

MODERN SLAVERY: A *MAQASIDI* APPROACH TOWARDS EMANCIPATION

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ABSTRACT

On the issue of slavery, contemporary Islamic scholars tend to be abolitionists, asserting that Islamic law may not have explicitly prohibited enslavement but aspires to gradually emancipate slaves. Meanwhile, the current international law discourse has shifted its focus to ‘modern slavery’. Numerous studies have appeared to very easily presume that modern slavery falls within the Islamic notion of slavery, then, based on that, claiming that the Islamic laws concerning slavery could assist in the emancipation of victims of modern slavery. However, this presumption is often not based on a deep critical examination comparing the different concepts. Therefore, our research first analyzes the presumption that modern slavery falls under the Islamic notion of slavery and concludes that it is incorrect: modern slavery and the Islamic notion of slavery are actually two legal concepts in both legal construct and consequences. The second part of our research finds that, while Islamic laws on slavery do not directly apply to modern slavery, the former may inspire a solution for the latter. For that purpose, we apply a doctrinal legal research method to utilize *uṣūl al-fiqh* with a *maqāṣidī* approach to critically examine the details of fiqh rulings on slavery (including the acquisition of slaves, the rights of masters over slaves, legal rights of slaves, *mukātabah* contracts, and *zakat*). We find that Islamic laws on slavery can— with necessary adjustments— provide some insights to help construct an Islamic framework for the emancipation of victims of modern slavery. The insights revealed in this research can assist Muslim or even non-Muslim governments, NGOs, and the ‘ulama in making policies to help combatting modern slavery by further protecting, liberating, and safeguarding its victims.

Introduction

Islamic civilization is no stranger to slavery, which was practiced even during the time of Prophet Muhammad PBUH and was abolished in the Islamic world only half a century ago. According to the majority opinion of the *fuqaha*, the Muslim leader may, based on *maṣlahah*, choose to execute, release with ransom, release gratuitously, or enslave war captives (Ifandy & Hasanah, 2024; Ibn Rushd, 2000a). However, following the abolitionist movement, especially entering the early 20th century, the attitudes of the *‘ulama* have shifted regarding the issue of slavery. Some *‘ulama*, such as the esteemed Syrian Shaykhs Mustafa Al-Khin and Mustafa Bugha, have ruled that there is no longer any *maṣlahah* in enslaving anyone today, and therefore, it should no longer be practiced (Al-Khin & Al-Bugha, 2014).

Central to our article, some contemporary *‘ulama*, such as Rashid Rida and Muhammad Qutb, take this further. They argue that the Islamic laws on slavery were intended to gradually abolish slavery because a forced and unprepared abolition would likely lead to massive unrest or even wars, such as the American Civil War (Qutb, 1992; Riḍā, 1910). In other words, the purpose (*maqāṣid*) of the Islamic laws related to slavery is to emancipate slaves. As Sayyid Qutb puts it, the purpose of Islam is:

Translation: ... to free those people who wish to be freed from enslavement to men so that they may serve Allah Almighty alone.

(Qutb, 2006, p. 65)

It is important to note that four key features are prevalent in the Islamic rulings related to slavery: reducing the ways to acquire slaves; encouraging and sometimes obliging the freeing of slaves (Al-Zuḥaylī, 2011a; Ibn Rushd, 2000b); prescribing humane treatment for slaves; and granting them legal rights (Al-Bukhārī, 1997; Al-Naysābūrī, 2007a). Thus, the term ‘slavery’ in an Islamic context signifies something very different from the stereotypical image of African slaves in America, who often endured severe torture and abuse, even murder, that usually dominates our imagination.

Meanwhile, the contemporary world has shifted its focus from the problem of slavery to ‘modern slavery’ through international law discourse (Hardianti, 2015). The term ‘modern slavery’ was coined to describe conditions that are viewed as inhumane as slavery yet appear to fall outside the strict conventional (international law) definition of slavery as outlined in Article 1 of the Slavery Convention 1926. This includes issues such as human trafficking, debt bondage, forced labor, and other forms that lack a universally agreed-upon definition (Paz-Fuchs, 2016). According to the International Labour Organization, over 40 million people worldwide are trapped in some form of slavery (Global Estimates of Modern Slavery, 2017). This situation occurs in various parts of the world, including some Muslim nations, such as the Arab states in the ‘Middle East’ (Deshingkar, Awumbila, and Teye 2019).

If the *maqāṣid* of the Islamic laws related to slavery were indeed to emancipate slaves, then should Islamic law not also emancipate “modern slaves” (victims of modern slavery)? There have been several studies on how Islamic law can help combat modern slavery-related issues, such as human trafficking and forced labor. Some of this research, including a study by Abd Rahman Shah et al., (2021) addresses slavery in Islam as a background (that Islam emancipates slaves); however, the analysis primarily focuses on the immorality of slavery and how to provide favorable working conditions for laborers to prevent their treatment from resembling that of slaves. Other studies, such as one by Imam Kamaluddin and Azzah Hafizhah, also explain how Islam promotes humane treatment and the emancipation of slaves, but they only go as far as justifying criminal sanctions against human traffickers, as their research was aimed at analyzing the Indonesian draft criminal code (Kamaluddin & Hafizhah, 2018). For other research with a similar direction, see Gani (2017).

A more holistic approach was attempted by Fauzi (2018), drawing parallels between slavery and human trafficking. The study explains how humanizing efforts, encouraging emancipation, threatening traffickers, and sometimes using emancipation as a form of punishment are among the methods derived from the *sunnah* to liberate slaves. However, aside from limiting his analysis to human trafficking, Fauzi has yet to address (a) the distinct characteristics of traditional slavery versus modern slavery and (b) the more detailed rulings related to slavery. Another analysis was presented by Basri (2012), who similarly draws parallels between the Islamic emancipation of slaves and the need to combat human trafficking but suggests a less government-centered approach. He proposed that *zakat* funds could be allocated to assist

victims of trafficking and advocate for a general notion of a ‘structural, cultural, strategic, and practical’ approach to combat trafficking, including government involvement and raising awareness. However, with only a two-page explanation, this work lacks a comprehensive discussion of the Islamic rulings related to slavery, especially regarding the extent to which their application can be extended (through *qiyās* and *maqāšid al-sharī‘ah*) to assist in the emancipation of modern slavery victims (Wanto et al., 2021).

As mentioned earlier, one of the major legal challenges of modern slavery is the definitional issues that render the definition of (and, consequently, domestic and international legal measures to abolish) traditional slavery inadequate, necessitating further developments in policy and law (Paz-Fuchs 2016). The Islamic law rulings related to slavery cannot be reduced to the general maxim, “Islam does not tolerate slaves”. Instead, there are various other aspects to consider, including the acquisition of slaves (sales and purchases), the rights of masters over slaves, the legal rights of slaves, *mukātabah* contracts, and the potential roles of *zakat*, among others, which previous research has yet to address.

That said, our research seeks to explore the extent to which Islamic laws of slavery could be applied to emancipate victims of modern slavery. To achieve this, we first need to examine whether ‘modern slavery,’ a term representing a concept found in contemporary international law, falls under the Islamic notion of slavery. If it does, then all Islamic laws of slavery would necessarily apply *mutatis mutandis* to situations also described as modern slavery. We address this by outlining the concept of *maqāšid* and the rulings on slavery in Islam, then explaining what modern slavery is, before finally conducting a comparative analysis of the two. Our analysis concludes that, despite sharing certain characteristics, particularly pertaining to the inability of individuals subjected to both forms of slavery to perform certain actions that others would be able to do, there are fundamental conceptual differences between the two, which render the wholesale application of Islamic law on slavery to the context of modern slavery challenging, if not impossible.

Thus, there is a necessity for us to investigate whether the ameliorative methodologies provided by Islamic law on slavery can still be applied to improve the conditions of those subjected to modern slavery, and if so, in what ways. For this reason, the second part of our analysis identifies the similarities between the Islamic notion of slavery and modern slavery at a *maqāšid* level. In this section, we argue that a *maqāšid al-sharī‘ah* analysis of the rulings of Islamic scholars related to slavery can largely provide insights for emancipating victims of modern slavery, and that through the similarities between the essential elements of the two, a "doorway" opens for us to draw inspiration from the methodologies of manumission as prescribed by Islamic law to alleviate the plights of modern slaves.

The Islamic Laws on Slavery and Their *Maqāšid*

Analysis of the purpose of Islamic law, whether generally or specific to certain themes, has become a major area of study today, often referred to as *maqāšid al-sharī‘ah*. As defined by Ibn ‘Ashur, *maqāšid al-sharī‘ah* refers to the purposes and wisdoms of the laws revealed by the Lawgiver, i.e., Allah (Ibn Ashur, 2006). All revealed laws contain purpose and wisdom to achieve *maṣlaḥah* (exigency) and avoid *mafsadat* (harm). Therefore, any process of *ijtihād* or independent judicial reasoning to derive legal rulings must always consider the *maqāšid al-sharī‘ah*.

In terms of scope, there are at least three levels of purposes of Islamic law. First, the general purpose of Islamic law, or *maqāšid al-‘ammah*. Muhammad Al-Zuhayli explains that Islamic law generally aspires to achieve two goals: *maṣlaḥah* for one’s worldly life and for one’s afterlife (Al-Zuhaylī, 1423H). Scholars often elaborate further; the most famous elaboration identifies five *daruriyyat* (essentials), namely the preservation of *al-dīn* (the true Islamic religion), *al-naḥs* (life), *al-‘aql* (mind), *al-nasl* (progeny), and *al-māl* (Al-Atawneh, 2011; Al-Ghazālī, 1971; Al-Shāṭibī, 1997). Meanwhile, others add more than just five (Al-Qarāfī, 1307H; Attia, 2008; Ibn Taymiyyah, 1995; Zahrah, 1957).

The second level is the thematic or “chapter” level, namely *maqāšid al-khāṣṣah*. This refers to the purposes of specific chapters or themes of Islamic law, such as Islamic criminal law, which aims to deter crime, and Islamic financial law, which seeks to prevent monopoly (Auda, 2007). The third level is the specific-rule level, referred to as *maqāšid juz‘iyyah*. At this level, the purposes of specific rulings are considered, such as those related to witnesses in court proceedings, made with the aim of seeking and

uncovering the truth in these proceedings (Auda, 2007). It is at these second and third levels that most of our discussions will be centered.

Perhaps it would be interesting to note that classical Islamic jurists have described marriage as a type of enslavement, including figures like al-Ghazālī (n.d.) and Ibn al-Qayyim (Al-Jawziyyah, 2019). Obviously, there are significant differences between marriage and enslavement; these classical scholars were highlighting the significance of obedience (slaves obey their masters just as wives obey their husbands, as long as it does not contradict Islamic law). A candid interpretation might suggest that this reflects a low perception of wives in Islam.

However, there is an alternative reading. Rather than interpreting “marriage is like slavery” as an indicator of how low Islam perceives women, one could instead view it as a reflection of how high Islam elevates the status of a slave. This interpretation may be appealing partly because of the rich Islamic resources, both classical and contemporary, regarding the elevated status of women in Islam (Al-Qaradāwī, 1996; Al-Qārī, 1422H; Al-Zuhaylī, 2016a). Therefore, equating slavery with this perspective does convey an elevation. Such an interpretation may appear even more compelling when one further considers Islamic laws relating to slavery.

There are a few features that need to be explained regarding slavery in Islam that are relevant to our study. The first and foremost is the defining characteristic in Islamic law: a slave is considered “not free.” Jonathan explains how unhelpful early definitions are: a slave is one who is not free, while a free person is one who is not a slave (Brown, 2020). This is relevant to ownership, meaning that a slave is property to the master, or “owned” (Al-Mawsū‘ah, 2003). According to the majority opinion, slaves do not fully own any property, which, if somehow obtained, actually belongs to the master, although there is some discourse on this issue (Al-Maqdisi, 2007). They can generally be sold, bought, gifted, and inherited. Some jurists define Islamic slavery by mentioning the legal effects of their status, such as their inability to become a judge or give testimony in courts (Al-Mawsū‘ah, 2003).

However, it is necessary to point out that the term ‘property’ in the context of Islamic slavery does not necessarily convey the same meaning as it might in a general context. In fact, it is prudent to note that the term ‘Islamic slavery’ is used for lack of a better term. As Jonathan Brown suggests, there is no universal definition of the term ‘slavery,’ to the extent that the inhumaneness commonly attributed to one form of slavery is not always present in another form and is sometimes instead found in practices not traditionally referred to as ‘slavery’ (Brown 2020).

This leads to the second important feature of Islamic slavery: being ‘property’ does not strip the slave of her/his legal personality. Instead, they still have rights and duties under Islamic law, and some are even able to sue in court. This includes, *inter alia*:

- i. Entering *mukātabah* contracts, i.e., buying their own freedom in full or in installments, raises discourse regarding whether it is obligatory for the master to grant requests for such a contract (Ibn Rushd, 2000b).

- ii. The right to be well-fed and clothed and not to be overburdened. Prophet Muhammad PBUH said:

Translation: O Abu Dhar! Did you abuse him by calling his mother with bad names You still have some characteristics of ignorance. Your slaves are your brothers, and Allah has put them under your command. So whoever has a brother under his command should feed him what he eats and dress him of what he wears. Do not ask them (slaves) to do things beyond their capacity (power) and if you do so, then help them.

(Al-Bukhārī, 1997, Hadith No. 30)

- iii. Being subject to criminal law; however, slaves who commit certain crimes will be punished less severely than free people. For example, slaves committing illicit sexual relations will still be punished, but only with fifty lashes, which is half of what a free person would receive (Al-Zuhaylī, 2016b).

- iv. The right to be freed if struck by their master, Prophet Muhammad PBUH said: “He who beats his slave who did not violate the law or slaps him, the expiation for it is that he should set him free.”
(Al-Naysābūrī, 2007a, Hadith No. 1657)
- v. If a female slave becomes pregnant by her master, she is now an *umm al-walad*, who may no longer be sold or gifted away and is automatically freed upon the master’s death, with her child born free as a lawful child of the master (Al-Zuḥaylī, 2011b).
- vi. *Mukātabah* slaves are not subject to *zakat* duties but are recipients of *zakat* for the purpose of their manumission (Al-Maqḍisi, 2007).

Here, the spirit of humanization is clear. Slaves, while still under the legal status of “owned” and “not free”, are elevated to a status of being legal persons capable of bearing rights and responsibilities, albeit not as fully as free individuals. Their masters have legal duties towards them and can face legal consequences for failing to fulfill those duties.

In addition to this legal humanization, there are etiquette-related commandments for slave masters to further socially integrate slaves. Albeit still legally considered “lesser,” these commandments raise the standards of treatment for slaves to a much more compassionate level than they would otherwise have been entitled to. An example, already mentioned, pertains to food, clothing, and the prohibition on overburdening, which are legal rights of the slave. However, the actual wording of the *ḥadīth* of Prophet Muhammad PBUH indicates virtues beyond legal obligations: said food and clothing should be similar to those of the masters, that the master should help a slave if the task is too heavy, and, crucially, that the slave is like family to the master (Al-Bukhārī, 1997, Hadith No.30).

Additionally, Imam Al-Bukhari's *Al-Adab al-Mufrad* has special chapters concerning slave owners, each containing narrations attributed to Prophet Muhammad PBUH (of which not all are authentic) or his companions and their students (*tābi'īn*). In this theme, he begins with two sub-chapters on “good slave owners” and “bad slave owners,” generally calling for caution regarding how slave owners treat their slaves (Al-Bukhārī 2000, pp. 64–65). Further chapters discuss various aspects of the treatment of slaves, including punishments for both slaves and masters who transgress the aforementioned proscriptions. Some intriguing highlights include: some companions of Prophet Muhammad PBUH gave their better clothes to their slaves, that masters should preferably eat together with their slaves, and that slaves must be addressed with good names rather than derogatory ones (Al-Bukhārī 2000, pp. 73, 75, 77, 80).

An interesting contemporary story relevant to this matter was reported by Weston (2008) in his book “*Prophets and Princes*”. He shares an incident from 1943 involving Prince Faisal, who later became king, insisting on dining together with his Black slave at the Waldorf-Astoria Hotel in New York. This must have been quite a spectacle: a Black slave dining with a prince in what was supposed to be the “whites-only” Wedgwood Room of that hotel during the segregation era in the United States (Weston, 2008).

The third important feature of Islamic slavery concerns enslavement and manumission. In Islamic law, enslavement begins with the capture of individuals during war, as this is one of the options an imam may choose for the fate of a war captive (Ibn Rusḥd, 2000a). This represents a significant reduction in the slave pool compared to the *status quo* before Islam, when slaves could be acquired through various means such as kidnapping, inability to repay debts, punishment, or selling one’s own children (Gilli-Elewy, 2017). However, it is possible for Muslims to purchase slaves from non-Muslim lands, where individuals may have been enslaved through other means (Brown, 2020).

Regarding manumission, there are several methods by which it can occur. The following are the ways slaves can be manumitted under Islamic law:

- i. *Mukātabah* contracts, the death of the master (in the case of *umm al-walad*), punishment against the master for hitting slaves, and *zakat* allocations for manumission, as previously explained.
- ii. The significant religious rewards associated with the act of freeing slaves, which encourage Muslims to liberate their slaves voluntarily.

- iii. As a penalty (*kafarat*) for certain prohibited actions, such as engaging in sexual intercourse (albeit with a lawful spouse) while fasting during *Ramaḍān*. Here, the manumitted slave must be Muslim according to the majority, although the Hanafis assert that non-Muslim slaves are acceptable (Al-Zuhaylī, 2011a).
- iv. Clear statements of manumission, even if unintentional. The Hanbali school notes that if a master refers to a group of individuals as “free people” without realizing that a slave is included in that group, it will legally manumit that slave (Al-Maqdisi, 2013).

These features achieve several objectives concerning the treatment of slaves. At face value, they promote the emancipation of slaves by not only closing many avenues through which one could be enslaved but also opening numerous pathways for manumission. Additionally, they enhance the value of freeing a slave due to the strong religious incentives involved.

Nonetheless, these features have led contemporary scholars to conclude that Islamic laws related to slavery were designed to first humanize slaves before ultimately emancipating them. As previously discussed, the arguments made by Rashid Rida and Muhammad Qutb emphasize that emancipation without prior humanization would likely lead to social unrest and possibly even wars, as evidenced by the USA’s 19th-century Civil War (Qutb, 1992; Riḍā, 1910). In fact, today, African Americans continue to face various forms of racial discrimination and challenges as a result of a legacy of slavery that was supposed to have ended over a century ago (Lavalley and Johnson 2022; Craemer et al. 2020). Therefore, mechanisms of humanization are a necessary first step to effectively integrate former slaves back into society as equals.

Traditional versus Modern Slavery: Ownership *De Jure* versus *De Facto*?

The slave trade, in which Muslims were also involved for hundreds of years, never seemed to cause any cross-jurisdictional legal problems. This means that slaves were bought and sold between different nations, and it is difficult to find instances where legal definitions became an issue, regardless of the languages spoken. However, the 1926 Slavery Convention is generally regarded as the high-water mark of the abolition movement and the starting point for defining the essential elements of the concept of "slavery" (Buck & Nicholson, 2010; Siller, 2016); it only addressed traditional slavery and not modern forms. If modern slavery is such a distinct legal concept that it requires new international instruments for definition, then one must carefully examine whether this change also affects its position vis-à-vis Islamic law. In this section, we identify the key differences between traditional and modern slavery as legal concepts.

The 1926 Slavery Convention, in Article 1(1), defines slavery as follows: “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. The key element of this definition is that slavery essentially involves the state’s conferment of ownership rights to one person—referred to as the "owner"—over another person—referred to as the "owned". This reflects the classical "chattel" definition of slavery, which formed the commonly accepted understanding of the term during the period of the Convention’s drafting (Scott, 2016).

What exactly the "right to ownership" entails, however, has been somewhat of a contentious topic. The classical restrictive interpretation is that the right of ownership, as meant by Article 1(1), refers to the *de jure* exercise of the right. This means that the stripping of a person’s *de facto* autonomy does not automatically imply that they have been subjected to slavery, particularly if their captors or *de facto* employers do not exercise a genuine right of legal ownership over them, reducing them to the status of an “object.” Genuine legal ownership in this context means that their supposed “right” is recognized by law—that is to say, the right to own people and any other entitlements which may flow from it, considered unimpeachable, even by the apparatus of the state. The corollary of this situation grants the person endowed by the state with the status of "owner" the right to rent out the person endowed by the state with the status of "owned," loan them, or give them as a gift to others without any intervention from the law or traditional authorities in that legal system (Shahinian, 2010). Such reasoning was the basis for the European Court of Human Rights, in its decision in the case of *Siliadin v. France* in 2005, to declare that a girl who was enticed to come to France by certain individuals under the pretense that they would help her obtain a regularized study visa and continue her studies in France, but who was instead kept as their

own domestic worker for several years, had not been subjected to slavery as it is commonly understood. This is because such a relationship does not involve the French domestic legal system, effectively reducing her, primarily by labelling her, among other things, to the status of an "object" (Stoyanova, 2016).

Meanwhile, some adopt a broad interpretation, arguing that the classical definition has evolved to encompass virtually all *de facto* exploitative labor practices and relationships (Allain & Hickey, 2012). Allain and Hickey (2012) highlight that common sense dictates it is not possible, in this day and age, for a truly *de jure* right of ownership over human beings to be exercised. This means that practically no court of law, within the context of modern legal systems, would entertain a claim brought by someone purporting to be a slave owner, asserting that their right to do as they please with their purported slave has been violated, and subsequently awarding compensation for that violation. Indeed, it is unthinkable for most modern legal systems to even consider labelling individuals as "owner" and "owned" in any legal relationship between people. However, in many of those same systems, it is still possible for one in the working equation to be subjected to treatments that, to the conscience of modern humanity, are akin to slavery. These may include being unduly used for sexual gratification, being forcibly severed from their ties to a particular culture, society, or religion, being restricted in their access to state support or authority and being "discarded" when they can no longer serve a purpose for their "owner." It is this discrepancy between modern conscience and the classical interpretation of the law that inspires scholars like Allain and Hickey (2012) to advocate for a more expansive reading of the 1926 Slavery Convention—one that seeks to go beyond merely insisting on a nexus between the practice of worker exploitation and its official sanctioning—and protecting—by the legal apparatuses of the state.

The *de facto* paradigm offered by Allain and Hickey (2012) above reflects the *zeitgeist* of the international community, especially during the decolonization era in which we live, condemning a wide range of exploitative practices that do not involve a *per se* legal exercise of ownership rights as slavery. This aligns with the burgeoning criticism that the classical definition does not adequately encompass other types of "servile relationships" (Report of the Ad Hoc Committee on Slavery (Second Session), U.N. Doc. E/1988, 1951; Stoyanova, 2016). This concern signifies the distinction between the traditional understanding of slavery on one hand, and the modern understanding on the other, which also qualifies other emerging practices as slavery, even if their tenor could only recently be "felt" as being tantamount to slavery.

Such a line of reasoning has led multiple courts and tribunals, both domestic and international, to interpret the phrase "any or all of the powers attaching to the right of ownership" in Article 1(1) as meaning that practices which essentially exhibit elements of exploitation and involuntariness constitute slavery. The *Kunarac* case before the International Tribunal for the Former Yugoslavia (*Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic (Trial Judgment)*, IT-96-23-T & IT-96-23/1-T, International Criminal Tribunal for the Former Yugoslavia (ICTY), 22 February 2001, 117) is widely regarded as a landmark in this regard, as many other international tribunals dealing with similar cases have followed its holding regarding the evolution of the concept of slavery from "chattel" to "modern." These cases include, *inter alia*, the *Hadjiatou Mani Koraou v. Niger* case before the ECOWAS Community Court of Justice (ECW/CCJ/JUD/06/08, 27 October 2008, 77) and the *Rantsev v. Cyprus and Russia* case before the European Court of Human Rights (Application no. 25965/04, 7 January 2010, 142). There are also domestic cases that cited this ruling, such as the *R v. Tang* case before the High Court of Australia in 2008 (HCA 39, 28 August 2008, 28).

In attempting to better understand those advocating for the extension of the 1926 definition of slavery and its surrounding discourse, it is important to consider ILO Convention No. 29 of 1930 (The Forced Labor Convention). The Convention maintains forced labor as a separate legal status from slavery; indeed, Bassiouni noted that the Convention was drafted with the intention of merely "regulating," as opposed to outright "prohibiting" forced labor to maintain the juridical distinction between it and "enslavement" (See: Forced Labor Convention, art. 16, Bassiouni, 1991). It follows that the Convention deems the practice acceptable, allowing for legally permissible forms of labor that are forced upon people, as long as certain conditions are met, which makes it more akin to slavery. This is also true for the International Covenant on Civil and Political Rights (ICCPR), which regulates forced labor under Article 8(3) and slavery under Article 8(1), thereby establishing forced labor as a distinctly separate concept from slavery, given that Article 8(3)(b) provides situations under which forced labor is allowed. The Allain-Hickey paradigm,

however, adopts a logical stance whereby the piecemeal exclusion of what they view as, in all but name, slavery should be abolished permanently; that the 1926 Slavery Convention ought to be read in such a way that what was considered permissible in its 1930 distant offshoot is no longer permissible within its own regime.

With that liberalizing *élan* in mind, the understanding of slavery is thus pushed towards a direction that covers any actions or conditions exhibiting any sign of exploitation, while eschewing the requirement to adhere to the strict legal (*de jure*) definition of ownership (Miers, 2003). This appears to be the view of the Human Rights Committee, which, when interpreting Article 8 of the ICCPR, held that slavery should not be defined narrowly as the destruction of a person's juridical personality through the legal system by sanctioning the right to ownership over them. Rather, in their view, it must be construed in a way that accommodates the *de facto* evolution of the concept of ownership, which may entail, among other things, the right not to be given away as one would with property in the context of women and marital status (UNHRC 2000, para. 19). Through this observation, the Committee concludes that there is a link between the juridical destruction of a person and the actual (that is to say, *de facto*) treatment of that person as an object, thereby severing the umbilical cord between the concept of "juridical destruction" and its hitherto orthodox "sanction of the state" centered conception, which was the prevailing understanding in 1926 (Stoyanova, 2016).

In summary, when identifying the elements central to the concept of "modern slavery," there seems to be a significant emphasis on the idea of a *de facto* right of ownership as opposed to merely a *de jure* right of ownership, as seen in traditional slavery. Therefore, the prevailing understanding of how to define modern slavery appears to direct the assessor's attention to whether a particular relationship (be it work-related or other types of subordinate relationships) effectively imposes conditions that may deprive a person of his or her rights. Most notably, the right of the subordinate individual to seek legal recourse for wrongs committed against them by their superiors, their right over the autonomy of their bodies, and their right to reside in a territory of their choosing are essential rights; the absence of these in a given superior-subordinate relationship would render it a form of modern slavery. Additionally, the involuntariness of the working party when their services are solicited, the utilization of penalties in soliciting their services, and the deprivation of adequate working conditions are other important elements that, together, loosely constitute the same. For the purposes of this work, this is the understanding of modern slavery to which we will refer.

Would Modern Slavery Fall under the Islamic Concept of Slavery?

After identifying the key distinction between traditional and modern slavery as legal concepts, the next question is whether this shift would change the relationship between the latter and Islamic law. This determines whether the derivative rulings on Islam and slavery are directly applicable to victims of modern slavery.

Much is at stake if we misanalyze this, hence the need for absolute caution. For example, consider the permissibility of sexual relations between a male master and a female slave in Islam. It is important to first note that the default rule (*hukm al-aṣl*) regarding sexual relations is that they are prohibited (*ḥarām*), unless a specific circumstance based on the Qur'an or Sunnah renders them permissible (Al-Shathri, 2005). With regard to sexual relations, there are only two bases from which they may be permissible: marriage and enslavement (Al-Shathri, 2005). Meanwhile, *zina* (illicit sexual relations) in Islam is considered a major transgression or sin, as opposed to minor sins. Al-Dhahabi (n.d.), in *Al-Kabā'ir*, ranks illicit sexual relations as the tenth among seventy major sins. He notes the strong language used in the Qur'an and *ḥadīth* on this subject, which includes very severe punishments both in this world (i.e., execution by stoning for married free persons and one hundred lashes for unmarried persons) and torments in the afterlife (Al-Dhahabī, n.d.).

That said, the risks are very high. However, one can use this case as a perspective from which to examine the issue. Considering the *hukm al-aṣl* above, one must reach certainty to equate modern slavery with the Islamic notion of slavery to reverse the default ruling. After all, according to an Islamic legal maxim, certainty is not overruled by doubt (Al-Ḥanbalī, 1432H; Al-Shathri, 2005).

In this case, another *ḥukm al-aṣl* should be considered: A person is by default free until something legitimately makes them a slave (Al-Mawsū‘ah, 2003). As noted by the *fuqaha* of *Al-Mawsū‘ah Al-Fiqhiyyah Al-Kuwaytiyyah*, engaging in sexual relations with a female slave who was enslaved illegitimately constitutes *zina* (Al-Mawsū‘ah, 2003).

If we consider the previous section, there are certain degrees of similarity between modern slavery and Islamic slavery. To provide another example, in both cases, there are barriers to their ability to testify before judicial systems. The nature of this obstruction differs, however, as it is *de facto* in the case of modern slavery, where victims, such as immigrants, fear deportation if they interact with law enforcement (O’Connell Davidson 2013). In contrast, this obstruction is *de jure* in the case of Islamic slavery. In certain cases of modern slavery, sexual intercourse between “owners” and the “owned” does occur, although the nature of it is also different. In modern slavery, it often results from *de facto* compulsion by the “owner” and the power imbalance between them and the “owned,” rather than any form of legal obligation (Shelley, 2012). In Islamic slavery, it is a legal right of the master.

The *de facto* and *de jure* distinction is what makes the ultimate difference. As explained in the second section above, the essential terms defining the Islamic notion of slavery (e.g., ownership, property) are legal terms. Numerous verses of the Qur’an and *aḥadīth* refer to slaves as objects of *fiqh mu‘amalah* (instead of subjects), such as objects of sales or gifts, in a manner similar to any other property. For example, in some *ḥadīth*, Prophet Muhammad PBUH was asked to witness the gifting of a slave (Al-Naysābūrī, 2007a). In another *ḥadīth*, Prophet Muhammad PBUH purchased a slave (he said *bi’nīhi* or “sell him (the slave) to me”) (Al-Naysābūrī, 2007a, Hadith No. 4113). This indicates an explicit *de jure* status over the slaves mentioned. It is important to recall that it is a principle to understand the Qur’an and Sunnah first and foremost in their apparent meaning, while making *ta’wīl* (ascribing meaning to a word other than its apparent meaning) may only be done based on the Qur’an and Sunnah as well (Ibn Al-Subkī, 2003; Al-Āmidī, 1996).

The aforementioned example of sexual relations and *zina* could also serve as a good illustration of how the difference between *de jure* and *de facto* creates a significant distinction. The definition of marriage, as a legal concept (*de jure*), to most ‘ulama, refers to a marital contract that legalizes sexual intercourse, such as al-Shāfi‘ī’s definition (Al-Sharbīnī, 1994). The *de facto* act of marriage (the actions that a married couple would undertake based on that definition) would presumably involve a couple engaging in sexual intercourse. Note that the term for “marriage” in Arabic, *nikah*, can also mean sexual intercourse (Al-Sharbīnī, 1994).

It would be extremely incorrect to apply the same rule to legally equate the *de facto* and *de jure* aspects of marriage. As explained earlier, sexual intercourse is by default *ḥarām* except if marriage occurs or in legitimate enslavement. That previous discussion certainly refers to marriage *de jure*, as it is a legal context. This means that the *de facto* aspect of a marriage will be *ḥarām* without the *de jure* aspect. In case one is tempted to interpret “marriage” in this context to mean a *de facto* kind of marriage as previously discussed, note that such an interpretation leads to this conclusion: sexual intercourse (the *de facto* act of marriage) is prohibited, except when there is the *de facto* of marriage (sexual intercourse). This statement makes no sense. We also mentioned how having sexual intercourse with a slave obtained through illegitimate means of enslavement (*de facto* without *de jure*) is also considered *zina*.

All that said, many of the limitations experienced by individuals who fall victim to modern slavery, being *de facto* in nature, cannot be classified under the Islamic concept of slavery. The latter requires, first and foremost, a *de jure* status of ownership for any differing concepts to fall under it. Consequently, the concept of slavery in Islam and the concept of “modern” slavery, as developed and expanded within the modern human rights law framework, are not equivalent to each other, rendering the derivative *fiqh* rulings related to Islamic slavery not automatically applicable in this context. That being said, as we shall see in the subsequent chapter, there is yet another factor upon which it is possible to capitalize on the many humanizing features of Islamic law, especially its chapter pertaining to slavery, to explore new possibilities for ameliorating the condition of the modern slave: its *maqāsid* of humanization and manumission.

***Maqāṣid*-Based Inspiration: A Slavery-Like Islamic Law?**

To introduce a *maqāṣid*-based inspiration for developing a classical Islamic concept, it would be insightful to learn from the case of *takaful*. In today's business landscape, insurance is extremely important. It provides individuals with the confidence to take risks in business as a form of protection against those risks, which, in turn, boosts economic activity (Meade, 2022; Mohy ul din et al., 2017; Ilmakunnas & Kannianen, 2001). However, conventional insurance has many drawbacks from an Islamic perspective because its practice necessarily includes numerous *ḥarām* elements, the most significant being: *gharar* (hazardous uncertainty), *maysir* (gambling), and *riba* (interest) (Iqbal, 2005).

In this context, the *'ulama* have attempted to draw inspiration from the pre-Islamic Arabian system of *takaful* that was deemed permissible and practiced in the Islamic era. During that time, the idea was that members of a tribe would donate money to a common fund that would be used when a need arose, e.g., paying *diyat* or blood money when one of their tribesmen accidentally killed someone from another tribe (Malik & Ullah, 2019). There are many major differences between the original *takaful* model and the contemporary insurance model, such as (a) the absence of *gharar* and *riba* in the former, (b) the latter being commercial, and (c) the extent of risks covered being dramatically different (Iqbal 2005; Malik & Ullah, 2019). However, in terms of general *maqāṣid* (purpose), the two are similar since they both cater to the need for protection against risks (Malik & Ullah, 2019).

Therefore, bearing in mind the *maqāṣid* of protection against risks, contemporary *'ulama* have developed the *takaful* model into what is now often referred to as "Islamic insurance". In summary, this modern *takaful* modifies the original *takaful* model to suit today's need for risk protection while attempting to avoid the *ḥarām* elements of contemporary insurance. However, it is worth noting that there is ongoing discourse among scholars regarding the extent to which these modern *takaful* models have successfully avoided the *ḥarām* elements of insurance.

The above serves as an example of how a very old legal concept, due to similarities in *maqāṣid*, can inspire the construction of a new legal concept. Even if there may also be significant differences alongside those similarities, this is where creativity and modifications come in to adapt the concept to contemporary needs. Islamic banking follows a similar trajectory (ISRA 2016; Abdullah & Chee, 2010).

Using the same idea, we propose that it is possible to utilize the *maqāṣid* of humanization and manumission to draw inspiration from Islamic laws of slavery to help address the problem of modern slavery. The differences between Islamic slavery and modern slavery provide opportunities for necessary adjustments.

With regard to humanization, Islamic laws of slavery appear to inspire at least two key principles. First, the fulfillment of basic needs. Food and clothing are universally recognized as fundamental necessities, and avoiding excessive burdens is a matter of health, which is also a basic requirement. It is essential to note, for anyone reading this, that working beyond one's physical and mental limits can lead to various health problems (Kuroda & Yamamoto 2019; Wong et al., 2019; Prasad & Thakur 2019). This underscores that any mechanism addressing victims of modern slavery must include plans to ensure that their basic needs are met. While this is likely a consideration in most victim treatment mechanisms, it is important to establish minimum thresholds.

Second, addressing negative stigmas. Victims of modern slavery, especially those who have experienced sex trafficking, often endure considerable stigma. Fulfilling their basic needs is important, but without addressing the stigma, they cannot comfortably reintegrate into society (Fukushima et al., 2020; Counts 2014; Wiener et al., 2021). The humanizing element of ensuring that slaves are fed and clothed to the same standard as the master is part of elevating their status beyond society's previously low perception of them. Similarly, promoting the practice of slaves dining with the master, using respectful names instead of derogatory ones, and implementing disincentives for mistreating slaves addresses stigma in two ways: it encourages society to perceive slaves more positively and helps the slaves themselves recognize their worthiness of decent treatment. Especially regarding the latter, social stigma also impacts how these victims perceive themselves (Fukushima et al., 2020; Counts 2014; Wiener et al., 2021).

This should inspire the establishment of mechanisms to address the negative stigma commonly associated with victims of modern slavery. Such mechanisms should reach society through education and provide support to the victims themselves in the form of counseling and therapy as needed. However, it is important to note that mechanisms aimed at countering social stigma must not be based on the endorsement of consent-based sexuality, as some secular feminists promote. The Islamic notion of sexuality contradicts secular feminism by including divine laws that also regulate sexuality (Kania 2018; Chairil & Henri Salahudin 2021).

Regarding manumission, the message is clear. To summarize the Islamic laws related to the manumission of slaves, as explained in the earlier section, many avenues are available to encourage and promote the manumission of slaves. While *de jure* slavery is not the same as *de facto* slavery in terms of legal status under Islamic law, in either case, manumission is preferred. In fact, since maltreatment and abuse are not inherent to Islamic slavery but are central to modern slavery, based on *qiyās awlawi (a fortiori)*, the latter requires more urgent manumission efforts.

We consider the various avenues for the manumission of slaves as sources of inspiration. First is the inherent virtue and heavenly rewards associated with freeing a slave. Even if modern slavery differs from Islamic slavery, the principle of helping someone escape a bad situation for a better one is commendable, if not obligatory, depending on the severity of individual circumstances (Al-Naysābūrī, 2007b). Raising awareness about the urgent need to emancipate victims of modern slavery, while emphasizing the immense rewards for participating in such efforts, will pave the way for many other solutions. This is also part of humanization; increased awareness may prompt governments to implement stronger policies against modern slavery and encourage Muslims to engage in these efforts within their respective capacities. Assisting in the emancipation of a modern slavery victim may not serve as *kafarat* for Muslims who have sexual intercourse with their spouses while fasting during *Ramaḍān* (or in some cases of accidentally causing death), as such *kafarat* is tied to Islamic slaves (Al-Zuḥaylī, 2011a).

However, a similar (though not identical) concept might be introduced through *nadhhar* (vows). The idea of *nadhhar* involves a person making a vow to do something (which must be good, as defined by Islam and its laws) if Allah grants them something; for example, if this article is accepted for publication, we vow to offer two *raka'at* of voluntary *ṣalāt*. On this issue, classical *fiqh* literature has discussed the matter of vowing to free slaves (Al-'Asqālānī, 1379H). With the same spirit but in a contemporary context, it could be an intriguing idea to popularize “contributing to modern slavery emancipation” as a form of *nadhhar*.

Second, funding for emancipation policies. In our introduction, we mentioned research by Basri, which suggests the allocation of *zakat* funds for emancipation programs (Basri 2012, pp. 93–95). Basri’s idea is commendable in terms of its purpose (he proposed an integrated action plan to combat modern slavery), but the categories of *zakat* are finite and restricted. As we concluded previously, modern slavery does not legally fall under the Islamic conception of slavery, and the *asnaf* of *zakat* can only be Muslim according to a majority of the ‘ulama (Al-Zuḥaylī, 2011a). These restrictions limit the reach of *zakat* funds, making it categorically inapplicable. However, there are ways around this. Victims of modern slavery are often poor, and many are debt-bound, which qualifies them under two different categories of *asnaf*, so *zakat* funds can still be utilized. Additionally, *zakat* is not the only source of funding available. If the *maqāsid* of giving *zakat* is to help emancipate these individuals, but some requirements are not fulfilled (e.g., victims are non-Muslims), then funds can be allocated for the same purpose from different sources, such as *sadaqah* (charity), which does not require recipients to be Muslim (Al-Nawawī, 1344H).

Another point to address is *mukātabah* contracts. The parties involved in *mukātabah* are the master and the slave. This situation is often a default scenario of modern slavery; many victims are, in some cases, already attempting to buy their way out of enslavement (Machura et al., 2019; O’Connell Davidson 2013). However, if the *maqāsid* of a *mukātabah* contract is to enable slaves to buy their own freedom, then we can apply this concept differently to modern slavery. Due to the complexities surrounding modern slavery such as corrupt law enforcement, weak regulations, direct emancipation may not be reasonably feasible. However, inspired by *mukātabah* contracts, we could construct mechanisms to help victims of modern slavery buy their way out. Ideas may include providing side jobs for the victims so they can eventually start repaying their debts or even building empowering communal economies to make communities less

susceptible to modern slavery. Often, poverty is a significant factor that drives victims into modern slavery (Adesina 2014; Srivastava, 2019).

It is also essential to discuss the status of slaves in criminal law, where they receive lesser penalties than free individuals for the same crime. This could inspire the easing of penalties for victims of modern slavery who become entangled in crime. If actual slaves (under Islamic law) receive lesser penalties due to their diminished legal status, victims of modern slavery might deserve similar consideration due to their lack of full free choice in their circumstances. Modern slavery often operates as a network of crime, where victims are compelled to act as co-perpetrators (Simpson 2019; Villacampa & Torres 2017). Criminal law and immigration regulations should take into account the challenges faced by these victims, allowing for reasonable and proportionate leniency based on individual situations.

The final matter to discuss is the familial context of a slave's relationship with the master. The most obvious and frequently discussed aspect is sexual relations. As explained earlier, the permissibility of sexual relations between a male master and a female slave in Islamic law does not apply to victims of modern slavery. However, a more holistic view of sexual relations as one aspect of family reveals more about the *maqāṣid*. We previously mentioned how the legal definition of marriage, the foundation of a family, encompasses the legalization of sexual intercourse. That said, Islamic law treats a slave as part of the family, as evidenced by various aspects of the humanization of the slave it prescribes. Some *ḥadīth* even show Prophet Muhammad PBUH stating that slaves are like family to the master (Al-Bukhārī, 1997, Hadith No. 30). Sexual relations resulting in the birth of a child from a slave make it impermissible for the master to sell her, and the child is not considered a slave, creating a family unit of master, slave, and child.

From a *maqāṣid* perspective, the purpose of a family is to provide first-layer comfort and support to all its members, thereby fostering a strong society (Badran, 1998). Some scholars also contend that the primary purpose of marriage in Islam, which is the starting point of a family, is to serve as a source of serenity and love in one's life (Nasution, 2004). Family is meant to be a safe haven for individuals. While some may find this notion far-fetched, it could inspire a crucial need for victims. Parents may be separated from their children when either the former, the latter, or both fall victim to modern slavery. Siblings and other family relationships also suffer greatly when separated in such an inhumane manner (Such et al. 2020). Reuniting with family may be a vital component of post-slavery healing and therapy.

Conclusion

Modern slavery is not the same legal concept as slavery recognized in Islam. Therefore, the legal rulings regarding slavery in Islam cannot be directly applied to the context of modern slavery and the so-called "modern" slaves. However, from a *maqāṣidī* perspective, the emancipative nature of Islamic laws on slavery can guide us toward classical methods of emancipating victims of modern slavery, with modern modifications to accommodate different natures and needs. The laws related to humanization inspire the alleviation of the inhumane conditions faced by victims of modern slavery, while the laws related to manumission encourage and support their liberation from the terrible bonds they endure.

Admittedly, various aspects of modern slavery have not yet been addressed in this article. After all, modern slavery is a complex and multidimensional issue that requires an equally nuanced and comprehensive solution; indeed, the discourse surrounding the very definition of the concept is continuously evolving, with its foundations ever-shifting. Consequently, it is challenging to delve deeply into each of the problems of modern slavery discussed in this article, as a thorough examination of each would likely require individual research. Nonetheless, some aspects of the problem of modern slavery addressed in this work have been discussed adequately, providing a foundation for further research to explore these issues in greater depth, as well as other aspects not covered here.

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