

Problems and Improvements in the Judicial Application of the Offence of Abuse of Wards and Caregivers

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Abstract: *This paper explores the issues and suggestions for improvement in the judicial application of the offence of abuse of wards and caregivers. Although this offence was incorporated into the Criminal Law in 2015, its actual application frequency has been low, particularly in cases involving mental abuse, where recognition remains challenging. The vague legal standards have led to inconsistent judicial practices. To address these issues, it is recommended to legislate clearer standards for "aggravating circumstances," enhance judicial recognition of mental abuse, and improve the professional training of judicial personnel. Additionally, it calls for increased judicial resource allocation to ensure that cases are handled scientifically and fairly, thus better protecting the legitimate rights and interests of vulnerable groups.*

Keywords: *Guardian abuse; Judicial practice; Mental abuse*

1. Introduction

With the rapid development of China's national economy and significant changes in social structure, traditional family life patterns have gradually transformed. People's daily interactions are no longer limited to family members; they increasingly encounter teachers, doctors, caregivers, and various other guardians in their social lives. However, in recent years, instances of abuse committed by individuals with guardianship or caregiving responsibilities—such as nannies, kindergarten teachers, and nursing home staff—against those they are supposed to protect have occurred frequently. These abusive acts severely infringe upon the legitimate personal rights of the affected individuals, attracting widespread public attention.

Abuse is generally defined as the use of cruel and vicious means to treat another person. However, the law does not clearly specify which actions constitute cruel and vicious means. The "Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Marriage Law of the People's Republic of China (I)" (referred to as the "Marriage Law Interpretation") mentions in the context of domestic violence that "persistent and habitual domestic violence constitutes abuse." Based on this provision, scholars often define abuse with the restrictions of "family members" and "persistent, habitual behavior." For example, some scholars define abuse as a situation where one family member repeatedly and consistently inflicts physical or psychological harm on another family member using cruel means. This clearly limits the scope of criminalizing abusive behavior. While the criminal law restricts the offense of abuse to family members as perpetrators, the creation of the crime of abusing guardianship and caregiver has already broken through this limitation. Furthermore, the criminal law does not specify any requirements regarding the persistence or habitual nature of the abuse.

In this context, to effectively protect the legal rights of wards and caregivers, the "Amendment (IX) to the Criminal Law" formally established the crime of abusing guardianship and caregiver, filling the previous legal gaps regarding abuse committed by guardians and caregivers. This amendment has provided a strong protective barrier for vulnerable groups such as minors, the elderly, the sick, and the disabled. To address the issue of identifying the crime of abusing guardianship and caregiver in judicial practice, it is crucial first to understand its application status, identify key issues, and make precise determinations. Therefore, it is imperative to reassess the current state of the application of the crime of abusing guardianship and caregiver, identify its shortcomings in practice, and propose practical improvements. Strengthening the identification and quantification of psychological abuse in the law and establishing clear sentencing standards could potentially lead to significant breakthroughs in the implementation of this crime, thereby enhancing the legal protection of vulnerable groups^[1].

2. Problems in the Judicial Application of the offence of abuse of wards and caregivers

2.1 Low Application Rate, Failing to Fully Utilize Legal Effectiveness

Since the offence of abuse of wards and caregivers was incorporated into the Criminal Law in 2015, its initial intent was to address the increasingly severe issue of abuse against vulnerable groups. However, in practice, the application rate of this offence has fallen far short of expectations. In recent judicial cases, the number of convictions under this offence is significantly lower than for other similar crimes. The law has not fully exerted its intended deterrent and protective effects in practice. Many abuse cases, although meeting the conditions for the application of this offence under the Criminal Law, have not been properly sanctioned due to inconsistent standards of conviction applied by judicial authorities^[2].

One reason for the low application rate is the lack of clear standards for determining "aggravating circumstances." This legal term, in practice, relies heavily on the subjective judgment of judges in individual cases, leading to arbitrary and uncertain convictions. This not only undermines the fairness of the judicial system but also weakens public confidence in the law. Especially in cases involving mental abuse, which is highly concealed, judicial personnel often struggle to deliver strong verdicts due to the lack of specific quantitative standards. As a result, the rights of victims are not adequately protected.

To address this issue, it is crucial to legislate clear standards for the determination of "aggravating circumstances" and provide more precise operational guidelines in practice. This would ensure that the law is effectively applied in more abuse cases, truly fulfilling its purpose of protecting vulnerable groups.

2.2 Difficulty in Quantifying Mental Abuse, Challenges in Judicial Recognition

Mental abuse, as a concealed and long-term form of abuse, often inflicts deep psychological harm on victims. However, due to the absence of visible physical marks, it is difficult to quantify and recognize within the current judicial system. Traditional legal frameworks focus more on physical abuse, as physical injuries provide clear evidence in court, whereas mental trauma is more concealed, making it harder to discover and prove. Many victims of mental abuse may suffer prolonged psychological torment, but in court, unless these traumas have escalated into severe mental disorders, they often do not receive sufficient attention or legal protection.

The difficulty in recognizing mental abuse in the judicial system is not only due to the challenge of collecting evidence but also the lack of professional support. Judicial personnel generally lack expertise in psychology and psychiatry, and in many cases, mental abuse is considered a secondary factor in sentencing, rather than the primary basis for conviction. This not only leaves victims' mental health inadequately addressed but also allows mental abuse to persist without effective legal deterrence.

Addressing this issue requires a multi-faceted approach. Specialized psychological assessment tools and standards should be introduced to scientifically quantify the extent of mental trauma, ensuring that such evidence holds weight in court. Furthermore, the judicial system needs more professionals from the fields of psychology and psychiatry to ensure that mental abuse cases are handled professionally and scientifically. Legislative bodies should establish clearer provisions for the recognition of mental abuse, ensuring that judicial personnel can impose sentences based on defined standards when dealing with such cases. Through these improvements, mental abuse will no longer be a blind spot in judicial recognition, and victims' mental health will receive the protection it deserves^[3].

2.3 Ambiguity in Legal Standards Leads to Inconsistent Judicial Practices

The current law lacks clear quantitative standards for determining "aggravating circumstances" in the offence of abuse of wards and caregivers. This ambiguity has led to inconsistencies in judicial practice. Judicial personnel in different regions, when handling similar cases, often have to rely on their subjective judgment due to the absence of specific sentencing standards. As a result, similar cases can yield vastly different rulings under different judges, undermining the fairness and consistency of judicial decisions.

This ambiguity in standards not only affects the handling of specific cases but also places an additional burden on judges in their decision-making. Without clear guidance, it becomes difficult for

judges to ensure that each ruling is consistent within the legal framework, resulting in arbitrary application of the law, especially when dealing with new types of cases like mental abuse. This inconsistency not only impacts the protection of victims' legitimate rights but also erodes public confidence in the fairness of the legal system.

To address this issue, it is essential to clarify the specific standards for determining "aggravating circumstances" through legislation or judicial interpretation. These standards should encompass multiple factors, such as the duration of the abuse, the severity of the harm, and the physical or mental condition of the victim. Such measures would not only improve the consistency and fairness of judicial practices but also provide judges with clear operational guidelines when handling cases, effectively preventing judgment deviations caused by personal discretion^[4].

3. Analysis of the Causes of the Problems

3.1 The Ambiguity of Legal Provisions Affects Practical Application

In recent years, cases of social abuse have become increasingly common, drawing significant public attention. The "Amendment (IX) to the Criminal Law" specifically added the offence of abuse of wards and caregivers to regulate such cases of abuse occurring between non-family members. This amendment effectively addressed the limitations in crimes like the offence of abuse and the offence of abuse of a person under custody, where special requirements for the offender's identity previously existed. It has provided strong regulation against societal abuse of the elderly, children, and disabled individuals, thereby protecting the legitimate rights and interests of vulnerable groups. However, as this offence is applied in judicial practice, several issues have gradually emerged: ambiguity in identifying the offenders, inconsistencies in the standards for determining "aggravating circumstances," and a lack of consideration for psychological damage. These issues have led to inconsistent judgments in similar cases, resulting in disparities in convictions and sentencing. To address these problems, it is essential to base our approach on practical experience, identify the challenges and difficulties in the judicial application of this offence, conduct in-depth analysis, and find ways to resolve these issues.

The legal provisions for the offence of abuse of wards and caregivers were initially designed to better protect vulnerable groups, but their ambiguity has caused numerous issues in practical application. Specifically, the lack of clear quantitative standards for determining "aggravating circumstances" has created significant challenges for judges when making rulings. Without explicit guidance, judicial personnel often have to rely on subjective judgment when handling such cases, resulting in the possibility of different rulings for similar cases across different regions and judges. This inconsistency not only impacts the fairness of the judicial system but also weakens the law's effectiveness in protecting vulnerable groups^[5].

To address this issue, it is urgent to further refine the quantitative standards for "aggravating circumstances" through legislation or judicial interpretation. These standards should comprehensively consider multiple dimensions, such as the severity of the abusive behavior, its duration, and the victim's physical and mental condition. By providing clearer provisions and guidance, the law can better fulfill its intended role, offering judicial personnel explicit operational criteria to ensure fair and consistent rulings while effectively safeguarding victims' legitimate rights.

3.2 Lack of Quantitative Standards for Mental Abuse, Difficulty in Effective Recognition

Psychological abuse, as a form of invisible and cumulative harm, often causes irreversible damage to the victim's mental health. However, one of the biggest challenges faced by the judicial system in dealing with psychological abuse is the lack of clear quantifiable standards. There are differing opinions in the academic community regarding whether purely psychological abuse can constitute the crime of abusing guardianship and caregiver. Some scholars argue that "persistent psychological oppression and torment, if particularly severe, can be treated as abuse crimes." They believe that psychological harm is no less damaging than physical harm and that it should not be overlooked simply because it is difficult to measure in practice. Excluding psychological harm from the definition of abuse crimes would narrow the scope of punishment, making it harder to combat such offenses. Therefore, they believe that psychological abuse should be included within the crime of abuse. Other scholars, however, argue that purely psychological harm cannot constitute an abuse crime, as it is merely one form of abusive behavior, such as insult or defamation, which can be addressed through other relevant offenses. Thus, they assert that there is no need to include it within the scope of punishment for abuse

crimes.

The current legal framework mainly focuses on identifying physical harm, neglecting the profound impact of psychological trauma on victims. Judicial personnel generally lack the specialized knowledge to handle cases of psychological abuse and the appropriate psychological assessment tools, leading to uncertainty and complexity in the case identification process. Psychological abuse is often relegated to a secondary factor in sentencing rather than being a decisive basis for conviction. This approach significantly weakens the protective effect that the law should have and fails to provide adequate psychological support for the victims.

To address this issue, it is urgently necessary to introduce specialized psychological assessment standards through legislation to clearly define the quantifiable basis for psychological abuse. The judicial system should enhance its collaboration with psychological experts, establish a comprehensive assessment mechanism, and incorporate the degree of psychological trauma into sentencing guidelines to ensure that cases of psychological abuse receive the same level of attention and punishment as cases of physical abuse^[6].

3.3 Legislative and Judicial Practice Lagging Behind, Leading to Accumulated Issues

As social structures evolve rapidly, cases of abuse by non-family members are increasing, and the forms of abuse by guardians and caregivers are becoming more complex. However, legislative and judicial practices have not kept pace with these changes, resulting in numerous issues during the practical application of these cases. Although amendments to the Criminal Law have somewhat expanded the scope of legal protection and aimed to address the diversification of abuse, the lag in relevant legal provisions and judicial interpretations has rendered them insufficient in practice, particularly when it comes to recognizing mental abuse and new forms of abuse.

This lag is evident not only in legislation but also in how judicial personnel handle cases. Many still rely on traditional standards of physical abuse when evaluating cases, overlooking the mental aspect of harm and the complexity of new forms of abuse. This delayed response to emerging types of abuse not only weakens the effectiveness of law enforcement but also prevents victims from receiving the legal protection they deserve.

To address this issue, it is first necessary to accelerate the research and definition of new forms of abuse from a legislative perspective and further clarify sentencing standards for mental abuse through judicial interpretation. Additionally, judicial personnel must continuously update their knowledge and receive training related to new forms of abuse, ensuring that the law can be executed more precisely and effectively when handling complex cases, thereby responding to the diversity and concealment of abuse forms in modern society.

4. Suggestions for Improving Judicial Application

4.1 Clarify the Quantitative Standards for Determining "Aggravating Circumstances"

In the judicial practice of abuse offences, determining "aggravating circumstances" is a critical step. However, due to the lack of specific quantitative standards, judicial procedures are often disorganized and inconsistent. This ambiguity leads to significant differences in judges' understanding and application of "aggravating circumstances" during sentencing. To ensure the fairness and consistency of the law, it is necessary to establish clear quantitative standards through legislation or judicial interpretation, providing judges with more scientific criteria.

The determination of "aggravating circumstances" should consider multiple factors, including the frequency and duration of the abuse, the extent of physical and mental harm to the victim, and whether the victim belongs to a vulnerable group, such as minors or individuals with health conditions. In cases of mental abuse, the severity of the psychological trauma should be quantified using professional psychological assessment tools. This not only ensures the scientific validity of sentencing but also provides more comprehensive legal protection for the victims.

Clear standards would improve the consistency of sentencing and reduce the arbitrariness that can arise from unclear standards. By adopting a multidimensional approach to standardization, the law can better address complex abuse cases, fully realizing its function of protecting vulnerable groups.

4.2 Strengthen Judicial Recognition of Mental Abuse

Mental abuse, as an invisible and continuous form of harm, often causes profound and irreversible psychological trauma to the victims. However, in the current judicial system, the recognition of mental abuse is highly challenging. The difficulty lies in the fact that psychological trauma typically lacks visible physical evidence, which results in the law giving insufficient attention and weight to these cases. Many victims endure long-term psychological suffering, but because of the absence of quantitative standards, this harm often fails to be a central factor in convictions.

To strengthen the judicial recognition of mental abuse, a systematic psychological assessment mechanism should first be introduced. With professional psychological evaluation tools, such as trauma assessment scales and mental disorder classification standards, the psychological harm suffered by victims can be scientifically quantified, providing strong evidence for judicial proceedings. Specialized psychological assessment institutions should be established, staffed with experts in psychiatry and psychology, to assist judicial personnel in identifying key points in mental abuse cases, ensuring the fairness and professionalism of case handling.

The law should clarify the standards for recognizing mental abuse through judicial interpretation or legislation, making the severity of psychological trauma a critical factor in both conviction and sentencing. Particularly for vulnerable groups such as children and the elderly, mental abuse often has a profound impact on their lives, and the law should provide stricter protective measures. By strengthening the recognition of mental abuse, the law can better protect victims' psychological health and effectively combat highly concealed forms of abuse, thus advancing overall judicial fairness in society.

The increased judicial attention to mental abuse is not only a way to fill gaps in the law but also a respect for and protection of the human rights of vulnerable groups.

4.3 Enhancing the Professional Competence and Awareness of Judicial Personnel

When dealing with complex abuse cases, the professional competence and awareness of judicial personnel are crucial to ensuring fair case handling. However, in current judicial practice, many judicial personnel lack a deep understanding and awareness of hidden forms of abuse, such as mental abuse. This deficiency in professional competence leads to mental abuse cases not receiving the attention they deserve during trials, and the psychological health of victims is not adequately protected. Therefore, it is essential to enhance the professional competence and sensitivity of judicial personnel.

Judicial personnel should undergo more systematic professional training, particularly in the fields of mental health and psychological trauma assessment. By collaborating with professionals from psychology and psychiatry, judicial personnel can better acquire the skills to identify mental abuse and understand the long-term effects of different types of abuse on victims. Additionally, training should emphasize the special protection of vulnerable groups, such as children, the elderly, and people with disabilities, ensuring that judicial personnel can make more empathetic and professional judgments when handling such cases.

Judicial institutions need to establish regular case-sharing and experience-exchange mechanisms, encouraging judicial personnel to learn from one another and share their experiences in handling complex abuse cases. By discussing typical cases, judicial personnel can improve their sensitivity to new forms of abuse and gradually form a unified standard for judging mental abuse cases, creating a consistent understanding of such cases. This not only helps to improve the efficiency of judicial practice but also reduces inconsistencies in the rulings of similar cases across different regions and judges.

Judicial personnel should remain sensitive to social realities and continuously update their knowledge and understanding to address increasingly complex forms of abuse. In modern society, abuse is becoming more hidden and diverse, and only through continuous learning and professional development can judicial personnel remain objective and fair in actual cases, effectively protecting victims' rights and upholding justice in the judicial system.

4.4 Improving the Allocation of Judicial Resources

The complexity of mental abuse cases requires the judicial system to have sufficient professional resources and support. However, many judicial institutions currently face issues of insufficient

resources and a lack of technical support when handling such cases. The assessment and quantification of psychological trauma rely on specialized psychological evaluation tools and experts, and the shortage of these resources often prevents accurate judgment in mental abuse cases, leaving the victims' rights inadequately protected.

To address this issue, the judicial system should strengthen cooperation with mental health institutions to ensure that relevant experts can be readily involved in case proceedings. Introducing more professional psychological evaluation institutions and equipment would enable mental abuse cases to be handled more scientifically. Additionally, local judicial agencies should increase investment in the fields of psychology and psychiatry to provide judicial personnel with the necessary support and resources, thereby improving the overall quality and efficiency of case handling.

Judicial training should also emphasize the rational allocation and use of resources, ensuring that the necessary technical support is available when handling complex cases. This approach would not only enhance the fairness of trials but also provide more comprehensive legal protection for vulnerable groups.

5. Conclusion

The introduction of the offence of abuse of wards and caregivers is intended to provide stronger legal protection for vulnerable groups in China's criminal law system. However, despite the importance of this offence, its actual judicial application has not met expectations. The ambiguity of legal provisions, difficulties in recognizing mental abuse, and insufficient judicial resources have become major obstacles to the effective implementation of this offence. If these issues are not resolved, the law's deterrent and protective effects cannot be fully realized, and the legitimate rights of victims will be inadequately protected.

To achieve true judicial justice, deep reforms must be made in both legislation and practice. First, the legal standards for determining "aggravating circumstances" must be clarified through legislation. This would reduce the subjectivity of judicial personnel in handling cases and ensure consistent rulings for similar cases across different regions and judges. Clear legal standards are fundamental to improving judicial efficiency and fairness.

Second, judicial recognition of mental abuse must be strengthened. As a hidden and cumulative form of harm, mental abuse is often overlooked or downplayed, yet its impact on the victim's mental health can be long-lasting and profound. The judicial system needs to introduce scientific psychological evaluation tools and standards to ensure that mental abuse cases receive the attention and handling they deserve. At the same time, society should increase awareness and attention to mental abuse, preventing such cases from being ignored outside the legal framework.

The professional competence of judicial personnel is also a critical factor in enhancing judicial fairness. Through more systematic training, judicial personnel can better manage complex cases such as mental abuse, ensuring that cases are handled fairly within the legal framework. Strengthening cooperation with professionals in psychology and psychiatry can provide judicial personnel with the necessary technical support, improving the scientific and fair handling of cases.

In the future, the improvement of the law and the enhancement of social awareness must go hand in hand. Only by continuously strengthening the enforcement of the law and improving its operability can we truly provide comprehensive legal protection for vulnerable groups.

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