

On the Influence of the Victim's Fault on Sentencing in Criminal Cases

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Abstract: In the field of criminal justice, the victim's fault is an important factor affecting sentencing. For a long time, due to its vague positioning in legal norms, it has led to frequent problems such as different applicable standards and different judgments in the same case in judicial practice. This paper adopts the method of literature analysis and case study to sort out the origin and development of the theory of victim's fault. Combined with domestic and foreign legislation and judicial practice, this paper probes into the constitutive elements of victim's fault and its specific influence mechanism on sentencing, aiming at providing theoretical reference for the improvement of criminal legislation and the standardization of judicial judgment in China. The study believes that the legalization of the victim's fault and the construction of a scientific sentencing rule system are the inevitable path to realize the principle of adapting crime, responsibility and punishment and ensure judicial justice.

Keywords: Criminal Cases; The Victim's Fault; Sentencing; Impact

1. Introduction

After the establishment of a modern country under the rule of law, the victim's dominant position in criminal justice has gradually been obscured by the state's public power and has become a passive recipient of judicial procedures. In the 1940s, the German criminologist Hans von Hentz founded the "Victimology," which for the first time shifted the research perspective from a single offender's behavior to the interaction between the victim and the offender, opening a new dimension of criminal law research. Scholars represented by Mendelssohn further put forward the concept of "victim's fault," pointing out that the victim's misconduct in some crimes has a promoting

effect on the occurrence of crimes. This theory subverts the static perspective of traditional criminal law that only pays attention to the behavior of criminals, and promotes the transformation of academic circles' cognition of criminal phenomena to dynamic interaction mode.

In China, with the deepening of criminal justice reform, the protection of victims' rights and interests and the issue of sentencing justice have received increasing attention. However, the current criminal law only regards the victim's fault as the discretionary circumstances of sentencing, and lacks a unified standard of identification and sentencing norms, which leads to the excessive discretion of judges in judicial practice and the frequent occurrence of different judgments in the same case. In this context, this paper aims to construct the identification criteria and sentencing rules of the victim's fault by combing the theoretical evolution, comparing Chinese and foreign practices, analyzing the constituent elements and influencing mechanisms, in order to improve China's criminal law.

2. Analysis of the Status Quo of the Impact of the Victim's Fault on Sentencing

2.1 The Legislative Status Quo and Judicial Application of the Impact of the Victim's Fault Sentencing in China

China's current criminal law does not make clear legal provisions on the fault of the victim, only reflected in some judicial interpretations and judicial documents. For example, the Supreme People's Court's "sentencing guidance on common crimes" points out that if the victim is at fault or responsible for the intensification of contradictions, it can be considered during sentencing, but the criteria for determining fault and the scope of sentencing are not clear. In judicial practice, the identification and application of the victim's fault presents the

following characteristics:[5]

2.1.1 The standard of identification is vague

Due to the lack of a unified legal definition, the judge's identification of the victim's fault often depends on the experience of the case, resulting in different courts' identification of similar circumstances. For example, in the case of intentional injury, whether the victim's verbal provocation constitutes a fault, different judges may have different judgments.

2.1.2 Sentencing range

As a discretionary sentencing circumstances, the victim's fault on the impact of sentencing range of the lack of clear provisions, the judge discretion is too large. In similar cases in the same area, the defendant may be sentenced to different penalties because of the similar degree of fault of the victim.

2.1.3 The application rate is low

Influenced by the traditional judicial concept, some judges do not pay enough attention to the victim's fault, and often ignore the plot in sentencing, resulting in the victim's fault failing to give full play to its due sentencing regulation.

2.2 Foreign Legislation on the Impact of the Victim's Fault Sentencing Status and Judicial Application

2.2.1 Relevant legislative provisions of civil law countries

Civil law countries mostly make principled provisions on the victim's fault in the criminal code, and further refine it through precedents. For example, article 122-8 of the French Penal Code stipulates that the victim's wrongdoing may reduce the criminal responsibility of the accused; although the German Criminal Code does not directly use the concept of "victim's fault," it implies the consideration of victim's fault in the system of justifiable defense and excessive defense. In judicial practice, civil law countries pay attention to the construction of victim's fault identification standards through dogmatic methods, emphasizing the causal relationship between fault behavior and criminal results, as well as the specific impact of fault degree on sentencing.

2.2.2 Relevant legislative provisions of common law countries

Common law countries mainly deal with the problem of victim's fault through the principle of comparative negligence in tort law, and introduce it into the field of criminal law sentencing. For example, in the United Kingdom,

the victim's fault behavior can be used as a reason to reduce the criminal responsibility of the defendant, and the judge needs to comprehensively consider the degree of fault of the behavior of both parties; the criminal codes of some states in the United States clearly stipulate that the victim's provocative, threatening and other wrongful acts can be used as mitigating circumstances in sentencing.[9] Different from the civil law system, the Anglo-American law system pays more attention to the accumulation of case experience, and forms a more flexible victim fault identification and sentencing rules through precedents.

2.3 Comparative Analysis of the Status Quo at Home and Abroad

Through comparison, it can be seen that civil law countries have formed a more systematic rule of victim's fault identification through the legalization of criminal code and the construction of dogmatics; the Anglo-American legal system relies on the tradition of case law to achieve sentencing adjustment in individual cases through the "principle of comparative negligence." China can learn from foreign experience, clarify the legal status of the victim's fault at the legislative level, and at the same time refine the identification criteria through guiding cases in judicial practice to balance the judge's discretion and the unity of rules.

3. Conditions for the Establishment of the Victim's Fault

The identification of the victim's fault is a complex legal evaluation process, which needs to consider subjective and objective factors. Combined with the academic theory and judicial practice, the establishment of the victim's fault should have the following conditions[1]:

3.1 Subjective Fault Elements

The victim must have a deliberate or negligent psychological state subjectively. Intentional means that the victim knows that his behavior may lead to criminal consequences, still actively implement the behavior; negligence means that the victim should foresee that his own behavior may lead to the occurrence of a crime, and fails to foresee it due to negligence or over-confidence. For example, the victim knows that the other party's character is irritable, and still insults the other party in public many times. His behavior has the subjective fault of intentionally

causing conflict.

3.2 Elements of Behavioral Relevance

The victim's fault behavior must have a direct or indirect causal relationship with the occurrence of the crime or the expansion of the result. This correlation is manifested in the fact that the fault behavior creates conditions for the implementation of the crime, intensifies the contradiction or directly induces the crime. For example, in the case of contract fraud, the victim is convinced of the false promise of the offender because of his greed for money, and there is a direct causal relationship between his fault behavior and the result of the fraud.

3.3 Elements of Illegality or Misconduct

The victim's behavior must be illegal or against the social public order and good customs. Illegality refers to the act in violation of the prohibitive provisions of the law, such as the

victim's assault, abuse, threats and other acts; improper behavior means that although the behavior does not violate the law, it violates the social moral standards or public order and good customs, such as the victim's malicious provocation, breach of trust and other acts.

4. The Relationship between the Victim's Fault and Sentencing

The influence of the victim's fault on sentencing is mainly reflected in the following aspects:

4.1 The Corresponding Relationship between the Degree of Fault and Sentencing Range[8]

According to the different degree of the victim's fault, it can be divided into three grades: general fault, obvious fault and serious fault. The influence of different grades of fault on sentencing should be different. The specific correspondences are as follows[2]:

Table 1. The Corresponding Relationship between the Victim's Fault Grade and the Benchmark Penalty Reduction Ratio.

Fault grade	The reduction ratio of benchmark penalty	Example (taking intentional injury causing minor injury as an example)
General fault	10%-20%	The victim only has verbal provocation, and the benchmark sentence is 1 year, which can be sentenced to 9 months to 1 year in prison.
Obvious fault	20%-30%	The victim has multiple insults and slight physical conflicts. The benchmark sentence is 1 year and can be sentenced to 7-8 months in prison.
Serious fault	30%-50%	The victim beats and abuses the defendant for a long time, and the benchmark sentence is 1 year, which can be sentenced to 6-7 months of imprisonment.

4.2 Differentiated Effects of Fault Types on Sentencing

In different types of crimes, the degree of influence of the victim's fault on sentencing may be different. In the crime of infringement of personal rights, such as intentional homicide, intentional injury, etc., the fault of the victim often has a direct causal relationship with the occurrence of the crime, and has a significant impact on the sentencing;[7] in property crimes, such as theft, fraud, etc., the impact of the victim's fault is relatively small. For example, in intentional homicide cases, the victim causes homicide due to long-term entanglement and threats to the defendant, and the criminal responsibility of the defendant can be greatly reduced by the serious fault of the victim; in the case of theft, the victim does not properly keep the property due to negligence, and the impact of his fault on the defendant's sentencing is usually

limited. Based on the analysis of 133 criminal judgments[1], the impact of the victim's sentencing in cases of infringement of personal rights is generally higher than that in property crime cases. The former reduces the benchmark penalty by about 25%-40% on average, and the latter by about 5%-15%.

4.3 Co-opetition with other Sentencing Circumstances

When the victim's fault and other sentencing circumstances (such as surrender, meritorious service, recidivism, etc.) exist at the same time, it is necessary to comprehensively consider the nature and role of each circumstance and reasonably determine the sentencing range. For example, if the defendant has the circumstances of surrender and the victim has obvious fault, the penalty can be further reduced according to the degree of the victim's fault on the basis of the lighter punishment for the defendant; if the

defendant is a recidivist and the victim has a general fault, it is necessary to properly consider the adjustment effect of the victim's fault on the sentencing under the premise of severe punishment.[4]

5. Perfect Path of Victim's Fault Legalization

5.1 Legislative Level

5.1.1 Define the legal status of the victim's fault
Add special provisions in the general provisions of the criminal law, clarify the definition of the victim's fault, the constituent elements and the principle of influence on sentencing, and provide a unified legal basis for judicial practice. For example, it can be stipulated that "if the victim has a fault in the occurrence or expansion of the crime, the criminal responsibility of the defendant should be lighter or mitigated according to the degree of fault."

Improve the provisions of the relevant crimes in the specific provisions of the criminal law: In the specific provisions, special provisions are made on the crimes with a high incidence of victim's fault (such as intentional homicide, intentional injury, provocation, etc.), and the applicable rules and sentencing range of the plot in specific crimes are clarified. For example, in the crime of intentional homicide clause to add "caused by the victim's serious fault crime, can be sentenced to 3 years to 10 years of imprisonment"[3].

5.1.2 Establish a scientific system of sentencing range

According to the degree of fault of the victim, the type of crime and other factors, to develop specific sentencing range standard, reduce the discretion of the judge. We can learn from the experience of civil law countries such as Germany and France, and clarify the proportion of benchmark punishment reduction corresponding to different fault grades through judicial interpretation or sentencing guidance.

5.2 Judicial Level

5.2.1 Unification of the criteria for the identification of the victim's fault

The Supreme People's Court should clarify the identification elements and judgment methods of the victim's fault by issuing guiding cases and formulating judicial interpretations, so as to ensure the unification of the criteria for the identification of the plot in judicial practice. For example, it can be stipulated that the identification of the victim's fault should have

three elements: subjective fault, behavioral relevance and illegality or impropriety, and enumerate the common types of fault behavior.[6]

5.2.2 Strengthen the training and guidance of judges

Through the organization of special training, case studies, etc., to improve the judge's understanding and application of the victim's fault theory, to ensure that it can accurately determine the circumstances and reasonable exercise of discretion in sentencing. At the same time, establish and improve the sentencing reasoning system, requiring the judge to elaborate on the reasons for the victim's fault and the impact on the sentencing process in the judgment.

5.2.3 Introduce case retrieval and case-based reference mechanism

Use platforms such as the China Judgment Documents Network to establish a case base for victim-fault-related cases and provide judges with case-based reference. When the judge hears the case, he can understand the identification and sentencing treatment of the victim's fault by other courts by searching similar cases, so as to avoid the occurrence of different judgments in the same case.

6. Conclusion

By analyzing the establishment conditions and sentencing influence mechanism of the victim's fault, this paper demonstrates the necessity of its legalization. The research shows that the fuzzy positioning of the victim's fault in the current criminal law leads to problems such as different identification standards and arbitrary sentencing in judicial practice. By clarifying the status and applicable rules of the victim's fault in the general principles and sub-rules of the criminal law, establishing a scientific sentencing range system, strengthening the unification of identification standards in judicial practice and the training and guidance of judges, it can effectively solve the problems of different judgments in the same case and unfair sentencing in the current judicial practice, and realize the principle of adapting crime, responsibility and punishment and the goal of fairness and justice in sentencing. In the future, it is necessary to further strengthen the research on the theory of victim's fault, combine judicial practice experience, and constantly improve the relevant system design, so as to provide strong

support for the scientific and standardized development of criminal justice in China.

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