

Study on the Controversial Issues of Abduction and Trafficking of Women and Children Crime: Legislative and Judicial Strategy Adjustments to Combat Crimes of Abduction and Trafficking

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Abstract: In recent years, the crime of trafficking has posed a serious threat to social security. At present, the general controversy about the crime of abduction and trafficking of women and children mainly focuses on the determination of the object of the crime. At present, crime has taken on a new shape, which leads to many problems that can not be solved in the current legislation. Therefore, this paper holds that the "right to personal dignity" should be defined as the legal interests infringed by this crime. Based on this, this paper further adjusts the legislative and judicial strategies of this crime, and proposes to modify the current "crime of trafficking in women and children" into "crime of trafficking in human beings", which provides reference opinions for solving the controversial issues of the crime of trafficking in women and children.

1. Introduction

The crime of trafficking has long been a severe threat to social security worldwide, ranking as the third largest criminal phenomenon globally, according to the United Nations.[1] In China, the frequent exposure of women trafficking cases through various social media platforms has drawn widespread attention from the public and the judiciary. Consequently, contentious issues surrounding the crime of abduction and trafficking of women and children, such as determining the object of the crime, identifying the victims, and imposing appropriate sentencing, are becoming increasingly debated topics.

The state has consistently adopted a policy of strict law enforcement and long-term suppression to combat the crime of trafficking. Since the "Strike Hard" campaign in 1983, China has repeatedly prioritized the crackdown on trafficking in human beings. In 1990, the Ministry of Public Security established a special office for combating the crime of abducting and trafficking women and children. In addition to judicial organs, other functional departments responsible for safeguarding women's rights and interests, such as the All-China Women's Federation and the Ministry of Civil Affairs, have jointly worked with the government to combat trafficking crimes.

It is evident that China has always exerted great efforts in combatting trafficking crimes.[2] However, despite these efforts, such criminal activity still persists. According to estimates from

relevant government departments, tens of thousands of women and children are still trafficked each year in China.[1] The author believes that with the development of society, the trafficking of persons has presented new trends and characteristics that differ from those of the past. In addition, existing laws still follow regulations from the amendment of criminal charges in 1997, which will inevitably result in new problems that cannot be accommodated by the current legal system. Therefore, the author argues that it is necessary to conduct a theoretical and practical analysis of current trafficking crimes, and address contentious issues through legislative and judicial regulations and refinement.

2. Analysis of Elements of the Crime of Trafficking and Related Controversies

The crime of trafficking women and children is stipulated in Article 240 of the *Criminal Law*. Currently, academia generally defines it as “the act of abducting, kidnapping, purchasing, selling, transporting, or transferring women and children for the purpose of selling them”. [3] Based on the framework of the “four essential elements”, several elements of this crime can be identified: Firstly, the objective aspect of this crime targets women and children under the age of 14, and involves acts such as abduction, kidnapping, purchasing, selling, transporting, or transferring them. Secondly, the subjective mens rea requirement is the direct intent to sell. Finally, the typical perpetrator of this crime is a natural person who is over 16 years of age and has full criminal responsibility. There is a debate among scholars regarding the object of this crime. The main viewpoints are as follows:

2.1. The Right to Personal Liberty Argument

This view argues that the crime violates the victim’s right to personal liberty because the act of “selling” people in the implementation of this crime constitutes control over individuals that deprives them of their ability to freely control their behavior. [4]

2.2. The “Freedom of Action” and “Physical Safety” Composite Argument

This view argues that the crime violates the victim’s freedom of action and physical safety. [5] This view not only includes the harm that trafficking causes to the psychological and physical health of the victim, but also refers to the threat and damage that trafficking poses to the victim’s personal safety.

2.3. The Right to Dignity Argument

This view primarily focuses on the right to dignity with respect to the prohibition on the sale of a person’s body. [3] Women and children are individuals with independent personalities, and the state prohibits the sale of any individual. This view also addresses situations where women are voluntarily sold.

The author asserts that defining the “Right to Dignity” as the object of the crime of trafficking women and children presents a more comprehensive and profound summary of the legal interests violated during the commission of this crime. It also provides a more accurate indication of the essence of trafficking behavior. The following reasons support this claim:

2.4. The Reasonableness of Adopting the “Right to Dignity” Argument

2.4.1. A Basic Right Accorded Protection by the Constitution and the Laws

The Right to Dignity denotes an essential right that is indispensable to “individuals” as human beings and ought to be accorded respect by society and others. [6] It represents the minimum social standing that an individual ought to enjoy. [7] The outbreak of “World War II”, historically,

represented a cardinal moment that engendered the formation of a craving by people for equality, freedom, and dignity. The *Basic Law of the Federal Republic of Germany* came into force in 1949, which already contained legal provisions regulating the Right to Dignity. In China, people's desire for the protection of the Right to Dignity has risen as China continues to implement its reform and opening-up policy and further develops its economy. The protection of the Right to Dignity is also reflected in many of China's laws. As China's legal system continues to develop, the Right to Dignity has become a basic right explicitly stipulated in the Constitution, which is actively protected by various legal departments in accordance with the Constitution's spirit. Hence, in light of the "right-based approach" to defining the object of the crime, defining the Right to Dignity as the "legitimate interest" violated by the criminal behavior [3] represents a rational choice confirmed by China's legal system.

2.4.2. Conformity in Revealing the Essential Features of the Crime Along with its Comprehensive Implications

Some scholars have pointed out that "the reason why the act of procuring women is deemed to first violate the dignity of the abducted woman is because the essence of 'buying and selling' is a form of exchange, a process of using one's own belongings to acquire those of others." [8] Hence, the essential feature of this crime lies in the buying and selling of women and children as commodities for profit. According to research, the demand for the illegal human trafficking market is primarily concentrated in the following areas: first, the demand for marriage and children, that is, the use of purchased women to forcibly establish a "marriage" and to bear children; second, the demand for the sex industry, which forces women and even girls under the age of 14 to engage in sex work for profit; and third, the demand for illegal labor, including forced labor, slavery, and various forms of illegal labor. [9] Regardless of the specific criminal purposes satisfied by the crime of trafficking women and children, their commonality lies in the fact that there are illegal demands for women and children in reality that cannot be met through legitimate channels. Such demands breed illegal human trafficking markets and thus create opportunities for criminals to seek economic benefits, which is similar to commodity trading that focuses on 'goods' as objects. Therefore, the purpose of trafficking women and children is not to restrict their personal freedom or cause bodily harm to them, but to use them as commodities for profit, which is essentially the complete objectification of human beings, and a desecration of human dignity. [10] Scholars have pointed out that including the right to dignity in the scope of constitutional protection is because "the intrinsic life, liberty, and happiness of each person are entirely consistent with those of others, which means that every person needs to be treated as someone who has the same requirements for obtaining freedom, happiness, and protecting their basic rights or property". [11] Criminals who engage in the crime of trafficking women and children in order to seek their own gain, treat others as commodities, and in a sense, deprive them of the opportunity to enjoy the same rights as themselves. This is a fundamental violation of the spirit of the constitution and law-making, which seriously challenges the bottom line of modern rule of law civilization.

Furthermore, whether it is the premise of "for the purpose of selling" in current legislation that regulates various specific criminal behaviors, or the various forms of crime presented in judicial practice, they all share the common characteristic of "selling people as commodities". More importantly, the right to dignity is equivalent to that of others, regardless of whether the victim of trafficking is voluntary or lacks the ability to make autonomous decisions. Whether or not they are voluntary, the right to dignity, which is an important legal basis of modern rule of law, has been violated. In other words, this is an "inalienable right" that does not depend on the victim's ability to act. It concerns not only a specific object of trafficking but also the legitimacy of modern rule of law. Therefore, we must treat the serious challenge posed by the crime of trafficking to the consensus of rule of law civilization with more seriousness. The fact that "human beings" can be bought and sold has already blurred the most important bottom line between pre-rule of law era and modern rule of

law.

2.4.3. Alignment with China's Legal System and the International Laws [7]

In 2000, the United Nations passed the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Supplementary Protocol)*, which provides a clear definition of “human trafficking” as “the recruitment, transportation, transfer, harboring or receipt of persons by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving or receiving payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”. Although the term “exploitation” is used to define the criminal means in the protocol, which is different from the term “trafficking” used in domestic legislation in China, the essence of the act is still the infringement of personal dignity. “When a specific person is degraded to an object (a thing), merely a means or a numerical value, human dignity has been violated”. [12] The term “exploitation” is further refined in the *Protocol* as sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or removal of organs, all of which conform to the definition of injury to human dignity. Therefore, defining “the right to dignity” as the legal interest infringed by the crime of trafficking in women and children in domestic legislation in China is conducive to the convergence of domestic law and international law at the level of legal interests infringed by the offense.

2.5. Limitations of other Theoretical Schools of Thought

2.5.1. Limitations of the “Right to Personal Liberty” Argument

According to Article 240(2) of China's Criminal Law, the manner of trafficking in women and children is specified as six types: “abduction, deception, kidnapping, buying, selling, and transporting”. From the perspective of infringement of legal interests, “The reason why criminal law prohibits certain behaviors with punishment is that they infringe on or threaten legal interests” [5]. Therefore, all six types of behaviors in this offense should constitute an infringement of the personal freedom of the victim, otherwise, the necessity and rationality of their regulation by criminal law will be lost. However, among the six types of behaviors, only the actions of “abduction, kidnapping, selling, transporting” have obvious implications for restricting personal freedom, while the action of “buying” is completed only when the payment is made and the victim is “owned”, and the result is just the maintenance of the infringement of the victim's dignity [8] without constituting an infringement of the personal freedom of the victim.

2.5.2. The Limitations of the “Freedom of Action” and “Bodily Safety” Composite Argument

This viewpoint mainly supplements the use of “freedom of action” as a single object and enhances the logical rationality when infants are the victims of the crime. It argues that such crimes remove infants from their natural living state and infringe upon their bodily safety. [5] However, for a complex object, the relationship between the several legal interests it contains when they are infringed upon should be “and” rather than “or”. For example, the object of robbery is defined as personal rights and property rights because forcibly taking another's property by means of violence or coercion simultaneously constitutes infringement of personal rights and property rights, rather than selecting one of them to infringe upon, otherwise, it would not be distinguishable from the crimes of intentional injury and theft. Therefore, even if the act of trafficking infants is interpreted as an infringement of bodily safety, this argument has not excluded the inapplicability of the act to “infringement of freedom”.

In addition, in judicial practice, some women who are trafficked are willing to be “sold” due to family difficulties, economic difficulties, or suffering from abuse and torture in the family and are

eager to leave their homes to find a better place to live. [13] For example, in the investigation of the trafficking of women and children in Anhui Province, 160 victims stated the reasons for their abduction, where the majority were voluntarily abducted by means of job or marriage introductions. [14] For these victims, being trafficked was a voluntary choice they made, and they usually cooperate with the perpetrators' arrangements during the trafficking process, and it often does not constitute an infringement of their bodily safety. In the case of Li Bangxiang trafficking of women, the Guangxi Provincial High People's Court sentenced him to trafficking in women for his behavior of selling the victims to others as demanded by the victims. [15] It is clear from judicial practice that the failure to infringe upon the victim's freedom of action or bodily safety cannot be used as a basis for the defendant's exoneration, and the "freedom of action" and "bodily safety" composite argument does not have the rationality to be used as the object of the crime of trafficking in women.

In conclusion, considering that "the right to dignity" itself has a protected value recognized by the Constitution and laws, meets the general requirements of essentiality and comprehensiveness for the object of the crime, and provides convenience for the integration of domestic law and international law, it is more reasonable to use "the right to dignity" as the object of the crime of trafficking in women and children. As a new quality of the object of the crime, the right to dignity can better respond to the concern of modern criminal justice about human rights protection, reveal the basic human rights infringed upon by trafficking crimes from a more profound dimension, especially the profound harm to modern constitutionalism and the rule of law. This lays a foundation for us to further explore the nature, characteristics, and harm of current new types of trafficking crimes, and also provides an angle for us to scientifically and reasonably regulate its legal provisions and judicial practice.

3. The Current Situation of Judicature

3.1. Domestic and Foreign Relevant Legislative Regulations

The prevailing international consensus on the issue of trafficking in persons is to define it as the crime of "human trafficking", which encompasses not only women and children under 14 years of age, but also males over the age of 14. This differs from the current crime of "trafficking in women and children" in China, primarily in terms of the formulation of the charge and the scope of criminal liability. The reasons for this discrepancy can be traced to the international criminal policy concerning transnational trafficking in persons.

3.1.1. Historical Evolution of Criminal Policy Development at Home and Abroad

The historical process of the international community's fight against human trafficking has deep roots. Based on the characteristics of the human trafficking market, the international community has divided its efforts in judicial policy into four aspects: prohibition of slavery, prostitution, and forced labor, as well as combating transnational organized crime. [16] The *International Agreement of 18 May 1904 for the Suppression of the White Slave Traffic*, the *International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age*, and the 1930 C29 *Forced Labour Convention* marked the beginning of international efforts to ban slavery, prostitution, and protect labor rights. The adoption of the *United Nations Convention Against Transnational Organized Crime* in 2000 and its *Supplementary Protocol* in 2003, represents a comprehensive summary of previously different focuses, and the formal prohibition of human trafficking as a crime by the United Nations.

The earliest known provision for the crime of human trafficking in China dates back to the Tang Dynasty's legal code, which included the "crime of abducting and trafficking people". After the founding of the People's Republic of China, the first *Criminal Law* in 1979 explicitly defined the offense of "abducting and trafficking in persons" and established a legal penalty. In order to mitigate the impact of imbalanced economic development on human trafficking, the Chinese government further refined the offense in 1992 through the adoption of the *Decision on Strictly Punishing*

Criminals Who Abduct and Traffic in Women and Children. Since then, China's legislation on human trafficking has largely conformed to international standards. However, in 1997 the *Criminal Law* amended the offense from "abducting and trafficking in persons" to "abducting and trafficking in women and children", leading to a divergence in China's legislation on this crime and international practice. Although China formally joined the *Protocol to Prevent, Suppress and Punish Trafficking in Persons* in 2009, this disparity between China's criminal law and international norms of the offense has yet to be resolved in subsequent amendments to the *Criminal Law*.

3.1.2. Characteristics of Chinese Legislation

In order to more effectively combat the crime of human trafficking, international conventions have required member states to revise their domestic legislation to fulfill their obligation to combat human trafficking.[16] To this end, China's legislative body has dismantled the elements of the offense of "human trafficking" under the Protocol, and specified the acts of "recruitment, transportation, transfer, harboring, and receipt" as objective elements of offenses such as "abduction and trafficking of women and children", "buying abducted women and children", "forced labor", "assisting in forced labor", "forced prostitution", and "assisting in organizing prostitution" under China's Criminal Law[17]. As a result, the difference between China's criminal legislation and international law lies only in the different formulation methods adopted for such crimes. However, despite these efforts, there is still a significant controversy regarding the scope of criminal liability under China's legislation for the offense of trafficking in persons, specifically whether the crime should include males above the age of 14, an issue that diverges from the offense of human trafficking in the 1979 *Criminal Law* and current international norms.

3.2. New Features in Judicial Practice

Since the implementation of the new Criminal Law in 1997, legal norms relating to the trafficking of women and children have undergone multiple revisions, in an effort to constantly improve them. It is, however, unequivocal that with the development of social rule of law, this charge has gradually produced a plethora of new problems and circumstances that cannot readily be accommodated by existing judicial regulations.

3.2.1. Flattening of Criminal Organization Member Relationships.

Based on the demand of the illegal human trafficking market, criminal organizations tend to adopt two typical structures in their construction: one is a pyramid-like structure with strictly defined hierarchy within, where the upper echelons are responsible for decision-making and lower levels for execution, with low levels of interference in specific affairs. This structure is relatively easy to manage, stable and suitable for meeting the requirements of simple and fixed market demands. The other structure is a network-like structure, which differs from the pyramid-like structure in that there is no clear division of "upper" and "lower" echelons, is more flexible and has the characteristic of being able to meet the changing and fiercely competitive market conditions. [9] This transition from individual to organized crime has greatly reduced the time and process from initiation to completion of the human trafficking crime, even giving rise to specialized "human traffickers". [18] Meanwhile, criminal organizations have continued to expand in size and begun to develop more sophisticated division of labor patterns. The types of criminal entities involved in the commission of this crime are increasingly diverse, with some defendants playing the special role of "introducers" in the process. According to incomplete statistics from relevant departments, group crimes now constitute more than 70% of all human trafficking crimes of women and children. [19] This indicates that the current offense of abduction and trafficking of women and children has presented a new trend in which different means and purposeful behaviors are combined. The current legal coverage of compound behaviors of "means + purpose" can no longer encompass the new forms of crime emerging in judicial

practice.

3.2.2. The Intervention of Women's Will

This offense includes the objective element of “contravening the will of the victim”. However, in real life, some victims of trafficking include women who have voluntarily chosen to be sold and those who lack the capacity to make decisions freely. There exists a contradiction between the two contexts. According to the crime of this offense, the pattern of behavior is “abduction” to achieve the results of “sale”, and both elements must be present. The term “abduction” refers to “placing others under one’s control through deception, enticement, threat or violence” [7], highlighting the requirement of “abduction” as the means to commit the crime, which naturally excludes the behavior of voluntary trafficking from the scope of conviction. This unjustly restricts the scope of the offense in a certain sense.

3.2.3. The Problem of Male Victims

According to the United Nations Office on Drugs and Crime’s *Global Report on Trafficking in Persons* published in 2014, 49% of identified victims were adult women, 18% were adult men, 21% were female children, and 12% were male children. Although males over the age of 14 are not the main victims of this offense, their proportion globally cannot be ignored.

The provisions of the *Supplementary Protocol* do not exclude males over the age of 14, and this represents a glaring divergence between this offense and China’s current legal framework. In 1997, China revised its “crime of trafficking in persons” to Article 240, “crime of trafficking in women and children”, as the phenomenon of trafficking males was comparatively rare in reality. Furthermore, where males were trafficked, their primary purpose was to perform forced labor, which was regulated under Article 244, “crime of forcing labor”. In this way, legislative authorities believed that Articles 240 and 244 adequately covered relevant crimes under the prevailing social context at that time. [16] In addition, the *Trafficking and Related Labor Exploitation in the ASEAN Region* report published in 2007 noted that trafficking often has a nexus with forced prostitution, with attention being primarily drawn to women being trafficked for sexual exploitation, at the expense of overlooking the male victims who also fall prey to the crime. [20] However, with the societal evolution, the “value” of adult males as exploited victims is gradually increasing. On the one hand, there is an emerging demand for males in the sex industry, as evidenced by the Ministry of Public Security’s redefinition of prostitution. On the other hand, the modern advancement of medicine and healthcare has also augmented the risks of adult males being trafficked for the sale of their organs. [21] In China, notable cases of male victims over the age of 14 include those in the Shanxi black brick kiln and Burma North fraud incidents. [22]

4. Controversy Issues

In the author’s opinion, the determination of the object of the crime represents a novel tension focal point of current criminal trends. The clarification of the controversy surrounding the object of the crime is also fundamental to resolving a series of other issues related to this offense. Therefore, the analysis of the specific legal interests infringed by this crime is critical to resolving a range of controversial issues surrounding this offense within the academic community.

Based on the foregoing, the most logical approach is to define “the right to personal dignity” as the primary legal interest infringed by this offense. However, in light of novel traits observed in the implementation of this offense, the current legislative framework presents several tensions, including but not limited to:

4.1. Criminal Object

Given that the essence of this offense is the buying and selling of human beings, which infringes

the personal dignity of victims, all individuals who are bought and sold should be included as criminal objects of the offense. However, this contradicts the existing legislative framework in China, which only punishes the trafficking of women and children. According to the principle of legality, behavior that is not explicitly stated as punishable by law should not be punished, and, as such, the phenomenon of trafficking of males over the age of 14, which lacks the basis for punishment under trafficking-related offenses, violates the principle of “equality before the law” and is at odds with the “legal interest infringement theory” and the international regulatory approaches for the trafficking of human beings. While in many cases criminal law provisions need to highlight heavier punishment for infringing upon certain special subjects, these emphasizes usually come in the form of special provisions for the elements of the crime and the prescribed punishment[23] rather than simply deleting relevant provisions of the law.

4.2. Criminal Conduct

According to Article 240(2) of the *Criminal Law*, any act of trafficking that involves fraud, kidnapping, buying, selling, transporting or transferring individuals for the purpose of selling them is punishable. [3] Overall, the conduct of this offense can be divided into two categories based on the offense name: “abduction” and “sale”. However, based on the previous discussion of the essential characteristics and legal interests infringed by this offense, only the selling of individuals serves as the core objective and reflects its essence, while the “abduction” conduct implemented outside of the “sale” action is only an auxiliary means to achieve this objective, and hence the two do not have the same status or play the same role in infringing upon legal interests. Therefore, to equate the two and treat both as the conduct of trafficking in women and children is beyond the scope of action involved[24] and does not meet the basic requirements of criminal law for legal interest protection.

4.3. Sentencing

Based on the premise of “the right to personal dignity” as the criminal object, the main contradiction in the sentencing of this offense lies in the punishment for the act of buying. As the essence of the offense is the buying and selling of individuals as commodities, the “buying and selling” process requires both the buyer and seller. In other words, in cases of trafficking, the reason why offenders engage in the act of trafficking is because the demand from the buyer market provides them with opportunities to make a profit, while the demand from the buyer market continues to sustain the operation of the trafficking “supply chain”. Therefore, the “buying” and “selling” conducts are not essentially different in terms of infringing upon the personal dignity of victims. However, the current legislation in China has an unbalanced punishment for buying and selling: on the one hand, the basic punishment for trafficking in women and children is imprisonment for more than 5 years but less than 10 years, while the maximum punishment for buying and selling trafficked women and children is only three years of imprisonment; on the other hand, according to statistics, there are very few cases where individuals are convicted and punished for both trafficking and buying offenses, and most offenders are only charged with buying and selling offenses, and most of them are granted probation or exempted from criminal punishment. [10] This contradicts the protective function of criminal law for legal interests.

5. Solution: Adjustment to Legislative and Judicial Policies

According to the provisions of China’s *Criminal Law*, one of its cornerstone functions is to safeguard legal interests; the criminal object underlined by traditional criminal law theory. Therefore, while regulating related criminal behavior, it is paramount that this mode of law protection is exercised to ensure the protection of legal interests that may be violated by the offense. Consequent to the preceding analysis, resolving the controversy concerning the criminal object in cases of

trafficking in women and children is a judicious step to harmonize and reconcile the vexatious incongruities that arise between current legislation, judicial strategies, and new challenges posed by the offense. However, to resolve the controversy arising from this mode of criminal offense, fundamental resolution requires strategic calibration at the current legislative level. It is the suggestion of this paper that the nomenclature “human trafficking” would be a virtuous step. This adjustment would have an impact upon three domains: firstly, the male population above the age of 14 would now be included within the ambit of criminal objectives. Secondly, by defining “buying” and “selling” as acts of trafficking in women and children, a more comprehensive understanding of the offense would be enabled. Lastly, during the conviction and sentencing process, the acts of “abduction” and “buying and selling” would be distinctly characterized, where the act of “buying” would be considered at par with “selling” as a regulated act.

5.1. Adjustment to the Criminal Object

The definition of legal interests in the field of Criminal Law in China is generally defined as “the life interests of people that are protected by law based on the fundamental principles of the Constitution and objectively susceptible to damage or threat” [5]. After contrasting and weighing up the current mainstream views in academia, it is in line with the standard of “infringing the right to dignity as the pre-requisite for constituting the crime of trafficking in women and children” [7] to define the criminal object that this crime violates as the “right to human dignity”. Currently, there is no unified and rigorous definition of “right to human dignity” in academic circles in China. In the view of Kant, the “dignity of human personality” means that the will as a rational being that universally legislates to itself possesses supreme moral value, and it has the characteristics of universality, freedom, and autonomy, thus it is an object of respect [25]. Some scholars believe that the right to human dignity refers to “the status of a dignified and solemn identity that people as right subjects should be respected and respected by others” [26]. Thus, the right to human dignity is a basic right that every natural person is entitled to, regardless of whether they are women, children under the age of 14, or males over the age of 14, and they should enjoy this right equally under the Constitution. For the crime of human trafficking, the right that “people cannot be bought and sold as commodities” should also apply to males over 14 years of age. Therefore, it is reasonable to include males over the age of 14 within the ambit of criminal objects for this offense, as the power to not be treated as a commodity to be bought and sold should be afforded to them as well.

5.2. Determination of the Criminal Conduct

As previously expounded, under the current legislative framework in China, the harmful conduct of trafficking in persons comprises of a dualistic construct; involving the method of “abduction” and the intent of “selling”, both of which are necessary to fulfill the condemnable offense [7]. Nevertheless, “as the infringement of legal interests is the essential element of conduct, any activity that does not impinge on legal interests must be excluded, and therefore, eliminated from criminal behavior” [5]. Building upon the analysis hereinabove concerning the legal interests violated by the offense, the effect of the means of “abduction” and the object of “sale” in this regard is dissimilar; only the purpose of “sale” constitutes an infringement of the victim’s right to dignity, which is the intrinsic legal interest underpinning this offense. In essence, if only the method of “abduction” is implemented, such as through the employment of repressive measures, deceit, or coercion upon the victim, the harm such conduct may occasion would, at most, reach the level of compromising the victim’s physical safety and mobility, thus not fully constituting an infringement of the victim’s right to dignity. Nevertheless, once the purpose of “sale” is realized, regardless of whether the offender employed the means of “abduction” or what modes of action were pursued to accomplish the objective, it signifies that the offender has utilized the victim as a commodity to be traded, and has benefited from this transaction, thereby violating the fundamental right of equality enjoyed by the

victim and offender alike. Therefore, it is the author's opinion that the existing legislation should include within its scope actions designed to achieve the purpose of selling, even if the methods utilized were limited to abduction. It is worth noting, however, that such a proposition differs somewhat from the claim that the criminal object is the victim's right to dignity discussed earlier.

If the offense of "human trafficking" is modified to "the crime of buying and selling persons", in accordance with the relevant provisions of the Criminal Law on the illegal trade of firearms, ammunition, and explosives, both the buyer and the seller would constitute co-offenders. With regard to co-offenders, under the Criminal Law, in cases where both parties are similarly punished, regardless of the legislative approach utilized, criminal law theory generally holds that the infringement is on the same legal interest [27]. Therefore, the acts of "buying" and "selling" should both be considered a violation of the victim's right to dignity and should constitute simultaneous criminal conduct under this offense. Thus, the buyer and the seller should both be regarded as co-principals in the commission of the crime of buying and selling persons.

5.3. Adjustment to Sentencing

In cases of co-offenders where there is considerable disparity in the basic punishment applicable to both parties, as is the case with the crime of trafficking in women and children and the crime of purchasing trafficked women and children, it is rare to see the punishments for both crimes being different [10]. As discussed earlier, there is no difference in terms of legal interest infringements or illicit constructs between the crime of purchasing and the crime of trafficking, thereby necessitating an identical assessment of the severity of their criminal conduct. Therefore, both crimes should be assigned the same prescribed penalty configuration [27]. With the "crime of buying and selling persons", the act of purchasing and selling is combined into one offense. The conviction and punishment for such a crime can be modeled on the criminal code provisions of the *German Penal Code*, Article 232, on human trafficking, and Article 236, on trafficking in children, as well as Article 226(2) of the *Japanese Criminal Code*, which concerns buying and selling persons. Such a sentence structure would align with the requirements of punishment configuration based on the evaluation of the conduct's degree of unlawfulness.

6. Conclusions

In conclusion, the proposal to modify the criminal charge for trafficking in women and children under the current legal framework in China is aimed at resolving controversies regarding the infringement of legal interests. This approach is anchored in the protective function of criminal law, providing a practical solution to the current challenges related to trafficking crimes. To achieve this, we adopt the "right to dignity argument", which accurately captures the nature and extent of the criminal act of trafficking. Based on this perspective, we propose the replacement of the charge of "trafficking in women and children" with the "crime of buying and selling persons". This modification aligns with the nature of the offense and its significance, and offers a more appropriate legal framework for addressing the crime of trafficking. This paper examines the proposed modifications from three perspectives, namely the criminal object, the criminal conduct involved, and the appropriate sentencing framework, and provides a detailed legislative and judicial strategy for implementing the proposed changes. Our recommendations reflect a basic adherence to the principles of regulating unlawful behavior through criminal law, providing a new reference point for resolving controversies relating to trafficking in women and children in China.

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