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Criminal Law Dilemmas and Breakthroughs in the Protection of Minors' Sexual Rights and Interests

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Abstract. China's criminal law in its current provisions exhibits significant gender limitations in protecting minors' sexual rights and interests. The crime of rape is specifically defined with only female victims in mind, consequently leading to situations where male minors who suffer sexual assault often can only be protected under the lesser charge of indecent acts, thereby resulting in different judgments for similar cases and apparent sentencing inequities in judicial practice. Current legislation persistently adheres to an outdated binary gender framework, employs an overly narrow definition of sexual assault, and suffers from both systematic gaps in comprehensive theoretical research and insufficient in-depth comparative legal reference. Drawing on Germany's unified offense model and the United States' tiered legislative approach, China should proactively establish a completely gender-neutral criminal law protection system. This can be effectively achieved by clearly amending legislative descriptions of the subjects of offenses, explicitly specifying detailed types of conduct and corresponding sentencing circumstances, and cautiously introducing additional penalties such as chemical castration, thereby ultimately achieving comprehensive equal protection for the sexual rights and interests of all minors.

Keywords: minors, sexual rights and interests, crime of rape, crime of child molestation

1. Introduction

The protection of minors' sexual rights and interests faces a significant imbalance, characterized by systemic gender limitations in current legal frameworks. An examination of the provisions of the Criminal Law of the People's Republic of China (hereinafter “the Criminal Law”) reveals critical gaps. The crime of rape is exclusively defined with female victims in mind, thereby excluding male minors from its protection. Similarly, the crime of sexual assault by a person with a special duty of care applies only to female minors, leaving male minors in analogous situations without direct legal recourse.

These legislative shortcomings lead to tangible judicial injustices, resulting in disparate punishment for equivalent harm. For instance, engaging in sexual intercourse with a female child under the age of 10 constitutes aggravated rape, punishable by over ten years' imprisonment, whereas sodomizing a male child of the same age can only be prosecuted as child molestation, carrying a significantly lighter maximum sentence. This sentencing disparity is compounded by a

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lack of academic attention, as research predominantly focuses on female victims, leaving the protection of male minors' sexual rights and interests critically underexplored [1].

To address these issues, this study employs an empirical analysis of 105 judicial judgments from 2023 to 2025, identifying systemic biases and legal blind spots. Furthermore, it adopts a comparative law perspective, examining legislative models from Germany and the United States, alongside child protection policies from other jurisdictions. By integrating these empirical and comparative insights, the paper proposes a comprehensive solution encompassing legislative reform, refined sentencing guidelines, and procedural safeguards.

2. Current deficiencies in China's criminal law regulation

The current inadequacies in China's protection of minors' sexual rights and interests are manifested in three aspects: theoretical research lacks a systematic framework and predominantly focuses on female minors; legislation adheres to a traditional binary gender distinction, resulting in weaker protection for male minors; and judicial practice tends to deliver inappropriately lenient sentences when the victim is male.

2.1. Judicial dilemmas

2.1.1. Data comparison

This study constructed its final sample of 105 valid judgments from China Judgments Online and PKU Law (2023-2025) after a rigorous screening process. Of the initially identified cases, all 54 rape convictions and 10 compulsory indecency cases were retained, while 41 of the 43 child molestation cases were confirmed as valid after excluding one irrelevant and one duplicate verdict. The resulting distribution of charges reveals significant prosecutorial disparities.

Table 1. Distribution of criminal charges for sexual offenses against minors

Charge	Number of Valid Judgments	Percentage
Crime of Rape	54	51.43%
Crime of Compulsory Indecency or Insult	10	9.52%
Crime of Child Molestation	41	39.05%
Total	105	100

Table 1 reveals that over half (51.43%) of sexual offense cases were classified as rape—a charge constitutionally limited to female victims, thereby elevating sentencing baselines for cases involving girls. In contrast, compulsory indecency accounted for only 9.52% of cases, yet functions as a de facto catch-all charge for male minors. This disparity demonstrates how gendered offense definitions directly shape prosecutorial inclinations and sentencing outcomes.

Table 2. Sentencing statistics for the crime of rape

Victims	Number of Victims	Percentage of Victims	Average Prison Sentence	Life Imprisonment Cases	Maximum Penalty
Female Minors	65	100%	64.01 months	None	Death Penalty
Male Minors	/	/	/	/	/

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As shown in Table 2, all rape victims were female minors, with an average prison sentence of 64.01 months (excluding two probationary cases) and the maximum penalty being death. The complete absence of male victims demonstrates a gender-specific pattern in judicial qualification of rape, systematically excluding male minors from equivalent protection. While the stringent stance is reflected in sentences exceeding five years, it risks excessive and rigid penalty application.

Table 3. Sentencing statistics for the crime of compulsory indecency or insult

Victims	Number of Victims	Percentage of Victims	Average Prison Sentence	Maximum Penalty
Female Minors	16	94.11%	25.5months	46months
Male Minors	1	5.89%	12months	12months

The data in Table 3 indicates a pronounced gender disparity. It is noteworthy that one case involving concurrent sentences for child molestation and compulsory indecency, resulting in an eight-year-six-month imprisonment term, was excluded from the average sentence calculation. After this adjustment, the average prison sentence for female minors was 25.5 months, while only a single case was recorded for male minors, accounting for a minimal proportion (5.89%) of victims and receiving a sentence of 12 months. This contrast highlights the marginalized status of male minors. Although the crime of compulsory indecency is theoretically applicable to male victims, it is rarely applied in practice, reflecting deficiencies in case registration for male minors. Even when cases are registered, the sentences imposed are significantly lighter than those for comparable cases involving females, thereby reinforcing the secondary status of male victims within the framework of legal protection. This situation essentially utilizes the crime of compulsory indecency as a catch-all charge to adjudicate cases with male victims through lower penalties, resulting in systemic leniency in sentencing.

Table 4. Sentencing statistics for the crime of child molestation

Victims	Number of Victims	Percentage of Victims	Average Prison Sentence	Maximum Penalty
Female Minors	67	62.04%	33.46months	76months
Male Minors	7	6.48%	37.67months	72months
Gender Unknown	34	31.84%	24.89months	63months

Data from Table 4 show female minors constituted the majority of victims, with an average prison sentence of 33.46 months (excluding two probation cases). Although male minors represented only 7 cases, their average sentence reached 37.67 months, slightly higher than that of females. Critical exclusions include one concurrent-sentence case of 8.5 years and one probation case from the "Gender Unknown" category, with the latter group's average being 24.89 months after exclusion.

However, this surface-level data requires contextual interpretation, as the limited sample size for male minors offers low statistical stability. The maximum sentence of 72 months reflects an extreme case—the Wu XX Child Molestation Case (Criminal Judgment No. 280, 2024, Qixian People's Court, Henan), involving long-term, repeated molestation of multiple boys—significantly inflating the average. Without this outlier, most male minor cases show relatively low sentencing levels.

When this extreme outlier is excluded, sentencing in most remaining cases involving male minors remains relatively low. This indicates that in ordinary cases, judicial practice still tends to apply child molestation as a catch-all charge—compared to rape—leading to generally inappropriately lenient sentencing. Thus, the inflated average cannot obscure the broader issue of inadequate protection and generally light sentencing for male minors in most instances.

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2.1.2. Disparate judgments for similar cases and uniform judgments for different cases

Table 5. Comparative analysis of the Lin case and the Jin case

Case	Victim	Act Description	Charge	Sentence
Lin Case	17-year-old male	1. Reached for the victim's genitals while the victim was sleeping, but was rejected. 2. Entered the victim's temporary residence a second time, ignored the victim's resistance, pulled down his trousers, and touched his genitals using hands, face, and own genitals to commit molestation.	Crime of Child Molestation	One year of fixed-term imprisonment
Jin Case	16-year-old female	1. Acted while the victim was asleep and unconscious. 2. Entered the victim's residence.	Crime of Child Molestation	One year and six months of fixed-term imprisonment

Both the Lin and Jin cases involved child molestation of sleeping victims, yet exhibited sentencing disparities. In the Lin case (17-year-old male victim), the perpetrator used genitals and repeated intrusion yet received only one year imprisonment, while in the Jin case (16-year-old female), simpler contact without the use of genitals drew a heavier 1.5-year sentence. This demonstrates disparate judgments where male victim cases receive lighter sentences despite more severe assault methods.

Table 6. Comparative analysis of Zhou Mouyang case and Zheng Ruzhong case

Case	Victim	Penile intrusion Act Description	Charge	Sentence
Zhou Case	He XX(male)	into victim's oral and anal cavities (aggravated means)	Crime of Child Molestation	5 years fixed-term imprisonment
Zheng Case	Jin XX(female)	Intrusion into the victim's vagina using fingers (relatively less severe means)	Crime of Child Molestation	5 years fixed-term imprisonment

A comparative analysis of the Zhou Mouyang and Zheng Ruzhong cases reveals that although both resulted in five-year sentences for the crime of child molestation, the legal severity of the violations differs substantially. In the Zhou Mouyang case, the perpetrator committed penile intrusion into the victim's oral and anal cavities, constituting “aggravated means” that according to judicial interpretation should warrant a sentencing range exceeding five years. However, the court imposed only the minimum sentence of five years. In contrast, the Zheng Ruzhong case involved finger, not penile, intrusion into the victim's vagina yet received the same five-year sentence. This phenomenon of uniform judgments for different cases reflects a judicial practice wherein protection for female minor victims is stronger, with a clear sentencing tendency toward heavier penalties for offenses against them compared to male minor victims.

In summary, the current legal framework governing rape, child molestation, and compulsory indecency or insult demonstrates significant structural imbalances. Judicial practice frequently exhibits both disparate judgments for similar cases and uniform judgments for different cases, resulting in markedly different levels of judicial protection for male and female minors and revealing inherent gender limitations in the legal provisions themselves. These inconsistencies in conviction and sentencing fundamentally stem from inadequacies at the legislative level and insufficient theoretical foundation, which will be addressed in detail in the following sections.

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2.2. Limitations of the binary gender legislative framework

2.2.1. Limitations regarding the subjects of the law

Article 236 of China's Criminal Law confines rape victims strictly to “females”, excluding males from such recognition. Consequently, violations against male minors are addressed only through lesser charges like child molestation or compulsory indecency. This creates a significant penalty discrepancy relative to the severity of harm inflicted.

Sodomy, for instance, inflicts comparable or greater biopsychological harm than vaginal intercourse, potentially causing permanent injuries like rectal tears in minors. Yet judicially it is classified merely as "molestation," capping penalties at 15 years—as seen in the 2021 Gao Huabing case involving four boys under 12, which drew only a 6.5-year sentence. Equivalent rape offenses could incur over 10 years, life imprisonment, or even death, exposing structural sentencing inequity.

Due to this legislative flaw, male minors suffering equivalent harm are relegated to fallback charges with lower statutory sentences. While child molestation carries a basic sentence under five years (or 5-15 years aggravated), rape starts at 3-10 years, producing vastly different legal evaluations based solely on victim gender and contravening equal protection principles.

2.2.2. Narrow interpretation of the constituent elements of sexual assault

The limitation of the crime of rape to protecting only females, forcing cases involving male minors to be addressed under the crimes of child molestation or compulsory indecency, has also led to interpretive confusion regarding the constituent elements of these offenses. The crime of child molestation uses “indecent act” as its core behavioral element, yet this concept is typically interpreted in judicial practice as referring to sexual contact other than intercourse. When a perpetrator engages in acts amounting to factual sexual intercourse with a male child, judicial authorities are compelled to classify what is essentially rape as “molestation”. This conceptual distortion not only violates the requirement for clarity under the principle of legality but also creates logical inconsistencies in the application of the law.

A more profound issue lies in the definition of “sexual penetration” within Chinese law, which remains anchored to traditional physiological concepts. In contrast, the Criminal Code of China's Taiwan region defines “sexual intercourse” as “an act in which a sexual organ enters the sexual organ, anus, or mouth of another person, or any act causing them to combine. An act in which any other body part or object other than a sexual organ enters the sexual organ or anus of another person, or causes them to combine” [2]. Similarly, the UK's Sexual Offences Act (2003) defines “penetration” to include any form of penetration of the vagina, anus, or mouth, all falling within the scope of rape. These legislative examples demonstrate that sexually penetrative acts are not confined to traditional physiological concepts.

In contrast, China's Criminal Law implicitly treats “penile-vaginal penetration” as the core constitutive element of rape, failing to fully recognize that other forms of sexual penetration can inflict equivalent harm on a minor's sexual autonomy. This narrow interpretation of the constituent elements not only lags behind the reality of sexual violation but also constrains the law's ability to effectively regulate and comprehensively protect male minors from acts amounting to factual sexual intercourse.

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2.2.3. Gaps in protection remaining after criminal law amendments

The 2021 Amendment XI introduced the "crime of sexual assault by a person with a special duty of care" yet again limited protection to females aged 14-16, excluding male minors. Consequently, male minors abused by authority figures like teachers cannot access this specific provision or rape clauses. This selective protection reflects persistent legislative gender bias requiring urgent amendment.

Beyond this gender limitation, significant gaps persist for male minors above 14. While under-14 minors receive absolute age-based protection through child molestation charges, those over 14 require proof of "violence or coercion" for compulsory indecency convictions. Non-violent scenarios exploiting cognitive vulnerability often escape punishment, creating loopholes for targeted offenses against male adolescents.

In summary, China's Criminal Law remains entrenched in a binary gender framework, with deficiencies manifesting through limited protected subjects, narrow constituent elements, and persistent protection gaps. This framework not only overlooks equivalent legal interests in male victimization cases but also fails to regulate non-traditional penetration and non-violent assault scenarios, creating systemic imbalances.

2.3. Insufficient theoretical research

Influenced by traditional concepts, China's criminal law has long presupposed females as the exclusive protected subjects in sexual assault crimes, leading to neglect and stigmatization of male minor victims. This entrenched binary gender framework constrains theoretical development, resulting in insufficient research on the wrongfulness of assaults against male minors and inadequate reference to comparative legal experiences.

2.3.1. Insufficient research on the criminal wrongfulness of sexual assault against male minors

Firstly, significant limitations exist in the research regarding the subjects of these offenses. The root cause lies in the academic community's still superficial understanding of the "gender-neutral" concept. In recent years, although some scholars have advocated for gender-neutral legislation, related discussions have mostly remained at the level of principled appeals. The majority of studies merely propose changing the term "female" to "person" in legal provisions, without genuinely challenging the deep-seated binary gender assumptions underlying the norms or shifting the focus from gender identity to the "essential harm to legal interests" of the act. The academic community has generally failed to adequately recognize and establish the legal status of male minors as independent subjects of sexual autonomy, often relegating them to the subsidiary position of atypical victims. As commentators have noted, the current research framework "still treats the sexual assault of boys as a supplement to the female victim model" [3]. This cognitive bias prevents academic research from effectively addressing the special needs of male minors, leaving their protection pathways insufficiently explored.

Secondly, research on the assaultive acts themselves requires substantial deepening. Most studies still apply the traditional paradigm of dominant male perpetrator and vulnerable female victim, neglecting the complex power dynamics that male minor victims may face, including same-sex assault scenarios. Simultaneously, existing research predominantly employs analytical frameworks designed for female victims, failing to fully account for the physiological, psychological, and socio-cognitive differences specific to male minors. Particularly in assessing the victim's subjective state,

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there is a failure to establish identification criteria that adequately consider the physical and mental characteristics of male minors, resulting in a lack of specificity in determining conditions such as "consent" or "inability, fear, or unawareness of resistance".

Finally, a tendency to underestimate the harm to legal interests persists in current assessments. Some studies still regard offenses against male minors as less harmful, failing to fully recognize their long-term negative impacts on victims' personality development and psychological health. Moreover, compared to the multi-layered protection system established for female minors, research on supporting measures for male minors—such as preventive education and post-assault intervention—is significantly underdeveloped.

2.3.2. Lack of systematic research

A substantial body of existing research remains content with revealing deficiencies in legal protection through case analysis, with most research findings focusing on problem description and value advocacy, rarely proposing actionable solutions. For instance, regarding new forms of sexual violation such as online "contactless molestation", while the academic community generally acknowledges their harm, it has failed to address how to adjust the constituent elements of Article 237 of the Criminal Law or how to establish corresponding sentencing gradients. This research disconnect makes it difficult for legislators to obtain effective references for legal amendments from academic work. Even suggestions put forward by some scholars, such as expanding the scope of application of the crime of child molestation, remain vague due to a lack of supporting institutional design [4].

Even when solutions are proposed, reform suggestions from different scholars are often fragmented and uncoordinated, discussing amendments to specific provisions in isolation without holistic consideration. Taking the "expansion of the scope of objects in the crime of rape" as an example, while some scholars recognize the protection gap caused by limiting the victims to "females" under Article 236 of the current Criminal Law, incorporating male minors involves a fundamental adjustment to the definition of "sexual intercourse". Related discussions are mostly limited to superficial references from comparative law, failing to fully consider the internal coherence of China's legal system. They do not simultaneously consider adjustments to supporting systems such as relevant evidence rules and sentencing standards. This piecemeal reform approach may lead to new systemic conflicts in the application of the law.

2.3.3. Insufficiencies in drawing from comparative law

Chinese academic research on minors' sexual rights and interests protection insufficiently utilizes comparative law, often limited to superficial conceptual introductions without deeper institutional or localized analysis. This disconnect hinders effective translation of proposals into China's judicial reality, creating a gap between theoretical frameworks and practical implementation.

Current studies demonstrate two persistent issues where conceptual transplantation without jurisprudential examination produces merely theoretical constructs, and insufficient assessment of institutional feasibility leaves supporting mechanisms like evidence rules underdeveloped. For instance, gender-neutral legislation proposals frequently lack corresponding procedural safeguards, creating implementation challenges in judicial practice.

In summary, despite growing scholarly attention to assaults against male minors and international human rights trends emphasizing equal protection, research on sexual violations against minors in

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China remains in its early stages [5]. There is an urgent need for more scholars to contribute to this field and fill existing research gaps.

3. Comparative law insights on the gender-neutral model

China's current protection framework for minors' sexual rights and interests remains constrained by a gender-binary approach, whereas the international trend is shifting toward a conduct-based model. This gender-neutral paradigm expands protection to all minors and enables precise sentencing alignment through factors like victim age, authority relationships, and violation means. Drawing on comparative law insights can thus provide both theoretical foundation and operational guidance for reforming China's legal system.

3.1. Legislative models from gender binary to conduct-based approaches

3.1.1. Unified offense model (Germany)

Germany's conduct-based legislative approach, codified in Sections 174-184 of the German Criminal Code, establishes a unified “sexual abuse of children” offense that focuses on the nature of the violation rather than victim gender. This framework demonstrates notable adaptability, with Section 177 enabling the inclusion of emerging digital violations like online grooming and psychological manipulation [6].

The model's effectiveness stems from three integrated institutional advantages. Its inclusive offense system incorporates diverse acts under a single framework; its refined sentencing ladder under Sections 174 and 176a establishes imprisonment ranges from three months to ten years based on authority relationships and trauma severity [7]; and its procedural safeguards mandate psychological expert participation to balance judicial fairness with trauma minimization [8].

3.1.2. Tiered offense model (United States)

The United States employs a tiered offense model in sexual offense legislation, establishing a multi-level regulatory system through federal and state statutes. The U.S. Code (Title 18) categorizes offenses into distinct tiers—sexual abuse of a minor, statutory rape, and aggravated sexual assault—each with differentiated elements and sentencing ranges corresponding to violation severity.

Table 7. Tiered classification of sexual offenses under the United States Code

Tier	Common English Name	Relevant U.S. Code Provision (Title 18)	Primary Content Related to Minors' Sexual Rights and Interests
1	Sexual Abuse of a Minor	18 U.S.C. § 2242	Engaging in sexual intercourse or other sexual acts with an individual under 18 years of age; or producing, disseminating, or possessing sexually exploitative material involving minors.
2	Statutory Rape	18 U.S.C. § 2243	A strict liability offense where engaging in sexual intercourse with a minor below the legal age of consent constitutes rape, regardless of the minor's apparent consent [9].
3	Aggravated Sexual Assault	18 U.S.C. § 2241, § 2245 (specifically for children under 12)	Sexual abuse or rape involving circumstances such as death, serious injury, or use of a weapon; punishable by up to the death penalty or life imprisonment.

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This model incorporates multiple statutory factors—such as perpetrator-victim age differences, fiduciary relationships, and violence—as grounds for elevating offense levels. Simultaneously, federal law establishes a refined, age-differentiated sentencing framework through legislation like the Adam Walsh Child Protection and Safety Act (2006). Specifically, its Section 111 categorizes victims into tiers: offenses against victims aged 14–18 trigger registration requirements, those under 14 carry enhanced sentences, and offenses against children under 13 mandate lifetime registration for offenders. As federal law sets minimum standards, states retain the authority to adjust consent thresholds and aggravating circumstances, leading to varied implementations across jurisdictions.

State laws illustrate this localized implementation. Texas Penal Code § 22.011(c) defines a "child" as under 17, imposing strict liability for sexual conduct, while New York Penal Code § 130.35 sets the age of consent at 17 and specifies varying degrees of rape based on precise age combinations between victim and perpetrator [10].

3.2. Refined sentencing

3.2.1. Age and nature of the conduct as foundational sentencing considerations

Age constitutes a fundamental sentencing factor in protecting minors. Germany establishes an absolute protection threshold for children under 14, while U.S. jurisdictions employ statutory rape provisions based on age differentials. Recognizing developmental nuances, some states like Texas incorporate "Romeo and Juliet" exceptions for consensual activities between close-age minors.

Conduct nature equally determines sentencing severity. Contact violations like rape directly violate bodily integrity, whereas non-contact offenses such as online grooming cause lasting psychological harm. California Penal Code Section 311.2(d) criminalizes transmitting obscene materials to minors, demonstrating how legislation addresses non-contact offenses with proportional penalties, including electronic monitoring during probation.

3.2.2. Aggravated sentencing mechanisms

Aggravated sentencing mechanisms enable precise targeting of egregious offenses through statutory circumstances and regulated judicial discretion. Perpetrator's special status and method cruelty serve as universal aggravating factors, remedying basic frameworks' inadequacy for severe cases. The perpetrator's status is primary, where positions like teacher or guardian exploit trust to violate minors and undermine social relationships. The UK's Sexual Offences (Amendment) Act 2000 introduced "position of trust", later aggravated in the Sexual Offences Act 2003 with life imprisonment maximums under breach-of-trust theory.

Exceptional cruelty constitutes another critical aggravation, including prolonged abuse, instrumental injury, or recording assault imagery. Digital means like deepfake child abuse material create transcendent harm, recognized as independent aggravating factors under Article 139h of the Dutch Criminal Code [11].

4. Establishing a gender-neutral criminal law protection system

4.1. Whether a unified offense should be established

The potential establishment of a "crime of sexual assault against minors" must balance systematic coherence with practical needs. While the current Criminal Law already provides protection through offenses such as rape and child molestation, along with aggravated circumstances, creating a

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separate, unified offense could lead to redundant provisions, trigger conflicts between legal articles, and undermine the logical structure of the legal system. Moreover, establishing a new offense would need to overcome judicial inertia, consume substantial resources, and potentially affect the credibility of the law. Hence, integrating special protections into the existing framework is more advisable than creating a separate offense.

4.2. Modifying the gender restrictions regarding the subjects of the offense

The current Criminal Law exhibits significant gender limitations in its definition of sexual offense subjects, urgently requiring legislative reconstruction toward gender neutrality. China could adopt Germany's unified offense model to extend protection to male minors, replacing the term “female” with “person” in relevant provisions.

Regarding minor victims, the gendered term “young girl” in Article 236 should be amended to the neutral concept of “minor” to encompass all minors and prevent protection gaps. Simultaneously, the gender-specific clause in the crime of sexual assault by a person with special duty of care must be eliminated. Legislation should focus on the power imbalance inherent in relationships with teachers or medical personnel rather than mechanically delineating protection by gender.

4.3. Tiering of act types

China could draw on the tiered offense model employed by the United States, as discussed earlier, to establish a scientific hierarchical system for categorizing acts that violate sexual rights and interests. Based on the degree of harm inflicted on the physical and psychological well-being of minor victims, sexual violation acts can be divided into two tiers including contact-based and penetrative sexual violations. This stratification aligns with the progressive nature of harm to legal interests and integrates well with China's existing offense structure.

Contact-based sexual violations form the foundational tier, encompassing acts involving genital contact without penetration against minors, which constitute substantive violations of personal dignity and induce long-term psychological trauma. In contrast, penetrative sexual violations—including rape, anal intercourse, and object insertion—represent a significantly higher degree of harm by violating both bodily integrity and sexual autonomy, thus warranting more severe sentencing tiers. Legislative reconstruction must explicitly include forced penetrative acts against male minors within this regulatory scope to ensure comprehensive protection beyond female victims.

4.4. Specifying “serious consequences” and “aggravating circumstances” for the crime of compulsory indecency or insult

Systematic specification of aggravating circumstances for compulsory indecency constitutes a crucial step toward gender-neutral protection. While the current Criminal Law includes general aggravators like “gathering a crowd”, it lacks minor-specific provisions. Although the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling Cases of Rape and Child Molestation defines “serious consequences” for rape and child molestation, compulsory indecency requires parallel refinement.

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Future judicial interpretations should clarify “serious consequences” and “other aggravating circumstances” specifically. This includes recognizing minor injuries, HIV transmission, severe mental disorders, or suicidal outcomes as “serious consequences”. Offenses against minors, exploitation of special relationships, recording or disseminating imagery, or persistent multi-victim abuse should be categorized as statutory aggravators.

5. Conclusion

Guided by the Convention on the Rights of the Child, China's criminal law reforms in protecting minors' sexual rights and interests, while progressive, require further advancement by establishing "prioritizing the harmfulness of the conduct over gender distinctions" as a core legal principle. This shift would focus legal assessments on the conduct itself rather than gender labels, enabling fairer judicial protection. Constructing a dual-layered system integrating gender-neutral legislation and judicial practice is essential for establishing a contemporary protection system and supporting China's global engagement in minors’ sexual rights and interests.

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