>19</sup>; and
- establishing the legal paternity of a child born to a slave that was sold such that with the seller or the purchaser may have been the father (Abu Hanifa modified an earlier ruling that in a disputed case the child should belong to the purchaser, by inserting a six month limit from the date of the sale within which any children born would be treated as property of the seller; and adapted this rule to the situation where any one of three slave owners may have been the father of a child born to a slave owned successively by each of them’.<sup>20</sup>

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<sup>15</sup> 390.

<sup>16</sup> 391

<sup>17</sup> 455

<sup>18</sup> 395

<sup>19</sup> 619

<sup>20</sup> 735 and 736

In *Al-Muwatta*, Malik Bin Anas also sets out rules:



- that where a Muslim had married his slave girl and then divorced her once: she remained *'lawful to him due to the possession of the right hand ... [unless] he divorced her irrevocably when she is unlawful to him due to the possession of the right hand until she has been married to another man.'*<sup>21</sup>
- prohibiting intercourse with both a mother and a daughter possessed by a right hand or two sisters possessed by a right hand,<sup>22</sup>
- prohibiting a man from intercourse with a slave where that slave had formerly been owned by the man's father and where the father had had intercourse with her;<sup>23</sup>
- prohibiting the marriage of a man to his Christian or Jewish slaves (limiting the instruction in the Qur'an, **{5.5}**, that '*chaste women from People of the Book*' are lawful to Muslims to marry to free Jews and Christians; and limiting the provision that a Muslim may marry his slaves, **{4.25}**, to believing slaves only) whilst adding:

*"The Christian and Jewish female slaves are lawful to their masters (to have intercourse with) due to the right of possession, but it is unlawful to him to have intercourse with a Magian female slave due to the right of possession."*<sup>24</sup>
- Confirming that a Muslim is only entitled to have intercourse with a slave that he owns personally, and not a slave of his wife:

*"Malik narrated from Rabi'a bin Abu Abdur-Rahman:*

*'Once a man went out with his wife's slave girl on a journey and copulated with her whereby his wife was jealous. So she mentioned it to Umar bin al Khattab who asked him about that. He said:*

*'She donated her to me'*

*Umar said:*

*'Either you set forward a proof before me or I will stone you.'*

*His wife confessed that she had donated her to him"*<sup>25</sup>

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<sup>21</sup> 1142

<sup>22</sup> 1143 (based upon a ruling of Umar, the second caliph) and 1144 (based upon a ruling by Uthman, the third caliph)

<sup>23</sup> 1146,7

<sup>24</sup> 1148. 'Magian' is a reference to Zoroastrians or '*the worshipers of the fire*'.

<sup>25</sup> 1571

Ahmad bin Hanbal recites the hadith of Abu Sa`id Al-Khudri (produced above) relating the capture of the women of the Banu Hawazin following the battle of Autas.

The position across all four schools of fiqh is summarised in *Sharia, Theory, Practice, Transformations* by Wael B Hallaq:

***“Slavery is also the fate of women who fall into captivity, whether they convert or not but like their male counterparts who are willing to convert they can purchase their freedom through a manumission contract...”***

***“The marriage contract of two captives continues to be valid and binding but that of a woman taken prisoner without her husband becomes null and void. As a slave she becomes sexually lawful to her Muslim master.”***<sup>26</sup>

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<sup>26</sup> 331

## Tafsir (Commentaries on the Qur'an)

Of the two earliest tafsir, the author has been unable to source a complete English translation of **Tafsir al Tabari**. The tafsir of **Tustari** (a ninth century sufi) contains no commentary on any of the verses of the Qur'an cited above, save for a meditation on humility before God {23.1} and the comment that 'private parts' {70.29} extends to 'all the bodily members, both exterior and interior'.

Ibn Kathir provides commentary upon all four of the verses permitting a Muslim man sex with those his right hand possesses.

His commentary to {4.24}, the fullest of the four, recites the hadith of the battle of Autas, and the comment:



(c.1360)

Most widely  
used Quran  
commentary

"[This] means, you are prohibited from marrying women who are already married, [except those whom your right hands possess] **except those whom you acquire through war, for you are allowed such women after making sure they are not pregnant.**

[Thus has Allah ordained for you] means, this prohibition was ordained for you by Allah. Therefore, adhere to Allah's Book, do not transgress His set limits, and adhere to His legislation and decrees."

## Conclusion and Comment

Muslims believe that the Qur'an:

- contains the verbatim words of God,
- is intended to be prescriptive, to guide mankind as to the social order that God wishes; and
- may never be reviewed or amended.

**The Qur'an states unambiguously in four places that a Muslim man commits no sin by having sexual intercourse with '*those his right and possess*'. This is interpreted by all schools of sharia law as captives taken in time of war and subsequently enslaved. This instruction was announced within the context of Mohammed's army waging war on tribes that refused to submit to his dominion over them and renounce paganism.<sup>27</sup>**

Furthermore all the major sources concerning Mohammed's life record Mohammed:

- keeping two concubines: one captured in war, the other sent to him as a gift; and
- granting his approval for his fighters having sex with their captives: despite the reservations of some of them and even to the point of his disapproving their withdrawal during sex aimed to prevent the victim's pregnancy.

This instruction is repugnant for at least three distinct reasons.

- It would be naïve and disingenuous to suggest that this instruction was not intended to legitimise the systematic rape of women with all the physical pain, suffering, distress, humiliation and risk to the victim of injury, disease or pregnancy that inevitably follow from such assaults. The four verses approach the issue from the perspective of permission granted to Muslim men: in none of the verses, nor in any record of Mohammed's application of it, nor in the legal rulings or Ibn Kathir's leading commentary on it, is there any recognition that the health or autonomy of the victim bears any consideration whatsoever.
- The legitimisation of the rape of captives provides Muslim fighters with a powerful incentive to wage war to take and keep prisoners who become objects of sexual slavery, and can thereafter be sold. The instruction therefore has the effect of legitimising, for Muslims, rape as a weapon of war to intimidate and demoralise communities who resist, or would otherwise have resisted, Islam.
- The instruction, with other verses of the Qur'an cited above, present a Quranic (and therefore for Muslims divine) view of sexual activity as the satisfaction of male lust through dominance, outside any context of romantic love or mutual commitment, satisfaction or pleasure.

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<sup>27</sup> See *The Quran ad it was Practised and Preached by Mohammed 2: Jihad* in this series

**It follows that by legitimising rape, sexual slavery, sexual violence as a weapon of war and an exploitative view of sex, the instruction in the text of the Qur'an that a Muslim man is permitted to have sex with those whom his right hand possesses, given its plain and originally intended meaning, and the example of Mohammed, are inconsistent with the values of modern liberal civilised society.**