Analysis of “Same Crime of Buying and Selling” in the Crime of Human Abduction and Trafficking

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Abstract
This article first discusses the shortcomings of the crime of human trafficking in China, which involve "different crimes of buying and selling." These include the relatively light criminal responsibility of the buyer, the singular statutory punishment, and the unclear conditions for applying a lighter punishment. The second part of the article reviews the perspectives on the "same crime of buying and selling" in the context of human trafficking. Professors Luo Xiang and Ken Sangimoto primarily advocate for the concept of the "same crime of buying and selling," while Professors Che Hao and Bai Langtao oppose this viewpoint. They further elaborate on and provide reasons for their stance against the "same crime of buying and selling" in this article. Additionally, suggestions for enhancing the handling of human trafficking crimes in China are presented from the perspective of the controversy surrounding the "same crime of buying and selling." These suggestions mainly focus on strengthening penalties for buyers, refining statutory criminal regulations, and specifying criteria for applying lenient punishments.

Keywords
Buy the same crime as buy, Vantage point, Perfect suggestion

1. The shortcomings of the “different crimes of buying and selling” in China’s human trafficking crime

1.1 The criminal liability of the buyer is relatively light
Compared with trafficking, the bribery of women and children is relatively less harmful to the victim and society as a whole. Moreover, the purpose of bribery for many criminals is to form a complete family, and the trafficked women and children will be regarded as their own, however, there are also a small number of criminals who buy abducted women and children and then force them into prostitution, begging, working, etc. This group is full of subjective viciousness and objective harm. If it is characterized as a crime of buying women and children, it can only be sentenced to three years in prison. Although some vicious violations can be punished with multiple crimes, the sentencing level of these crimes is still not high, and the punishment for criminals is relatively light. From the perspective of judicial practice, many criminals end up with leniency granted. It can be seen from this that the overall sentencing period and punishment range for the crime of buying trafficked women and children should be appropriately increased, so as to completely destroy the trading market for human trafficking and eliminate the demand for trading from the source (Mou Xueyan, 2018).

1.2 Statutory penalties are single
The legal sentencing system for buying abducted women and children is relatively simple. It basically only enforces
the punishment from the perspective of restricting the criminal’s personal freedom and does not impose property penalties. This will make the criminal punishment of this crime too simple, so in the future, it is necessary to further optimize the penalty system and truly implement the principle of unifying crime, responsibility, and punishment. The crime of buying abducted women and children is the counterpart of the crime of abducting women and children. There is no additional property penalty in the legal penalty setting. This phenomenon is unconventional. Among other crimes stipulated in the criminal law, the crime of abducting women and children is not included in the criminal law. All of them are related to the application of property punishment. Therefore, setting up a property penalty for this crime can not only increase the illegal cost of crime from the perspective of judicial practice, serve as a warning to buyers of human trafficking transactions, reduce the possibility of crime, but also improve the law from a legislative perspective.

1.3 The applicable conditions for a lighter punishment are not clear

In the crime of procuring abducted women and children, two conditions need to be met at the same time for a lighter punishment for the purchaser of children. On the one hand, there is no abuse of the victim, and on the other hand, there is no obstruction to the rescue operation of the trafficked person. However, this legal norm also exposes some problems: First, when the buyer commits abusive behavior, no matter whether the buyer obstructs the rescue, he cannot be punished lightly. At this time, the buyer may act to hinder the rescue. Second, because the idea of "son preference" is deeply rooted in some areas, most of the buyers who buy children want to buy a boy to carry on the family line, so it will hinder the rescue work, but the buyers themselves did not abuse the children, but as long as they buy Those who hinder the rescue work cannot be given a lighter punishment. Third, abuse cannot be accurately defined. Some bribers may not physically abuse abducted children, but the abducted children have been severely psychologically damaged (Liang Fan, 2020). Therefore, in the crime of buying abducted women and children, the applicable conditions for a lighter punishment for the buyer who buys a child are not clear.

2. Comments on the viewpoint of the "same crime of buying and selling" in the crime of human trafficking

2.1 Comments in support of the view that the “same crime of buying and selling”

Professor Luo Xiang from China University of Political Science and Law discussed the idea of increasing the maximum sentence for bribing trafficked women and children from three aspects: First, from the perspective of "opposing crimes" in China's current criminal law, the crimes of trafficking and bribery are a kind of "opposing crimes" and belong to accomplices at the macro level. In the current legal system, "opposing crimes" to other crimes "The criminal penalties and sentencing are similar, but only the crimes of abduction and bribery are special. The sentencing between the two crimes is very different, which is inconsistent with legal principles; Second, from the perspective of comparing the sale of humans and the sale of animals, China’s criminal law is even less aggressive against the sale of humans than the sale of protected animals. Buyers of animals are often sentenced to more than five years in prison, while those who buy abducted women are often sentenced to more than five years in prison. The maximum prison sentence for purchasers of children is only three years, which makes people feel that "people are inferior to animals", thereby reducing the public's perception of the authority and credibility of the law; Third, from the perspective of statute of limitations for prosecution, criminals who commit the crime of abducting and trafficking women and children will be sentenced to at least five to ten years in prison, while those who are guilty of bribing abducted women and children will be sentenced to a maximum of three years in prison. This problem also means that many criminals who bribe and traffic women and children are rarely prosecuted, and the short prosecution period of five years cannot meet the needs of judicial practice. In addition, there is an imbalance in the sentencing of different crimes, which will also cause an imbalance in the statute of limitations for prosecution (Luo Xiang, 2022).

Professor Sang Benqian of Ocean University of China discussed the viewpoints of raising the maximum sentence for the crime of buying trafficked women and children from five aspects: First, China’s criminal law combines the purchase of abducted women and children into one crime. This is not in line with legal principles. There are significant differences in the motivations and harmful consequences to society of the two bribery behaviors. Second, this crime should be combined into one crime. They are regarded as dangerous criminals rather than as preparatory criminals; thirdly, the criminal law punishes criminals with the purpose of bribery. Some good-faith bribers will not be criminally punished because their original intention is to help the trafficked persons obtain Personal freedom should...
be rewarded rather than punished; fourth, if this crime is abolished, it will deprive the judicial department of the opportunity to intervene in the case in advance. Fifth, there is no need to worry about the problem of excessive punishment in this crime. Compared with other criminal crimes, buying trafficked people is more harmful to society (Sang Benqian, 2022).

2.2 Comments on the view that the “same crime of buying and selling” is not supported

Professor Che Hao from Peking University discussed the viewpoints of maintaining the current status of the crime of procuring abducted women and children from four aspects: First, the crime of procuring abducted women and children cannot be unilaterally evaluated as a misdemeanor, and the criminal law needs to be reviewed. Article 241 carries out a systematic evaluation and the crime of buying abducted women and children should be classified as a felony. Second, it is necessary to start from the perspective of retributive punishment and doctrinal theory. Purchasing abducted people from traffickers is essentially a preparation for other serious criminal crimes. Subsequent bribers may be raped, illegally detained, or deliberately detained by human traffickers. Injury and other behaviors; thirdly, from the perspective of preventive punishment and economics, rigidly needed interests are slow to heavy incentives, that is, because of the buyer’s market interests when various bachelors living in impoverished mountainous areas purchase women of school age from traffickers, they establish Having children at home has become a necessity, and the legal punishment for this illegal behavior is relatively light. Even if the criminal law increases the maximum penalty for this crime to life imprisonment in the future, it will not necessarily create a deterrent that puts everyone in danger. Effect; Fourthly, from the perspective of legal sociology, criminals can seek to serve as a certain protective umbrella. Law enforcement officers at the grassroots level have feudal and backward concepts and form a criminal relationship of "government and civilian mutual protection" with criminals. In the future, when a case of human trafficking comes to light and law enforcement agencies need to intervene, it is difficult to do so in the face of various difficulties and concerns (Che Hao, 2022).

Professor Bai Langtao of East China Normal University discussed the views on maintaining the current status of the crime of buying abducted women and children from three aspects: First, the crux of the current problem is not legislation, but law enforcement. Many human trafficking cases have lax law enforcement. This is a serious problem, and many grassroots law enforcement departments have ignored these criminal acts; secondly, "people" and "animals" are not comparable. According to the reasoning of the ex officio interpretation of the law, the two contrasting matters must be of the same nature and highly related. The criminal forms of buying people and buying animals are similar, but there are serious differences in the objects of the crimes and the legal interests protected by the law. Therefore, it is difficult to develop legal reasoning that can naturally explain the two; thirdly, the statute of limitations is not a Dilemma, this crime is not a continuing crime in the strict sense, but other serious crimes such as illegal detention, rape, intentional injury, etc. may occur in the future. As long as the criminal standards are met, the prosecution must start to increase according to the statute of limitations for continuing crimes. In summary, Professor Bai Langtao pointed out that in the process of improving the crime of human trafficking, legislative revision is not the difficulty, but strengthening law enforcement is (Bai Langtao, 2022).

2.3 This article’s views and reasons on “same crime of buying and selling”

This article supports increasing the severity of sentencing for the crime of procuring abducted women and children to punish the buyer's market. Because of the existence of the "market", that is, China's huge population base and the concept of "son preference" determine that there are a large number of couples who are unable to have children or "lost their only child" in society, as well as families who long for boys. "For the sake of 100% profit, it dares to trample all human laws." This famous saying is also the truest portrayal of the market's spawning of transactions. Many citizens support the same crime of human trafficking. Even if the party who buys human beings has treated the trafficked victims well, this cannot be a reason for them to evade criminal responsibility. Families who buy people enjoy family happiness, while families who lose their children may be immersed in pain for the rest of their lives and walk on the tragic road of seeking relatives for the rest of their lives, resulting in broken families. On the issue of strengthening law enforcement, it is necessary to align with the "Action Plan for Combating Human Trafficking (2021-2030)", do a good job in publicity and education, and gradually eliminate implementation resistance with the full support of funds, organizations, and publicity to form a social consensus. We don't expect every criminal to be a criminal jurist. Few criminals know that behind the crime of buying abducted women and children, there are crimes of rape, illegal detention, and intentional injury. What they know is "buying a daughter-in-law", "Buying a child"
will be sentenced to three years if it is discovered, and the three-year sentence is weighed against the benefits of "buying a wife" and "buying a child", and a three-year sentence is nothing.

3. Suggestions for improving the crime of human trafficking in China from the perspective of the "same crime of buying and selling" controversy

3.1 Strengthening punishment on the buyer's market

From a fundamental point of view, it is precisely because of the strong demand in the human trafficking market that repeated illegal acts occur. In order to eradicate human trafficking, during the annual two sessions, many representatives and committee members will propose bills on this topic. The Criminal Law Amendment (9) has made legislation to regulate the illegal behavior of buying and trafficking women and children, but it is still difficult to implement it in judicial practice. If it is difficult to enforce the law and punish it, then this legislation will become an embroidered pillow. Crime cannot be punished in the true sense. The crime of human trafficking in China has a long history, and the crackdown on this crime is very complex and arduous. Judging from the current situation, it is necessary to deepen the public's understanding of "buying and selling are the same crime", strengthen publicity, and strengthen the offensive of public opinion. Only in this way can we strengthen social supervision of human trafficking, reduce the blind spots in the popularization of the law, and provide a basis for public opinion for the punishment of human trafficking crimes.

3.2 Improving the setting of statutory penalties

Considering that there is still such a small number of legal illiteracy today, excessive criminal law responsibility should not be added. The author believes that a fine penalty can be added on the basis of the original main penalty. The fine penalty can increase the cost of crime and make people with criminal intentions vigilant. To reduce the possibility of crime and strengthen material punishment, some criminals with strong subjective malice can be punished with personal punishment and property punishment at the same time, so as to combat human trafficking with greater intensity. According to the criminal law, current criminal penalties for those who obtain women or children through transactions are not high, with a maximum of three years in prison. In contrast, traffickers' crimes are punishable by up to the death penalty. As we all know, if there is no buyer demand for this kind of abduction crime, there is almost no possibility of abduction. Therefore, the criminal law should also increase the punishment for the buyer. For example, the starting point of the penalty for the crime of buying abducted women and children The current maximum prison sentence of three years has been increased to a prison term of not less than three years but not more than five years. Increase the application of court injunctions. Injunctions are generally used as auxiliary penalties. In the crime of buying and trafficking women, an injunction can be imposed on the perpetrator alone to prohibit him from engaging in certain activities (Wang Jichun, 2018).

3.3 Differentiate the conditions for the application of a lighter punishment

In the crime of procuring abducted women and children, two conditions need to be met simultaneously for the peddler of children to be given a lighter punishment. The first is that there is no abuse, and the second is that there is no obstruction to the rescue activities of the victims. However, in practice, it is rare to meet both requirements at the same time, so this article believes that this should be distinguished and compared between meeting one condition and meeting all conditions. "Abuse" does not only refer to physical harm but also includes mind control and mental harm. The expression used in the legal provisions of this crime is "can", which means that the judicial department has discretion. When all conditions are met, it can only be given a lighter punishment, but it does not necessarily require leniency. It must Judgments should be made based on the comprehensive performance of criminals.

References


Sang Benqian. Why is it necessary to legislate to severely punish the crime of bribing abducted and trafficked women? [EB/OL]. https://mp.weixin.qq.com/s/qgAdL1XJTpf0OgtX3yD9Gg, 2022-02-08/2022-02-21.