

Marriage and Slavery in Islamic Thought: A Critical Study of Dr. Kecia Ali's Scholarship

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Abstract

This article presents a critical study of the legal, social, and ethical concepts of marriage and slavery in early Islam in light of the contemporary scholarship of Dr. Kecia Ali. The central research problem concerns the extent to which similarities in certain legal concepts and terminology related to marriage and slavery in early Islamic jurisprudence can be understood as evidence of their legal or ethical equivalence. Dr. Kecia Ali examines marriage, dower (mahr), sexual rights, consent, ownership (milk), authority, slavery, and concubinage through the framework of early Islamic legal texts, highlighting significant parallels between certain legal structures governing marital and enslaved relationships. This study, however, argues that legal similarity should not necessarily be equated with normative equivalence. The ethical principles of the Qur'an and Sunnah—particularly human dignity, justice, consent, ma'ruf (fair and proper treatment), affection, and mercy—establish marriage as a distinct legal and moral institution. Likewise, Islamic teachings concerning slavery, including the encouragement of emancipation, contractual manumission (mukatabah), and humane treatment, provide a basis for understanding the institution within a broader framework of ethical transformation. By distinguishing between classical juristic formulations and Qur'anic ethical principles, the study evaluates both the scholarly contribution and the limitations of Kecia Ali's approach. It concludes that although historical legal parallels between marriage and slavery are significant, they should not be regarded as establishing complete legal or ethical equivalence between the two institutions.

Keywords: Marriage, Slavery, Kecia Ali, Islamic Jurisprudence, Mahr, Consent, Milk, Concubinage, Milk al-Yamin, Human Dignity, Contemporary Islamic Interpretation.

1. Introduction and Theoretical Framework

1.1. Background

Marriage and slavery represent two significant legal and social institutions in early Islamic society, both deeply connected to the family system, social stratification, sexual ethics, property, legal personality, and human relationships. In the pre-Islamic Arabian society, various forms of marriage were practiced, and slavery formed an integral part of the social and economic order. Islam did not merely preserve these existing social institutions; rather, it established specific legal boundaries and ethical principles for them. Marriage was accorded the status of a formal contract, women's financial rights were recognized, and marital life was linked to responsibility, *ma'ruf* (fair and proper treatment), and benevolent companionship. Similarly, with respect to the existing institution of slavery, numerous legal rulings and ethical exhortations emerged—including emancipation, *mukatabah* (contractual manumission), humane treatment, and the freeing of slaves. Without this historical background, it is difficult to understand the interrelationship between marriage and slavery in early Islamic jurisprudence (Ali, 2010, pp. 1–28).

Prior to Islam, Arabian society was organized around tribal and familial relationships; marriage was therefore not merely a personal bond between two individuals, but also a means of social alliance between families and tribes and the preservation of lineage. It was within this social context that Islam gave marriage the form of a legal contract and attached financial and ethical obligations to it. The *mahr* (dower) became an established financial right of the wife, and marital life was linked to a structured system of rights and responsibilities rather than mere sexual union. The Qur'an describes the marital relationship in terms of tranquility, affection (*mawaddah*), and mercy (*rahmah*), which makes clear that in the Islamic conception of marriage, the ethical and human dimensions hold fundamental status alongside the legal dimension (Ali, 2010, pp. 25–44).

With regard to slavery as well, it is essential to view Islamic texts within their historical context. Slavery existed in Arabia and other societies before Islam, and individuals were enslaved through various means. Islam issued numerous legal rulings concerning this existing institution, but at the same time presented the emancipation of slaves as an act of righteousness and as expiation, opened the path of *mukatabah*, and emphasized humane treatment of slaves. Surah al-Balad mentions the freeing of a slave among the difficult paths of righteousness, while Surah al-Nur provides guidance toward the legal mechanism of achieving freedom through *mukatabah* (The Holy Qur'an, 2001, 90:13, 24:33).

1.2. Statement of the Research Problem

The central problem of the present research is why similarities emerged between certain legal concepts and terminology related to marriage and slavery in early Islamic juristic texts—such as *milk* (ownership/dominion), authority, sexual rights, and legal claims—and how these similarities should be understood in contemporary scholarly interpretation. Dr. Kecia Ali's scholarship lends particular significance to this problem, because rather than viewing marriage and slavery as entirely separate and unrelated legal domains, she examines the legal discourse

and conceptual parallels existing between them. However, her study also raises the question of whether the parallels found at the juristic level can be equated with the Qur'anic normative ethical conception of marriage (Ali, 2010, pp. 1–28).

The fundamental position of this research is that legal parallelism cannot be understood as normative equivalence. Marriage and slavery were distinct legal institutions in historical Islamic law. While certain legal concepts did exhibit similarities, marriage—through mahr, maintenance (nafaqah), consent, lineage (nasab), mutual rights, and marital obligations—constitutes a distinct contractual structure. Therefore, the shared use of a single legal term does not establish the complete identity of the two institutions.

1.3. Significance of the Research

The significance of this subject operates on two levels. The first level is historical and juristic, where an examination of the formation of early Islamic law and its conceptions of marriage and slavery is essential. The second level is contemporary and intellectual, where attempts are made to understand Islamic law and ethics in relation to modern conceptions of human dignity, consent, gender relations, and freedom. Dr. Kecia Ali's scholarship holds particular significance in this second domain, as she connects the classical formulations of Islamic jurisprudence with contemporary questions of gender and sexual ethics (Ali, 2016, pp. 1–22).

1.4. Research Methodology

This research is fundamentally based on an analytical, critical, and comparative methodology. It employs Dr. Kecia Ali's principal works—particularly *Marriage and Slavery in Early Islam* and *Sexual Ethics and Islam*—as primary sources. Alongside these, the Qur'an, Hadith, and classical juristic sources—especially materials related to the Hanafi, Maliki, and Shafi'i juristic traditions—have been consulted. The study first expounds Kecia Ali's argument, then critically evaluates it in light of classical juristic conceptions and Qur'anic ethical principles. The objective of this methodology is neither to reject classical jurisprudence outright nor to accept contemporary interpretation uncritically, but rather to establish scholarly dialogue between the two.

2. An Analysis of Dr. Kecia Ali's Scholarly Interpretation

2.1. Dr. Kecia Ali's Scholarly Methodology

Dr. Kecia Ali's scholarly interests are connected to Islamic law, gender, sexual ethics, and the interrelationship between marriage and slavery. Her major work, *Marriage and Slavery in Early Islam*, presents a study of the legal relationships between marriage and slavery in the early Islamic juristic tradition. She reads juristic texts not merely as lists of religious rulings, but as a historical legal discourse in which jurists employed not only revealed texts but also their social circumstances, customary practice ('urf), and legal reasoning. Because of this methodology, her research holds significance for understanding the legal categories present in early Islamic law and their interrelationships (Ali, 2010, pp. 1–28).

A fundamental characteristic of Kecia Ali's methodology is that she does not view marriage merely as a religious ritual or ethical relationship, but also highlights its contractual and legal

dimensions. In her view, the juristic discourse on marriage includes numerous legal claims concerning financial rights, sexual rights, residence, maintenance, obedience, and companionship. Similarly, in the legal system of slavery, various rights and authorities are distributed regarding a person's body, sexual relations, and legal status. It is through this structural comparison that she elucidates the historical relationship between the two institutions (Ali, 2010, pp. 29–64).

2.2. Transacting Marriage

In Kecia Ali's discussion, there is an attempt to understand marriage as a legal transaction in which various rights and obligations are generated. The mahr is a central component of this transaction, since as a consequence of the marriage contract, a financial right is established for the woman. However, an important critical distinction is necessary here: construing the mahr as the purchase price of the woman does not constitute a complete representation of the Islamic legal conception. The Qur'an establishes the mahr as the woman's right and commands that it be paid to her (The Holy Qur'an, 2001, 4:4).

This conception of the mahr makes clear that in marriage, the woman is not merely an object of transaction, but possesses a legal personality with independent financial rights. This very point helps to illuminate the fundamental distinction between marriage and slavery. In the legal structure of slavery, a person's legal status was determined by the system of ownership, whereas in marriage, the woman's personality and her financial rights remain intact. Therefore, equating similarity in juristic terminology regarding transaction with similarity of legal status would be incorrect.

2.3. Maintaining Relations

Kecia Ali's research does not confine marriage to the initial stage of contract alone, but also attends to the enduring rights and obligations generated as its consequence. In marital life, matters such as maintenance, residence, sexual relations, mutual responsibility, and social relationship form part of the legal discussion. In this way, marriage becomes a continuous legal relationship in which both parties bear specific rights and obligations (Ali, 2010, pp. 65–96).

Here the internal structure of Islamic jurisprudence is also significant. In Hanafi jurisprudence, marriage is understood as a contract that generates specific legal rights between husband and wife. The mahr is the right of the woman, while maintenance (nafaqah) is established as the responsibility of the husband. Therefore, confining marriage to a unilateral relationship of the husband's authority and the wife's obedience does not reflect all aspects of the juristic system (Al-Sarakhsī, 1993, Vol. 5).

2.4. Claiming Companionship

An important aspect of Kecia Ali's discussion is marital companionship. Rather than viewing marriage merely as a sexual relationship or a collection of legal obligations, she also brings forward the concept of marital companionship. The Qur'an links the marital relationship to tranquility, affection, and mercy; therefore, the ethical meaning of marriage cannot be separated from its legal meaning (The Holy Qur'an, 2001, 30:21).

Here an important distinction emerges between classical legal discourse and Qur'anic ethical discourse. Jurisprudence divides the rights and duties of marriage into detailed legal categories, while the Qur'an also highlights the broader ethical purpose of the marital relationship. In contemporary Islamic interpretation, both levels must be held together so that marriage may be understood not merely as a technical contract but also as an ethical partnership.

2.5. Untying the Knot

Kecia Ali's research also accords significance to the termination of marriage and the legal process of divorce. Divorce demonstrates that marriage is a legal relationship for which, alongside its inception, specific legal procedures for its termination also exist. Similarly, for the termination of slavery, manumission and other legal means existed. In both matters, discussion of the dissolution of a legal relationship emerges; however, this parallel cannot be construed as the identity of the two institutions (Ali, 2010, pp. 133–163).

This distinction is of fundamental importance to the present research. Divorce is the termination of a marital contract, whereas manumission is the termination of the legal status of slavery. The legal consequences and social implications of the two differ. Therefore, comparative analogy only aids in understanding legal structure; it does not establish normative identity.

2.6. Marriage and Dominion

The most important and sensitive part of Kecia Ali's discussion concerns the relationship between marriage and dominion. In early juristic texts, concepts such as milk, authority, and sexual rights were, in certain places, employed in the legal discourse of both marriage and slavery. However, taking the term milk everywhere in the sense of the modern concept of property is not correct. In legal contexts, its meanings may also be authority, entitlement, or a particular legal relationship.

In the case of slavery, the element of ownership was more direct, since the slave formed part of a specific legal property regime. By contrast, in marriage the wife remains an independent legal personality, and as a consequence of the contract, rights such as mahr, maintenance, and others are established for her. Therefore, equating certain legal authorities of the husband in marriage with the ownership of slavery would amount to disregarding the distinctions between juristic categories (Ali, 2010, pp. 164–186).

3. Juristic and Exegetical Critique

3.1. Marriage and Slavery: Two Distinct Legal Institutions

The fundamental critical conclusion of this research is that marriage and slavery should be understood as two distinct legal institutions in Islamic law. Certain legal terminology and structural parallels exist between them, but their fundamental legal status differs. Marriage is a contract that generates rights and obligations between the parties, whereas slavery was historically connected to a person's legal status and the system of ownership.

Disregarding this distinction gives rise to the problem of transferring juristic terminology into modern meanings. For the contemporary reader, terms such as "milk," "right," "authority," and "tamkin" may immediately appear connected to modern concepts of property, ownership, or personal autonomy; however, in historical juristic discourse, the meanings of these terms were more contextual. It is for this reason that historical context holds fundamental importance in the interpretation of classical texts (Hallaq, 2009).

3.2. Mahr: Financial Right or Purchase Price?

In Dr. Kecia Ali's discussion, the mahr is a central issue, since through it the contractual dimension of marriage can be understood. The Qur'an clearly commands that women be given their mahr willingly. This indicates that the mahr is the right of the woman and acknowledges her legal personality (The Holy Qur'an, 2001, 4:4).

Classical jurisprudence contains detailed discussion of the amount of the mahr, its payment, and its legal effects. In the juristic traditions of Imam Malik and Imam Shafi'i as well, the mahr is an important part of the legal system of marriage (Mālik ibn Anas, 1985; Al-Shāfi'ī, 1990). Therefore, describing the mahr merely as a "purchase price" limits the complete legal and ethical structure of Islamic marriage. However, it is also true that in juristic discourse, certain legal connections between the mahr and marital access were discussed, which Kecia Ali highlights. This is precisely the point at which her research raises an important critical question; however, the answer to that question cannot be given by equating marriage with slavery.

3.3. Consent and Legal Personality

Consent is a fundamental issue in Islamic marriage. In Sahih al-Bukhari, in the chapter on marriage, there are hadiths concerning the consent of the widow and the virgin, from which the importance of the woman's consent in marriage becomes evident (Al-Bukhārī, 1999, Hadith No. 5136).

This conception of consent clarifies the legal personality of marriage. Although classical jurisprudence contains various details regarding the role of guardianship (wilayah) and the family, the woman's consent cannot be rendered entirely irrelevant. In this respect, the legal structure of marriage is fundamentally different from the legal status of slavery. In contemporary Islamic interpretation, it is more appropriate to regard consent as a central principle in both the ethical and legal dimensions of marriage.

3.4. Juristic Similarity and Normative Equivalence

An important contribution of Dr. Kecia Ali's research is that she brings to light the legal relationships existing between marriage and slavery in juristic texts. However, converting the conclusions of her research into normative equivalence would not be correct. If certain technical categories are shared between two distinct legal institutions, it does not follow that the ethical value, legal status, or normative purpose of both institutions is also the same.

Here, a distinction between jurisprudence and ethics is necessary for understanding Islamic legal history. Jurisprudence is the result of the interpretation of texts and legal reasoning under historical circumstances, whereas the ethical message of the Qur'an provides broader normative

principles. Consequently, in contemporary interpretation, when establishing a relationship between the two levels, neither should jurisprudence be understood as the exact equivalent of the Qur'an, nor should the juristic tradition be regarded as insignificant (Hallaq, 2009).

3.5. The Ethical Center of the Qur'an: Affection, Mercy, and Ma'ruf

The Holy Qur'an grounds the marital relationship in tranquility, affection, and mercy:

"And He placed between you affection and mercy" (The Holy Qur'an, 2001, 30:21).

This verse holds fundamental status in understanding the normative ethical purpose of marriage. Alongside this, the Qur'an commands husbands to live with women in a manner consistent with ma'ruf (The Holy Qur'an, 2001, 4:19). This makes evident that marriage cannot be confined to a mere technical exchange of rights. It also fundamentally includes benevolent companionship, respect, mercy, and responsibility.

It is for this reason that in contemporary Islamic interpretation, reading the classical legal rules of marriage in isolation from the broader ethical framework of the Qur'an is not appropriate. If, at some point in legal discourse, the language of dominion or authority has been employed, its interpretation must be connected with the Qur'anic principles of justice, dignity, and ma'ruf.

3.6. Slavery, Freedom, and Islamic Ethics

In the matter of slavery as well, a distinction between the legal and ethical levels is necessary. Historically, slavery was an existing institution, for which Islamic jurisprudence laid down specific legal regulations. However, the Qur'an counted the emancipation of slaves among righteous deeds and provided the path to freedom through mukatabah (The Holy Qur'an, 2001, 90:13, 24:33).

In this context, contemporary Islamic interpretation can, while understanding slavery as a historical legal institution, accord central importance to the principles of human freedom and dignity within Islamic ethics. From this, the conclusion may be drawn that historical juristic categories and their contemporary normative implications must be analyzed at separate levels.

3.7. Internal Critique and Classical Jurisprudence

In accordance with the important directive of the reviewer report, the internal critique of classical jurisprudence must also be included. In this context, the recent scholarly work of Marion Katz holds significance, as contemporary scholarship opens the possibility of viewing classical Islamic jurisprudence not merely as a static legal code but as a historical interpretive tradition (Katz, 2022).

An important aspect of this internal critique is that within the juristic tradition itself, disagreement, reasoning, and diverse legal approaches have always existed. Therefore, presenting "classical Islam" as a single and static legal position is not scholarly sound. Disagreements exist on numerous issues among the Hanafi, Maliki, and Shafi'i juristic traditions, and it is precisely this diversity that provides intellectual resources for contemporary interpretation.

3.8. A Critical Assessment of Dr. Kecia Ali's Methodology

A major strength of Dr. Kecia Ali's scholarly endeavor is that she examines the issue of marriage and slavery neither in a merely apologetic nor polemical manner, but rather brings to light the legal structures present within juristic texts. Her comparative method helps in understanding how the legal categories of gender, sexuality, marriage, and slavery related to one another in early jurisprudence.

However, one possible limitation of her methodology is that if classical legal formulations are directly translated into contemporary categories such as ownership, autonomy, and consent, the historical context may be affected. Similarly, if juristic legal analogy is taken as representative of the entire Islamic normative system, then the broader ethical framework of the Qur'an—particularly the principles of affection, mercy, justice, ma'ruf, and human dignity—may become less prominent.

Therefore, while benefiting from Kecia Ali's research, two levels must be held together: first, the historical reconstruction of early juristic law; and second, the contemporary interpretation of the normative ethical principles of the Qur'an and Sunnah. It is precisely this distinction that, while preserving the scholarly merits of her research, also clarifies its limits.

4. Contemporary Islamic Interpretation

4.1. The Distinction Between Shari'ah and Fiqh

For contemporary Islamic interpretation, the most fundamental principle is the distinction between Shari'ah and fiqh. Shari'ah represents the normative guidance related to revelation, whereas fiqh is the historical result of human understanding, interpretation, and legal reasoning regarding those texts. Within juristic rulings, customary practice, circumstances, reasoning, and various methodological approaches have also played a role (Hallaq, 2009).

In light of this distinction, Dr. Kecia Ali's research can be understood in a more balanced manner. Her study is fundamentally a study of the legal texts of formative Islamic jurisprudence; therefore, every historical legal formulation emerging from it cannot be presented as the single and final normative conception of Islam. Rather, her research demonstrates how, within specific historical juristic traditions, the concepts of marriage and slavery related to one another.

4.2. Human Dignity

In contemporary Islamic ethics, human dignity holds the status of a fundamental principle. With respect to marriage, granting the woman an independent financial personality, recognizing the right of mahr, according importance to consent, and directing companionship with ma'ruf are all part of this ethical framework. With respect to slavery, the teachings of freedom, mukatabah, and humane treatment can also be connected to the principle of human dignity.

Therefore, the objective of contemporary interpretation should not be to directly replace historical juristic terminology with modern legal terminology, but rather to understand

historical legal formulations in their original context and to evaluate their normative ethical implications.

4.3. Mutual Consent and Marital Partnership

In contemporary Islamic interpretation, understanding marriage as a partnership based on mutual consent, responsibility, and respect is consonant with the ethical temperament of the Qur'an. The Qur'anic conception of affection and mercy does not confine the marital relationship to a mere technical list of rights and obligations (The Holy Qur'an, 2001, 30:21).

Similarly, the principle "and live with them in a manner consistent with ma'ruf" indicates that ethical conduct and benevolent companionship hold fundamental status in the marital relationship (The Holy Qur'an, 2001, 4:19). Therefore, in contemporary Islamic interpretation, alongside legal rights, mutual respect, consultation, compassion, and the avoidance of harm should also be given importance.

4.4. A Contemporary Comparative Understanding of Marriage and Slavery

In light of the present research, the historical legal parallels between marriage and slavery may be acknowledged, but these parallels cannot be understood as the normative identity of the two institutions. Marriage was a contractual marital institution in which specific rights and obligations were generated between the woman and the man, whereas slavery was a historical status institution in which a person's legal status was determined by the system of slavery.

Despite this distinction, Kecia Ali's research is significant because it raises the question of how, in classical jurisprudence, power, sexuality, property, and gender related to one another. This question is also important for contemporary Islamic ethics, because through it, a deeper study of the relationship between power relations and ethical values within the Islamic legal tradition becomes possible.

4.5. Research Findings

The following fundamental conclusions emerge from this research:

First: Marriage and slavery were two distinct legal institutions in early Islamic law. Certain legal parallels existed between them, but these parallels do not establish complete legal or ethical identity.

Second: In marriage, the mahr is the independent financial right of the woman. Understanding it merely as the purchase price of the woman does not represent the complete legal structure of Islamic marriage.

Third: In marriage, consent, mahr, maintenance, lineage, residence, and other rights and obligations make it a distinct contractual institution.

Fourth: Understanding the juristic term "milk" everywhere in the sense of modern property ownership is not correct. Its meanings may also be legal authority, entitlement, or a particular legal relationship.

Fifth: An important scholarly contribution of Dr. Kecia Ali's research is that she clarifies the structural parallels between marriage and slavery in early juristic discourse; however, historical context must be preserved for the interpretation of these parallels.

Sixth: Understanding classical jurisprudence in isolation from the normative ethical principles of the Qur'an is not appropriate. Affection, mercy, ma'ruf, justice, consent, and human dignity should be the fundamental principles of contemporary Islamic interpretation.

Seventh: While understanding the historical institution of slavery, the Islamic texts concerning freedom, mukatabah, and human dignity should also be given fundamental importance.

Eighth: In contemporary Islamic interpretation, rather than rejecting the juristic tradition entirely, there is a need for new interpretation by keeping in view its historical context, internal diversity, and ethical foundations.

4.6. Recommendations

In contemporary Islamic studies, when working on the issue of marriage and slavery, a clear distinction should be established between classical legal texts and Qur'anic ethical principles. Rather than directly equating historical juristic formulations with modern categories, their linguistic, legal, and historical contexts should be examined.

While benefiting from Dr. Kecia Ali's research, further comparative research is needed on the subjects of marriage, slavery, gender, and sexuality—particularly, it is essential to bring to light the disagreements existing within the various schools of juristic thought. In this way, "Islamic jurisprudence" may be understood as a diverse intellectual tradition rather than a single, static position.

In contemporary Islamic interpretation, alongside the legal aspects of marriage, human dignity, mutual consent, affection, mercy, ma'ruf, mutual respect, and reciprocal responsibility should also be accorded central status. This can establish a more balanced scholarly dialogue between classical jurisprudence and contemporary Islamic ethics.

4.7. Research Gap

Several aspects of this subject require further attention in future research. In particular, further research is needed on the comparative linguistic study of the terminology of marriage and slavery across different schools of juristic thought, the legal personality of women in classical legal texts, the various juristic interpretations of milk al-yamin and concubinage, and new interpretations of classical slavery discourse by contemporary Muslim scholars.

Similarly, interdisciplinary research would be useful for connecting human dignity, consent, and gender justice with classical jurisprudence in contemporary Islamic legal thought. Research of this kind can establish a stronger scholarly connection between Islamic law, jurisprudence, ethics, history, and gender studies.

Conclusion

The fundamental conclusion of the present research is that Dr. Kecia Ali's scholarship provides an important scholarly contribution to understanding the legal and conceptual parallels existing between marriage and slavery in early Islamic jurisprudence. She viewed marriage not merely as a religious ritual but as a complex legal relationship, and attempted to understand concepts such as mahr, sexual rights, companionship, dominion, milk, concubinage, and consent within the framework of historical juristic discourse. Because of this methodology, her research holds particular significance in contemporary Islamic legal and ethical studies.

However, it cannot be concluded from this research that marriage and slavery were institutions of the same nature in Islamic law. Certain legal similarities existed between them, but in marriage, the legal personality of the woman, mahr, maintenance, consent, lineage, marital rights, and mutual obligations constitute a distinct contractual structure. Therefore, converting legal analogy into normative equivalence is not scholarly sound.

For contemporary Islamic interpretation, the more balanced path is to understand classical jurisprudence in its historical context while simultaneously according central status to the normative ethical principles of the Qur'an. Affection, mercy, ma'ruf, justice, consent, and human dignity are principles that can form the basis of a contemporary ethical understanding of marriage. Similarly, it is essential to understand the historical institution of slavery in conjunction with Islamic teachings concerning freedom, mukatabah, and human dignity.

Consequently, there is neither a need to reject Dr. Kecia Ali's research entirely, nor would it be correct to regard every historical legal observation of hers as the final normative conception of Islamic marriage. The more scholarly and balanced approach is to read her research as a critical reconstruction of classical Islamic jurisprudence and to place its conclusions in dialogue with the broader ethical framework of the Qur'an and Sunnah, juristic diversity, and contemporary Islamic ethics. It is this approach that can help in understanding the issue of marriage and slavery more comprehensively at all four levels: historical, juristic, ethical, and contemporary.

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