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Chapter

Legal Definition of Modern Slavery

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Abstract

In this study, first of all, the basic elements of the slavery phenomenon in general and the paradigm of slavery were tried to be discussed in order to understand the slavery phenomenon correctly. Following these explanations, a definition proposal has been made for modern slavery, which has not yet been defined in any national or international law text. This definition includes four essential elements that must be included in the definition of modern slavery: control, continuity, voluntas and exploitation. Beside this definition, on the axis of this definition, a brief critique of other slavery definitions in the literature has been made. The desired result with these discussions and explanations in the study is to present a generally accepted road map that can be applied in the fight against modern slavery.

Keywords: slavery, modern slavery, exploitation, human rights, elements of modern slavery

1. Introduction

It cannot be said that the concept of modern slavery is a technical term accepted in terms of international law for the time being. Of course, this fact does not mean that the concept is not included in any legal document. For example, while the expressions of “today’s forms of slavery” or “today’s slavery practices” have been used frequently in the legal regulations in the United States for many years, the concept of “modern slavery” has started to be used in some regulations that have entered into force since 2015. Also, laws enacted in the UK in 2015 and in Australia in 2018 use the concept of “modern slavery”. However, in order to express this phenomenon in both legal texts and scientific studies; although different concepts such as “human trafficking”, “forced labor”, “slavery-like practices”, “global slavery” or “new slavery” are used, “modern slavery” is the most widely used concept [1, 2]. Therefore, while there is no consensus on the concept used to express this phenomenon, which I think is the last stage in the evolution of slavery (for now); it is not easy to find a satisfactory definition for international actors. However, in order to develop an effective action at the national, regional and global level in terms of combating modern slavery, first of all, a clear and widely accepted definition of modern slavery must be made. The effort to define modern slavery in this study basically aims to meet this requirement. However, as it is known, the issue of defining any phenomenon in social sciences is not an easy one. In this context, three basic problems that can be seen at first glance draw attention to the effort to make a reference to modern slavery. Firstly, the question of whether modern slavery, embodied in many different practices, can be addressed with a single concept. Latter the possibility that
many victims of modern slavery practices would be left out if the possible definition to be put forward was too narrow, for example, on the basis of purely proprietary powers, as in classical slavery. Third, there is the danger of diluting modern anti-slavery efforts if the possible definition is over-expanded to include, for example, violations of rights resulting from various forms of social injustice and/or poor working conditions, as the definition becomes blurred and vague, thus rendering the phenomenon meaningless.

2. Basic elements of slavery phenomenon

Slavery was seen as a “useful and indispensable” element of social life as one of the cornerstones of the economy, starting from prehistoric times and continuing until the twentieth century, and it was continued by gaining legal legitimacy within the state society structure. Although slavery gained different appearances mostly due to the transformation in production styles, it continued to be a part of economic and social life for thousands of years.

The concepts of “slave” and “slavery” have been used many times in almost all legal systems, from cuneiform legal texts to the legal texts of other ancient civilizations, from Roman law texts, which are considered the basis of many contemporary legal systems, to religious-based legal texts and to the legal regulations of nation states, but have not been defined. It was only in the first quarter of the twentieth century that a widely accepted legal definition could be made for slavery, which has been applied for thousands of years with different appearances in all these legal systems and is described as “classical slavery” in this study. According to this definition, which is included in Article 1 of the Slavery Convention of 1926 and which is taken as a basis by many current international documents on the subject, “slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”

As it can be understood from this definition, in the classical slavery approach, the situation or status of the person can only be considered as slavery if the property-related powers are available. The details of these powers, which were codified in the Slavery Convention and defined as property, were listed in a report on slavery published by the United Nations Secretary-General in 1953. According to this:

1. An individual can be made an object of purchase.
2. The master can use the individual within his absolute capacity to work without any restrictions.
3. The products produced in exchange for the individual’s labor become the property of the master with no compensation commensurate with the value of the labor.
4. Ownership of an individual may be transferred to another person.
5. These status and conditions are permanent. That is, this status cannot be terminated by the will of the person subject to it.
6. These status and conditions pass automatically (ipso facto) to the descendants of the person subject to such status [3].
These results, which emerged in the context of the definition of slavery in the Slavery Convention and the powers exercised on the slave on the basis of this definition, can be sufficient and useful in terms of understanding and making sense of classical slavery. However, it is insufficient in terms of understanding the practices of “modern slavery”, which we describe as the present view of slavery that has been transformed over time.

This inadequacy is characterized as institutions and practices similar to slavery with the Additional Slavery Convention; but it could not be eliminated by expanding the scope of the prohibition by re-arranging it to cover debt bondage, servitude, forms of slave marriage and the abuse of children themselves or their workforce. So much so that both the definition and the results of the powers used on the slave, which is reached on the basis of the definition; the use of property-related powers over the person and the related elements are no longer the absolute elements of slavery, within the framework of the conditions and requirements of the time. However, when the new type of slavery, which we describe as modern slavery, is examined, it can be easily seen that the basic element of slavery is neither the subject of property nor the existence of a legal status recognized in this way. These elements, which have been accepted as the basic element of slavery for thousands of years, are actually the results of slavery that emerged within the framework of the needs of the periods. Because in the social reality of all ancient civilizations that included slavery regulations in their legal systems, there are also countless masters who treat their slaves well beyond oppressing them. These slaves, who are treated well, have no problem with being the subject of property in most cases. Because people experience the discomfort of what they feel the pressure of. Throughout history, there are many examples of obedient slaves who were not shackled, surrounded and prevented from escaping, but still did not abandon their master and the circumstances. It should come as no surprise that a person who is treated well by his master and who, although a slave, is seen as a member of the family, part of the household population or work environment, is not uncomfortable with his status. Because for this slave, the status he is in does not create any pressure in itself. For most slaves, the legal status they are in is not disturbing as long as their basic needs for security, shelter, subsistence and similar are met and they are not mistreated. This status is an accepted status that can be based on learned helplessness from a psychological point of view and legality and legitimacy from a legal point of view. At this point, the main issue, which is a problem for the slaves both in terms of their social and economic situation and human rights, is that the master uses the individual within his working capacity, the product that comes out is included in the master's property without any compensation in proportion to the individual's labor, and the person has no will to end the situation he is in. In other words, when the slave believes that he does not get what he deserves, he begins to see this situation as an exploitation. It does not matter what the slave's right is or whether it is more or less. The important thing is that the slave feels deprived in terms of what he believes he deserves, that is, he realizes that he is exploited. If it is not possible to end this process with his own will, it will have consequences that will mean the person's social death.

From this point of view, it is seen that “exploitation” is the first essential element that always expresses the existence of slavery in both classical and modern slavery in the evolution of slavery. Of course, it cannot be concluded from this that wherever there is exploitation, as in slavery, it would not be wrong to conclude that exploitation is inevitable wherever there is slavery, with a reverse reading.
The main elements of exploitation, which is a reference to a general definition of slavery to include classical and modern slavery; it is the ability of the individual (with his labor and/or body) to be used within his absolute working capacity without any restrictions, and the products that come out without obtaining a compensation proportional to the value of the individual’s labor become the property of the person who uses them. At this point, exploitation, which can occur in many different forms in economic and social life, also needs to be embodied in terms of the definition of the concept of slavery.

The most common form of exploitation that comes to the fore in slavery practices is undoubtedly “economic exploitation of the individual”.

Considering the different aspects of both classical slavery and modern slavery, the most common type of exploitation other than economic exploitation on the enslaved person is “sexual exploitation”. The exploitation faced by concubines, which are frequently mentioned in legitimate and legal slavery practices, those who are forced into prostitution, the majority of whom are women and children, and those who are forced into marriage for money or on the axis of traditional rituals, are examples of sexual exploitation. In fact, for those forced into prostitution, both sexual exploitation and economic exploitation occur at the same time.

The exploitation of war slaves who are forced into military service by being used as soldiers in conflicts and in hot contact or behind the front, or sex slaves who are offered to militants to increase their loyalty to ideology and therefore authority, is another form of exploitation. This type of exploitation can be described as “ideological exploitation”.

In addition to these types of exploitation, it is also possible that slavery is linked to religion and that exploitation is based on religious motives. “Exploitation based on religious motives” can be seen in both classical slavery and modern slavery practices, as in other types of exploitation. For example, in the Law of Manu according to Ancient Indian law, it is written that the Sudras, which are at the bottom of the caste, were created by the God Svayambhu as slaves of the Brahmans (Manu VIII, 413). It is for this reason that the Sudras, whose slavery is by nature, cannot escape from slavery even if they are freed by their masters (Manu VIII, 414) [4].

Thus, a Brahman who uses a Sudra as his slave acts in accordance with the order of God Svayambhu and in this way provides spiritual satisfaction. Today, thousands of girls and young women in Southeast Ghana, Togo, Benin and Southwest Nigeria are given as slaves by their families to the pagan priests of that region for the purpose of exploitation based on religious motives. In these instances, according to a tradition that will probably seem very strange to us, girls are enslaved as atonement for sins committed by their own family members (of which rape is the most common of these sins) [5]. As can be seen, in this example, exploitation based on religious motives and sexual exploitation come together and two different types of exploitation occur simultaneously.

With all these different forms of appearance, “exploitation is an absolute element in the definition of slavery, but it is not the only element”. At this point, the second main element common to both classical slavery and modern slavery is “control of another person”. This element expresses a relationship of domination arising from the lack of free will of the exploited in the formation of the conditions leading to the exploitation of the person or the termination of this exploitation process. While this domination relationship is based on a legal property transaction in classical slavery, in modern slavery; it appears as a “de facto” control that is not supported by law and even constitutes a crime. But in both, the main tool used to maintain
this control is violence. Therefore, the control of another person and the violence or threat of violence that maintains that control play a central role in all forms of slavery. Therefore, a definition of slavery, classical or modern, which is devoid of the elements of “exploitation” and “control of another person based on violence or threat of violence”, does not seem possible.

3. The paradigm of modern slavery

Classical slavery practices cover two different systems. In the first system, slaves could survive if they devoted themselves to their masters. This relationship of dependence on throat satiety was mostly encountered in cases where the slave source was prisoners of war and enslavement of serfs. In this system, which was “beneficial” for both sides, the captive-servant was getting rid of death, and the owner was improving his economic situation thanks to this worker with low consumption. The second system was based on racial segregation. In this system, racial or ethnic differences were used to explain the existence of slavery and even justify it [6]. In these systems, the power holders based their legal and political justifications on these justifications in order to morally justify the decisions they took for economic reasons to maintain slavery.

In the modern slavery system, the concepts of captivity of war or apartheid no longer mean as much as they used to. However, the fact that these ideas that legitimitzied classical slavery have lost their validity over time does not mean that modern slave owners have not started to use new criteria to select their slaves. Today, we see that the most important criterion used by modern slave owners when choosing their slaves is “personal vulnerability”. It is the economic, social, political and cultural conditions that make people vulnerable to slavery [7]. What matters today is not “how suitable the skin color, ethnicity, religion of the enslaved people are to be slaves”. The basic qualities that modern slave owners look for in their potential slaves: It is “being so pure, weak, poor and deprived that one can be deceived”. In addition, there is no need to legitimate this justification nowadays. Because, unfortunately, in the modern world, the morality of money itself has reached the power to smash many other concerns in life. For this reason, most modern slaveholders do not even need to explain or defend their chosen method of exploitation of labor. Those who use modern slaves enslave these people for profit, not to mistreat them. As a result, since modern slavery is much more profitable than classical slavery, the size of the final figure after incomes are deducted can be accepted as a valid excuse for everything for modern slave owners [5].

Today, the modern slavery system manifests itself in unregistered economic practices created by the mafia and terrorist organizations, sometimes seeing people of a certain race as belonging to a lower social class, mostly based on the cheap labor needs that capitalism needs [8]. This new slavery system, including but not limited to; human trafficking, trafficking in women subject to sexual exploitation, forced marriage, transfer of a woman by her spouse or her husband’s family or her own family to someone else in exchange for money or in line with different traditional rituals, exploitation of child labor, sexual exploitation of children, being used as a soldier in conflicts, debt slavery, domestic slavery and exploitation activities related to racism are carried on in the axis of many different practices [6]. Modern slavery, which includes many of the most serious human rights violations, including extreme economic exploitation, severe discrimination and coercion, may not always be
detectable at first glance, as it is often created through complex and dark relationships [9, 10]. This situation makes it difficult to reveal a clear picture of modern forms of slavery, to punish the actions that cause this phenomenon and to eliminate this problem.

In Bales's words, slavery; it has now turned into an “attractive” business field, and contrary to popular belief, slavery is not decreasing, the number of slaves is increasing day by day [5]. Today, modern slavery is part of the modern global economy and is somehow in our lives whether we are aware of it or not.

4. A proposal for a legal definition of modern slavery

When the studies on modern slavery are examined, it is seen that the majority of these studies prefer to focus on the practices that can be considered in the category of modern slavery, their sources and common features, rather than the definition of the concept. In this respect, modern slavery studies generally appear as a large corpus consisting of thousands of pages that contain many determinations about the concept but avoid defining the concept. The concept of modern slavery is not defined in national and international legal documents. For this reason, attempts to define modern slavery have been limited to the efforts of some non-governmental organizations and a few academics fighting modern slavery.

Nevertheless, it can be said that contemporary politics, international documents, activists and scientists have been able to reveal the image of modern slavery with modern slavery approaches. Although different approaches to this image vary in terms of some elements of the image, it is seen that there are three common elements in the denominator of the image. These; One person’s control over another is the involuntary aspect of this control relationship and exploitation [7].

But this compromise, which seems to have been achieved in the image of modern slavery, is out of question when it comes to defining the concept. However, as in the fight against any problem, it is clear that a consensus should be reached on a definition related to the concept in order to fight modern slavery. For this reason, I will try to put forward an original definition proposal, with its justifications, in order to express modern slavery, in the hope that it will contribute, albeit in a small way, to meeting this requirement. In order for this definition to be able to develop an effective action at national, regional and global level in the fight against modern slavery; I care about the possibility of benefiting both researchers, administrative authorities and judicial bodies.

In this context, a modern definition of slavery appears to have the following characteristics:

- the definition should cover all the different aspects of modern slavery.
- the definition should not be so narrow that it excludes potential victims.
- the definition should not allow for a broad interpretation that would dilute the efforts to combat modern slavery by rendering the phenomenon of modern slavery meaningless.

In this context, I can express the four elements that I think must be present in any modern definition of slavery (Table 1):
Of course, it can be argued that others should be added to these elements while defining modern slavery. Since I think that there is some justification for this view, I chose to characterize the elements in the table above as “elements that must be included in the definition”. However, I would also like to point out that I am concerned that the addition of elements required for the definition that are not necessarily necessary to explain modern slavery and are applicable only to some instances of modern slavery will only add to the confusion about the concept. Therefore, I prefer to formulate the definition I am going to propose to include only these four absolute elements. Of course, there will be different forms of expression that include these four elements; however, at this point I propose to define modern slavery as:

“The situation, in which, for the purpose of exploitation, a person is systematically detained over time being deprived freedom, getting his/her consent in control due to desperation and authentication opportunity, by violence and trickery, physical or verbal menace, abuse of authority.”

5. Critique of different definitions of modern slavery

I think that a definition that does not include any of the elements in the definition I have proposed may be useless to understand the modern slavery phenomenon “as it is”. I will try to defend this view by examining the major modern definitions of slavery in the literature.

For example, let us take the definition of the 1926 Slavery Convention, which is at the center of all descriptive debates in international legal texts. In the Convention, the definition of slavery is formulated as “slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. In this definition, we can only reach the control element in the table through judgmental and scientific interpretations [11, 12] that suggest that the definition should be re-read in accordance with today’s conditions. We see that the elements of continuity, voluntas and exploitation in the table are not included in this definition. In this case, even if the definition of the Slavery Convention is reinterpreted according to the conditions of the day, it is insufficient to cover some examples of modern slavery and remains broad enough to cover some situations that do not constitute slavery.

In this context, in the simplest form of the powers related to the property right, I will try to test this definition in terms of various examples, remembering that they have the authority to usus, fructus and abusus [13].

<table>
<thead>
<tr>
<th>Name of element</th>
<th>Context of element</th>
</tr>
</thead>
<tbody>
<tr>
<td>Control</td>
<td>Existence of control over the person, established through the exercise of proprietary powers, which deprives the person of his or her individual freedoms to a great extent.</td>
</tr>
<tr>
<td>Continuity</td>
<td>Maintaining control over the person throughout an ongoing process, not a one-time action.</td>
</tr>
<tr>
<td>Voluntas</td>
<td>The insignificance of the will of the person at the point of ending the control over him/her.</td>
</tr>
<tr>
<td>Exploitation</td>
<td>Control over the person for the purpose of exploitation.</td>
</tr>
</tbody>
</table>

Table 1. Essential elements of the definition of modern slavery.
This is a basic function in terms of the period when it is possible to establish legal property rights on the person and legitimate and legal slavery is in question. However, when it comes to modern slavery practices encountered in modern legal systems where it is not possible to establish legal property rights on the person, this basis will be dysfunctional in determining slavery.

For example, the ECHR, in its assessments on slavery, prefers an interpretation that is closely tied to the definition of slavery in the Slavery Convention. According to the ECHR, only if the “authorities related to the right to property over the person” in the definition are legally recognized, a violation of the prohibition of slavery in paragraph 1 of Article 4 of the ECHR may be in question. Therefore, since it is not possible to establish a legal property right over a person in the legal systems of the states party to the ECHR, the ECHR has not detected “slavery” in any of the applications it has examined so far.

Also, for example, in a business relationship established between the employee and the employer, the employer earns a profit on the labor of the employee in relation to the subject of work. It is clear that this situation is “fructus”, which is one of the powers of ownership. In addition, this authority provides the employer with a control over the worker. However, if this benefit is carried out in a way that is not contrary to a lawful contract established between the employee and the employer and the employee is paid a fair wage for his labor, it will not be considered as slavery in any way. However, when this example is examined through the definition of the Slavery Convention, it may seem as if the worker is a slave as “a person on whom any of the powers related to the right of property are exercised”. Because, in the definition of the Slavery Convention, it is not mentioned that “control over the person should be of a nature that would deprive the person of his individual freedoms significantly.

Another important deficiency in the definition of the Slavery Convention is that it does not include the element of continuity. In fact, the expression “status of the person” in the definition expresses a continuity with a legal basis. However, as I mentioned above, this continuity does not make sense in terms of contemporary legal systems where the status of slave is not legally recognized. The expression “(person’s) situation” in the definition does not always contain a continuity. For example, it cannot be said that a person who has been subjected to the act of rape once is in a state of slavery. However, a person who has been subjected to a pervasive and repeated rape can be characterized as a kind of modern slave throughout the continuum of his situation. Or, it is clear that a person who is forced to do something that will happen immediately for the exploitation of his labor and does not have the will to get out of this situation is subjected to forced labor, but this case has not yet turned into slavery. However, if forced labor in this way turns into a serious, continuous and intense deprivation of individual freedom, with different behavioral patterns that have an exclusionary effect on the will, depending on the main purpose of exploitation, then slavery should be mentioned. In both cases, victims are in the position of “a person to whom any or all of the property rights are exercised” in the definition of the Slavery Convention. However, as it is tried to be explained in the examples, this situation they are in cannot be described as modern slavery in every case.

In addition, the fact that the control over the person has the purpose of exploitation and the fact that the will of the person is unimportant in the termination of control is not included in the definition, which distracts the definition from the reality of modern slavery. For these reasons, we can say that the definition of the Slavery Convention is insufficient in terms of covering modern slavery practices in its current
form, and that with its interpretation in accordance with today’s conditions, it widens the scope of modern slavery too much and obscures the concept.

The second definition I will examine is that of the Walk For Free Foundation, a non-governmental organization that conducts significant global work on modern slavery. WFF modern slavery It defines it as an umbrella concept that expresses “the situations of exploitation that a person cannot refuse and cannot get rid of because of threat, violence, coercion, abuse of power or deception” [14]. Essentially, this definition includes the three elements I have identified, namely control, exploitation and will. However, this definition does not include the element of continuity. For this reason, the definition of WFF may be insufficient in terms of covering all the appearance forms of modern slavery.

Bales, on the other hand, defined modern slavery as “the detention of a person by violence or threat of violence for the purpose of economic exploitation” in his definition, which he accepts as extremely general [5]. But in a more recent study by Bales, co-published with different authors, modern slavery is defined as: Modern slavery is a relationship in which one person is controlled by another through violence, threats of violence or psychological coercion, loses free will and is deprived of freedom of movement, is economically exploited and is paid nothing but a living wage [15].

The fact that the element of exploitation is limited to only economic exploitation in both of Bales’ definitions is the most important problem faced by these definitions in terms of meeting all the appearance forms of modern slavery. If these definitions are taken as a basis, sexual exploitation by forced marriage in the axis of traditional rituals, ideological exploitation by being used as a soldier in conflicts and people enslaved as a result of exploitation with religious motives will be excluded from the scope of modern slavery. Apart from this, we see that in both definitions of Bales, the element of continuity is ignored. For this reason, I have to say that Bales’ definitions are not definitions that will cover the whole of modern slavery practices, even though they include a narrow-scoped element of exploitation along with control and voluntas elements.

Known for his expertise in immigration law and international humanitarian law, Piotrowicz prefers to define the modern slavery as: “the control of a person by another person using violence, threats or psychological pressure, and as a result economic exploitation of the person resulting in the loss of free will and freedom of action” [16]. As such, just like in Bales’ definitions, this definition, which includes the elements of control, will and limited exploitation, is incomplete in terms of defining the modern slavery phenomenon, since it does not include the element of continuity and limits the element of exploitation to only economic exploitation.

In a study recently published in Turkey, modern slavery, we see that it is defined as “the human will being weakened by deception, deception or coercion, and being forced to stay permanently in situations where it cannot save itself from the exploitation of its labor and body” [17]. This definition, formulated by Ogün Usta, differs positively from all other definitions, especially in that it includes the element of continuity. This definition, which I think is sufficient in terms of control, exploitation and will, is open to criticism because of the weakness in the expression “the human will ... weakening”. So much so that, when examined semantically, the expression “weakening the will” still indicates the existence of a certain degree of will, together with the weakening of the will. However, for people who are faced with modern slavery, it is necessary to talk about not weakening their will, but taking away their will completely, that is, the elimination of their will completely.
Therefore, in fact, I can say that if the definition of the Master is rewritten with a stronger expression such as "the abolition of the will" rather than "the weakening of the will", it can be a definition that fits the elements I have identified and covers all the manifestations of modern slavery.

At this point I am concerned that the conclusion has been drawn that I have argued that the only and best definition of modern slavery is the one I have made. Of course, all definitions of the concept can be considered as "adequate" by the authors who wrote these definitions. In this study, I need to remind you that the qualifications I have made regarding the above definitions such as "incomplete" and "inadequate" are based on the criteria included in the table of "Elements that must be present in the definition of modern slavery", which is also tried to be put forward by me. Therefore, it is clear that all the characterizations put forward regarding all these definitions are of a relatively subjective nature. Nevertheless, I would like to state that I hope that these criticisms can contribute to the development of an effective fight against modern slavery at the international and national level, at least in terms of definition.

Abbreviations

ECHR European Court of Human Rights
ICTY International Criminal Tribunal for the Former Yugoslavia
WFF Walk Free Foundation

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