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A Brief Analysis of the Crime of Purchasing Women and Children Who Have Been Trafficked

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Abstract

Since ancient times, there have been criminal activities of trafficking in women and children in our country. Due to the high incidence of such crimes, many families have been broken up, and wives, children, and the elderly have been torn apart. At the same time, it has also had a significant impact on the stability of society and the country. However, the emergence of the crime of trafficking in women and children has led to an increasingly rampant occurrence of the crime of purchasing trafficked women and children. To protect the legitimate rights and interests of women and children, the Criminal Law of our country imposes severe penalties on the crime of purchasing women and children.

Keywords

Buying trafficked women and children, causes, statutory penalties

1. Introduction

The existence of a “market” is a prerequisite for trafficking activities. Investigations and research reveal that the prevalence of human trafficking remained alarming in 2022, with millions of individuals worldwide falling victim to this crime annually. The majority of those trafficked are children and women. Criminal organizations involved in human trafficking continue to expand their operations, and such illicit activities are increasingly developing on a global scale. As a grave social issue, the rampant nature of human trafficking and its criminal undertakings have become a focal point of international concern. A significant contributing factor to this phenomenon is the “buyer’s market,” making it imperative to intensify crackdowns on the act of purchasing individuals.

2. The Offense of Buying Abducted Women and Children

2.1 *The Concept of the Crime of Bribing Trafficked Women and Children*

The offense of purchasing abducted women and children refers to the act of knowingly buying women or children who have been trafficked. The core characteristic of this offense lies in the fact that the act of purchasing itself is not carried out with the intent to resell. If the perpetrator initially intends to resell the victim at the time of purchase, the act should be directly prosecuted as the crime of trafficking women and children.

The 1979 Criminal Law of China did not include this as an independent offense. After the 1980s, as trafficking in women and children became increasingly rampant, the role of purchasing as the “demand side” of such crimes became prominent, creating a market for trafficking. To eradicate this foundation, the Standing Committee of the National People’s Congress adopted a special decision in 1991, which for the first time criminalized the act of purchasing abducted women and children. During the revision of the Criminal Law in 1997, this provision was incorporated into Article 241.

To further intensify the crackdown on the buyer’s market, the Ninth Amendment to the Criminal Law, which took effect in 2015, introduced key revisions to this article. It eliminated the original clause stating that “criminal liability may not be pursued” under certain circumstances. The amendment explicitly stipulates that purchasing an abducted child without subjecting the child to abuse and without obstructing their rescue, or purchasing an abducted woman without obstructing her return to her original place of residence in accordance with her wishes, may lead to a mitigated or reduced punishment. However, such acts uniformly constitute a crime and entail criminal liability. This revision signifies the establishment of a zero-tolerance legislative stance toward the act of purchasing abducted persons.

2.2 *The Constitutive Elements of the Crime of Bribing Trafficked Women and Children*

2.2.1 The Object Elements of the Crime of Purchasing Trafficked Women and Children

This crime infringes upon the personal freedom rights of the trafficked women and children, as well as their dignity. The act of trafficking women and children essentially treats the trafficked women and children as commodities for sale. This is an infringement upon the victims. During the process of trafficking, the victims are regarded as “objects” and have no power to choose their own fate. This is an infringement upon the victims’ personal freedom rights. The criminal subjects of this crime are women over the age of 14 and men under the age of 14, and must be trafficked women. If the purchased women collude with the person who traffics the population or act as “pigeon messengers” to commit fraud, they cannot be convicted of this crime.

2.2.2 The Objective Elements of the Crime of Bribing Trafficked Women and Children

Objectively, it manifests as the purchase of trafficked women and children. Purchasing refers to exchanging money, property, and other items with the trafficked individuals. The methods vary; some are directly purchased from the criminals who “sold” them; some are purchased through introductions of the trafficked women and children; some are induced to be purchased and then made pregnant and

give birth before being sold to others; some are purchased through connections with criminals, and only when the perpetrator negotiated with a third party, reached a transaction, and held the transaction in their own hands, can it constitute a crime. For example, if the attempt to purchase fails due to the lack of agreement on the price between the two parties, or dissatisfaction with the trafficked women and children, the transaction usually is considered to be of a relatively minor nature and with less harm, and does not constitute a crime. However, even if the perpetrator did not commit the act of purchasing, the result of the purchase cannot be denied. If there is evidence indicating that the perpetrator committed the crime without achieving the purchase result, it is regarded as an attempted crime. If after obtaining the women and children, the perpetrator does not control the women and children, does not prohibit the women and children from returning to their place of residence, actively seeks the relatives of the victims, does not use violence against the obtained children, and does not prevent the rescue of the women and children, the perpetrator's criminal responsibility will not be pursued. Purchasing trafficked women and children falls into the second category, but there is no factual connection; that is, there is no direct participation in the trafficking. If the purchaser was involved in trafficking women and children, he would not be punished for purchasing the women and children, but would be punished for the actual trafficking of women and children.

2.2.3 The Subject Matter Requirements for the Crime of Purchasing Trafficked Women and Children

Theoretically, there is almost no dispute regarding the identification of the subject matter in the criminal composition of this crime. It is believed that this crime, like most crimes stipulated in our criminal law, is constituted by a general subject and does not require them to possess a special identity: natural persons who have reached the age of criminal responsibility and possess criminal responsibility capacity, that is, those who are 16 years old or older and have criminal responsibility capacity. In judicial practice, when asked about how families can be convicted and punished for participating in the purchase, the Supreme Court replied that only those family members who played a key role in the crime would be prosecuted.

2.2.4 The Subjective Aspect of the Crime of Bribing Trafficked Women and Children

The criminal composition of this crime is limited by subjective intent. When the perpetrator purchases a woman or a child, they know that the woman or the child is a victim, and purchasing such a woman or child infringes upon the person's rights and human dignity. It should be noted that if the perpetrator does not have the subjective intention to sell, it does not fall under the category of this crime and constitutes the crime of trafficking in women and children. If there is the intention to sell women and children, and then subsequently sells the trafficked women and children, it should also be classified as the crime of trafficking in women and children. Regardless of the perpetrator's motivation, as long as it is not for the purpose of selling, it will not affect the criminal composition. For example, a woman who is bought and forced to become the husband of the buyer, forced to propagate the family line for the buyer, raped by the buyer, sold by the buyer, and exploited by the buyer, etc.; buying a child, merely to continue the bloodline, etc., do not affect the establishment of the crime. However, when a citizen

discovers that a unit or an individual is trafficking trafficked persons, they are not allowed to make a request to purchase the trafficked person because, even after the buying behavior occurs, if the person who carried out the buying behavior does not prevent the bought person from returning to their original place of residence and implementing the buying behavior, the person may be sentenced to punishment by the court.

3. The Causes of the Phenomenon of Trafficking In Women and Children for Sale

3.1 The Influence of Feudalistic Ideology and System

Some deeply-rooted feudalistic ideas provide a cultural backdrop for the commission of crimes. Firstly, there are traditional moral concepts such as “three obediences and four virtues”, which regard women as appendages of men and neglect their independent personalities. Secondly, the remnants of feudal arranged marriages, where paying a bride price is seen as an equivalent exchange, blur the boundaries between legal marriage and the trafficking of women. Thirdly, the clan inheritance concepts of “reproducing the family line” and “favoring males over females” make some families without boys resort to desperate measures to buy baby boys in order to continue the so-called “family lineage”. Although modern laws guarantee gender equality and freedom in marriage, in some economically underdeveloped and culturally backward regions, these outdated ideas remain deeply entrenched, directly stimulating the demand for trafficked women and children.

3.2 The Gender Ratio Is Seriously Imbalanced

In some areas, especially in rural poverty-stricken regions, the imbalance in the gender ratio between men and women is particularly prominent. This is mainly due to two factors: Firstly, the high bride prices and wedding expenses caused by economic poverty, making many older men unable to establish families locally. Secondly, with the urbanization process, a large number of local women have migrated to areas with better economic conditions through marriage and other means, further exacerbating the scarcity of local women. This marriage squeeze effect has led some men and their families to purchase trafficked women as a “shortcut” to solve marriage problems, thus forming a real demand market.

3.3 The Citizens' Awareness of the Rule of Law Is Weak

In some cases of forced entry, the public generally lack a correct understanding of the illegality of such acts, and there are many legal misconceptions. Firstly, they wrongly consider women and children as private property that can be bought with money, believing that “paying money to get a wife or a son” is perfectly normal and without any sense of guilt. Secondly, they wrongly regard human traffickers as the “matchmakers” who facilitate marriages, and misunderstand the trafficking of people as a variant of the “matchmaking and escorting” activities in the folk, believing it to be a fair transaction. These erroneous ideas lead to the fact that the grassroots people not only do not cooperate with the rescue efforts of the public security authorities, but may even gather to obstruct, providing social “cover” for the crime of bribery.

3.4 The Punishment Is Relatively Lenient

Before the Criminal Law Amendment (Nine), the sixth clause of Article 241 of the Criminal Law allowed many cases of purchasing to be exempted from punishment under certain conditions such as “not hindering the rescue”. This led to a wrong trend of “no crime if both the person and the property are recovered”, objectively weakening the deterrent effect of the criminal law. Although the amendment (Nine) has abolished the exemption provisions, the basic legal penalty for this crime is “imprisonment of three years or less, detention, or probation”, which is a significant gap compared to the extremely severe penalty of the crime of trafficking in women and children, which can be sentenced to death. This criminal penalty configuration is, to a certain extent, still regarded by some scholars and the public as not matching its status as a joint crime, and has not fully demonstrated the strong deterrent effect on the buying market.

4. The Judicial Determination of the Crime of Bribing Trafficked Women and Children

4.1 Correctly Determining Whether the Crime of Purchasing Trafficked Women and Children Is A Crime or Not

According to relevant judicial interpretations, not all acts of purchasing are necessarily considered as constituting this crime. For cases where the circumstances are significantly minor and pose little harm, they may not be classified as a crime. Specifically, if one knowingly purchases a trafficked woman or child, but one of the following circumstances exists, they may not be convicted of a crime or receive lenient treatment: If one purchases a trafficked woman and allows her to return to her original place of residence according to her wishes; if one purchases a trafficked child and does not abuse the child, and does not hinder their rescue. These two situations may constitute a crime, but they can be punished leniently or mitigated according to the law. However, for cases with serious circumstances such as obstructing rescue, depriving or restricting personal freedom, rape, injury, humiliation, forced labor, organizing begging, repeated resale, causing the victim’s death or injury, etc., they must be punished severely according to the law.

4.2 Correctly Handle the Relationship between the Crime of Purchasing Women and Children Who Have Been Trafficked and the Crime of Trafficking Women and Children

This crime and the crime of trafficking in women and children are typical complementary offenses, which are interdependent. The trafficking behavior creates the “supply”, while the purchasing behavior provides the “market”. The key to distinguishing between the two lies in whether there is an “intention to sell” subjectively. The purchasing behavior is limited to buying and does not have the intention to sell; while the trafficking behavior includes various acts such as purchasing, selling, and transporting with the purpose of selling. If the perpetrator has the intention to sell before or after the purchase and implements the act of selling, they should be directly convicted of the crime of trafficking in women and children. For acts that assist in purchasing, such as intermediary introduction, they should be recognized as accomplices of the crime of purchasing trafficked women and children, rather than

accomplices of the crime of trafficking.

4.3 Correctly Determine the Number of Crimes for the Offense of Buying Abducted Women and Children

The act of purchasing is often accompanied by other criminal activities, and it is necessary to accurately determine whether it constitutes one crime or multiple crimes. Firstly, according to the provisions of the Criminal Law, if a person buys a woman or child who has been trafficked and then resells them, they shall be convicted of the crime of trafficking in women and children as a single offense. Secondly, if after purchasing, the person also commits illegal detention, rape, injury, or insult, in addition to the crime of purchasing trafficked women and children, they shall also be convicted of the crimes of illegal detention, rape, intentional injury, and insult respectively, and multiple punishments shall be imposed concurrently. Thirdly, if after purchasing, the person organizes or forces them to engage in prostitution, begging, or other illegal and criminal activities, they shall also be punished concurrently for the crime of purchasing trafficked women and children and the relevant crimes. Finally, for those who incite or assist others in trafficking in women and children and then purchase some of the trafficked individuals, their incitement or assistance constitutes the crime of trafficking in women and children as an accomplice, and their subsequent purchase constitutes the crime of purchasing trafficked women and children. Generally, multiple punishments shall be imposed concurrently.

5. Increase the Legal Penalty for the Crime of Bribing Trafficked Women and Children

5.1 Increase the Statutory Penalty for This Crime

Currently, the maximum statutory penalty for the crime of purchasing trafficked women and children is three years of imprisonment, which stands in stark contrast to the severe penalties prescribed for the crime of trafficking women and children. Although both offenses constitute reciprocal crimes with comparable social harm, there is a significant imbalance in their sentencing provisions. This situation of “harsher penalties for selling than for buying” fails to adequately reflect the efforts to curb demand. Compared to countries such as Japan, where the crime of purchasing individuals can carry a maximum sentence of seven years of imprisonment, China’s penalties are relatively lenient. In light of this, it is necessary to appropriately elevate the statutory penalty for this offense—for instance, by increasing the baseline sentence to fixed-term imprisonment of up to five or seven years. Moreover, aggravated sentencing ranges should be established for cases involving severe circumstances such as rape, injury, deprivation of liberty, or forced labor. Increasing statutory penalties does not imply a one-size-fits-all approach toward severity but aims to enhance the deterrent effect of the law, precisely target the buyer’s market, and ensure that the punishment fits the crime. At the same time, the leniency provisions in the current Criminal Law that allow for mitigated or reduced sentences should be retained to reflect the criminal policy of balancing leniency and severity, thereby encouraging purchasers to treat victims humanely, cooperate in rescue efforts, and maximize the protection of victims’ interests.

5.2 Introduce the Penalty of Fines

The academic community is divided on the introduction of monetary penalties for the crime of purchasing abducted individuals. Proponents argue that, given the transactional and profit-driven nature of such offenses, imposing fines can strip perpetrators of their financial capacity to commit crimes while serving as a punitive measure. Particularly in cases where biological parents sell their own children, imposing fines—instead of imprisonment—on purchasers who treat the children well avoids secondary trauma to the child, such as the risk of being left without guardians, while still achieving punitive aims. Opponents, however, contend that monetary penalties are typically suited for crimes motivated by greed, whereas the primary motives in such cases often involve intentions to form a family or continue a family line, rather than financial gain. They also note that offenders are often concentrated in economically underdeveloped regions with limited personal financial means, which could lead to enforcement challenges and undermine judicial authority. In summary, while the addition of monetary penalties is theoretically justified and practically necessary, its design demands careful consideration. Options include positioning fines as supplementary penalties to be imposed alongside custodial sentences, or exploring their use as substitutes for short-term imprisonment in minor offenses. It is crucial to establish a scientifically-grounded mechanism for determining fine amounts, one that fully considers the defendant's economic circumstances to ensure enforceability, and to improve enforcement mechanisms to prevent court rulings from becoming unenforceable mandates.

6. Conclusion

Human trafficking has existed since ancient times and has formed a cross-border trafficking interest chain all over the world. The buyer market is the terminator of this chain and plays a crucial role. Unlike the scattered legislative model of the international community, China's criminal law mainly consists of different types of crimes, such as the crime of trafficking in women and children, the crime of purchasing trafficked women and children, the crime of forced prostitution, the crime of forced labor, etc., all of which are classified under the general title of "human trafficking". The trafficking phenomenon in China has improved after several special campaigns, but due to the existence of the buyer market, the trafficking crime has not been completely eradicated. To effectively combat the buyer market, China officially established the crime of theft in the 1997 Criminal Law, and included theft behavior in the criminal subject in the Criminal Amendment (IX), thus the restrictive effect of the criminal law on the buyer market has become increasingly significant. With the rapid development of online media, the influence of the buyer market has become increasingly obvious. Based on this, I will further discuss this issue by combining the provisions of the Criminal Law regarding the crime of embezzlement of funds. Through analyzing the components of this crime, an overview can be obtained. In addition, various solutions can be discussed for some problems that have emerged in contemporary Chinese judicial practice, such as the distinction between international adultery, the act of purchasing and traditional private franchises, and modern marriage intermediaries, the special circumstances where

the victim actively allows the perpetrator to dispose of their rights, and the criminality of the purchase act. The following are some of the main issues that can be discussed. The central point of the debate on accomplices is to introduce the act, and how to determine this act, whether it is as an accomplice of the seller, an accomplice of the buyer, or as a separate crime. Finally, the focus will be on the application of the sanctions for this crime, mainly concentrating on the sentencing rules for this crime, starting from the legal sanctions for this crime, discussing the rationality and fairness of legislative amendments that need to be considered on a case-by-case basis, and considering the possibility of imposing fines for this crime. I have expressed a positive attitude towards this, and on this basis, have appropriately adjusted the statutory penalty for this crime. I believe that in this process, it is also necessary to pay sufficient attention to individual cases related to this, which requires us to conduct specific analysis and handling for each situation. At the same time, criminal legislation should not only focus on safeguarding the legitimate rights and interests of the victimized women and children, but also require the cooperation of the social security system and relevant law enforcement agencies to promptly and effectively protect the legitimate rights and interests of the victimized women and children.

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