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# Evolution of Compensation for Emotional Damages in China

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## Abstract

Compensation for emotional damages is important liability system in tort law. The rules of compensation for emotional damages in China has experienced evolution from vacancy to establishment of legal system in main legal resource of tort law. The article give an introduction to the evolution of the rules, the first part is explanation to the vacancy of the rules in past time, the second part introducing the disputes of the legal theory, the third part analysis the current regulations of compensation for emotional damages.

## Keywords

Evolution, Compensation, Emotional damages.

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## 1. Introduction

Compensation for emotional damages has been established in civil codes in many civil law countries. In china which legislation deeply effected by civil law system there was no regulations of compensation for emotional damages for a long time. It made victims who suffered mental damages unable to receive compensation. A variety factors contributed to the situation. Ideology maybe the main reason. When in the planned economy period of china, in Mainstream opinion compensation for emotional damages is characteristic of capitalize countries, An typical view was “compensation for emotional damages is close to merciless 'Cash transactions', in socialism countries human is the most valuable fortune of society, it is unable to value the life and health of human by money, only when the assault to human body result in property losses that plaintiff would be liable for compensation. If there is no property loss, there is no civil liability”. This view just coincide with traditional money view of china.

When society developed into the market economic, things are different. Individual's rights got more respected, there is a sharp increase in protections of human rights from government. On the other hand, traditional money view changed, people feel no hostility towards money, compensation with money became the main methods in civil remedy. It made possible of using money as compensation for nonphysical damages. Owing to complex of the legislative procedure, compensation for emotional damages was not established in *General Principles of the Civil law*. Which play a role as civil code in china. Instead, it was ruled in judicial interpretation. This kind of act actually resolved some practical problem, but the absent of deep research make it as Expedient measure. Regulations of compensation for emotional damages in judicial interpretation is not specific, accordingly, when regulations apply in practical cases the effect is limited.

## 2. Disputes of Legal Theory on Emotional Damages

Owing to big different opinions between scholars as well as disputes lies between legislature and legal scholar on some important issues, there was no ideal legal regulations of compensation for emotional damages so a long time, theory disputes are as follows.

## 2.1 The Relation Between Nonphysical Damage and Emotional Damages.

There are two view points about the relation between two damages .in one view that emotional damages just same as nonphysical damage, both of them refers to physiological or psychological misery that victims can feel. the rest scholars consider that emotional damages is one of damages in a wide range of nonphysical damages such as harm to personality rights and status rights , The difference between two view point is not only a theoretic problem but also affects practical cases. According to the first view, victims that can claim compensation for nonphysical damage should be restricted in nature person, artificial person such as corporation should be excluded from victims, because they have no misery of physiology for they are not biologic organism. According to this view, it is difficult for enterprise to protect their good will suppose a corporation is libeled by a newspaper and result in a cline of competitive of the corporation, perhaps there is no direct property losses, but perspective sale will be affected, the corporation can not claim for compensation.

## 2.2 Emotional Damages in State Tort

In state tort cases, according to *Law on State Compensation* state compensation only for physical damages, there is no remedy for nonphysical damage. In she xiang ling vs government case, victims was deprived of freedom for several years due to illegal activity of state organ ,finally he was proved innocent ,but there is no compensation for his emotional damages . that is so unfair, in fact, in state tort cases mental damages of victims is no less serious than in civil tort cases. It is inevitable demand of a state rule by law that state organ should be liable for compensation for it's unlawful acts, which can embody protection of the human rights and restriction of the state power .

## 2.3 Basis of Calculation For Emotional Damages

How to fix amount of compensation is very important in trial nonphysical damage cases ,it is difficult to compute the amount of nonphysical damage for it's intangibility. Various Compute methods were adopted in countries around the world ,such as estimate methods . classification methods, however, now in china basis of calculation foremotional damages have not been ruled in judicial interpretation, instead, considerable factors of compensation were listed in it . as a result fixing the amount of damages mainly depends on subjective judgment of the court. In general, victims get a small amount of compensation inemotional damages cases, absent of objective basis of calculation bring about insufficient compensation for victims. Adopt appropriate basis of calculation for emotional damages is inevitable problem of legislation of tort liability law.

## 3. The Legal Rules and Regulations of Compensation for Emotional Damges

### 3.1 Specific Content of Judicial Interpretation

The system of compensation for emotional damages in China is mainly through Judicial interpretation . Until February 26, 2001 the Supreme People's court made *Judicial Interpretation for Several Issues on the Liability of Compensation for Emotional Damages* ,the scope of compensation for emotional damages includes infringement to person, personal interests, right to status, The right to items with significance as symbol of specific personal memory. In the judicial interpretation Compensation for emotional damages has been divided into three types, 1, disability compensation for disabilities; 2, death compensation for death; 3, comfort compensation for other kind of damages. There are four types of situations in which the victims can applying for compensation for emotional damages, article 1 to article4 describe the situations.

According to article1. A natural person can brings a law suit before people's court for compensation for emotional harms from unlawful infringement on any of the following personal rights, the people's court shall accept and hear the case. the rights include right to life , health and body; right to name , portrait; reputation and honor ; right to personal dignity and personal freedom.

Article 2 describes the tort which makes a ward out of guardianship, which results in serious damages to parentage or close relatives, the guardian has the right to bring a law suit for compensation for emotional harm.

According to article 3, if a natural person dies and his close relatives can bring a law suit to people's court for compensation for emotional harm because of suffering emotional harm from any of the following acts. These acts are infringing on the name, portrait, reputation or honor of the decedent by insult, libel, derogation or uglification or by other means in violation of public interests or social morality; acts of infringing on the privacy of the decedent by unlawful disclosure or taking advantage of the privacy of the decedent or by other means in violation of public interests or social morality; or acts of unlawfully taking advantage or damaging the body or remains of decedent, or violating the body or remains of decedent by other means in violation of public interests or social morality.

In article 4 it rules if a particular memorial with personal symbolism is permanently lost or destroyed by tortious acts, the owner of the memorial brings a tort suit before a people's court for compensation for emotional harm.

### 3.2 The Significance of Judicial Interpretation

The system of compensation for emotional damages in China has made significant progress. The judicial interpretation clearly states emotional damages can be compensated. The significance of the judicial interpretation are as follows: First, it realizes the scope of compensation for emotional damages evolving to "physical personal right" from "spiritual personal right". The scope of compensation for emotional damages is limited to the rights which have been stipulated in General Principles of Civil Law, such as the right of name, portrait, reputation, and honor. Secondly, personal rights such as right of privacy have been brought under the direct judicial protection as legitimate interests. Thirdly, it is to extend the scope of compensation from the personality rights to status rights. Article 2 of the judicial interpretation regulates guardian as victims of infringement of guardianship, parentage, and relation of relatives have rights to ask compensation for emotional damages. Right to status always based on relation of marriage or families. Guardian is not just a type of duty, but also a kind of right. The guardian has the right to seek compensation for emotional damages.

### 3.3 Rules in Tort Liability Law

In 2009 *China Tort Liability Law*, as an important legal resource of civil law, was passed through the legislation process of NPC standing committee. The Article 21 of the law rules, *Infringe upon the personal rights and interests of others, causing serious emotional harm to others, the victims may request compensation for emotional damages*. The law definitely states the emotional damages should be compensated by tortfeasor. Although less rules of emotional damages were regulated in *Tort Liability Law*, the symbol meaning is significant, that means the formal legislation accepts the compensation for emotional damages. But compared with the judicial interpretation Tort liability law still needs improvement. Firstly, an explicit definition of emotional damages is needed in order to support the victims. Secondly, an objective standard for judging and valuing the emotional damages is important for compensation for emotional damages in real cases trial.

## 4. Conclusion

The system of compensation for emotional damages in China has experienced a process from abstract to concrete. The judicial interpretation of the emotional damages providing the judgment standard of the compensation for emotional damages, which were made as guidelines for the trial of a large number of cases. The article 21 of *Tort Liability Law* provides the legislative basis for compensation for emotional damages. Although the basic system of mental damage has been established, it still needs further improvement, types of emotional damage should be established in the legislation for supporting the more victims and the objective criteria should be established as far as possible for the benefit of reasonable case trial.

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