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The Dilemma of Judicial Application of the "Intimacy of Childhood Clause"

--Centered on Age Definition and Gender Factor

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Abstract. Article 6 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Specific Application of the Law in Trial of Criminal Cases Involving Minors, the "Intimacy of Childhood Clause" is a special path to conviction in cases involving consensual sexual behavior of minors. However, in judicial practice, this provision faces many difficulties in its application: at the age definition level, the age range of the perpetrator is closed mechanically, the reasonableness of the upper limit of the age of sexual consent for "young girls" is questionable, and the age gap between the two parties is missing, leading to a fuzzy standard of measurement of the substantive elements; in terms of gender influencing factors, the provision tacitly recognizes that the perpetrator is a man, In terms of gender, the provision tacitly recognizes that the perpetrator is male and the victim is a young girl, ignoring the need for protection of boys as a vulnerable party. In order to provide operational references for the judicial authorities and to address the reasonable expectations of society regarding the handling of criminal cases involving minors, we have adopted a gender-neutral legislative model, clarified the scope of the reasonable age difference, and appropriately raised the age of sexual consent.

Keywords: "Intimacy of Childhood Clause", offense clause, voluntary, protection of minors

1. Introduction

The second paragraph of Article 236 of the Criminal Law stipulates: "Whoever rapes a young girl under the age of fourteen shall be punished with rape, and shall be punished with heavier penalties." This means that having sexual relations with a young girl under the age of 14, regardless of whether the young girl is voluntary or not, will be punished as rape and will be punished with heavier penalties. Meanwhile, the proviso to Article 13 of the Criminal Law states that "if the circumstances are significantly minor and the harm is not great, it is not considered a crime." Sexual acts between minors, although illegal, can be decriminalized if the circumstances are minor and do not cause serious consequences. The former National Health and Family Planning Commission released the China Family Development Report 2015, which showed that among the surveyed adolescents aged 15 to 17, the incidence rate of sexual behavior was 4.1%, the average age at which first-time sexual

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behavior occurred was 15.9 years old, and the proportion of adolescents who had experienced sexual behavior in which they or their girlfriends had been pregnant was 25% [1]. As the number of minors engaging in premature sexual behavior has surged, the "Intimacy of Childhood Clause" has emerged as a special form of criminalization. According to Article 6 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Specific Application of the Law in the Trial of Criminal Cases Involving Minors (Legal Interpretation [2006] No. 1) and other judicial interpretations, the "Intimacy of Childhood Clause" refers to the fact that if a person who has already attained the age of fourteen and is less than sixteen occasionally engages in sexual intercourse with a young girl under minor circumstances that are minor and do not result in serious consequences, the case is not considered to be a crime. Academics have now explained the legal basis of this paragraph, according to the theory of sexual exploitation, direct, intentional sexual behavior between an adult and a child is a form of exploitative behavior [2]. Adults abuse positions of power, trust, or authority to gain sexual favors from unequal power relationships. Other scholars define "child sexual exploitation" as the perpetrator's use of a child to satisfy his or her sexual desires or personal interests in any erotic act, deriving sexual gratification or other benefits from it, making the child an instrumentalized sex object [3]. The key reason for the perpetrator's decriminalization in the case of "Intimacy of Childhood" is that he did not violate the young girl's right to make her own decisions about her sexuality, as his sexual relationship with a young girl of a similar age lacked the attributes of sexual exploitation [4]. However, existing studies have not yet reached a consensus on its practical application. This article will focus on the age definition standard and the gender factor of the two aspects of the impact of the study, clarify the "Intimacy of Childhood" provisions of the application of the boundaries and logic, for the judicial organs to provide operational reference, to seek a more accurate balance between the protection of the rights and interests of minors and the safeguard of public interests, in response to the society on the handling of criminal cases involving minors of the reasonable expectations.

2. Normative examination of the "Intimacy of Childhood Clause"

2.1. The legislative intent of the "Intimacy of Childhood Clause"

The legislative intent of the "Intimacy of Childhood Clause" is: on the one hand, since the sexual consent capacity of young girls (under 14 years old) is denied by the law, the law needs to provide absolute protection for their sexual autonomy; On the other hand, by providing a path to decriminalize consensual sex for adolescents, it can strike a balance between the protection of sexual autonomy of minors and the physical and mental health of young girls, so as to prevent then from being criminally punished after tasting the forbidden fruit out of curiosity or love, and then being branded as "sex offenders" for the rest of their lives, which will not be conducive to their future growth [5].

Beccaria once said, "Some people compare crime to a flood and punishment to a dike, hoping that the dike of punishment will enclose the water of crime. In reality, the dike of punishment cannot contain the water of crime." [6]As such, the criminal policy adopted by the Chinese judiciary with regard to minors engaging in "consensual" sexual relations has always been one of "moderate involvement and prudent intervention". Based on the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, justice should protect the rights and interests of minor victims, while emphasizing the education and rehabilitation of minor offenders, i.e., the principle of two-way protection. Minors are in the stage of physical and mental development, their understanding and judgment of sexual behavior is still immature, their cognitive level and control of

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their own behavior is limited, and they are psychologically malleable. In the case of consensual sex between minors, a blanket punishment of rape may result in excessive punishment of the minors involved, especially the party committing the act, and is not conducive to their healthy growth. For this reason, although article 236, paragraph 2, of the Criminal Code criminalizes rape when "the girl is consensual", the "Intimacy of Childhood Clause" includes "consensual consent of the girl" as one of the elements of decriminalization, which in effect recognizes that consensual sex between minors of similar age is not criminally punishable because it lacks the nature of sexual exploitation.

2.2. Problems at the normative level of the "Intimacy of Childhood Clause"

2.2.1. Insufficient operability of age definition standards

2.2.1.1. The age limit of the perpetrator

The "Intimacy of Childhood Clause" explicitly limits the age of the perpetrator to the interval of "having reached the age of fourteen but not yet having reached the age of sixteen," and makes no mention of mitigating circumstances or paths for perpetrators of a similar age group to be convicted of a crime. In fact, it has made a strict closed range for offenses. However, the sexual cognitive ability of minors is a gradual process of development and maturity. If the age limit is too absolute, it does not conform to the characteristics of minors' physical and mental development, and will also lead to judicial bias towards conservatism, affecting the actual function of the path of crime, and does not conform to the original legislative intent of the paragraph.

2.2.1.2. Upper age limit for young girls

The age of consent is the minimum age at which an individual can legally give "valid consent" to a sexual act, as stipulated by law. In Chinese criminal law, the upper age limit for "young girls" as victims is currently fourteen years old. This means that young girls under the age of fourteen are not capable of sexual consent at all, but once they reach the age of fourteen, they can give fully valid sexual consent, which may be questionable at the theoretical level of reasonableness.

2.2.1.3. The age gap between the teenagers

The adjudicator's discretionary area is excessively broad and prone to varying conclusions, making it more difficult to handle such cases. In this regard, some scholars believe that the smaller the age difference between the case of sexual exploitation of the lower degree, the "occasional" and "minor circumstances" judgment standard should also be more relaxed. The Guiding Case for Criminal Trial Reference No. 981 also states that "the perpetrator should have had sexual relations with a young girl of comparable age based on the young girl's volition in the course of normal intercourse and love." The range of age difference here is not explicitly stipulated in Chinese law and judicial interpretations. But in practice, there is a difference of less than three years between the ages of the two youngsters, and the perpetrator was still convicted of rape just because he was over 16 years old.

2.2.2. Gender protection is biased

The current clause assumes that the default perpetrator is male, and young girl are the "victims", this is the traditional social roles and gender stereotypes of the inertia, ignoring the possibility of boys as

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a disadvantaged party, just as the existing provisions of the crime of rape will be limited to the sex of the victim of the female gender tendencies. In the long process of China's social development, men have often been given the stereotype of the strong, dominant person, while women have been labeled as the passive, weak, and vulnerable, and this subtle gender stereotype and the construction of traditional social roles still have a profound impact on the superstructure of contemporary society. The formation of the legal system is inevitably influenced by political forces and cultural concepts of the era in which the legislator lives, and tends to reflect the existing power structure. The traditional gender power structure is deeply rooted in society and culture, leading to the implicit inclusion of traditional gender roles in the content of legislation relating to sexual crimes. Under the influence of this inertia, the possibility of boys being the weaker party in a sexual relationship is overlooked. At present, although there are fewer cases of boys being the weaker party in sexual relations compared to young girls, in certain scenarios, such as bullying in schools, boys may also become the target of sexual abuse, and the aggressor is not only limited to the opposite sex, but may also be of the same sex, especially when the other party is a little bit older, and has a certain physical or psychological advantage, and the current "Intimacy of Childhood Clause" has not yet covered this kind of content.

From the view of justice, which emphasizes the fair and equal treatment of every individual, regardless of gender, it is in line with the general public perception that the law should treat all vulnerable groups equally and should not result in protection on the basis of gender. Existing provisions only focus on young girls as victims, and the concept of equality before the law is contrary to the full realization of the legislative intent of the protection of minors, to the detriment of the authority of the law and judicial impartiality.

3. The investigation of the practice of the"Intimacy of Childhood Clause"

3.1. Typical cases reflecting the dilemma of judicial application

In recent years, minors due to mental immaturity, curiosity, impulse-driven, and young girls' "voluntary" sexual relations occur from time to time, and many cases involving these situations than the judicial interpretation of the situation is more complex, the loopholes and excessive discretionary space make the actual application of the clause of the dilemma.

Case 1: The suspect A (male, 15) met B (female, 13)through the network to determine a romantic relationship and had sexual relations. Afterwards, B's parents found out the situation and reported it to the police. A was suspected of rape by the police of the criminal case and released on bail pending trial. During the period of bail pending trial, A, through the alumni group, met C(female, 13), and the police have warned A not to get involved with C. A knew that B, C were under 14, and searched on the Internet rape related legal provisions, then still had sexual relations with C voluntarily [7].

Case 2: 16-year-old boy Xu Mouhua and 13-year-old girl Zhang Mou were in love and cohabited. Xu was on bail pending trial because of the previous crime of robbery. Xu knew Zhang was under 14 years old, still had sex with her in their residence. He was prosecuted by the prosecution authorities in accordance with the law. Despite the Zhang's insistence that both parties were willing and that her family did not pursue the case, Xu was ultimately convicted of rape [8].

Case 3: Defendant Liu (aged 16 years and 2 months) and victim Lai (aged 13 years and 8 months) developed a relationship as lovers from classmates, and were reported to the police by the woman's parents after they discovered that they had had sex on several occasions. The court sentenced Liu to two years and six months' imprisonment and three years' probation for the crime of rape [9].

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3.2. Realistic problems reflected in typical cases

3.2.1. Fuzzy measurement standards for the substantive elements of the "Intimacy of Childhood Clause"

When applying this law in practice, it is often not possible to judge whether a person has committed a crime solely on the basis of formal elements such as age, but also on the basis of substantive elements such as "minor circumstances" and "occasional"; however, the criteria for measuring the substantive elements have been quite ambiguous, which poses a challenge to the judiciary in practising two-way protection and reasonably exercising its discretion in specific cases.

In Case 1, both parties met the conditions for the crime in terms of the formal element of age, the girl herself agreed to have sexual relations, and her guardian also expressed acquiescence, but the criminal law needs to be determined from the perspective of a more macroscopic social public interest, the maintenance of the legal order, and the judicial authorities should take this into account when exercising their discretion. A knew the age of the two girls,so his subjective malignancy, as well as the social harm of recidivism while awaiting trial on bail, the negative social impact of his behavior seems to be difficult to comply with the "circumstances are minor" requirements. In Cases 2 and 3, the actors are over sixteen years old, and the age difference with the girl is within 3 years old, formally does not meet the elements of the crime, and the conviction is no longer applicable to the "Intimacy of Childhood Clause", but only Liu was sentenced to probation for three years. The reason for this, combined with the case Xu does not listen to the reminder of the police and recidivates, but Liu is only in love with classmates, compared to the former subjective malignancy is a little less. The judicial officers in the sentencing should also take this into account, so although the current provisions of the rape was convicted, but to be a suspended sentence, in fact, will be the paragraph out of the crime of the reasons for the misdemeanors appropriated as a combination of circumstances to be dealt with more leniently, the ambivalence of the adjudicator is evident.

3.2.2. Age range delimitation mechanization

"Intimacy of Childhood Clause" limits the age of the perpetrator has reached 14 less than 16 years of age, and the victim is limited to under 14 years of age of young girls, which seems to be too conservative and narrow in dealing with the judicial application of the clause. In Case 3, the age of both parties was at the edge of the age limit stipulated by the law, and the age difference was less than three years, and the physical and mental state of Liu may not be substantially different from the minors under the age of 16, and the clause could not be applied to the case only because Liu exceeded the upper age limit by two months, reflecting that the age delimitation standard of the clause was too mechanical, and the rigid restriction of the age compressed the space for the practical application of the paragraph, which may affect the practical application of the clause as a path to the discrimination of "Intimacy of Childhood". This is not fully in line with the legislative intent,which is to give room for "young and ignorant, based on the emotions of the accidental behavior".

3.2.3. Lack of a specific age difference interval

Some extraterritorial laws clearly stipulate that the application of similar provisions need to control the age difference between the two parties, such as the Italian criminal law requires minors and minors under the age of 13 to have sex, the age difference of no more than 3 years can be exempted from punishment, but China's "Intimacy of Childhood Clause" has no relevant content.In Case 3,

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Liu and Lai's age difference is within three years, they have emotional basis, close relationship and voluntarily have sex, Liu is still convicted of rape. But the judicial personnel took their emotional basis and the minor circumstances into consideration, eventually suspended the sentence. It can be seen that the lack of a legal provision on reasonable age difference has led to a lack of a more scientific and quantitative basis for judging whether or not to recognize "minor circumstances" when dealing with similar cases by judicial officers, and has tended to result in sentences that are biased in favour of convictions.

4. Paths to the improvement of the "Intimacy of Childhood Clause"

To sum up, the "Intimacy of Childhood Clause" tends to the guiding value of principle, the actual application of a large extent relies on the judicial authorities on the actual understanding of the law and the case-by-case consideration, easy to cause the same case to receive different judgments. Therefore, it is necessary to further improve it.

4.1. Strengthen the refinement of the definition of the age element

4.1.1. Define a reasonable range of age difference

Some scholars have pointed out that the main reason why the sexual behavior between adults and children is exploitative is that there is a huge gap between the two parties due to their different degrees of physical and mental maturity. The age difference between the two parties is not only an important reason for the formation of the power gap, but also the most intuitive external symptom of the unequal relationship between the two parties [10]. It can be reasonably extrapolated from this to consensual sex between minors, and the most intuitive indicator to rule out its sexually exploitative nature is also the age difference between the parties. In fact, the "Intimacy of Childhood Clause", which limits the age of the perpetrator to 14 to 16 years old, also aims to reduce the degree of sexual exploitation by limiting the age difference between the two parties, so as to enable minors who are on equal footing in an intimate relationship to achieve reasonable incrimination. It is therefore necessary to clarify the specific scope of the appropriate age difference.

Overseas countries also have similar provisions for minors of similar age to voluntarily engage in sexual intercourse, and most of them use the age difference as an important criterion for determining whether to commit the crime, combined with other conditions that can judge the degree of physical and mental development of both parties to be the same, and do not harm the younger person, so as to prevent the older person who has sexually abused the younger party from escaping punishment by using the other party's volition as an excuse [11]. The common thread between civil law and common law programs is the Age Differential or Close-in-Age Exception, although the specific modalities differ. For example, in Germany, Article 176 and Article 182 of the Criminal Code stipulate the absolute age of protection (14 years old) and the relative age of protection, and through the "Close-in-Age Exception", it gives a way of amnesty for the relative age of protection: if the perpetrator of the act of a minor and a juvenile aged between 14 and 16 years old engage in sexual intercourse of their own free will, he or she will not be subjected to criminal prosecution as a general rule unless there is a "use of special power and authority", and the perpetrator will not be subjected to criminal prosecution. There are circumstances such as "exploitation through the use of a special power relationship". In Japan, there is also a judicial practice whereby the prosecutor will usually exercise hesitation in prosecuting a minor between the ages of 13 and 16 for consensual sexual acts where both parties are of a similar age and where there is no coercion or exploitative relationship. In

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the United States, there is also the Romeo and Juliet Clause, which further quantifies the age difference, with the State of Texas setting the age difference at no more than four years for such cases to be reduced to misdemeanors or not punished, and the State of California requiring three years.

Similar provisions exist in Taiwan, China. For example, Article 227 of the Criminal Law provides that sexual intercourse with a minor is a crime, while Article 227-1 provides that a minor who has sexual intercourse with a minor may be mitigated or exempted from punishment; Article 229-1 further provides that a person under the age of eighteen years who commits a crime under Article 227 is required to be informed of the crime.And full consideration is given to the weight of the subjective consent of both parties and their guardians, so that the so-called "not to sue" is implemented.

Although China's current path to decriminalize sexual conduct between minors is only the "Intimacy of Childhood Clause", for minors who have reached the age of sixteen and young girls who have sexual intercourse no clear mitigation, mitigating views, but can refer to learn from the Taiwan region and foreign legislative ideas. First, the introduction of a specific age difference as a more objective and quantitative standard of evaluation, combined with the three-year school system for junior and senior high schools in China and the characteristics of reasonable interaction between minors, the age difference interval is set at 3 years, in order to further provide reference for the refinement of the substantive elements of the standard of measurement; second, the two sides will be included in the circumstances of the circumstances of the scope of the situation, and if the sexual relationship is indeed voluntary, the application of the misdemeanor not to be prosecuted, not to be prosecuted under conditions, or not to be prosecuted for minor criminal circumstances, or not to be prosecuted for minor criminal circumstances and not to be prosecuted. Third, if the age doesn't meet the legal range, but doesn't fluctuate up or down by more than six months, such as in the aforementioned Case 3, the judge is allowed to rule on a case-by-case basis on whether or not to convict the perpetrator, in order to avoid the possibility of a minor offender being charged with a crime. This is to prevent perpetrators of minor offenses from being unable to be convicted simply because they have exceeded the legal age range by one or two months or even a few days.

4.1.2. Appropriately raising the minimum age of sexual consent for women

At present, the upper age limit of a young girl is 14 years old in the "Intimacy of Childhood Clause", and the age of sexual consent in China is also 14 years old, which means that a young girl cannot give legally valid sexual consent before she is 14 years old, and the legal validity of her "consent" is fully recognized after she is 14 years old, which is not in line with the law of progressive physical and mental development of minors. Su Wenying, a child protection officer at UNICEF China, also points out that there is insufficient evidence to show that 14-year-olds are capable of recognizing and accepting the process and consequences of sex. In addition, modern sex education in China started late and is not well developed in all aspects, so 14-year-old minors do not have the necessary knowledge and awareness of self-protection against sexual abuse. In terms of the age distribution of sexually abused children in China, children between the ages of fourteen and seventeen still account for a significant proportion of sexual abuse cases [12]. Moreover, early sexual life is not conducive to the protection of underage women's right to sexual health, and it is even more likely to bring about a high incidence of cervical cancer.

According to the Criminal Law Amendment (XI), for a minor female who has reached the age of 14 but not yet 16, even if the offender with care responsibility has sex with her with her consent, it also constitutes the crime of sexual assault by a person with care responsibility. This provision

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indicates that the sexual cognitive ability of minors between the ages of 14 and 16 is immature, and that they are unable to make accurate judgments under the premise of the existence of a caregiving relationship, and that even if they obtain the consent of a minor female, the consent is invalid [13]. The emotional basis of the intimate relationship in the "Intimacy of Childhood" case is not necessarily stronger than that of the care relationship, and it seems contradictory to set the age of sexual consent for consensual sexual relations between minors at fourteen years of age when the capacity of sexual consent of females under the age of sixteen in the care relationship is not yet recognized by the current law.

The current trend in international legislation is to raise the age of sexual consent to 16 years and above. According to statistics, the age of sexual consent is currently higher than 14 years in more than 170 countries. In Asia, it is 16 in Hong Kong, China, 16 in Singapore (same-sex sex is not allowed), Japan (2023) and the Philippines (2022) have successively raised the age of sexual consent to 16 from the previous ages of 13 and 12, Cambodia has raised Asia's lowest age of sexual consent from 12 to 16, and South Korea has raised the age of consent in its special law on the protection of minors in respect of sex to 19 years old. Western countries such as the United Kingdom and Russia set the age at 16, while most U.S. states set it between 16 and 18. In contrast, the current age of sexual consent in China's criminal law, at 14 years old, is relatively low internationally.

China's Civil Code divides the age of capacity for civil behavior into three grades at the nodes of 8, 16 and 18 years of age, and the Criminal Law also divides the age of criminal responsibility into four major categories according to the developmental laws and actual cognitive control ability of natural persons, so the age of sexual consent, which is closely related to the physical and mental development of minors, should be refined in accordance with the actual situation. On the one hand, the general age of consent should be adjusted upward to 16 years, including the special case of "Intimacy of Childhood". In addition, the age of sexual consent for relationships between persons in a custodial, educational, or managerial relationship should be raised to 18 years of age, so as to prevent older persons from abusing their dominant position to obtain sexual favors. Extraterritorial experience, such as the German Penal Code, stipulates that if a person who has the responsibility for the guardianship or protection of a minor wishes to have sexual relations with him or her, he or she must wait until the minor reaches the age of 18. In addition, according to the Sexual Offenses Act of the United Kingdom, the age of consent for minors is 18 years old for groups in which there is a special relationship of trust, such as teachers and students, guardians and wards.

4.2. Strengthening the protection of boys' sexual autonomy

At present, the "Intimacy of Childhood Clause" applies only to the rape of a young girl and does not protect a boy. However, as mentioned earlier, it is not uncommon for boys to be the vulnerable party in sexual relationships. Some scholars have pointed out that, compared to the more general social awareness of the serious nature and social harm of sexual abuse of girls, sexual abuse of boys has long been seriously neglected [14]. The 2013 Guangdong Province Youth Health Risk Behavior Monitoring Report shows that 2-3 out of every 100 adolescent males have forced sex, which is 2.2-2.3 times higher than that of females [15]. It is evident that gendered legislative language is inappropriate.

The practice in Taiwan can also provide a reference for mainland China. Article 227 of the Criminal Law of Taiwan provides that a person who has sexual intercourse with a person under 16 years of age is guilty of the same crime, regardless of whether he or she is voluntary or forced, and Article 227-1 provides that a person under 18 years of age who commits the crime of the previous

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article shall be mitigated or exempted from the penalty. This legislative language is more in line with gender neutrality than the judicial interpretation of the mainland.

While the incriminatory setting of "Intimacy of Childhood Clause" indicates that China's existing judicial interpretations condone and tolerate consensual sexual exploration between adolescents within a specific age range, this decriminalization needs to be carried through to the end, and should be applied to other sexual acts between minors of similar age, rather than treating them differently on the basis of their gender [16]. Therefore, China should adopt a gender-neutral legislative model, deleting the gendered legislative language that points to the specific gender of the perpetrator and the victim from the existing text of the "Intimacy of Childhood Clause". Specifically, the term "young girls" should be changed to "young children", so as to cover male child victims. At the same time, the sexual behavior in this paragraph should be interpreted broadly, not limited to the current crime of rape, which stipulates that a man inserts his penis into a woman's vagina, but should include oral sex, anal sex, and the insertion of a foreign object into the anus or vagina, which invade a child's body [17], to echo the foregoing.

5. Conclusion

In the criminal law normative system, the "Intimacy of Childhood Clause" is positioned as a special channel for decriminalization of consensual sexual acts between minors, and its legislative intent is deeply consistent with China's core value orientation of "two-way protection" in the field of juvenile justice, which centrally manifests the humanistic concern of modern criminal justice. From the analysis of the protection object, the paragraph through the rigid constraints of the legal provisions to prevent young girls from being unlawfully harmed in gender interaction, to build a barrier of protection for the rights of young girls from sexual exploitation; at the same time, it attaches importance to the education and salvation of the minor perpetrators, so as to prevent them from being held criminally liable for the implementation of consensual sex due to their ignorant knowledge of sex in the stage of puberty and being burdened with the negative record of crimes for a lifetime, which will have long-term adverse impacts on the subsequent growth and development of the juvenile justice.

However, a combination of normative analysis of the "Intimacy of Childhood Clause" and a review of judicial practice cases shows that there are two main problems in the current application of the provision, namely, the mechanical nature of the age definition rule and the one-sidedness of the scope of protection in terms of gender, which constrains the full realization of the judicial effectiveness of the provision. Specifically, at the level of age definition, the closed provision of the age range of the perpetrator leads to the difficulty of the minor perpetrator at the edge of the range to obtain a reasonable opportunity to get out of the crime; the "one-size-fits-all" setting of the age of sexual consent fails to match the difference in sexual cognitive ability of minors of different ages; and the lack of legislation on the criteria for determining the age difference between the two parties amplifies the uncertainty in the process of judicial discretion, which may lead to the judicial dilemma of different judgments for the same case. At the level of gender protection, the gendered legislative language in the text of the articles has led to the exclusion of boys, a potentially vulnerable group, from the scope of protection under the articles, which is a departure from the essence of equal protection required by the principle of equality before the law.

In the future, the study of the "Intimacy of Childhood Clause" can further combine the empirical data in judicial practice, and through data analysis methods, examine in depth the specific impact of the adjustment of the age difference and the upward adjustment of the age of sexual consent on the outcome of the case. At the same time, we can explore the synergistic path between the application

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of the law and the popularization of sex education, family guardianship and other social governance, so as to build a multifaceted system for the protection of sexual rights and interests of minors.

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