



# **CRIMINAL INTENT IN THE CRIME OF HUMAN TRAFFICKING : A COMPARATIVE STUDY**

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<b>Received:</b> December 20 <sup>th</sup> 2021 <b>Accepted:</b> January 20 <sup>th</sup> 2022 <b>Published:</b> February 24 <sup>th</sup> 2022	The crime of human trafficking is an organized crime as it includes all legitimate and illegal behavior that turns a person into a mere commodity or a victim to be disposed of by professional intermediaries across national borders with the intent of exploiting him in low-paid work or sexual acts or the like, whether the act was done with the will of the victim This crime has characteristics that distinguish it from other crimes, and it does not depart from two main points. Among the transnational crimes, the crime of human trafficking is one of the intentional crimes whose moral pillar is based on the general criminal intent and the private criminal intent, and this is the focus of our study.

**Keywords:** Intent, Criminal, Crime, Trafficking, Human Beings.

## **Introduction**

Trafficking in human beings is one of the most serious crimes that humanity has known throughout the ages, and it has long permeated the human conscience for its flagrant violation of human rights and basic freedoms, starting with the human right to life by endangering his life and passing through his right to the safety of his body and his right to personal freedom and all other rights through the practice of all forms of exploitation Whatever the means, whether it comes through the threat or use of force or other forms of coercion, kidnapping, fraud, deception, abuse of power, abuse of influence, or abuse of a position of weakness.

And the assault of these crimes on the rights subject to criminal protection is considered a premeditated assault, and the law does not punish it unless it has criminal intent. It expressed the seriousness of the offender's personality and became a reason for the law to blame him on the condition that the control of the offender's will over the material of the crime is effective comprehensive control, and this will of the offender is described as a psychological activity directed to an illegal purpose or to a goal beyond that, this will is of great importance in Determining the type of intent required in the crime in question. Is the general criminal intent considered necessary and sufficient in the crime of human trafficking as long as the law in most intentional

crimes usually only cares about the purpose that the offender seeks in committing the crime, or is the seriousness of the act in the crime of human trafficking comes from the departure of the offender's will to a specific goal to be achieved Responsibility for the crime, and the answer to that requires us to state the position of the national legislator on the necessity of having a special criminal intent in all forms of criminal behavior or activity that constitute the material element of this crime, in addition to the general criminal intent?

Accordingly, we decided to discuss the subject of our study in two sections, the first in which we will address the concept of the crime of human trafficking in terms of its definition and characteristics, while the second topic we will talk about the criminal intent in the crime of human trafficking, where the importance of our study lies in the statement of the definition of the crime of human trafficking at the level We followed the comparative analytical approach based on the analysis of legal texts criminalizing these crimes by the Iraqi legislator and several comparative criminal legislation, as well as the position of jurisprudence on that crime to To reach the type of criminal intent required.



## **The first topic**

### **Defining the crime of human trafficking**

Legal scholars have made efforts to develop a definition of the crime of human trafficking that covers all the activities included in this crime, the means used by its perpetrators, and the images adopted through this crime. International charters and protocols and national laws related to addressing this crime and punishing its perpetrators have also included definitions of this crime. To clarify the concept of this crime, we need to shed light on its jurisprudential and legal definition.

### **Definition of the crime of human trafficking in criminal jurisprudence**

Criminal jurisprudence was keen on defining human trafficking, including saying that "trafficking is a modern form of slavery and servitude, which represents a serious violation of human rights, and includes recruitment, transportation, deportation, harboring and receiving people for exploitation <sup>1</sup>.

A part of jurisprudence defines human trafficking as "all legitimate and illegal behavior that turns a person into a mere commodity or victim and is disposed of by professional intermediaries across national borders, with the intent of exploiting him in low-paid work, sexual acts, or the like, whether this behavior is committed By the will of the victim, or by force on his behalf, or by any other form of servitude <sup>2</sup>. In another definition, it was said, "It is the process of subjugating people and transferring them through the use of violence or threat of violence or abuse of position or exploitation of special circumstances of victims or deception or other coercive operations to exploit these human beings sexually or economically, including forced service, servitude, servitude, Stealing members for the benefit of other people, such as pimps, smugglers, brokers, owners of brothels, crime organizations, and anyone who has the financial ability and wants to buy people or their members <sup>3</sup>.

And some mentioned another definition of human trafficking "that every operation that takes place for selling, buying, smuggling, kidnapping or exploiting people for forced labor, sexual services, or other fields, such as pornographic media materials, marriage on demand, or any other work-related to sex."<sup>4</sup>.

Others define human trafficking as "the recruitment or transfer of persons by force, coercion or deception for exploitation in all its forms, including sexual exploitation, forced labor, forced service, beggary, slavery, trafficking in human organs and so on."<sup>5</sup> While some jurisprudence defines international human trafficking - in general - as all criminal activities

related to the renewal, possession, transfer or deportation of persons subject to trafficking from one country to another by legal or illegal means and their reception in the same country or any other country in preparation for their exploitation.

And it was said that "every legal or illegal act or behavior that responds to a human being makes him just a commodity that is bought and sold to exploit him in all or part of his bodily organs, whether that was done with the consent of the victim or forcibly on his behalf, and whatever the face or means of exploitation, whether within or outside the borders of states." .

We support the last definition because some of the previous definitions focus on defining human trafficking across the national borders of states, which means ignoring human trafficking that takes place within the national borders of states, which is no less dangerous to society than the other type, while others focus only on the means of achieving behavior The criminal offense of human trafficking and its forms without indicating the geographical area in which it is achieved, although it is understood from the foregoing context that the crime occurs across the national borders of countries without indicating the trafficking that takes place within the country.

In turn, we define human trafficking: as any act or omission that turns a person into slavery or subject him to a practice similar to slavery, through coercion or deception, or by taking advantage of the need or weakness of the victim or the authority of the offender over the victim, to exploit him physically or sexually or medically, whether within the national borders of the state or outside it.

Based on the advanced definitions of human trafficking, it is clear that the latter often requires the necessity of having several essential elements that are capable of highlighting them.

It should be noted that there is a jurisprudential consensus on the elements that make up the crime of human trafficking. The majority of criminal jurisprudence indicates that human trade does not differ in its elements from traditional trade, as these elements are represented in the commodity, which is the person subject to trade, and the merchant, who is the person who exploits another person with the intention of trading in him in all or some of the aspects of exploitation, and finally the market is intended The state to which the traded person is transferred to exploit him as desired by the merchant or buyer. However, there is a difference between this type of trade and traditional trade, which is represented in its place, which takes the form of a living human being.



## **The second requirement**

### **The legal definition of the crime of human trafficking**

The legal definition of the crime of human trafficking does not differ from the jurisprudential definition, as these definitions were numerous and differed from one legislator to another in terms of wording. However, most of these definitions considered human trafficking as an organized crime that includes all legitimate and illegal behavior that turns a person into a mere commodity or a victim to be disposed of. It is carried out by professional intermediaries across national borders with the intent of exploiting it in low-paid work, sexual acts, or the like, whether the act was done with the will of the victim, coercion on his behalf, or any other form of slavery.

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Organized Crime (Palermo Protocol) for the year 2000 defines the crime of human trafficking as "all recruitment, transfer, transfer or reception of individuals using threat or use of force or any other form Others to coerce, kidnap, defraud, deceive, abuse power or exploit vulnerabilities or give or receive money or privileges to obtain the consent of a person who has power over another person for exploitation. The consent of the victim of trafficking in persons to the exploitation intended in the previous paragraph shall not be taken into consideration when it appears that one of the means in the previous paragraph has been used".

The Council of Europe Convention on Combating Trafficking in Persons of 2005 also defines human trafficking in Article No. (4) as "the recruitment, transportation, transfer, harboring or receiving of persons through

By threatening to resort to the use or actual use of force or other forms of coercion, kidnapping, fraud, deception, abuse of power, abuse of a position of vulnerability, giving or receiving sums of money or benefits to achieve the consent of a person who has control over another person for exploitation, including exploitation as a limit the least exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or service, slavery or practices similar to slavery, servitude or the removal of organs

The Arab Convention against Transnational Organized Crime of 2010 defines trafficking in persons, especially women or children in No. (11) as "any threat or use of force or other forms of coercion, kidnapping, fraud, deception, abuse of authority or

exploitation of a position of vulnerability." This is to use, transport, harbor or receiving persons for their illegal exploitation in the practice of prostitution or other forms of sexual exploitation, forced labor or services, slavery, or similar practices.

Through these definitions, several common points are evident in which organizations and legislators have attempted to define the characteristics of human trafficking, including:

1- The crime of human trafficking is one of the organized crimes, where it is carried out by gangs who have mastered the crime and made it the focus of their activity and source of income, and accordingly they practice their criminal activities as a crime of work, job, and profession. Organized criminal groups are defined as the group formed according to a specific organization of at least three people to work continuously or for a period aiming to commit one or more specific crimes, including human trafficking crimes alone or with others, to obtain directly or indirectly Directly on a financial, material or in-kind benefit.

2- Human trafficking is special, given that its subject is a mobile, renewable commodity of a special category of people who suffer extreme poverty, unemployment, and social insecurity, and they are mostly women and children. Therefore, this crime has devastating economic and morale effects.

3- This trade is cross-border trade, where there are countries exhibiting goods, i.e. exporting countries, which are economically poor, and there are importing countries, i.e. requesting countries, which are economically rich, and there are transit countries between the two previous countries, but also that human trafficking takes place within one country.

Believing in the seriousness of acts of human trafficking as a threat to humanity, depriving people of their rights and violating their dignity, the American Trafficking and Violence Protection Act of 2000 was issued, where it also provided a definition of trafficking in Chapter (77) of Chapter (18) Clause (1590) and included the text of the first article of it, which The recruitment, transfer, harboring or receipt of any person by force, threat or other means of coercion, kidnapping, deception, abuse of power or a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for exploitation.

This definition is the same as that contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the aforementioned 2000 United Nations Convention against Organized Crime 6. Likewise, the American legislator has included a special



provision for child trafficking, considering this type of trafficking as an independent form of trafficking in persons, stating that the character of a child is an essential element or an assumed condition. or the deportation, harboring, or receipt of a child or the giving of money to obtain with the consent of a person having control over a child for exploitation constitutes trafficking in persons regardless of whether the means provided for in Article 1 have been used **7**.

In Egypt, the Egyptian legislator was keen to protect human rights, especially women and children, as Law No. 64 of 2010 was issued to combat human trafficking in implementation of the international protocols and conventions it signed, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Crime Transnational Organization in 2000, and this law is the first of its kind in Egypt that criminalizes forms of human trafficking and provides legal protection for victims of trafficking, in addition to the guarantees it provides for the respect of their basic rights. With human beings, whoever deals in any way with a natural person, including selling, offering to sell, buying, promising them, using, transporting, handing over, harboring, receiving or handing over, whether inside the country or across its national borders, if this is done by exploiting a situation of weakness or Need, or a promise to give or receive sums of money or benefits in return for obtaining the consent of a person to trade with another person over whom he has control, all if the transaction is intended to benefit In prostitution and other forms of sexual exploitation, child pornography, forced labor or services, slavery or practices similar to slavery, servitude, beggary, or the removal of human organs or tissues or part of them".

It is noted on this definition that the Egyptian legislator, despite his clear impact on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2000, has expanded on showing the images of human trafficking in comparison with the 2000 Protocol, where the Egyptian legislator tried to collect all forms of trafficking and included images such as sale Or offering to sell or buy or promise them, although the definition contained in the 2000 protocol, as well as the definitions contained in Federal UAE Law No. 51 of 2006 that punished trafficking, did not mention the forms of buying, selling or promising them as forms of trafficking.

The UAE legislator defined in Federal Law No. 51 of 2006, which is the first anti-trafficking law in the Arab world, as special legislation imposing severe penalties of up to life imprisonment for perpetrators of human

trafficking crimes **8**. Where human trafficking is defined in Article 1 of it as "the recruitment, transportation, deportation or reception of persons using threat or use of force or other forms of coercion, kidnapping, fraud, deception, abuse of authority, abuse of a position of vulnerability, giving or receiving sums of money. or advantages to gain the consent of a person having control over another person for exploitation"...

It is clear from this definition that the UAE legislator has been keen to criminalize the various forms of human trafficking crimes contained in the 2000 protocols. Exploitation includes all forms of sexual exploitation, exploitation of the prostitution of others, forced labor or service, slavery or practices similar to slavery, servitude, or the removal of organs.

As for the position of the Iraqi legislator on the crime of human trafficking, the third paragraph of Article 37 of the permanent Iraqi constitution of 2005 stipulates the prohibition of forced labor, slavery, and the slave trade, and the prohibition of trafficking in women and children and sex trafficking in all its forms and forms. Arab countries in which there is no similar text, where the issue of human trafficking did not live up to the extent of the constitutional provision, which indicates the attention of the Iraqi legislator to the seriousness of this crime, which made it within the comprehensive jurisdiction contained in Article (13) of the Iraqi Penal Code No. ( 111) for the year 1969. In 2012, the legislative authority in Iraq issued a law prohibiting human trafficking, Law No. (28) of 2012 on combating human trafficking, which is an important step in the way of contributing to international efforts to curb this dangerous phenomenon. The first article of this law defines the crime of human trafficking. "Human trafficking for this law means the recruitment, transportation, harboring or receipt of persons using the threat or use of force or other forms of coercion, kidnapping, deception, abuse of power, or the giving or receiving of sums of money or benefits to obtain the consent of a person having authority or jurisdiction over Another person to sell or exploit them in prostitution, sexual exploitation, forced labor, servitude, beggary, trading in their human organs or for medical experiments.

It is clear to us that this definition that the Iraqi legislator came with is derived from the definition contained in the Trafficking in Persons Protocol annexed to the aforementioned Transnational Organized Crime Convention. (recruitment, transportation, accommodation, reception) and that the term (transfer) within the context and legal framework in this shop means transferring and giving control and control of the victim to another person





called the recipient of the victim, and the common pattern of transfer is the sale of trafficked persons to another person and that the other actions mentioned in Iraqi law do not understand this meaning. We also note that the Iraqi legislator did not mention (the practices similar to slavery) defined by the Supplementary Agreement to Slavery and which limit the cases of human exploitation that Iraqi society suffers from, such as granting women compensation to another tribe or clan (clan separation) and marriage (sugar) which gives the man in which his daughter or sister is transferred to another to marry her in exchange for taking his daughter or sister to marry her without a dowry so that each of them will be a dowry for the other.

### **The first requirement general criminal intent**

For us to have a general criminal intent, the offender's knowledge must be devoted to the subject of the assaulted right. All the facts on which the crime of human trafficking is based.

#### **Section one: knowledge**

What is meant by knowledge is that the criminal incident and its consequences were previously represented, provided that this incident is one of the essential elements in the establishment of the crime **9**.

The incident is considered one of the essential elements if the law requires knowledge of it for the criminal intent to be considered available, but if the location of the error is an incident that the law does not require knowledge of until the criminal intent is available, this is considered an immaterial mistake **10**.

As the offender must be aware of the act of recruitment, transportation, harboring, receiving, or any other act of disposing of people, and his knowledge must go to the result of the violation of the right protected by law, which is to deprive the victim of his right to physical freedom or his right to dignity Humanity, and the offender must know that his behavior will lead to the result he seeks to achieve, meaning that he must know the causal relationship.

The offender's knowledge must be directed to the subject of the infringed right. The reason for criminalizing human trafficking is the protection of the right to human dignity, and for the crime of human trafficking to take place, the offender must know this right, which is proven to only a living person **11**.

Based on this, for the intent to be established in the crime of human trafficking, the offender must know that he is assaulting a living human being. The essential error does not negate the criminal intent in all its cases and inevitably leads to the exclusion of all intentional responsibility because the error is limited

to the incident on which it was focused, and therefore does not preclude the availability of criminal intent about the facts that were not related to it. If the mistake is focused on an incident that is considered an aggravating circumstance that changes the description of the crime, the criminal intent about this incident is negated, and intentional responsibility remains for this crime, but it is devoid of the aggravating circumstance, such as someone who sells a juvenile who has not reached the age of eighteen years, believing that he has reached the age of majority. , as the offender is asked about the crime of trafficking deprived of this aggravating circumstance, but if the mistake does not fall on a basic element of human trafficking, that is, if it falls on an element that is not essential, there is no effect of error in denying the intent in the crime of trafficking as a person who transports a citizen or recruits him for a computer He is a foreigner, such a person has not made a fundamental mistake because his knowledge has neglected an incident that is not essential in the construction of the crime, and then this mistake does not affect the portrayal of the incident in the law as human trafficking, so the offender here denied his knowledge of the truth of the incident as he assumed knowledge of it violates Truth **12**.

#### **Section two: the will**

Criminal intent is not based on knowledge alone, but rather requires that the offenders will be directed to the coming or realization of all the facts on which the crime of human trafficking is based.

The will is a psychological activity that emanates from awareness and awareness and tends to achieve a specific goal through a specific means, so it is assumed knowledge of the intended purpose and the means used to achieve this goal, including the means of threatening or using force, kidnapping, deception, or deception **13**.

The will is a force that the offender uses to influence the people around him, and it is the motivator of types of behavior of a material nature that occur in the external world of material effects that satisfy the offender's many needs **14**.

It is not sufficient for the will to focus on the behavior that constitutes the crime of human trafficking, meaning that the offender wanted the act of recruitment, transportation, harboring, or receiving that he committed. behavior **15**.

The will is closely related to the purpose that the offender seeks to achieve by committing the act of human trafficking. If the purpose is unlawful, that is, it is represented in the form of a result in which the law considers aggression against a right worthy of



protection, such as "violating the right of man to his physical freedom" or "compromising his human dignity or consideration", then the will directed to him through a specific act determined by the law, which is the act of trafficking, is Criminal intent **16**.

Criminal jurisprudence has differed within the comparative legislation in determining the purpose of the crime of human trafficking, so we find the UAE federal legislator in this regard was clear in deciding the punishment for acts of possession, purchase, sale, offer for sale, or disposal of a human being because he is a slave. According to the text of Article (346) of the Federal Penal Code, where the legislator did not require the occurrence of subsequent acts of exploitation on the person acting for the crime to take place and required the imposition of the penalty even if no act of exploitation occurred on the victim, which is interpreted by some jurisprudence as clear evidence that Exploitation does not constitute one of the pillars of the crime of human trafficking, but rather represents the purpose of the crime **17**.

As for the Egyptian criminal jurisprudence, it distinguished between two cases: The first case is to determine the general criminal intent in the crime of trafficking in children according to the text of Article (291) of Law (126) of 2008 amending the Penal Code, and Child Law No. (12) of 1996. The jurisprudence emphasized that the Egyptian legislator did not require the existence of the intention of exploitation for the crime of trafficking in children, as he mentioned among the forms of criminal behavior "selling, buying, or offering for sale..." without specifying the purpose or goal that is close to the immediate end of the sale or purchase. Hence, the Egyptian legislator punished these acts, even if they were not related to the exploitation of the child, the object of trafficking in any of the aspects of exploitation. Rather, the legislator considered one of the forms of criminal behavior to exploit the child, whether sexually or commercially, or to use it in forced labor, which confirms the prevailing trend in Egyptian jurisprudence. Exploitation in any of these forms constitutes the criminal behavior that constitutes the material element, and the legislator has not dealt with it on the basis that it is a special intent that must be present for the crime to occur **18**.

As for the second case, it includes determining the criminal jurisprudence of what is the moral element of the crime of human trafficking following Law No. (64) for the year 2010, which is available as soon as the offender deals with the natural person through the behavior of trafficking with the intent of exploiting it, whatever the form of this exploitation to express the essence of the element morale for this crime. It

represents the general criminal intent that consists of the knowledge and will of the offender about the behavior that constitutes its material pillar, as it is sufficient for the "intent to exploit" on the part of the perpetrator in the crime of human trafficking without actually achieving it to complete the elements of the crime - the subject of the study - and therefore it is sufficient for the victim to be subject to an act of human trafficking by any means of exploitation.

French jurisprudence supports the previous trend by considering that the text of Article (225/4-1) of the amended French Penal Code stipulates that the offender who commits human trafficking behavior is not the same as the one who achieves the purpose of exploitation **19**.

According to another trend in criminal jurisprudence, if the purpose is the immediate goal to which the will is directed, and it is the result determined by the law regarding the crime of human trafficking, then it is achieved according to the forms of criminal behavior that constitute the material pillar of the crime, meaning the result is achieved about sale or purchase by handing over the victim from the seller to the buyer and vice versa, and the matter is different if the criminal behavior takes the form of commercial sexual exploitation or exploitation in forced labor, as the result is achieved following this opinion if the offender was able to exploit the victim in the form his will was directed to, whether to sexual or commercial exploitation or exploitation in the field of work **20**.

And if the act is how the will is used to realize the goal, then the criminal intent is the will itself, and it has turned towards the goal and at the same time, it is directed to the act as a means to achieve the goal **21**.

We believe that the criminal intent in the crime of trafficking in human beings is a special criminal intent, as it is not enough to know and will on the part of the offender, but rather requires a special intent that is the intention to exploit the person being trafficked in any of the forms of exploitation, and this intent is required for all offenders, whether the exploitation is realized or not It is achieved and that intention represents the final goal of the will.

As for the purpose that represents the general criminal intent in the crime in question, its attainment by the offender is not sufficient to satisfy the need, as it is no more than a stage of voluntary activity to satisfy the need. It is represented in the offender's devotion to the criminal activity specified in the relevant legislative texts and its devolution to the criminal outcome, which is the assault on the right protected by law, which is violated by simply depriving the victim of his right to freedom as a minimum, and



the consequent prejudice to his being and his dignity as a human being.

The final saying is that the offender is questioned about the crime of human trafficking as long as his will freely and freely direct to the criminal outcome, and we recall a decision issued by the Dohuk Court of Appeal in its discriminatory capacity, which ruled that "what is established from the facts of the case is that the defendants participated in the sale and purchase of human organs, even if one of them had contributed In the process, in return for his car's rent." 22

### **The second requirement**

#### **Special criminal intent in the crime of human trafficking**

It is not enough to have a special criminal intent to achieve the result as a goal, but we must look at the goal that the offender aims at by achieving the result. Iraqi human beings and comparative criminal legislation do not represent the purpose that was achieved by the result, but rather the far-reaching goal that the offender aims at behind the act of assault, and it represents the specificity of that crime compared to other crimes. To achieve a specific purpose, criminal jurisprudence differed with it in terms of determining what is meant by the phrase "intent to exploit" whether it is the intention to harm others or the intention to trade in or dispose of a person on the basis that he is a slave, or is it the intention to exploit him in one of the forms of exploitation mentioned in comparative criminal legislation 23.

Part of the jurisprudence has gone to say that the special criminal intent in the crime of human trafficking is the intent to traffic in a specific person or persons or to dispose of the trafficked person on the basis that he is a slave or a place of trafficking. By his statement in the judgment through the facts and circumstances of the case, he must verify that it is proven 24.

In jurisprudence, there is an opinion that the specific intent that the offender must have besides the general criminal intent that is legally required for the crime of trafficking to be the intent to harm others, which is a subjective element stemming mainly from the offender trafficked in human beings 25. The prevailing juristic and judicial trend emphasizes the necessity of realizing the temporal contemporaneity between the intention of exploitation on the part of the offender and the commission of the criminal act by him, meaning that the intention of exploitation must be present when a person is recruited, transferred, deported or received by one of the legally defined means. Criminal activity and when the result is achieved, which is the actual exploitation of victims of

trafficking, the crime of human trafficking does not occur 26.

The term exploitation is not defined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons or the criminal legislation in question, but it is generally associated with harsh and infringing working conditions, or working conditions inconsistent with human dignity, including the intent to subject a person to work, or to allow the person to be subjected to working conditions inconsistent with human dignity.

The UAE legislator has mentioned in the text of its first article of Federal Law No. 51 of 2006 the various forms of exploitation to which trafficked persons may be subjected exclusively, and according to him, "exploitation includes all forms of sexual exploitation, exploitation of the prostitution of others, forced labor or service slavery, or practices similar to slavery, servitude, or the removal of organs".

Contrary to what was reported by the UAE legislator, the approach was taken by the Egyptian legislator in Article (2) of the Anti-Human Trafficking Law, where he cited the forms of exploitation, for example, but not limited to, by saying "...whatever its forms, including exploitation in prostitution and all other forms of sexual exploitation and exploitation Children in this and pornography, forced labor or services, slavery or practices similar to slavery, servitude, beggary, or the removal of human organs or tissues or part of them".

As for the Iraqi legislator, it is also the number of criminal images with the intent to exploit, which naturally resulted from the criminal behavior resulting from the offender's dealing in any way with the natural person, including his recruitment, transfer, harboring, or receiving, where the Iraqi legislator expressed the special criminal intent in crimes of human trafficking He said, "... to sell them or exploit them in prostitution, sexual exploitation, forced labor, servitude, beggary, trading in their human organs, or for medical experiments".

It is clear to us that the criminal intent of the crime of human trafficking is represented in three groups, the first group relates to the intent of sexual exploitation, the second relates to the intent of physical exploitation, and the third relates to medical exploitation. This is what we will talk about later.

#### **Section one: The intention of sexual exploitation**

Sexual exploitation is a modern and contemporary form of slavery and servitude that violates the basic rights of human beings, especially women and children 27.



The Protocol to Prevent, Suppress and Punish Trafficking in Persons did not define the terms "sexual exploitation" and "exploitation of the prostitution of others" to allow each country to ratify the Protocol, independently of its internal public policies on dealing with prostitution or prostitution.

The protocol does not address the issue of the exploitation of prostitution except in the context of trafficking. The term "unlawful" has been added to indicate that this exploitation must be illegal following the national laws issued in this regard **28**.

The national legislator crossed with the intention of exploitation and extended its extension to all forms of sexual exploitation of natural persons, including exploitation in prostitution **29**. And the exploitation of children in pornographic materials, as it is one of the most common types of human trafficking that falls on its victims, women, and children, because of its serious sexual harm **30**.

This criminal image is achieved when the offender uses the victim, whether he is a female or a male, to satisfy the desires of a non-sexual in return for sums of money that he obtains, whether part of it is allocated to the victim or not. **31**

The comparative criminal legislation - the subject of the research - did not define or define the prohibited acts of exploitation in general, and sexual exploitation in particular, except the American legislator who defined sexual trafficking in persons in general in Chapter (103) of Chapter (9) of Section (12) of the Protection of Persons Act. Victims of Trafficking and Violence in 2000 were defined as "recruiting, transporting, harboring, deporting, receiving, or obtaining the consent of a person to engage in the sex trade."

As defined in Chapter (77) of Chapter (18) Clause (1591) of the same law, sexual trafficking in children by force, fraud or coercion is "recruiting, transporting, harboring or receiving by any means if the act is committed against a child whose age is not less than (14 years old and he has not yet reached (18) years of age"...

Among the contemporary criminal legislation that has been keen on criminalizing commercial sexual exploitation of children is Egyptian Law No. 126 of 2008, where this law added, in addition to Article (291), an article that penalizes all forms of commercial sexual exploitation of children, including the punishment of those who import or Issues, produces, prepares, displays, publishes, promotes, or possesses any pornographic works involving children or related to the sexual exploitation of children. As well as punishing anyone who uses a computer, the Internet, an information network, or animation to prepare, save,

process, display, print, publish, or promote pornographic activities or acts related to inciting children and exploiting them in prostitution and pornography, defaming them or selling them, and whoever uses these Means to incite the child to delinquency or to force them to commit a crime, or to engage in illegal or immoral activities or acts, even if the crime did not occur.

Although child trafficking and exploitation are considered to fall under the term "worst forms of child labor" under the text of Article 3 of the International Labor Organization Convention on the Prohibition of the Worst Forms of Child Labor of 1999, some international jurisprudence criticizes the description of prostitution and the production of pornographic acts or the performance of pornographic performances as forms of To work, as this detracts from the real concept of work and a violation of human rights in general and the child in particular, and considering prostitution as a form of work gives legitimacy to any activity that is supposed to be eliminated or contradicts a basic and clear contradiction with the essence of the agreement, and therefore this jurisprudence confirms that prostitution Child trafficking and child trafficking are contemporary forms of slavery that should not be considered labor **32**.

And exploitation in general, and sexual exploitation in particular, is considered by some jurisprudence to be the criminal consequence of acts of human trafficking, based on the texts of criminal legislation that punished human trafficking, including UAE Federal Law No. 51 of 2006 and Egyptian Law No. 64 of 2010, while jurisprudence confirms, However, sexual exploitation of children, in particular, is considered a form of criminal behavior for the crime of selling and trafficking children under Article (291) of Egyptian Law No. (126) of 2008, which specifically punishes trafficking in children **33**.

Sexual exploitation can be defined in general as obtaining financial benefits or any other benefits by involving a person in prostitution or prostitution, or in providing any other types of sexual services, including pornographic scenes or the production of pornographic materials.

As for the term "exploitation of the prostitution of others," it does not, in our view, exceed the meaning of illegally obtaining a financial benefit or any other material benefit from the prostitution of another person.

As far as the sexual exploitation of children is concerned, we find that every sexual abuse is done in return for an in-kind or monetary value paid to the child or another person.





As for the judiciary's position on this form of exploitation, the US judiciary has convicted an Indian businessman of the crime of human trafficking in the form of sexual exploitation, for having appointed girls of the same sex in a restaurant he owned in California, then raping them and forcing them to work in prostitution and exploiting them sexually **34**.

The Dubai Court of First Instance also ruled that the accused committed the crime of human trafficking if the accused sold a girl who was looking for work to a friend for 4000 dirhams to work in prostitution **35**. The court stated that the accused abused the victim's financial weakness and agreed by subterfuge to sell it for a cash consideration to exploit it in the practice of prostitution, which requires his conviction following Article (2) of Federal Law No. (51) of 2006 regarding combating human trafficking.

## **Section Two: The intention of physical exploitation**

The intent of physical exploitation - as a special criminal intent - dominates the crimes of human trafficking in a clear indication of the gravity of the crime against a natural person in the field of victims' work by owning it like the traditional slave system.

The comparative criminal legislation has expressed the forms of physical exploitation **36**. In an explicit and clear wording towards considering it the goal that the offender seeks as a result of his perpetration of the material act constituting some of the crimes of human trafficking.

Physical exploitation takes several forms mentioned by the Iraqi legislator in Article (1) of the Anti-Human Trafficking Law, namely forced labor, servitude, and beggary.

Since we dealt with the concept of enslavement in a previous part of this research, our research in this section will be limited to explaining the meaning of forced labor, forced labor, and beggary as follows:  
First, forced labor:

Most criminal legislation did not define what is meant by forced labor, but Article (2) of the International Labor Convention on Forced Labor of 1930 defined forced labor as any work or service that is forced by any person under the threat of any penalty, and the person did not volunteer to perform it of his own free will. Provided that the actions that the state compels its citizens to do come out of that.

Forced labor of humans and children, in particular, takes forms, including slave labor, compulsory domestic service, forced labor in agriculture, mining, hunting, prostitution, or work as camel jockeys in the camel race **37**.

The employment of victims of trafficking in homes is considered very dangerous, especially for children, because the type of tasks assigned to them or the working conditions cause physical, psychological, or sexual harm.

Child labor does not stop at agricultural work and domestic service, but rather they are exploited in some dangerous or even very dangerous work, such as the manufacture of fireworks, matches, and coal mines **38**. Often children are employed in jobs that do not fit their age or their physical or mental abilities, which constitutes a violation of their most basic rights related to education, development, and comfort **39**.

We believe that the idea of labor exploitation contained in the definition of human trafficking allows the establishment of a link between the Protocol to Prevent, Suppress and Punish Trafficking in Persons in 2000 and the International Labor Convention on Forced Labor of 1930, and makes it clear that trafficking in persons for exploitation is included in the definition of forced or compulsory labor contained in the General Convention. 1930 aforementioned.

The case of forced labor is determined according to the nature of the relationship between a person and the employer and not according to the type of activity performed, whether the activity is legal or illegal under national law, or whether it is recognized as an economic activity. Therefore, forced labor includes forced labor in factories as well as forced labor. engage in prostitution or other forms of forced sexual services, even if prostitution is a legal activity under national law, as well as in cases of forced beggary.

## **Secondly, forced labor:**

Forced labor is a form of physical exploitation and a form of forced labor. The relevant international conventions have expressed the term "forced service" and the criminal legislation on combating human trafficking has been keen to include the term forced labor among the forms of exploitation that must be achieved to establish a special criminal intent in this crime. However, comparative criminal legislation has distinguished between the term forced labor and the term forced service when It expressly stipulated forcible service in addition to forced labor, which indicates that the criminal legislator has another connotation that expresses forced labor and is different from that which defines the meaning of forced service.

As for the Iraqi legislator, and it did well, it explicitly stipulated forced labor under Article (1) of the Anti-Human Trafficking Law and did not mention the term forced service in line with the prevailing legal trend.



Forced labor as a previously followed system, meaning compulsory work without the right to refuse, according to which an existing authority forces a group of people in a specific situation to do some work for a certain period of the year without return or for a simple wage, and in the event of refusal, the victims fall under the responsibility because their actions are not considered such Free volunteer work 40.

Because of the definition of forced labor as compulsory labor with symbolic wages or without wages, it is considered one of the practices that complement the actual practices of slavery, although its duration is limited and sometimes it is seasonal.

And because forced labor is one of the clearest forms in which a person's humanity is violated and dealt with him as a thing and not a human being with rights, whereby a person is forced to work against his will and without pay or guarantee for any of his rights. The International Labor Organization adopted the Forced Labor Convention of 1930 in an attempt to gradually eliminate the system of forced labor. The International Labor Organization considered forced labor as a form of slavery, but rather became treated internationally as slavery 41.

In the term of this Agreement, the term "forced labor" means all work or services which are imposed by force on any person under the threat of any punishment and which that person has not voluntarily performed 42.

Although international law prohibited forced labor in 1930 within the ILO Convention on Forced Labor and Compulsory Labor, this law made exceptions for it in emergencies and for military and community service of public interest and other cases that recognize laws, and the Convention also gave a transitional period to eliminate forced labor once and for all. 43.

After the urgent need to permanently eliminate forced labor, the International Labor Organization issued the convention prohibiting forced labor once and for all in 1957, which added new meanings to what was stated in the previous agreement, where Article (1) of it required not to resort to forced labor as a means of political coercion or directive as a punishment for embracing political views or opinions that are doctrinally inconsistent with the existing political, economic or social system, as a method of mobilizing and using labor for economic development, as a means to impose discipline on workers, as a punishment for participating in elections, or as a means of racial, social, national or religious discrimination.

Forced service or forced labor represents a case of exploitation of the victim to the extent that the victim is the mere property of the offender, as the offender

disposes of it according to what he wants. The denial of the freedom of the person to the obligatory exertion of work, rather it extends to the conditions of his life without the possibility of addressing this, which is not available in forced labor within its general concept 44.

The US judiciary has issued several judicial decisions in this regard. In 2000, the Ramos brothers, the owners of an agricultural company in Florida, were convicted of the crime of human trafficking in the form of forced service, for exploiting more than (700) workers from Mexico and Guatemala to harvest sour crops, where the company used the threat of force. To force them to work for little wages and sometimes without payment 45.

Forced labor is considered involuntary servitude if the employer causes the worker to believe that he cannot escape from that working situation without being subjected to abuse and detention 46. In 2001, the US judiciary convicted two sisters from Cameroon, one of them aged fourteen and the other seventeen, to work in domestic service in their home in Washington. Under the influence of threats and violence 47.

### **Third: Begging:**

The phenomenon of beggary is one of the unusual phenomena that has spread in public places such as streets, alleys, highways, passenger stations, markets, the doors of mosques, banks, post offices, and telecommunications, and is abused by members of society of all generations and ages, including children, youth, women and the elderly.

Begging is a form of physical exploitation that aims to reach the offender as a result of committing the act of trafficking, as it was explicitly stipulated by some criminal legislation related to combating human trafficking, such as the Egyptian legislator according to the text of Article (2) of Law No. 64 of 2010, and the Iraqi legislator according to The text of Article (first) of Law No. (28) of 2012. While the UAE Federal Law No. 51 of 2006 was devoid of the term beggary.

And beggary means: begging or questioning and asking for charity from others without return or in exchange for a frivolous one that others did not ask for 48. It is in itself an illegal way to live, in addition to being a crime punishable by law.

Where the Egyptian legislator faced the phenomenon of beggary when he singled out a separate law for begging, Law No. (49) of 1933, and in its first article, beggary was criminalized, and a beggar was defined as: whoever finds a beggar on the public road or in public places, even if he claims or pretends to perform a service for others or Show games or sell any of that.



The Iraqi legislator also punished beggary and considered it a punishable crime following Article 390 of the Penal Code and punished anyone who tempted a person under the age of eighteen to beg, and the penalty was intensified if the offender was a guardian, custodian, or entrusted with the care or observation of that person **49**.

Accordingly, the intent of physical exploitation in the form of beggary is achieved if the offender intends to recruit, transport, harbor, or receive using coercion or fraud, or by exploiting the offender's wealth of power over the victim himself or over another person who has authority and jurisdiction over the victim. To make the victim of trafficking a beggar on the public road asking for charity and charity from people, even if he conceals the request for charity or charity through a legitimate act as if he conceals the victim of trafficking by selling a trivial commodity that he presents to the public in exchange for a sum of money.

### **Section Three: Intent for Medical Exploitation**

New experiments have emerged by some doctors in the Arab countries and in other countries of the world, which is the trading of human organs for material profit or for medical experiments, which is considered before human trafficking because it represents an explicit violation of human rights.

Criminal legislation on the prohibition of trafficking differed in the expression of this type of exploitation, as the UAE legislator expressed it by "removing organs" **50**. The Egyptian legislator used the phrase "the removal of human organs or tissues or part of them."**51** As for the Iraqi legislator, he mentioned an inaccurate phrase in the drafting of the legislative text, which is "trading in their human organs or for medical experiments" **52**.

It is clear that medical exploitation has three forms: the first form is represented by the removal of human organs or tissues, the second is the sale of human organs, and the third takes the form of conducting medical experiments and we will address it in the following paragraphs:

#### **First: Removal of human organs and tissues:**

The crime of human trafficking occurs as soon as the offender removes a member of the victim's organs, whatever the nature of this organ is the subject of the removal, or removes the tissues in his body or any part of it, with the intention of selling, offering for sale, promising, using, transporting, delivering, or cultivating In someone else's body that needs it.

According to the general rules, organs may not be removed or removed from the body of a living person

without his consent or consent, or if this person is immature or fully competent, or from the body of a person subject to any form of legal protection, and similar to organs, tissues and cells cannot be cut And the products of the human body from living minors or adults without capacity, and a fortiori in cases of dissatisfaction, and this principle is absolute **53**.

About performing these operations on a living, adult, fully qualified person who is not subject to any form of legal protection, the same conditions resulting from the principles applied to human organ donation must be met as a condition of the donor's consent, confidentiality, and free of charge, to prevent trafficking and legal dealing with the body.

#### **Second, the sale of human organs**

Most of the man-made legislations went to the necessity of the absence of financial compensation in exchange for the waiver of the human organ. In the United Arab Emirates, Article (7) of Federal Law No. (15) of 1993 stipulates that "it is prohibited to buy and sell organs by any means, or to receive any financial compensation for it, and a specialized doctor is prohibited from operating his knowledge of that."**54**.

In Egypt, before the issuance of Law No. 64 of 2010 on combating human trafficking, there was no law explicitly prohibiting the sale and trafficking of organs, except Law No. 103 of 1962 regarding the reorganization of eyes and cornea transfer. For the eye free of charge and without material consideration, where the legislator used the term will and donation **55**.

As for the Iraqi legislator, it stipulates in Article (9) of Law No. (11) of 2016 regarding human organ transplants and the prevention of trafficking in them that "it is prohibited to sell, buy or trade-in human organ or tissue by any means, and the doctor is prohibited from performing the removal of the organ." And planted when he knew that.

As for the criminal jurisprudence, it was divided into two directions: one that supported the principle of selling human organs and tissues, and another direction opposed it **56**. The proponents of the first trend are based on the fact that there is no conflict between the permissibility of deducting organs for a specific financial consideration and criminal protection for the integrity of the body. Financial compensation for bodily harm has been established since ancient times, and no one has said that this degrades the human being and that the phrase selling these parts in itself does not diminish the dignity of the person as long as the organ that is given up, whether by sale or donation, will be transferred to another person **57**.



As for the trend opposing the principle of selling human organs and tissues, it represents the opinion of the majority of legal jurisprudence and sees that trafficking in human body organs or dealing with the human body as a commodity that enters the circle of dealing and is subject to the rules of financial transactions, is incompatible with the prevailing moral values in society.

About the subject of the research, the crime of human trafficking is realized following the legislative texts related to combating human trafficking by the occurrence of any form of medical exploitation, whether it was done by paying the victim financial compensation or any other benefits, or without any compensation for that as long as the material behavior constituting the crime is available in the case of collection Victims under duress or other criminal means in preparation for removing their organs and selling them as merchandise to obtain profits.

### **Third: Conducting Medical Experiments**

Medical exploitation in the crime of human trafficking in the form of medical experiments is one of the flagrant violations of human rights subject to scientific research or a medical scientific experiment, and a second violation of the trafficking victim's right to her physical or mental integrity or human dignity.

Scientific research and medical experiments on humans, including unprecedented experimental surgeries "contrary to medical practice and custom," have raised the need to balance modern biological requirements in the field of medicine, surgery, and experimental scientific research with the inevitability of the minimum due respect for the human body and the preservation of human dignity.

Comparative jurisprudence was divided into two directions <sup>58</sup>, one that recognized the absolute irresponsibility of conducting scientific medical experiments, and another trend that supported those operations and recognized their legitimacy and legality on the human body.

Most of the opinions of comparative jurisprudence see the illegality of scientific medical experiments on humans in general, and they based this on many arguments, the first of which is the lack of legislative, jurisprudential, and judicial support for these experiments, and the second is the lack of intentional treatment, which is the basis for the legality of medical work. What human beings are exposed to within the scope of scientific progress throughout human history, and therefore it is not permissible to conduct any medical experiments to satisfy scientific lust, even if it is for the service of medical science in itself or humanity as a whole. The person who is the subject of

research or experimentation, or if he is not, to his legal representative, and that the person has the right to withdraw his consent and stop the experimentation at any time if he so requests <sup>59</sup>. This is not available in medical experiments that are replaced by a victim of human trafficking.

### **CONCLUSION**

After we dealt with the criminal intent in the crime of trafficking in human beings, where we have defined it and explained its characteristics, and finally we came to several results and recommendations, the most important of which are:

1- That human trafficking is any act or omission that turns a person into a slave or subject him to a practice similar to slavery through coercion or deception, or by taking advantage of the need or weakness of the victim or the authority of the offender over the victim to exploit him physically or sexually or medically within or outside the national borders of the state.

2- It turns out that the crime of human trafficking has characteristics that distinguish it from other crimes, and these characteristics do not go beyond two basic points. Being a transnational organized crime.

3- We found that the crime of human trafficking according to some jurisprudence is as a series of criminal acts, not as a single criminal act, so that each of these acts constitutes an independent crime and each of these acts is different from others, the act of recruiting people is completely different from the act of transportation or transportation. Deportation, reception, extradition, or any other act that falls on the victim.

4- It has become clear to us that there is a legislative and jurisprudential consensus on considering the crime of human trafficking as one of the intentional crimes in which the moral element takes the form of criminal intent, with a difference of opinion about the type of intent whether it is criminal or private intent.

5- We found that the intent in the crime of human trafficking is not general, but rather a special intent because the intent to exploit mentioned in the Iraqi Anti-Human Trafficking Law and the comparative criminal legislation does not represent the purpose that was achieved by the crime, but rather the far-reaching goal that the offender aims at behind the act of assault and it represents the peculiarity of that crime compared to other crimes.

It became clear to us that the Iraqi legislator has several criminal images with the intent to exploit, which naturally resulted from the criminal behavior resulting from the offender's in any way a natural person, including his recruitment, transportation, harboring, or receiving.





6- We concluded that the criminal intent of the crime of human trafficking is represented in three groups: sexual exploitation, physical exploitation, and medical exploitation.

7- What we recommend is the need for national legislation addressing combating human trafficking crimes to agree with the prevailing international standards in this regard, as stated in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime in 2000, covering all forms of human trafficking. The offense outlined in this Protocol and the relevant conventions.

8- It would be nice if the Iraqi legislator singled out special criminal provisions punishing the act of transporting, relocating, harboring, receiving, receiving, deporting, recruiting, and other human trafficking crimes independent of the trafficking crime represented in the exploitation of physical, sexual or medical exploitation to avoid escaping the perpetrators of human trafficking will be punished for not being aware of the aspects of exploitation that the victims will be harnessed for.

9- It would be nice if the Iraqi legislator explained the legal elements of each crime of human trafficking or other related crimes when describing these crimes and analyzing its elements and elements according to the relevant provisions when trying to identify or adapt any of the crimes of human trafficking legally. To each act of the material element of the crime as constituting an independent crime in itself.

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