

From Private-Sphere Autonomy to Public Intervention: Paradigm Shifts and Institutional Restructuring in the Governance of Domestic Violence

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Abstract: The patterns of violence stemming from the alienation of traditional ethics and the imbalance in gender rights have transcended the boundaries of self-governance in the private sphere, posing a dual threat to citizens' fundamental rights and public order and urgently requiring intervention by public authorities. Although the current "Law on Combating Domestic Violence" establishes intervention mechanisms such as the admonition system and personal protection orders, its practical implementation still reveals structural contradictions, including the dominance of punitive interventions, the neglect of restorative measures, and gaps in institutional coordination. Therefore, efforts should begin by broadening the methods by which public authorities intervene in cases of domestic violence and enhancing the practical feasibility of such interventions. This will further refine the legal framework governing public intervention in domestic violence and, through the coordination of public and private law, achieve an organic unity between the value of family cohesion and the protection of modern rights.

Keywords: domestic violence; public authority; rationality; improvement

1. Introduction

Under the influence of traditional notions such as "family matters should not be aired in public" and "even the most impartial judge cannot resolve family disputes," the family is typically regarded as a private sphere. Family conflicts are often resolved through internal, self-governing mechanisms, while

legal intervention is excluded (Li HX, 2020). Precisely because of this, some individuals "use the private sphere as an excuse, shielding themselves behind the 'halo' of personal privacy, to exclude the intervention of public authority, thereby allowing them to arbitrarily abuse their children and wives within the family" (Blumenfeld E & Mann S., 1980). With the evolution of human civilization, domestic

violence has transcended spatial boundaries to become a global social challenge (Xue NL., 2008). In March 2016, the Law on Combating Domestic Violence (CDVL) officially came into effect, reflecting the proactive stance of public authorities in addressing domestic violence.

2. The Legitimacy of State Intervention in Domestic Violence

Domestic violence is not merely a matter of individual misconduct but rather a product of sociocultural factors, psychological mechanisms, and legal gaps. The constraints imposed by the traditional concept of private autonomy, the long-standing entrenchment of gender power structures, the pathological nature of the desire for control manifested in violent behavior, and the need for equitable prioritization in the protection of rights collectively form the foundation for the legitimacy of state intervention in domestic violence.

2.1 The Alienation of Traditional Ethics and the Imbalance of Gender Power

In traditional Chinese culture, the “family” and the “nation” are closely intertwined—a concept known as “the family as the nation”—which reflects the fact that the expansion of political communities in ancient China was rooted in kinship ties. In ancient Chinese society, the family held a pivotal position. Mr. Liang Shuming once said: “From the moment of birth, people are and remain embedded in various relationships, and these relationships are, in essence, various forms of ethics” (Liang SM., 2011). Traditional ethics were primarily manifested in “differential” relationships based on kinship and status (Zhang JY., 2020). These “differential” family relationships, centered on “patriarchy” and “marital authority,” granted the “head of the household” (typically the father or husband) excessive authority over family affairs, while neglecting the rights and interests of women and children.

“Domestic violence is a ‘cancer’ in society and a veritable social scourge, because it serves as a breeding ground for social violence” (Xu H., 2014).

Although domestic violence mostly occurs within the family, if it becomes a widespread social trend, it will cause far-reaching harm to both families and society. It not only severely damages the physical and mental health of family members and erodes the foundations of family unity but also breaches the privacy of the family, posing a massive threat to social stability. In such cases, intervention by public authorities is not only a necessary means of legal redress but also an inevitable choice for safeguarding the overall interests of society.

2.2 The Pathologization of Control and the Entrenchment of Victims’ Trauma

The persistence of domestic violence relies not only on cultural tolerance but is also deeply rooted in the complex psychological interactions between perpetrators and victims.

On the one hand, the family holds extraordinary significance for every Chinese person. Mr. Lin Yutang once said, “A family, together with friends, can form a fortress as strong as a wall of bronze and a barrier of iron, because of the mutual support among its members” (Lin YT., 2010). Prolonged domestic violence severely erodes the victim’s emotional anchor, instilling a fear of the family and plunging the victim into a state of helplessness, which in turn leads to adaptive changes in the nervous system. These physiological changes, combined with psychological trauma, reinforce one another, trapping the victim in a “freeze response.” On the other hand, violent behavior can be learned through observation and imitation. Perpetrators of domestic violence often view violence as a tool to establish authority and alleviate anxiety. This pathological manifestation of a desire for control also causes violent behavior to gradually evolve from sporadic conflicts into a means of exerting power within the family. Living in such an environment of domestic violence for an extended period has a devastating impact on children’s development. This not only leads to personality distortions but may also cause children to spread this pain to the wider community when they enter society, creating factors of instability and

undermining social harmony and stability (Liu YL., 2011).

When public authorities intervene in cases of domestic violence—whether by imposing penalties on perpetrators or taking supportive measures to intervene in a timely manner—they not only create a deterrent effect in society and demonstrate the law’s zero tolerance for violent behavior, thereby preventing domestic violence, but also help families affected by domestic violence restore order and unity and assist victims in reclaiming their sense of self.

2.3 A Paradigm Shift from Private Autonomy to a Rights-Based Approach

Rawls’s *A Theory of Justice* emphasizes that the realization of social justice does not rely solely on spontaneous constraints imposed by morality or custom; rather, it is even more crucial to establish institutional safeguards, particularly when it comes to protecting the rights of vulnerable groups. Although the legal tradition expressed in the saying “even the most upright judge cannot settle family disputes” reflects respect for autonomy within the private sphere of the family, its limitations have become increasingly apparent under contemporary human rights principles. When family autonomy becomes a refuge for perpetrators to evade legal responsibility, it not only severely undermines the fundamental rights of family members but also challenges the fairness and justice of society as a whole.

The United Nations Declaration on the Elimination of Violence against Women states that violence against women in the family is widespread and that all countries should adopt policies as soon as possible, using all appropriate means, to eliminate such violence. This not only demonstrates the international community’s resolute stance against domestic violence but also provides a legitimate basis for governments to implement legal interventions. Therefore, the intervention of public authorities in cases of domestic violence is not only

a moral imperative from the perspective of social equity but also a legal responsibility under the framework of international law.

3. An Examination of the Current Status of Government Intervention in Domestic Violence

From the first inclusion of provisions against domestic violence in the Law on Marriage and Family in 2001 to the formal implementation of the CDVL in 2016, China’s legislation against domestic violence has not only increased significantly in volume but also shown a trend toward diversification in terms of the entities responsible for drafting the laws, as well as the methods and means of intervention. However, the actual effectiveness of these governance measures has been less than ideal.

3.1 Vague Definitions and Difficulties in Practical Determination

According to Article 2 of China’s CDVL, domestic violence refers to acts of physical and mental abuse committed between family members, such as beating, binding, restricting personal freedom, and frequent verbal abuse. Although the law defines the scope of domestic violence through a list of specific acts, practical application still faces challenges in determining what constitutes domestic violence.

The term “frequent” as defined in the legislation lacks quantitative standards, leading to inconsistent determinations in practice. Some argue that if an incident consists only of occasional arguments or outbursts that do not cause obvious physical harm to the parties involved, it should not be classified as domestic violence in the legal sense¹; others contend that as long as the violent act causes physical or mental harm to the parties involved, regardless of its frequency—even if it occurs only sporadically—it should be recognized as domestic violence (Song JN & Chen Y., 2024). At the same time, determining the severity of domestic violence presents a similar dilemma. The law does not further clarify what level of violence constitutes domestic violence. Some parties argue that

¹ (2021) Gan 0921 Min Chu No. 571 (Civil Judgment).

“domestic violence should refer to continuous acts of violence over an extended period of time; occasional arguments or roughhousing between spouses cannot be classified as domestic violence” (Guangzhou Railway Transport Courtm, 2017), while some judges contend that “minor acts of violence, such as slapping or mutual shoving, should not be classified as domestic violence if they do not result in persistent physical or mental harm to the victim” (Liubei District People’s Court of Liuzhou City, Guangxi Zhuang Autonomous Region, 2021). The lack of uniform standards for determination has directly led to discrepancies in judicial rulings, undermining the authority of the law and public trust in it.

3.2 Imbalance in Intervention Methods, Neglect of Healing-Oriented Interventions

Adam Smith’s “rational economic man” hypothesis posits that people are rational and that every choice they make is based on a weighing of interests. Therefore, it is believed that domestic violence can be effectively prevented simply by punishing perpetrators to create a deterrent effect, thereby stopping and preventing their violent behavior. (Li CB, 2023) The domestic violence warning system and the personal safety protection order system established in China’s CDVL are preventive measures designed to prevent the recurrence of domestic violence by exerting a legal deterrent effect on perpetrators. While these measures have, to a certain extent, exerted a short-term deterrent effect on perpetrators, domestic violence generally exhibits cyclical and repetitive characteristics. Under these circumstances, punitive interventions may temporarily suppress the behavior but cannot eradicate the root causes of domestic violence.

In contrast to punitive interventions, therapeutic interventions focus on the deep-rooted causes of the problem and the healing potential inherent in the law. (Yu XZ, 2014) Proponents of restorative interventions argue that we should not view perpetrators of domestic violence as “cold-blooded or even cruel monsters.” (Gelles RJ, et al., 1996) Although Article 22 of China’s “Law on the

Prevention and Control of Domestic Violence” specifically mentions restorative prevention, this general provision fails to meet the needs of practical implementation. The severe inadequacy of provisions regarding such measures has rendered this article little more than a formality. First, regarding the responsible entities, organizations such as trade unions, the Communist Youth League, and the All-China Women’s Federation lack a clear legal basis for providing psychological counseling and legal education to parties involved in domestic violence. Laws such as the Trade Union Law, the Constitution of the Communist Youth League of China, and the Law on the Protection of Women’s Rights and Interests do not confer upon these organizations the responsibility to provide legal education and psychological counseling to victims of domestic violence; moreover, these organizations generally lack the necessary capacity for such counseling and education. Second, regarding the content, how should the phrase “when necessary” be defined in the context of providing psychological counseling “when necessary”? Furthermore, it remains to be seen whether legal education and psychological counseling provided “when necessary” can actually serve to curb and prevent domestic violence. All of this has led to difficulties in implementing these remedial measures in practice, leaving the relevant provisions vague and rarely enforced.

3.3 Lack of Cooperation Mechanisms and Difficulties in Implementing Mandatory Systems

Effective governance of domestic violence relies on coordinated action among public authorities; however, in practice, the division of responsibilities among departments is unclear, and the development of coordination mechanisms has lagged, resulting in weakened intervention effectiveness.

On the one hand, regarding the mandatory removal system, China’s initial provisions on mandatory removal in cases of domestic violence appeared in the “Opinions on Several Issues Concerning the Lawful Handling of Acts by Guardians That

Infringe Upon the Rights and Interests of Minors” (OGIMR). Article 11 of the OGIMR explicitly states that public security organs may carry out mandatory removal of minors who have suffered domestic violence. Under the “CDVL,” the authority responsible for enforcing compulsory removal was transferred from public security organs to civil affairs departments, with public security organs now bearing only the obligations to notify and assist with enforcement. This makes it difficult for them to proactively cooperate, which undoubtedly weakens the effectiveness and practicality of the compulsory removal system.

On the other hand, the warning system and the personal safety protection order system established by the “CDVL” face numerous practical operational challenges. First, the “CDVL” lacks clear legal provisions regarding the conditions for applying the domestic violence warning system. The law stipulates that the warning system applies to cases of “domestic violence of a relatively minor nature,” but it fails to clearly define what constitutes “relatively minor.” Relying solely on the “intuitive judgment” of relevant departments will inevitably lead to inconsistent standards of assessment. Second, the legal nature of the warning notice has not been clarified, and the burden of proof for personal safety protection orders is unreasonably structured. Regarding the legal nature of the warning notice, the CDVL provides no explicit definition; there is ongoing debate in both practice and theory regarding its legal status, which is also the primary reason why the implementation of warning notices has been less than ideal in reality.

4. Approaches to Improving the Institutional Framework for Government Intervention in Domestic Violence

Given the characteristics of domestic violence—including a significantly higher proportion of female victims compared to male victims, complex causes of violence, diverse forms of violent behavior, and the difficulty of intervention (Li XH, 2017)—institutional design must focus on

innovating intervention concepts, diversifying intervention measures, and refining institutional frameworks to establish an effective intervention system for domestic violence, thereby achieving a balance between safeguarding the rights of family members and maintaining social order.

4.1 Revamping the Concept of Intervention: Combining Punishment and Healing

Only by combining punitive and therapeutic interventions—and, depending on the circumstances, either prioritizing punitive measures with therapeutic ones as a supplement or prioritizing therapeutic measures with punitive ones as a supplement—can we achieve a synergistic effect that represents the wise choice for resolving domestic violence issues.

In terms of specific intervention approaches, restorative interventions should serve as a complementary measure to punitive interventions. They must not only focus on protecting the rights and interests of victims but also prioritize the psychological counseling and behavioral rehabilitation of perpetrators, helping them reintegrate into society, return to their families, and repair family relationships fractured by domestic violence. This dual focus on both victims and perpetrators is not only a requirement of modern family governance but also an effective means of preventing and controlling domestic violence in the long term. Combining punishment with healing not only adheres to the principle of humanity in the governance of domestic violence but also addresses the requirements for the legitimacy and rationality of public authority intervention in private matters.

4.2 Improve Therapeutic Measures and Establish a System of Supporting Mechanisms

Given the general provisions regarding therapeutic interventions in China’s current laws, institutional frameworks must further clarify the entities responsible for such interventions, the content of these interventions, and specific procedures, while establishing a systematic set of supporting

mechanisms to ensure their effective implementation.

First, the entities responsible for domestic violence rehabilitation and their specific duties should be clarified. The causes of domestic violence are diverse and “are often related to mental illness; if perpetrators do not receive timely intervention and treatment, this violence will continue.” (Witty, n.d.) Addressing domestic violence requires coordinated efforts among multiple departments to form a collective force. Therefore, Article 22 of the “CDVL” should be amended to include health authorities, professional psychological intervention agencies, and social work organizations as entities responsible for domestic violence treatment. At the same time, the legal responsibilities of the aforementioned departments and the conditions for their intervention should be clearly defined to ensure that each entity actively fulfills its duties and effectively provides psychological treatment, social support, and family relationship restoration services to parties involved in domestic violence.

Second, regarding the content of domestic violence recovery, given the complex and diverse nature of its causes, a variety of measures—including psychotherapy, psychological counseling, educational correction, and social support—should be adopted. For example, to address the abuser’s pathological psychological state, psychological therapy should be provided to help them recognize their own psychological issues and teach them how to interact with family members on an equal footing; to address the economic, physical, or emotional constraints faced by victims of domestic violence, social support should be provided through joint efforts by the All-China Women’s Federation, public security departments, and other agencies to introduce social work service programs and organize and carry out anti-domestic violence initiatives within the community. The goal is to achieve the joint healing of both abusers and victims through a rich and diverse array of healing measures.

4.3 Refine Punitive Measures and Standardize Conditions and Procedures for Their Application

While clarifying restorative intervention measures, it is also necessary to further refine existing punitive intervention measures to enhance their practical applicability.

On the one hand, the legal nature and scope of application of warning letters must be clarified. Essentially, a warning letter constitutes a factual determination of domestic violence and may be used as evidence in cases such as divorce proceedings. Therefore, the legal nature of a warning notice should be characterized as an administrative factual act. Consequently, the law should also provide parties with certain avenues for redress—such as establishing a review system for warning notices—while referencing local legislation to clarify the conditions for their application.

On the other hand, it is necessary to reasonably determine the evidentiary standards and the burden of proof for personal safety protection orders. Admittedly, relevant documentation issued by public security organs—such as warning notices and police dispatch records—can serve as evidence that the victim faces an actual risk of domestic violence. (Xu WY., 2021) However, the departments and individuals capable of proving the actual existence of domestic violence are not limited to public security organs and responding police officers; they also include neighbors and other individuals present at the scene, including personnel from civil affairs departments, women’s rights protection agencies, neighborhood committees, and similar organizations. If these individuals, departments, and organizations can provide relevant evidence and the court verifies it to be true, such evidence should also be accepted as grounds for determining the “existence of a real danger of domestic violence.”

4.4 Optimize Coordination Mechanisms and Clarify Departmental Responsibilities

To address the current prominent issue of poor coordination among public authorities in China,

legislation should be enacted to clarify the specific responsibilities and coordination mechanisms of organizations such as public security, civil affairs, judicial, and health authorities, as well as the All-China Women's Federation, in the fight against domestic violence. When an incident of domestic violence occurs, public security authorities should intervene promptly to ensure the victim's personal safety. After initiating emergency protective measures—such as compulsory removal or personal protection orders—they should promptly notify civil affairs departments, health authorities, and social service agencies so that these entities can provide further therapeutic interventions to the parties involved in the domestic violence. After judicial authorities have adjudicated such cases, they should also refer cases to social service agencies for family relationship restoration services based on the outcome of the case. Establishing a “full-process intervention chain” not only enhances the effectiveness of interdepartmental coordination but also helps achieve a systematic approach to domestic violence governance.

5. Conclusion

Research on public authority intervention in the governance of domestic violence reveals that, in the context of contemporary human rights protection, the traditional model of private-sphere autonomy is no longer sufficient to address the patterns of violence stemming from deviations from family ethics. Domestic violence not only erodes family unity and equality among members but also threatens public order through the socialization of violence; therefore, public authority intervention is urgently needed to balance private rights and the public interest. Although the current “CDVL” has

established an intervention framework—including a warning system and personal protection orders—structural contradictions in practice—such as the dominance of punitive interventions, the neglect of restorative measures, and gaps in institutional coordination—have undermined the effectiveness of governance. Therefore, efforts should be guided by the refinement and categorization of public authority intervention methods to broaden intervention channels and strengthen operational standards. Through the organic integration of punitive interventions and restorative measures, we can achieve a harmonious balance between the protection of family members' rights and the maintenance of public order.

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