Balanced Sentencing: An Empirical Study Based on the Crime of Buying Abducted Women and Children

Weiwei Fan, Midan Yang

Hunan University, Changsha, Hunan, 410012, China

Abstract: *A stratified sampling of the effective verdicts on the crime of buying abducted women and children was conducted by spss based on regions, and the final 135 valid verdicts obtained after screening were used as a sample for statistical analysis. The results show that there is an unevenness in judicial practice in terms of judges' determination of sentencing outcomes for defendants in the crime of buying human beings. In order to enhance the legal effectiveness of this law, the sentencing of this crime in judicial practice should be regulated, and sentencing guidelines for the crime of buying trafficked women and children should be formulated as soon as possible, or a large-scale empirical study should be conducted to demonstrate the feasibility of adjusting the legal sentence for this crime.*

Keywords: *balance of crime and punishment, balanced sentencing, penal intensity, the crime of buy abducted women and children*

1. Research Hypothesis and Test Logic

1.1 Research Hypothesis

The empirical study of sentencing is an empirical study of the relationship between the circumstances of the sentencing of a crime and the declared sentence. The sentencing circumstances are specific facts that indicate the degree of harm of the behavior and the degree of personal danger of the perpetrator, thereby determining the scale of punishment. [1] The crime of buying abducted women and children isn't taken seriously in judicial practice. Therefore, Chinese criminal law scholars have not conducted an in-depth analysis on the empirical research on sentencing for the crime of buying abducted women and children. However, with the development of the standardization of judicial sentencing in our country, criminal law circles have conducted sentencing balance research on crimes such as intentional injury, theft, bribery, and traffic accidents. Cai Xilei, through a questionnaire survey of recidivist intentional injury cases in 209 courts across the country, believes that there is generally an imbalance in sentencing in Chinese judicial practice. [2] However, Xiong Moulin analyzed 1039 samples of crimes of theft, intentional injury, and robbery, and believed that there is no imbalance in sentencing in my country's judicial practice, and that overemphasis on the comparison of extreme cases is an important reason for exaggerating the differences in sentencing. [3] Professor Bai Jianjun's analysis of the full sample of traffic accident crimes shows that the deviation of sentencing in my country's judiciary is very low, and [4] affirmed Xiong Moulin's sentencing balance theory.

According to Article 241 of the Criminal Law, for a specific crime of buying and trafficking women and children, the judge will distinguish between the circumstances of conviction and the circumstances of sentencing based on the extracted relevant facts that affect criminal responsibility during the trial process, and then check whether Article 241 is met. To reduce the composition of the crime and determine the specific range of statutory punishment. Then the facts related to the circumstances of conviction are eliminated, and the remaining facts reflecting the personal danger and social harm of the defendant are transformed into sentencing circumstances, including statutory circumstances and discretionary circumstances. [5] Finally, the judge comprehensively considers various evaluation factors to arrive at the sentencing result in the judgment.

Based on the scholars' theories and research on the balance of sentencing in the judicial practice of other crimes in our country, we can put forward the empirical research hypothesis of this paper on the judicial sentencing of the crime of buying and trafficking women and children. That is to say, in judicial practice, after the judge considers the sentencing circumstances of the crime of buying abducted women and children, the final sentencing result met the requirement of balanced sentencing. The verification of this hypothesis includes two parts: first, the hypothesis requires that the sentencing result of the judge in

the crime of buying abducted women and children meet the requirements of sentencing balance. Second, the hypothesis also requires to verify whether each sentencing factor in the case of buying abducted women and children has a different influence on the sentencing equilibrium result.

1.2 Test logic

Sentencing balance is mainly manifested in the balance of sentencing results, that is, for the handling of similar cases of the same kind, the judgment results of the court must maintain a high degree of inertia and consistency in time and space. From a legal point of view, sentencing includes the type of punishment, the duration of the sentence, whether it is suspended, and whether it is exempt from criminal punishment. Among them, only the suspended sentence and the sentence are suitable for the quantitative analysis of sentencing results. [6] At the same time, because of the different types of penalties, to study the impact of sentencing factors on sentencing results, it's necessary to set a unified scale for different types of penalties that can measure the severity of sentencing, so as to achieve accurate comparison of penalties. Professor Bai Jianjun believes: "It's obviously a meaningful work to conduct a comprehensive measurement of the severity of the statutory punishment for all crimes in the criminal law." [7] Therefore, on the basis of referring to the relevant theories of Professor Bai Jianjun, the judgment the severity of the defendant's punishment under different types of punishment is measured by a dimensionless unified standard, that is, the "strength of punishment" is used to represent the sentencing results of the defendant in the case of buying and selling trafficked women and children. Therefore, the analysis in this paper is based on the comparison of the intensity of punishment among defendants. The more representative the assignment, the more convincing the conclusion. The statutory punishment for the crime of buying and selling abducted women and children is fixed-term imprisonment of less than three years, criminal detention or public surveillance. Therefore, referring to the relevant research of Professor Bai Jianjun, "fixed-term imprisonment (month)" is used as the basic measurement unit of penalty intensity. The fixed-term imprisonment is 1 month, and the corresponding punishment intensity is 1. The severity of criminal detention is second only to fixed-term imprisonment. One month of criminal detention corresponds to a penalty of 0.75. The severity of control is lower than that of criminal detention. Therefore, 1 month of control corresponds to a penalty of 0.5. [7] If probation is applied, the intensity of the original penalty will be reduced by three-quarters. If the conviction is exempt, the severity of the penalty is 0. To sum up, the formula for calculating the intensity of punishment can be obtained.

$$Punishment\ intensity = fixed-term\ imprisonment(month)(if\ probation\ period \times 0.25) + criminal\ detention(month) \times 0.75(if\ probation\ period \times 0.25) + control(month) \times 0.5(if\ probation\ period \times 0.25).^1 \tag{1}$$

Accordingly, this article takes the intensity of punishment as the starting point to realize the analysis of the balance of sentencing in the cases of buying and selling trafficked women and children. Specifically, on the basis of testing whether the relevant sentencing factors in the specific cases of buying and trafficking women and children have an impact on the sentencing results, based on the conversion between the sentencing results and the intensity of the penalty, the sentencing factors are realized by analyzing the difference in the intensity of the penalty. The test of the correlation with the sentencing results, so as to realize the test that the sentencing results of the crime of buying abducted women and children meet the requirements of sentencing balance.

2. Empirical analysis plan

2.1 Sample source

This study mainly takes the criminal verdicts for the crime of buying abducted women and children published on the Internet of Chinese Judgments as analysis samples. Using spss to stratify by region and using the stratified random sampling method, 17% of the criminal judgments for the crime of buying and trafficking women and children were selected as analysis samples. [2] The sample selection steps are as follows: the first step is to clarify the distribution of the entire sample of criminal judgments for the crime of buying and trafficking women and children in all provincial administrative divisions in the country published on the Judgment Documents website. The second step is to use spss to carry out complex

---

[1] It is difficult to convert the intensity of punishment between different types of punishment. This is only a preliminary conversion based on the relevant theories of Professor Bai Jianjun, which generally reflects the comparison of the intensity of different punishment methods. As for the accuracy, it needs to be further explored in follow-up research.
[2] The sampling deadline is November 22, 2022.

sampling, and determine the number of samples that should be drawn in each area in proportion. The third step is to use spss to determine the number of samples to be sampled, and to extract the corresponding judgments in each region. According to the above steps, a total of 135 sample records were obtained after the screening.

2.2 Variable Selection and Definition

Table 1: Variable definition assignment table

variable type	variable name	Variable definitions
Explained variable	Punishment intensity	Under different types of penalties, the severity of the defendant's actual punishment is measured by a dimensionless unified standard
Explanatory variables	sentence	Announced sentence, that is, the specific sentence announced by the court to the defendant in the criminal judgment according to the law, converted in months
Explanatory variables	Type of punishment	Divided into fixed-term imprisonment, criminal detention, control, and exemption
Explanatory variables	probation period	The probation period of probation for a fixed-term imprisonment or criminal detention shall be converted in months. If it does not exist, it shall be recorded as 0
Explanatory variables	guilty attitude	Divided into self-surrender, confession, cooperation and non-cooperation
Explanatory variables	meritorious service	Divided into meritorious service and no meritorious service
Explanatory variables	plead guilty	Divided into those who pleaded guilty and accepted punishment, those who didn't admit guilty and accepted punishment
Explanatory variables	whether there is abuse	Classified as abusive, not abusive, other
Explanatory variables	Whether it does not impede rescue or return to place of origin	Divided into non-existent hindrance, hindrance, other
Explanatory variables	joint crime	Divided into non-joint crimes, principal offenders in joint crimes, accessory offenders in joint crimes, and joint crimes without distinction between main offenders and accomplices
Explanatory variables	ex-convict	Divided into recidivists without a criminal record, administrative punishment, criminal record, recidivist
Explanatory variables	Accomplished situation	Accomplished, Attempted
Explanatory variables	year of crime	Behavior divided into before November 2015, after November 2015
control variable	area	Divided into eastern region, central region and western region
control variable	Buy object	Divided into buying children, buying women
control variable	Purpose of buying	Divided into support, forming a family to live together, and others
control variable	trial procedure	Divided into expedited procedures, summary procedures, ordinary procedures of first instance, second instance and other procedures
control variable	defendant's age	The defendant's age at the time of bribery
control variable	Defendant's identity	The occupations engaged by the defendants are divided into unemployed, freelancers, farmers, workers, small businesses such as self-employed households, other
control variable	defendant's gender	Divided into male and female according to biological sex
control variable	Defendant's educational level	Divided into illiterate, elementary school, middle school, technical secondary school, university and above

The explained variable determined in this paper is the intensity of punishment, that is, the severity of the defendant's actual punishment under different types of punishment, which is measured by a dimensionless unified standard.

Referring to the penalty theory and the research results of previous criminal sentencing, referring to the information of the judgment documents and the criminal law provisions on the crime of buying and trafficking women and children, "Opinions on Punishing the Crime of Abducting and Trafficking Women and Children" and "Sentencing Guiding Opinions", this paper, a total of 20 variable characteristics were extracted, including region, defendant age, defendant gender, probation period and other variable

information related to the judgment document. In order to avoid repeated evaluation of the circumstances of sentencing, the independent variables of this study didn't include the circumstances mentioned in the judgment documents such as "subjectively less malignant", "occasional offenders", and "minor criminal circumstances". However, since most provincial-level administrative regions have enacted sentencing implementation rules for common crimes, the influence of regional variables on the sentencing results of the crime of buying and trafficking women and children may be mainly due to the influence of the economic conditions and customs of each province on judges' discretion. Therefore, this article includes the sentence, type of punishment, probation period, confession attitude, meritorious service, whether to plead guilty and accept punishment, whether there is abuse, whether there is no hindrance to rescue or return to the original place of residence, joint crimes, previous convictions, consummation, and year of criminal behavior as an explanatory variable. In order to improve the reliability of the analysis results, referring to relevant research on the impact of sentencing results, this paper selects 8 variables as the control variable. The specific variable definitions and assignments are shown in Table 1.

2.3 Data analysis methods

The explained variable determined in this paper is the intensity of punishment, that is, the severity of the defendant's actual punishment under different types of punishment, which is measured by a dimensionless unified standard. In this paper, using spss26.0 software, the multivariate linear regression method is mainly used to analyze the influencing factors of the sentencing results of the crime. Meritorious service, whether to plead guilty and accept punishment, whether there is abuse, whether there is no hindrance to rescue or return to the original place of residence, joint crimes, previous convictions and recidivism, and completed situations are used as independent variables to study the influence of various factors on the intensity of punishment, and give various sentencing effects Ranking of factors by relative importance. Before regression analysis, all categorical variables in the independent variables were transformed into dummy variables.

3. Linear regression analysis and hypothesis testing

3.1 Linear regression analysis

Table 2: Regression analysis

variable	Cases of buying abducted women and children		
	variable unstandardized coefficient	standardized coefficient	significant
constant	-1.333		0.000
LnSentence	1.021	0.680	0.000
Is there abuse = exists	1.281	0.296	0.000
Punishment = control	0.597	0.234	0.000
Defendant Status = Unemployed	0.544	0.223	0.000
Judgment procedure = expedited procedure	-0.460	-0.106	0.046
Adjusted coefficient of determination R square	0.678		

Note: The dependent variable is ln penalty intensity, and the regression method is step-by-step entry method. The significance value is 0.05. The number of samples is 135.

For multiple linear regression analysis, the data must meet the following: 1. Linearity assumption. That is, there is a linear relationship between the independent variable and the dependent variable. 2. Independence conditions. That is, the values of the dependent variable are independent of each other. 3. Normal distribution assumption. That is, the random error term and the dependent variable obey the normal distribution. 4. Assumption of homogeneity of variances. That is, the variance of the random error term is a constant. [8] Previously, the variables that didn't conform to the normal distribution, that is, the length of sentence and the intensity of punishment, were logarithmically transformed, and all categorical variables were transformed into dummy variables. The independence, normality, and homogeneity of variances of the data are mainly tested by the independence, normality, and homogeneity of variances of the residuals. [9] In this paper, the residual test after stepwise linear regression basically

meets the requirements of independence, normality and homogeneity of variance. Finally, multicollinearity needs to be tested. In the final model, the tolerance of each variable is greater than 0.01, the VIF is less than 10, and there is no collinearity problem. In short, through the above detection and transformation, the final linear regression model is robust.

At this time, the expression of the regression equation is:

$$lnPunishment\ intensity = -1.333 + 1.021 \times lnSentence + 1.281 \times (Is\ there\ abuse\ = exists) + 0.597 \times (Punishment\ =\ control) + 0.544 \times (Defendant\ Status\ =\ Unemployed) + (-0.460) \times (Judgment\ procedure\ =\ expedited\ procedure) \qquad (2)$$

3.2 Hypothesis testing

The research variables selected in this paper do not necessarily cover all the indicators that affect the intensity of punishment for the crime of buying and trafficking women and children. Therefore, for the test of the research hypothesis of this paper, as long as there are explanatory variables other than the statutory factors and discretionary factors that affect the sentencing results in the criminal law that have a significant impact on the intensity of the penalty, It can be considered that the sentencing results of relevant judicial decisions are affected by individual factors, and there is a problem of balanced sentencing for the crime of buying abducted women and children. Combing the above analysis results, we can know that the defendant and the trail procedure have a significant impact on the determination of the severity of the penalty. Therefore, according to the research hypothesis test logic proposed above, it shows that there is an uneven sentencing in the crime of buying abducted women and children, and then verifies the first research hypothesis of this paper. The second hypothesis has been answered through multiple linear regression results, which show that the length of sentence, whether there is abuse, the type of sentence, the identity of the defendant, and the trial procedure have a significant impact on the sentencing of the crime.

4. Theoretical thinking based on empirical analysis results

The balance of crime and punishment is the basic principle of criminal law. The discussion on the punishment of this crime and the issue of sentencing in judicial practice are all manifestations of pursuing the balance of crime and punishment. Starting from the concept of criminal law of retributivism and prevention, the setting of penalties should be able to achieve the effect of retribution and prevention. We all know that the stability of positive law must be maintained, and it cann't be changed at will. However, the existing law should also meet the requirements of purpose and justice, and if not, it must be revised. Therefore, according to the empirical research and operational status of judicial sentencing in Article 241 of the Criminal Law, there is every reason to revise it or issue sentencing norms for this crime as soon as possible.

References

[1] Wang Chen. On Sentencing Circumstances [J]. Law Review, 1991(3).

[2] Cai Xilei. Attribution of Sentencing Imbalance[J]. Legal System and Social Development, 2015(1): 154-172.

[3] Xiong Moulin. Reconsidering Sentencing Fairness and Sentencing Differences——Quantitative Research Evidence from Five Basic Courts in Deyang City [J]. Crime Research, 2014(6):20-44.

[4] Bai Jianjun. Research on Sentencing Prediction Based on Judges' Collective Experience [J]. Legal Research, 2016(6):140-154.

[5] Yin Mingcan, Wang Mingkun. An Empirical Study on the Relationship between the Sentencing Circumstances and the Announced Sentence of the Crime of Intentional Homicide——A "Correlation" Analysis Based on the SPSS Software Package [J]. Journal of Guizhou Police Vocational College, 2009(6):24-29.

[6] Xiong Moulin, Li Zhining, Hu Jingxuan. The Chinese Experience of Sentencing Balance: An Empirical Study Based on the Crime of Rape [J]. Legal Modernization Research, 2009(6):116-138.

[7] Bai Jianjun. Quantitative Analysis of Penalties [J]. Chinese Social Sciences, 2001(6):114-125.

[8] Zhang Wentong, Dong Wei. SPSS Statistical Analysis Advanced Course [M]. Beijing: Higher Education Press, 2013: 97-98.

[9] Wen Ji. Empirical Research on Sentencing of Credit Card Fraud [J]. Law Forum, 2018(4):141-151.