

## **A brief analysis of the compensation system for mental damage of minors**

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**Abstract:** In recent years, infringement cases, minors as a social vulnerable groups, poor mental maturity, self-awareness and discrimination ability is weak, compared with adults, the same criminal behavior will cause greater mental anguish to minors, and is likely to bring its long-term psychological trauma. This paper discusses the impact of infringing ACTS on the physical and mental health of minors and gives some Suggestions on improving the system of compensation for mental damage of minors based on the current laws of our country.

### **1. Introduction**

On October 28, 2015, the second trial of 12 girls sexually assaulted by teachers in Ningxia began. Huang Zhenxin, a rural teacher in Lingwu city, was sentenced to life imprisonment in the first instance for rape and child molestation. At the trial, representatives of the 12 victims filed claims for psychological rehabilitation fees of about 180,000 yuan each. Given that the court only supports "incurred" costs, the initial fee for psychological rehabilitation is only 1, 800 yuan. According to the ruling, each family will receive less than 2,000 yuan in compensation. If you accept mediation, you will receive a mediation payment of \$50,000. In the end, the parents of 12 victims withdrew their claims and signed up for mediation.

In recent years, the number of cases of adolescent aggression has gradually increased. Domestic violence, sexual assault, abuse, security incidents, violence, cyber injuries, etc. have caused extremely serious harm to the physical and mental health of adolescents. Judging from the situation, the situation of minors who have been illegally infringed in China is not optimistic. Some situations may be more serious. They have been extended from outside the campus to the campus. For minors who have been infringed, the impact on them may not be material damage. But mental damage. In China, whether it is legislation or judicial practice, there is relatively little research on the compensation for mental damages of minors. This paper analyzes and discusses the compensation of minors' mental damage by combining the characteristics of minors and the status quo of legislation, hoping to do their best to improve the compensation system for minors' mental damage.

### **2. The current situation of minors' infringement**

The victimization of minors is mainly caused by domestic violence, sexual abuse, abuse, security accidents, violence and Internet abuse, etc., and presents such characteristics:

#### **2.1 Acquaintances commit crimes at a high rate**

According to the investigation, parents, foster (stepparents), close relatives and neighbors have a large proportion of the cases of infringing on minors, and they often take advantage of the minors' trust and reliance on them. Questionnaires and case studies conducted by the women's federation of Guangdong province and the psychological research and analysis institute of the Chinese academy of sciences respectively found that more than 60 percent of child sexual abuse cases were committed by acquaintances.

## 2.2 Left-behind children become the most vulnerable group

With the rapid economic development in our country in recent years, more and more farmers choose working away, leaving only the old man often home alone with the child, in the absence of parents' love for a long time, left-behind children are widespread lack of confidence, anxiety, psychological problems such as autistic, resentment parents, which makes them easier to become the object of infringement.

## 2.3 Minor injuries are more serious

In the face of illegal infringement, minors are weaker than adults in terms of physical strength and discrimination, and weak in self-repair ability after being infringed, especially in cases of extremely bad nature such as sexual assault and abuse. The psychological trauma suffered by minors is incalculable.

## 3. Analysis of the physical and mental impact of aggression on minors

### 3.1 Cause serious psychological trauma

According to the survey, a minor infringement case mostly acquaintances commit crime, such as parents, neighbors, teachers, and so on, a minor for this portion of the fear and loathing of the owner, but accustomed to dependence on them again at the same time, this kind of self-awareness and confrontational extremes easily, make the infringement children have different degrees of post-traumatic stress disorder, such as traumatic experience symptoms again, avoid and numbness symptoms, symptoms of increased alertness and PTSD symptoms in children. American scholars such as Kilpatrick sampling to select the more than 2000 adult women, they had suffered personal trauma in juvenile stage, and investigated about their adulthood, the survey results are shown in table 1, the rape of women appear mental breakdown is as high as 16.3%, as high as 44% of suicidal thoughts, attempted suicide behavior of about 19.2%. It can be seen that the psychological problems suffered by the aggrieved minors are difficult to be eliminated after adulthood, even with a lifetime.

Table 1. Proportion of victims with significant psychological problems

| Constituencies                     | Mental breakdown |            | Suicidal thoughts |            | Suicide attempt |            |
|------------------------------------|------------------|------------|-------------------|------------|-----------------|------------|
|                                    | Number           | Percentage | Number            | Percentage | Number          | Percentage |
| Attempted rape                     | 7                | 9.0        | 23                | 29.5       | 7               | 8.9        |
| Rape committed                     | 16               | 16.3       | 44                | 44.0       | 19              | 19.2       |
| Attempted harassment               | 2                | 5.4        | 12                | 32.4       | 3               | 8.1        |
| Harassment that has been committed | 1                | 1.9        | 12                | 21.8       | 2               | .6         |
| Attempted robbery                  | 0                | 0.0        | 3                 | 9.1        | 4               | 12.1       |
| Robbery committed                  | 5                | 7.8        | 7                 | 10.8       | 2               | 3.1        |
| Malicious atrocities               | 1                | 2.1        | 7                 | 14.9       | 2               | 4.3        |
| Non-victims                        | 51               | 3.3        | 106               | 6.8        | 34              | 2.2        |

### 3.2 Sow the seeds of psychological problems in adulthood, and even harm the society

If minors do not receive treatment in time after being violated, it is easy to trigger the hatred of revenge society and flout the law. In one study, abused children aged 1-3 were observed with their partners and found that when other partners were in pain or crying, the abused children responded not with sympathy, but with fear or threat or assault. Therefore, it can be found that early personality trauma can easily lay the foundation for adult psychological disorder, making the victim turn into the perpetrator in the future, repeat the same infringing behavior, endanger the personal safety of others, and disturb the social order.

## **4. Our country about the minor spirit damage compensation existence question**

### **4.1 Problems in legislation**

(1) The law does not clearly stipulate the mental compensation for criminal victims

China has promulgated several laws, such as the provisions of the supreme people's court on the scope of criminal incidental civil action and the reply of the supreme people's court on whether the people's court accepts the civil action of mental damage brought by the victims of criminal cases, which exclude mental damage compensation from criminal proceedings. Although in recent years the theoretical circle has been calling for the protection of the victim's spiritual damage compensation, but our country still has not made the stipulation in the legislation.

(2) There are limitations in the prescription mode of civil tort

Article 6 of China's interpretation of several issues on determining compensation for mental damage in civil torts stipulates that if a party fails to make a claim for compensation for mental damage in an infringement lawsuit, and after the end of the lawsuit files another claim for compensation for mental damage based on the same tort fact, the people's court shall not accept the claim. However, due to insufficient physical and mental development, minors are unable to exercise their rights in a timely manner, or their guardians fail to exercise their rights in a timely manner due to various reasons, so that they miss the limitation period of litigation and have no way to seek compensation for the mental pain they suffer.

(3) The compensation expense for mental injury is generally low

Take the abuse, for example, in the present judicial practice, child sex abuse on the way to fight for compensation for mental damage is facing difficulties, in June 2018 in guangzhou stepfather stepdaughter rape case, according to the doctor suggested, the victims need at least 180 hours of professional psychological counseling, psychological counselling local lowest quotation for 600 yuan per hour, is expected to take psychological counseling fee of 160000 yuan, but the request was rejected in the first-instance judgment. In many similar cases, even those who can ask for compensation for mental damage are only a drop in the bucket, and even some cases only pay tens of yuan, which is undoubtedly a secondary injury for the victim.

### **4.2 Problems in practice**

In fact, it is mainly because the guardians of minors ignore the long-term adverse effects of such psychological trauma on minors and do not realize the importance of psychological rehabilitation treatment. In the case of Ningxia molestation case, according to the reporter's knowledge, only one of the parents of the 12 girls who were assaulted took their children to psychological counseling, and the rest of the parents chose to save the money or use it for other purposes, without effectively using the compensation to repair the psychological trauma of the children.

## **5. Suggestions on improving the system of compensation for mental injury of minors**

### **5.1 From the perspective of legislation**

(1) Improve the compensation system for the mental damage of juvenile criminal victims

The existence of this system has certain rationality. First of all, compared with civil tort victims, criminal victims suffered more serious mental damage; Secondly, China's law has stipulated the procedural protection for minor defendants, so it should provide corresponding protection for minor victims, which is also the requirement of equal protection of rights. Finally, it is conducive to the protection of human rights, jumping out of the vicious circle that mental damage is not differentiated and treated uniformly.

(2) Perfect the prescription mode for the use of mental damages for minors

For example, article 191 of the general provisions of the civil law of the People's Republic of China stipulates that the limitation period of the right to claim damages for sexual assault on minors shall be calculated from the date when the victim reaches the age of 18. Such a provision takes into account the uncertainty, long-term and complexity of the mental injury of minors, so that the injured

minors have the opportunity to carry out legal relief after adulthood. Therefore, according to the author, it is also possible to develop a special limitation system for the right to claim for mental damages of minors, following the applicable mode of the limitation system for the right to claim for sexual assault damages.

(3) Increase the compensation for mental damage to minors

To maximize the interests of minors as the basic principle of handling such cases, we should not only consider the degree of disability and the degree of damage to parents, but also consider the special compensation items of minors in light of their own particularity, so as to ensure the best effect of their mental recovery. In some serious crimes against minors, such as rape, indecency and other serious crimes, we can refer to the general compensation standard to appropriately increase the spiritual compensation expenses, adopt the principle of paying equal attention to comfort and compensation, and should be higher than the compensation for adults under the same circumstances, which is to implement the requirements of maximizing the interests of minors.

## 5.2 From a practical point of view

(1) Guardians of minors shall strengthen their care

First of all, guardians should make reasonable use of mental damage compensation and avoid using mental damage compensation for other purposes, which requires guardians to pay more attention to mental health problems of minors. Secondly, guardians should take the initiative to help minors for psychological rehabilitation, and actively cooperate, in peacetime life to give them enough sense of security, to help minors out of the psychological shadow, restore physical and mental health.

(2) Establish more relevant organizations for the protection of minors, and provide assistance to minors after they are violated.

The domestic violence protection station in the United States, for example, provides special help to children when they are abused. China's relevant social organizations should give full play to their due role in providing psychological rehabilitation services for minors suffering mental damage.

## 6. Conclusion

For the infringed minors, the damage is divided into two parts: material damage and mental damage. Usually, material damage can be timely compensation, but spiritual damage compensation is often not smooth. Because minors are in a state of relatively immature mind, their psychological trauma cannot be quickly recovered in a short time, so compensation for mental damage is of great significance to them, on the one hand, it is conducive to the recovery of their physical and mental health, on the other hand, it is also conducive to the stability and development of the society. Therefore, the author suggests that the legislation should improve the system of compensation for the mental damage of minors as soon as possible. At the same time, the victims' families and the society should also take more care of and tolerate the infringed minors and make them return to normal life as soon as possible.

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