



BARDA AND BARDA-DĀRI VI. REGULATIONS GOVERNING SLAVERY IN ISLAMIC JURISPRUDENCE

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Slavery is designated in *feqh* (i.e., religious law, although not in the Qurʾān or *ḥadīth*) as *reqq* “weakness.” The weakness in question is extrinsic to the person of the slave and results from his legal debarment (*ḥejr*) from ownership, guardianship, giving witness and exercising judgeship. Certain other rights and obligations are also materially affected by servitude. Matters concerning slavery never formed a separately organized topic in *feqh*, with the exception of manumission (*ʿetq*); the relevant regulations are scattered in books on *jehād*, trade (under the subheading *bayʿ al-ḥayawān* “the sale of animate beings”), marriage, fixed punishments (*ḥodūd*), and retribution and blood money (*qesāṣ wa dīa*). This distribution of the subject matter reflects the hybrid, even contradictory legal status of the slave; he was both an item of property and a person with a claim to certain rights. All schools of *feqh* tended, before modern times, to regard slavery as a permanent feature of Muslim



society; the ethical emphasis of the Qur'ān and Sunna on the desirability of emancipation never became fully reflected in law. This article summarizes the provisions of the Hanafite and Shafē'ite schools—the two Sunni schools that have had a historical presence in Iran—and those of Shi'ite (Ja'farī) jurisprudence.

The original source of all slavery is warfare, the enslavement of enemy captives being one of the options open to the Muslim ruler or commander. According to some jurists, slavery originally had a punitive aspect, in that the non-Muslim enemy by failing to use his intelligence to perceive the truth of Islam had assimilated himself to nonrational beings and therefore deserved to be treated as such (Boḳārī, II, p. 282). It follows from this that a Muslim may not be enslaved, although a slave embracing Islam after his capture is not automatically emancipated and his descendants may inherit his servile status. A minor captured from the enemy without parents or guardian automatically becomes Muslim, as does the foundling (*moltaqeṭ*) abducted from Dār al-Ḥarb, but both remain slaves. However, a slave voluntarily quitting Dār al-Ḥarb for Muslim territory is automatically emancipated on his arrival.

After the battle of Ḥonayn, the Prophet is said to have forbidden the enslavement of male Arab polytheists. The prohibition was regarded as specific to the occasion by Abū Bakr and as general in force by 'Omar. Sunni schools of law followed the judgment of 'Omar (although the question soon became theoretical), and Shi'ite *feqh* rejected it (see tradition of Moḥammad al-Bāqer in Ḥorr 'Āmelī, VI/1, p. 17).

Heresy and rebellion (varyingly understood by different sects) might also lead to enslavement. *Fatwās* issued by the Ottomans in the course of their wars against Safavid Iran occasionally provided for enslavement of the wives and children of Shi'ites (Uzunçarşılı, IV/1, pp. 175-76, but see *fatwā* of Abū'l-So'ūd Efendi prohibiting the enslavement of the Shi'ites of Naḳjavān in Düzdağ, p. 111), and Shi'ites kidnapped from Khorasan were routinely sold as slaves in Bukhara (Vambéry, II, p. 59). Shi'ite *feqh* does not appear to have responded in kind. The enslavement of rebels against legitimate authority (*boḡāt/ahl al-bāgy*) was prohibited in imitation of the example of clemency set by 'Alī b. Abī Ṭāleb on his conquest of Basra. The case will be different with the Twelfth Imam; on his return, he will enslave the dependents of all who oppose his authority (Ḥorr 'Āmelī, VI/1, pp. 56-59).

War against the non-Muslim enemy continued to be the theoretical



justification for the acquisition of slaves, but the war was often fictive and consisted of little more than raids into enemy territory by professional slavers. The jurists never condemned this degeneration of *jehād*, although some scrupulous Hanafites, at a fairly late date, recommended the masters of female slaves to enter into a form of marriage with them (*nekāh tanazzohī*) in order to avoid the risk of adultery. For the Shi'ite imams, the fact that the pseudo-*jehād* of slavers was conducted under the auspices of a usurpative (*zālem*) authority appears to have been immaterial. Ja'far al-Ṣādeq drew up a kind of code of professional ethics for the slaver (*naḳkās*; Ḥorr 'Āmelī, VI/3, pp. 31-32), and Mūsā al-Kāẓem, all of whose thirty-seven children were born to slave mothers (Shaikh Mofīd, pp. 457-58), strongly recommended the purchase of women for concubinage (Ḥorr 'Āmelī, VII/1, p. 191). Moḥammad al-Bāqer, Mūsā al-Kāẓem, and 'Alī al-Rezā all explicitly permitted the purchase of slaves from the various nationalities—Slav, Turkish, Khazar, Daylamite, and Nubian—that were available on the market, including castrated males (Ḥorr 'Āmelī, VI/1, pp. 17, 99-100, VI/3, p. 27; Ḥellī, II, p. 59). Ja'far al-Ṣādeq recommended against the purchase of African (Zanj) slaves, making an exception of the Nubians, a party of whom would one day assist the Mahdī (Ḥorr 'Āmelī, VII/1, p. 56).

The devotional duties of the Muslim slave are in general the same as those of his free counterpart. According to a tradition of the Prophet, the prayers offered by an absconding (*ābeq*) slave are invalid (*Ṣaḥīḥ Moslem*, Ketāb al-Īmān no. 131); Nawawī considers this to apply to nonobligatory prayers only. Being without property, the slave is exempt from paying *zakāt* and performing the *ḥajj*, unless his master wishes to facilitate the latter for him. His master is obliged to pay *ṣadaqat al-feṭr* at the end of Ramaẓān on his behalf. The slave is not required to participate in *jehād*; if he volunteers, he must have the permission of his master ('Alī b. Abī Ṭāleb appears, however, to have accepted a slave volunteer without obtaining the master's permission; Ḥorr 'Āmelī, VI/1, p. 15). The female slave is not required to cover herself as fully as the free woman when performing prayer, and no blame attaches to her if she permits parts of her body to be viewed by prospective purchasers.

Humane treatment of slaves is enjoined by the Prophet in a number of frequently quoted traditions, especially that which calls on the master to dress and feed the slave as if he were a member of his own family (Ġazālī, II, pp. 199-201). *Feqh* contents itself with stipulating that the master must provide the slave with the necessities of life (*nafaqa*) at a level comparable to that enjoyed by the slaves of similarly situated owners. If he fails to do so, a judge may



compel him to sell the slave; the same applies in the case of mistreatment amounting to grievous bodily harm. It is, in any event, desirable (*mostaḥabb*) to emancipate the slave as expiation for beating him, even lightly and with apparent justification. All schools are agreed on these matters.

As an item of property, the slave can be sold, given away, rented or inherited, and be owned either individually or jointly. He cannot own property; and items he brings with him at the time of sale belong automatically to the buyer unless it can be reasonably inferred that the seller was unaware of them, in which case they must be returned to him. A slave may be permitted (*ma'dūn*) by his master to engage in commercial transactions. According to Hanafite *feqh*, the permission must be unrestricted in nature: the slave keeps his earnings and is responsible for his debts; if he fails to meet them, his master must sell him and pay off his debts from the proceeds. Shi'ite law agrees with these provisions, but stipulates that the master may demand a fixed proportion (*ẓarība*) of the slave's earnings (Ḥorr 'Āmelī, VI/3, pp. 34-35). Shaf'ites regard the permission to trade as restricted in scope: whatever the slave earns belongs to the master, who is also responsible for the debts he incurs. All schools are of the view that the permission given to the *ma'dūn* may be revoked at any time; it is not to be regarded as a form of incipient manumission.

The slave's status materially affects his or her ability to marry. A free man may marry a female slave (not, however, one he owns himself, unless he emancipates her first, a procedure praised in *ḥadīth*), and a free woman may marry a male slave. The consent of the owner of the slave partner in such "mixed" unions is necessary for their validity, and in the case of sale, a new owner may either confirm or dissolve the marriage. A master who consents to the marriage of his female slave renounces thereby his right of concubinage with her. The offspring of marriages between free persons and slaves are free. Finally, a male slave may marry a female slave, again after consent is obtained. The offspring of such a union share the servile status of the parents; if they are owned by different masters, they become the joint property of both masters, according to the Sunnis, and the property of the mother's owner, according to Shi'ite *feqh*. A master may compel two of his slaves to marry each other, having "coercive guardianship" (*welāyat al-ʿjbār*) over them, and he can also force the male partner in such a union to repudiate his wife. Hanafite and Shaf'ite *feqh* are agreed that a slave can marry only two wives; Shi'ite *feqh* makes this limitation only in the case of free wives, permitting the slave to



marry up to four slave women (Ḥorr 'Āmelī, p. 520). Since slaves are barred from ownership, the owner must provide for the dowry and upkeep owed by his slave to his wife, and he also takes possession of the dowry given to a slave wife owned by him.

An owner has unrestricted right of concubinage (*estefrāš*) with his unmarried female slaves; if, however, he owns both a mother and her daughter, or two sisters, he can choose only one of the two for his bed. A period of restraint (*estebrā*; see *ET*², s.v.) of forty-five days must be observed after the purchase of the slave, unless she has not reached puberty, has entered menopause, or has just completed a menstrual period. Unlike a wife, a concubine has no claim of sexual satisfaction on her master, but Shi'ite *feqh* recommends coitus with a female slave at least once every forty days in order to protect her against the temptation of fornication. Coitus interruptus (*'azl*), discouraged (*makrūh*) in the case of a wife, is unobjectionable with a concubine, in the view of both Shi'ite and Shafe'ite *feqh*. Shi'ite regulations also permit the simultaneous bedding of two concubines, a practice forbidden with wives (Ḥorr 'Āmelī, p. 93; Ḥellī, II, p. 317). Shi'ite *feqh* differs sharply from the Sunni schools in permitting the owner of a female slave to assign sexual enjoyment of her to a third party, by way either of gift or of rental. This provision appears to contradict Qur'ān 24:33. The offspring of such a liaison belongs to the owner of the woman. In the case of joint ownership of a female slave by two or more men, the Sunni schools deny the right of concubinage to all the owners; Shi'ite *feqh* permits it, although with reluctance. If two or more owners of a slave woman have coitus with her during a single menstrual cycle during which she becomes pregnant, paternity is established by lot (Ḥorr 'Āmelī, VII/1, p. 566).

In partial compensation for his disabilities, the slave receives a lesser penalty than the free man or woman for certain offenses—generally a half, when the punishment can be fixed quantitatively. A slave who commits fornication or drinks alcohol receives half the number of lashes that are given a free man, and a married slave, male or female, who is guilty of adultery is not subject to lapidation. If the slave commits an offense calling for the payment of blood money, it must be paid by his master, who may also turn him over to the claimant in full or part payment. If conversely a slave is killed or suffers bodily injury, only Hanafite *feqh* makes the offender liable to retribution (*qeṣās*); other schools provide for the payment of blood money—fixed at rates lower than those applicable to a free person—to the owner.

Manumission (*'etq*) is strongly recommended by the Qur'ān. It serves as



expiation for the violation of a solemn oath (5:89), manslaughter (4:92), and the form of repudiation of a wife known as *ḡehār* (58:3-4); is one of the purposes on which *zakāt* may be spent (9:60); and is generally enjoined as a means of drawing nearer to God (2:177, 90:11-13). The Prophet emancipated all his male slaves (Hamidullah, 1975, p. 632), and his promise that for every limb of a slave set free God will save from the fire a limb of the liberator is quoted in all the books of *feqh*. (Ṣadūq, p. 37, fixes the ratio at one limb of the liberator for every two limbs of a female slave set free.) Manumission may take place in fulfillment of a vow; otherwise it is a voluntary and unilateral procedure on the part of the owner, immediate in its effect and irrevocable.

Both Hanafite and Shafe'ite *feqh* recognizes as valid an implied act of manumission, or even one originating in drunkenness; Shi'ite *feqh* insists on the pronouncement or writing of an explicit formula of manumission while in a state of sobriety. A formula of manumission related from Ja'far al-Ṣādeq stipulates that the former slave should agree to perform his devotional duties, be loyal to "the friends of God" (i.e., the imams), and dissociate himself from His enemies (Ṣadūq, p. 37). Shi'ite *feqh* forbids the manumission of the non-Muslim slave, discourages manumission of the non-Shi'ite Muslim (*al-moslem al-moḡālef*) slave, and recommends manumission of the Shi'ite (*mo'men*) slave, particularly after seven years of servitude (Ḥellī, III, p. 108). All jurists agree that a slave contracting leprosy is automatically freed, but physical defects such as blindness, being cross-eyed, and lameness to the point of immobility may serve as bars to emancipation.

Complexities arise when one among two or more owners of a slave decides to emancipate him. Hanafite *feqh* holds that free and servile statuses are indivisible (Boḡārī, II, p. 282): Abū Ḥanīfa believed that the slave must therefore continue in bondage until the claims of all his owners are satisfied, while Abū Yūsof and Ṣaybānī declared that the slave must be freed immediately, although the non-emancipating co-owners retain a right to compensation (ibid., p. 283). In either case, satisfaction of their claims is to be made either by the emancipating owner or by the slave himself, working to accumulate the necessary amount (a process known as *estes'ā'*). Shafe'ites regard it as possible for a slave to be partially emancipated, whether singly or jointly owned, one consequence of partial emancipation being that he acquires the right to ownership (ibid.). Shi'ite *feqh* agrees that partial manumission is possible, even to the extent of a single limb being emancipated (Sayyed Mortazā, p. 176); it otherwise coincides with the position of Abū Yūsof and



Šaybānī.

Another path to freedom is *mokātaba*, a contractual agreement between the slave and his master whereby the former (*mokātab*) gradually purchases his freedom from the latter (*mokāteb*). Recommended by Qur'ān 24:33, the acceptance of such an arrangement by the owner was regarded as obligatory by 'Omar (Hamidullah and Aydın, p. 131). If slave and master are unable to agree on a price for freedom, the amount may be set by a judge. *Mokātaba* is irrevocable in its effects except that—according to Shi'ite *feqh*—the contract may provide for repossession of the slave if he fails to complete payment during the stipulated period, together with the forfeiture of all money paid. A *mokātab* cannot be sold, and a master has no right to concubinage with a female slave who has entered on *mokātaba*.

A master may will that the slaves he holds be emancipated on his death, a transaction known as *tadbīr*. Hanafites regard *tadbīr* as irrevocable and forbid the sale of a slave awaiting this form of emancipation (*ibid.*). Shafé'ites regard *tadbīr* as revocable only in connection with the sale of a slave; Shi'ites, as revocable without restriction, by way of analogy with a will. All schools regard the slave, in the case of *tadbīr*, as part of the disposable third of his master's estate: Shafé'ite and Shi'ite *feqh* therefore regard it as permissible to sell him to a new owner if this is needed to cover the debts of his deceased master. Shi'ite regulations prohibit the *tadbīr* of a non-Muslim slave (Sayyed Mortazā, p. 178).

The female slave who bears her master a child (*omm al-walad*) forms a special case; according to most Sunni opinion, she, too, attains freedom on the death of her master. The Egyptian Mārīa who bore the Prophet a short-lived son would seem to furnish the obvious precedent for the emancipation of the *omm al-walad*, but the Companions were divided on the matter, and it was some time before a categorically affirmative *ejmā'* on the subject crystallized (Boḳārī, II, p. 248). The Shi'ite position is more nuanced. 'Alī b. Abī Ṭāleb is said to have permitted the sale of the *omm al-walad* if she had been bought on credit and the purchaser was unable to complete payment; Mūsā al-Kāzem allowed greater latitude, proclaiming that the *omm al-walad*, like any other slave, could be sold, inherited, or given away (Ḥorr 'Āmelī, VI/3, p. 51). The permissibility of such disposal of the woman was sometimes made dependent on the child's having died or attained maturity. If the child survives his father, the mother is emancipated only insofar as her value is equal to the child's share of the estate; if it exceeds that share, she must compensate the other heirs with the fruits of her labor (Ḥellī, III, p. 140).



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