

О преступлении, связанном с продажей похищенных женщин и детей, в уголовном праве Китая

On the Crime of Buying Abducted Women and Children in Chinese Criminal Law

Сюй Вэньчао,
научный сотрудник, Институт по борьбе с преступностью
и уголовной политики, юридический факультет
Хэнаньского университета,
Кайфэн, провинция Хэнань, Китай
e-mail: 905490492@qq.com

Xu Wenchao,
Research fellow at the Institute
of Crime Control and Criminal Policy, Henan University
and Law School of Henan University,
Kaifeng, Henan Province, China
e-mail: 905490492@qq.com

© Сюй Вэньчао, 2023

DOI: 10.17803/2587-9723.2023.6.078-085

Аннотация. С построением и развитием общества на основе закона государство уделяет все больше внимания защите прав человека. В этой связи преступления, связанные с похищением людей и торговлей людьми, предусмотренные в уголовном законодательстве Китая, постепенно привлекают широкое внимание со стороны общества. В то время как государство борется с такими преступлениями, академические круги проводят активные дебаты о том, необходимо ли изменить предусмотренное законом наказание за покупку похищенных женщин и детей. В связи с этим дискуссия о том, что «люди уступают вещам», также постоянно возникает при разработке норм, в частности уголовного законодательства, направленных на пресечение преступлений, связанных с покупкой похищенных женщин и детей. В данной статье рассматриваются имеющиеся в судебной практике проблемы, связанные с такими преступлениями, анализируются данные о случаях покупки похищенных людей, выдвигаются некоторые предложения по совершенствованию предусмотренного законом наказания и расширению охраняемых объектов этого преступления.

Ключевые слова: преступление покупки и продажи людей, преступление покупки похищенных женщин и детей, предложение по совершенствованию законодательства.

Abstract. With the construction and development of a society ruled by law, the state pays more and more attention to the protection of human rights. Among them, the crime of abducting and trafficking in human beings stipulated in China's criminal law has gradually attracted widespread attention from the society. While the state has cracked down on the crime of abducting and trafficking in human beings, the academic circles have aroused heated debate on whether it is necessary to amend the statutory penalty for the crime of buying abducted women and children.

In this regard, the discussion about «people are inferior to things» is also constantly fermenting between the mouthpiece of paper and pen. Starting from the legislative evolution and criminal constitution of the crime of buying abducted women and children, this paper discusses the problems of this crime in judicial practice based on the case data analysis of the crime of buying abducted human beings, and puts forward some suggestions on improving the statutory punishment and expanding the protected objects of this crime.

Keywords: the crime of buying and selling human beings; the crime of buying abducted women and children; legislative suggestion.

Introduction

The phenomenon of human trafficking has existed for thousands of years in the long history of human development. Human trafficking in China can be traced back to the Xia Dynasty, more than 4,000 years ago. The earliest victims of trafficking were criminals, prisoners of war, indebted civilians and slaves, who lost their personal freedom and were sold as commodities at will. With the development of society, even the feudal Dynasties began to crack down on human trafficking, but until the Qing Dynasty, although legislation severely punished the crime of human trafficking, there was still a strange phenomenon that the sale of slaves was legal «human market». After entering the modern society, the world's civilized countries have compiled laws to define the sale of human beings as a criminal act, and in the context of economic globalization, transnational sale of human beings has become one of the crimes that are difficult to eradicate in the world today. In the process of criminal legislation in China, the crime of human trafficking has undergone two changes in the statute law.¹

1. Legislative Status of the Crime of Buying Abducted Women and Children in China's Criminal Law and Related Disputes

1.1. Legislative evolution

The Criminal Law of 1979, the first criminal code in China, contains only two articles on the crime of abducting and trafficking in persons. One is the crime of abducting and trafficking in persons in Article 141. Whoever abducts and traffics in a person shall be sentenced to fixed-term imprisonment of not more than five years; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than five years. The second is the crime of abducting children in Article 184, that is, abducting a man or woman under the age of 14 from his family or guardian shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

In 1983, the Standing Committee of the National People's Congress of China passed the Decision on the Severe Punishment of Criminals Who Seriously Endanger Public Security. In 1991, the Standing

Committee of the National People's Congress of China passed the Decision on the Severe Punishment of Criminals Who Abduct and Traffic in or Kidnap Women or Children. Although the revision of the law has a special background of the times, it shows China's determination to crack down on the crime of human trafficking.²

1.2. Academic disputes

The promulgation of any statute law is lagging behind, so it is inevitable to accept the normal amendment of the legislature. Nowadays, there is a heated debate on whether to amend the statutory penalty of the crime of buying abducted women and children in China's legal circles, the root of which is that there are different positions on the object of the crime of buying abducted women and children. There are three representative views on the object protected by the crime of buying abducted women and children: 1) the right not to be bought or sold;³ 2) the personal freedom and physical safety of the murdered woman and child;⁴ 3) the personal freedom, personal dignity, and family stability of the purchased person.⁵

This paper holds that the right of human body not to be bought and sold and the right of personal dignity of women and children are the objects infringed by this crime for three reasons: 1.If the right to personal freedom of women and children is considered to be the object infringed by this crime, when it is punished together with the crime of illegal detention and the crime of kidnapping, it will cause repeated evaluation of the violation of the victim's personal freedom, which is not conducive to combating crime. It is also not conducive to the protection of the victim's personal rights and interests; 2.If it is considered that the marriage and family relationship and the guardianship relationship are the objects infringed by this crime, it is impossible to explain the identification and punishment of the perpetrator who sells his wife or children for profit in judicial practice, not to mention that the crime of abducting children from the original guardianship relationship has been clearly stipulated in Article 262 of the Criminal Law; 3.Whether it is abducting and selling or buying women and children, the object of infringement is the right of the person not to be bought and sold. The wanton sale of human beings as commodities is a thorough materialization of human beings and a fundamental desecration of group dignity.⁶

¹ Zhang Zhigang. Changes and Prospects of Criminal Law in New China in the Past 70 Years [N]. People's Court Daily, 2019-12-5 (6).

² Luo Xiang. On the Legislative Amendment of the Crime of Human Trafficking [J] // Politics and Law Forum, 2022, 40 (03). P. 132—145.

³ Gao Mingxuan, Ma Kechang. Criminal Law [M]. Beijing : Peking University Press, Higher Education Press, 2022. P. 479.

⁴ Zhang Mingkai. Criminal Law (II) [M]. Beijing : Law Press, 2021. P. 1171.

⁵ Wang Zuofu. Practical Research on the Specific Provisions of Criminal Law (II) [M]. Beijing : China Founder Press, 2010. P. 89.

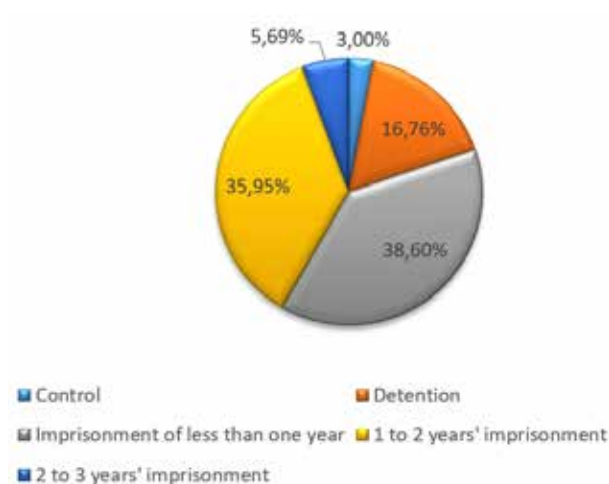
⁶ Li Guanyu. Is Human Dignity the Legal Interest of the Crime of Buying Abducted Women. Juvenile Delinquency, 2022 (03). P. 4—17.

The dignity of human nature is not only embodied in individuals, but also in the dignity of women. Whether it is trafficking or buying, its essence is the objectification and slavery of women, and what it tramples on is the personality and dignity of all women. Human nature is not an abstract thing inherent in a single person, but the sum of all social relations in its reality. Among the three categorical commands of Kant's moral precepts, «Man is the end, not the means» is not only the starting point of Kant's philosophy, but also the core of the three categorical commands. «No one should at any time regard himself and others only as tools, but always as an end in himself.» «It is dignity to transcend all values and have no equivalent to replace them.» In Kant's view, human beings are not only the existence of biological individuals, but also the existence of rational subjects, which can not be replaced by any equivalent. As a biological individual, man's existence has only relative value. However, as a rational subject, human beings can realize self-discipline of will, and their existence has absolute value. The essence of man is freedom, and man is not only the starting point, but also the purpose, and the highest purpose. Law is not justice itself, but the pursuit of justice by law. For this reason, this paper supports the appropriate increase of the statutory penalty for this crime.⁷

2. Problems in the judicial application of this crime

A total of 361 cases of the crime of buying abducted women and children were retrieved from Website of China Judicial Documents, China Procuratorial Network, Peking University Magic Weapon Network and Poly Case Website, and 356 valid cases were screened out after removing 5 duplicate cases. Among them, 334 cases were found to constitute only the crime of buying, but 58.36 % of them were actually sentenced to fixed-term imprisonment of less than one year, criminal detention and public surveillance. As a basic sentence with a maximum of three years' imprisonment, this crime will inevitably be criticized for its light penalty.⁸

In 4 of the 356 cases, the court decided to exempt from criminal punishment. Case No. 251 (2010), the defendant found that the victim had mental problems and felt cheated, so he called the police. The court believed that he knew the victim's home address and should have sent him back to his original residence in time after buying, but the defendant did not do so. However, the court also pointed out that



the perpetrator did not hinder Li Mou's return after the incident. Criminal responsibility may not be investigated according to law. The reasons for the judgment in this case are inconsistent and the reasoning logic is confused. At present, it is only obtained from the judgment that can be verified, and it is not known whether there is any room for such a situation in judicial practice. Case No. (2011) Xu Xing Chu Zi No. 0098 case, the reason for exemption from criminal punishment is that the defendant bought the abducted Sumou only to be a wife, when he found that Sumou was pregnant and suffering from a disease, he sent Sumou to Fan's home in time, the circumstances of the crime are minor, and there is no need to impose punishment. It can be seen from the judgment that the defendant sent the victim back because the purpose of his act could not be realized. Even if it did not cause evil results, it could not be denied that his act of buying infringed on the victim's right to personal integrity and personal dignity. The court's determination of the defendant's behavior as minor is inevitably unsatisfactory.

In the retrieved samples, the application of combined punishment for several crimes is not satisfactory. Among the 356 samples, there were 18 cases of combined punishment for several crimes, accounting for 5.06 %. Among them, the most punishment is the hard and soft violence such as illegal detention, rape and intentional injury accompanied by the act of buying. In 18 cases of combined punishment for several crimes, the maximum penalty for execution is 11 years' imprisonment and the minimum is 5 months' detention. Judging from the judgment documents, most of the women are bought for the purpose of childbirth, and the healthy and mentally normal victims often resist fiercely, which is often accompanied by illegal detention, rape and other acts of violence.

⁷ Kant. Theory of Moral Metaphysics. Translated by Miao Litian. Shanghai : Shanghai People's Publishing House, 2002. P. 40.

⁸ Retrieved December 1, 2022. Website of China Judicial Documents // URL: <https://wenshu.court.gov.cn/China> Procuratorial Website // URL: <https://www.12309.gov.cn/>. Peking University Magic Weapon Website // URL: <https://www.pkulaw.com/Poly> Case Website: URL: <https://www.jufaanli.com/>.

However, in judicial practice, some cases have a long history, even if the victim accuses these acts, not only is it difficult to obtain evidence and investigate, but also the prosecution can not eliminate reasonable doubt, and it is even more difficult to prove causality.

Some scholars believe that buying is regarded as a preparatory crime for subsequent felonies, and that crimes such as rape, illegal detention and intentional injury committed after buying can be punished for several crimes, so as to achieve the effect of severely punishing the buyer, and that the social harmfulness of abduction and purchase is far greater than that of purchase. In this regard, after sorting out the 18 cases of combined punishment for several crimes, it took more than one year from the act of buying to the case, the longest was 10 months, and the shortest was only one day.

In the case of single punishment for one crime with a longer time, we do not know whether there is objectively no act that can be punished for several crimes or whether it can not be identified in the process of litigation, and whether if the victim can not enter the proceedings in a short period of time, the investigative or judicial organs can not identify and investigate the responsibility for several crimes. In these 18 cases, except for a few cases of treating abducted women in good faith, almost all of the other cases contain illegal detention, rape and other violent acts against abducted women, and the application of combined punishment for several crimes in judicial practice is limited. This is not only a problem of litigation procedure, but also a realistic problem.

After being bribed, some victims marry and have children with the buyer and live together. After having children, they are often forced to accept the reality and voluntarily stay. Even if the victim is willing to confess other criminal acts except the act of buying, it is difficult to meet the standard of proof in the Criminal Procedure Law only by the victim's confession, and the local customs and neighborhood relations in China determine that even those who know about it will turn a deaf ear to it, and few of them are willing to provide witness testimony.

2.1. The penalty setting is too light

From the perspective of opposite crime, Article 241 and Article 240 are typical examples of different punishment for different crimes, and the maximum statutory penalty of Article 241 is three years' imprisonment, which is a misdemeanor in form. However, compared with Article 240, the statutory punishment of Article 241 is too single, and its strength is slightly insufficient to crack down on the buyer's market of this crime. If the penalty is too light, it will lead to insufficient deterrence at the social level, which will deter not only the individual and family members of

the buyer, but also the group value judgment including the state functionaries.

In some parts of China, the traditional concept of raising children for old age and saving grain for famine is still continuing in modern society. The buyer held the idea of preferring boys to girls, and the family members of the buyer even spoke with certainty after the incident, believing that since they had spent money, the woman they bought was a natural daughter-in-law. However, according to the Opinions on Punishing the Crime of Abducting and Trafficking in Women and Children in accordance with the Law, only those who play a key role in the purchase behavior of the purchaser are punished, resulting in a large number of family members of the purchaser who are no longer prosecuted for criminal responsibility after administrative punishment by the public security organs. This is not only the regret of law popularization work, but also the helplessness of law enforcers.

However, in some remote areas, the grass-roots staff in villages and towns did not strictly follow the registration procedure when they handled the marriage registration or household registration change for the murdered women, which was not only the local relationship, but also the underlying logic that could not attract the attention of the staff because of the light penalty for this crime. It can be imagined that if there is a deviation in the overall perception of social groups, the last «survival route» of the murdered women will be completely blocked.⁹

In practice, there are more buyers who order «goods» from the kidnappers, which encourages or stimulates the «courage» and «courage» of the kidnappers, such as pregnant women who go to the buyer's residence to wait for delivery. Under such special circumstances, the buyer is more harmful to society than the seller.

Therefore, this paper supports the prudent increase of penalty to improve the public's attention, and the light penalty is difficult to educate the people's bad habits. The important reason for these phenomena is that the deterrent force of punishment is insufficient, so that criminals are lucky, and the attention of the public and staff is also declining.

The revision of criminal law is a big issue, and logic is more important than public opinion, but this does not mean that public opinion is meaningless. In the view of the simple values of the public, criminals are deeply hated, some people support the theory of retribution and homomorphic revenge, and even hope to impose capital punishment on criminals to satisfy the simple justice in their hearts, which is particularly evident in the families of victims. However, the lenient penalties stipulated in some laws seem to lead legislators to stand on the opposite side of the people. However, it is impossible for individu-

⁹ Wei Lei. Rural Disorder and Normative Reconstruction Behind the Crime of Buying Abducted Women [J] // Juvenile Delinquency. 2022 (03). P. 18—28.

als to think about the establishment of rules in revenge, people only want to «blood for blood, tooth for tooth», more excessive or even unlimited revenge will occur outside the rules, which will inevitably lead to social chaos.

The criminal law is the boundary rule of revenge formulated by the state, which is the embodiment of human rationality and civilization. In fact, legislation is a complicated work, which not only needs to achieve the purpose of preventing and punishing crime, but also needs to ensure the realization of procedural justice and result justice, but also needs to coordinate the combination of justice and law enforcement. If legislation blindly satisfies the people, the law will be reduced to a tool of private relief for the people. In this way, an insurmountable gap seems to be built between legislators and ordinary people.

However, it is not only the requirement of legislation and judicature, but also the simple emotional demand of the public for the pursuit of justice. Therefore, when there are realistic evidence and proof problems in the design of concurrent punishment for several crimes, it is more in line with the principle of suiting punishment to crime and responsibility to prudently increase the statutory penalty for one crime.

2.2. The object of protection is limited to women and children

All history is contemporary history. Looking at the first criminal law of China from the perspective of modern people, it was unavoidable even if it was careless under the special background of the times. Inevitably, there are also some negligence in today's criminal law legislation.

Taking the typical Shanxi black brick kiln incident as an example, the 32 migrant workers rescued were all men over 14 years old, lured by high salaries or forcibly tied up and detained, and even deceived into «begging for food» in coal kilns because of mental retardation. Its strong adult male, in the eyes of human traffickers, is just a few hundred yuan of 'goods'. According to the preliminary investigation and handling of the Shanxi black brick kiln incident announced by the joint working group of the State Council, 359 migrant workers have been rescued and 12 have been identified as child workers (under 16 years old). Some of the acts of the black brick kiln gangs have fully met the constitutive requirements of the crime of abducting and selling women and children, but because there is no crime of abducting and selling or buying men over the age of 14 in China, the final court verdict is the crime of illegal detention.

Since 2017, Yunnan police have received a large number of cases involving illegal detention, kidnapping and ransom demands of Chinese citizens by illegal elements abroad, which have been investigated

by Yunnan police. By means of 'online gambling', 'free travel', 'high-paying recruitment', 'interest-free loans' and 'business cooperation', free air tickets and free transportation to foreign countries are provided to illegally cross the border to Myanmar.

In this kind of fraud cases in northern Myanmar, compared with the practice of Shanxi black coal mines, the worse nature of the fraud gangs is to buy adult men by means of illegal detention of domestic labor intermediary companies and then force them to engage in illegal activities such as fraud, drug manufacturing and trafficking, and even prostitution. If the victim resists lightly, he will be beaten severely, and after he has no use value, he will falsely claim that his family will pay the ransom to redeem the victim, and then he will brutally kill the victim after receiving the ransom.

Taking this as an example, this paper does not want to discuss the issue of value evaluation, but the judgment published by the judicial organs, without exception, does not make a complete evaluation of the victim's trafficking and luring to the place where the case occurred. The fundamental reason is the defect of legislation-abducting and selling or buying men over 14 years old is not within the scope of punishment of China's criminal law, and the crime of illegal detention can not completely evaluate all criminal acts. This is undoubtedly contrary to the principle of a legally prescribed punishment for a specified crime. Expanding the object of protection of this crime, including males aged 14 to 18, as well as adult males, within the scope of protection of criminal law, is a legislative direction worthy of consideration. Some scholars believe that, on the one hand, the legislative thinking of criminal law at that time was out of the protection of «vulnerable groups», which was in line with the necessity of macro-development, but if the local interests were sacrificed in exchange for the focus of this point, it would not only be contrary to the legislative will, but also violate the legal feelings of the people. Moreover, in the crime of human trafficking, the victims are not only women and children stipulated in the current legislation, but also the weak regardless of gender and age.¹⁰

3. Suggestions for legislative improvement

A total of 188 decisions on non-prosecution of the crime of buying abducted women and children were searched and published by the China Procuratorial Network. Among them, there were 59 non-prosecution decisions for the crime of buying abducted women, of which 40 involved foreign women. The victims were Vietnamese (24), Cambodian (10), Lao (4) and Burmese (2). From the perspective of individ-

¹⁰ Liu Xianquan. On the Perfection of Criminal Law in Punishing the Crime of Abducting and Trafficking in Human Beings in China // Jurisprudence. 2003 (05). P. 93—100.

ualization of punishment, this paper does not intend to argue whether these decisions are correct or not, after all, the law is not the only answer. However, it is worth pondering whether the judicial organs have different criteria for judging whether the victims are citizens of their own country and whether there are different criteria for judging them. Whether different value evaluation criteria are different because of different races and nationalities needs to be constantly corrected and repaired in judicial practice.

3.1. Appropriately raise the upper limit of statutory punishment

As mentioned above, in the judicial practice of this crime, a large number of cases of mitigation of punishment have resulted in unreasonable punishment in fact. From the legislative point of view, compared with the crime of abducting and trafficking in women and children, the statutory penalty for the act of buying abducted and trafficked women and children is slightly lighter. As a typical counterpart in the criminal law, it is difficult to find such a penalty imbalance as the crime of abducting and trafficking in women and children and the crime of buying abducted and trafficked women and children. For example, in bribery crimes, the statutory penalty gap between the briber and the bribee is within two years or equal to it, and the penalty for dereliction of duty is almost the same.

According to the provisions of Article 72 of the Criminal Law of the People's Republic of China, a suspended sentence may be applied to a criminal sentenced to criminal detention or fixed-term imprisonment of not more than three years. Based on this, China's judicial practice considers this crime as a misdemeanor, combined with the criminal policy of tempering justice with mercy, this crime has no serious deterrent to the act of buying abducted women and children. The deterrence of criminal law first comes from the penalty. When the penalty is no longer strictly enforced, the general preventive function of criminal law will be greatly hindered.¹¹

Buying women and children is not only a legal issue, but also contains ethical and social value evaluation. From the perspective of the development of human civilization to the perspective of ordinary people in society, the fact that this crime has become a felony does not conflict with the criminal policy of

tempering justice with mercy. Appropriately raising the upper limit of statutory punishment for this crime not only plays an important role in crime prevention, but also enables judicial staff to pay attention to such criminal acts imperceptibly and eliminate the phenomenon of judicial law enforcement omission.¹²

To sum up, it is in line with scientific criminal legislation to raise the upper limit of statutory punishment for this crime to 3-10 years and gradually realize the same punishment for buying and selling.

3.2. Expand the object of protection of this crime

From the experience of legislation outside the mainland of China, Article 232 of the German Criminal Code stipulates the crime of human trafficking, which constitutes the crime of human trafficking by taking advantage of other people's personal or economic difficulties or helplessness abroad, whether recruiting, transporting, transferring, sheltering or accepting persons under the age of 21. They may be sentenced to fixed-term imprisonment of not less than 6 months but not more than 5 years or fixed-term imprisonment of not less than 6 months but not more than 10 years, regardless of whether they buy or sell, they shall be punished for the same crime.¹³

In 2005, according to the changes of social development and crime situation, Article 226 of Chapter 33 of the Japanese Criminal Code was «the crime of buying and selling human beings» and Article 227 was «the crime of accepting lured or sold persons», and the buyer and seller were punished equally.¹⁴

Chapter 26 of the Criminal Law of the Taiwan Region of China stipulates that a person who makes a person a slave or makes a person live in an unfree status similar to a slave shall be sentenced to fixed-term imprisonment of not less than one year but not more than seven years, even if he is a slave, and a new paragraph is added to this crime as the crime of buying, selling and pledging human beings.¹⁵

Combating Human Trafficking (No. 6/2008) of the Macao Special Administrative Region. The definition of trafficking in human beings in international conventions has also been adopted, and the basic penalty for delivering, luring, recruiting, receiving, transporting, transferring, harboring or receiving another person with the purpose of exploitation is from 3 to 12 years' imprisonment, and other aggravating circumstances have been provided for in the law.¹⁶

¹¹ Xu Wei. On the Theoretical Structure of Positive General Precaution and Its Legitimacy [J] // Chinese Journal of Criminal Law. 2017 (04). P. 77—93.

¹² Jiang Taike. The dogmatic structure of the act of buying abducted women and children under the principle of balance between crime and punishment [J] // Journal of Southwest University of Political Science and Law. 2022. 24 (02). P. 128—138.

¹³ German Penal Code [M] / translated by Xu Jiusheng. Beijing : Peking University Press, 2019. P. 163.

¹⁴ Japanese Penal Code [M] / translated by Chen Ziping [et al.]. Taipei : Yuan Zhao Publishing Co., Ltd., 2018. P. 154.

¹⁵ Chen Ziping. On Criminal Law (II) [M]. Taipei : Yuanzhao publishing Co., Ltd., 2019. P. 147—148.

¹⁶ Zhu Xinli, Shi Xiaoxue. Research on the Legalization Strategy of Human Trafficking in China [M]. Beijing : Law Press, 2017. P. 199—200.

Compared with China's criminal law, we can not blindly think that foreign legislation is more advanced, each country's legislation is the product of ideology in a certain historical period, but extraterritorial legislation is still worth learning.¹⁷

Comparing the 1979 Criminal Law with the current Criminal Law, Article 141 of the 1979 Criminal Law was amended as the crime of abducting and trafficking in women and children in the 1997 Criminal Law. In the process of amending the Criminal Law in 1997, there were also voices to retain the crime of human trafficking. Some scholars and departments have proposed that only the crime of abducting and trafficking in women and children should be stipulated and the crime of abducting and trafficking in persons should be completely replaced. It is not easy to deal with the crimes committed by people other than abducting or trafficking in women and children. In practice, there are also cases in which men are abducted and trafficked as laborers.

It is suggested that the crime of abduction and trafficking in persons should be stipulated, and that those who abduct and traffic in women or children should be given heavier punishment. After studying, the legislature, considering that the abduction and trafficking of men is extremely rare, directly stipulates that the crime of abduction and trafficking of women and children has the pertinence of punishment, which helps to improve the deterrent force of legislation, and therefore does not adopt this opinion in the end.¹⁸

As far as this crime is concerned, the current criminal law of China should abolish the limitation of women and children in this crime, and merge the crime of abducting and trafficking in women and children, the crime of buying abducted women and children, and the crime of abducting children in Articles 240, 241 and 262 of the Criminal Law of China

into the crimes of human trafficking, which is more in line with the necessity of the development of the times and can better integrate with the world.

Conclusion

To claim rights is not only to defend one's material interests, but also to safeguard one's moral existence and personality. Anyone who feels righteous indignation and moral indignation when witnessing the wanton violation of rights has a sense of right concept, which is a powerful legal feeling of moral nature against the violation of rights, and is the most beautiful and inspiring right word produced by the sense of law. There is always tension in the stability and flexibility of the law, and legislation has never been absolutely correct and can not be blindly worshipped. No society, no matter how perfect, can eradicate crime, but it does not mean that it is wrong to impose severe penalties on serious crimes. The author believes that the statutory penalty for this crime is too light, and there is an imbalance in the penalty for the opposite acts of abduction and purchase. Compared with some greedy crimes, there is a criticism that people are inferior to things, and the protection of personal rights and interests is inadequate. Considering the needs of social development and the development of the rule of law, the proposal to increase the statutory penalty for this crime does not conflict with the current criminal policy of tempering justice with mercy, and only by prudently increasing the statutory penalty for a crime can it be more in line with the compatibility of crime, responsibility and punishment. Expanding the object of protection of this crime will not lead to the expansion of penalties, on the contrary, it is more in line with the Chinese-style modernization of the rule of law.¹⁹

REFERENCES

1. *Zhang Zhigang*. Changes and Prospects of Criminal Law in New China in the Past 70 Years [N]. — People's Court Daily, 2019.
2. *Luo Xiang*. On the Legislative Amendment of the Crime of Human Trafficking [J]. — Politics and Law Forum, 2022.
3. *Gao Mingxuan, Ma Kechang*. Criminal Law [M]. — Beijing : Peking University Press, Higher Education Press, 2022.
4. *Zhang Mingkai*. Criminal Law (III) [M]. — Beijing : Law Press, 2021.
5. *Wang Zuofu*. Practical Research on the Specific Provisions of Criminal Law (III) [M]. — Beijing : China Founder Press, 2010.
6. *Li Guanyu*. Is Human Dignity the Legal Interest of the Crime of Buying Abducted Women. — Juvenile Delinquency, 2022.

¹⁷ Guo Jing. Research on Transnational Human Trafficking Crime [M]. Beijing : Law Press, 2017. P. 119.

¹⁸ Wang Aili. Explanation of Articles, Legislative Reasons and Relevant Provisions of the Criminal Law of the People's Republic of China [M]. Beijing : Peking University Press, 2021. P. 906.

¹⁹ Rudolph von Jhering. Struggle for Rights [M]. Translated by Liu Quan. Beijing : Law Press, 2019. P. 37—38.

7. *Kant*. Theory of Moral Metaphysics / translated by Miao Litian. — Shanghai: Shanghai People's Publishing House, 2002.
8. *Wei Lei*. Rural Disorder and Normative Reconstruction Behind the Crime of Buying Abducted Women [J]. — Juvenile Delinquency, 2022.
9. *Liu Xianquan*. On the Perfection of Criminal Law in Punishing the Crime of Abducting and Trafficking in Human Beings in China. — Jurisprudence, 2003.
10. *Xu Wei*. On the Theoretical Structure of Positive General Precaution and Its Legitimacy [J]. — Chinese Journal of Criminal Law, 2017.
11. *Jiang Taike*. The dogmatic structure of the act of buying abducted women and children under the principle of balance between crime and punishment [J]. — Journal of Southwest University of Political Science and Law, 2022.
12. Japanese Penal Code [M] / translated by Chen Ziping [et al.]. — Taipei : Yuan Zhao Publishing Co., Ltd., 2018.
13. German Penal Code [M] / translated by Xu Jiusheng. — Beijing : Peking University Press, 2019.
14. *Chen Ziping*. On Criminal Law (I) [M]. — Taipei : Yuanzhao publishing Co., Ltd., 2019.
15. *Zhu Xinli, Shi Xiaoxue*. Research on the Legalization Strategy of Human Trafficking in China [M]. — Beijing : Law Press, 2017.
16. *Guo Jing*. Research on Transnational Human Trafficking Crime [M]. — Beijing : Law Press, 2017.
17. *Wang Aili*. Explanation of Articles, Legislative Reasons and Relevant Provisions of the Criminal Law of the People's Republic of China [M]. — Beijing : Peking University Press, 2021.
18. *Rudolph von Jhering*. Struggle for Rights [M] / translated by Liu Quan. — Beijing : Law Press, 2019.