

Criminological research of deviant behavior

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Practical Exploration of the Response of Public Security Agencies to Domestic Violence Cases

Abstract

In China's system of the prevention and deterrence of domestic violence, public security agencies are the main force behind the fight against domestic violence and are also important organizations for managing and governing domestic violence. Therefore, from the perspective of the public security agencies, with the practical experience and data of public security, this paper focuses on the handling and features of domestic violence cases currently by public security agencies, discusses the highlights of the process, and then summarizes the findings in a systematic and comprehensive manner in the aspects of updated thinking, law application, effectiveness guarantee, etc., so as to improve the mechanisms of handling domestic violence cases for public security agencies.

Keywords

domestic violence, China, public security agency, practical exploration

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Криминологические исследования девиантного поведения

Научная статья



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Изучение практического опыта органов общественной безопасности Китая о домашнем насилии в семье

Аннотация

В китайской системе предупреждения и сдерживания роста домашнего насилия в семье, органы общественной безопасности Китайской Народной Республики воспринимаются в качестве силы, выступающей и в роли защитника от возможной тирании, и основным субъектом в сфере выработки национальной политики в сфере предупреждения насилия в семье. Принимая во внимание накопленный практический опыт и данные, полученные от органов общественной безопасности Китая, основное внимание в данной статье авторы уделили рассмотрению некоторых особенностей девиантного поведения в реальных случаях применения домашнего насилия в семье. Обсуждаются ключевые аспекты дел, обобщаются и выносятся на обсуждение итоги всесторонней систематизации рассматриваемых проблем применения законодательства, гарантий эффективности и т.д., с тем, чтобы в дальнейшем усовершенствовать механизм рассмотрения дел о домашнем насилии в семье органами общественной безопасности Китайской Народной Республики.

Ключевые слова

домашнее насилие, Китай, общественная безопасность, практический опыт

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Domestic violence exists all over the world and has always been a global social problem. Its main behavior mainly includes the infringement of the relevant legal rights and interests of family members, resulting in both physical and psychological injuries for the victims. Under extreme circumstances, the victims are forced to commit crimes by using “violence to fight against violence”, which seriously affects family harmony and social stability. The Anti-Domestic Violence Law of the People’s Republic of China (hereinafter referred to as the “Anti-

Domestic Violence Law”) that came into force on March 1, 2016, specifies the concept and applicable scope of domestic violence (Yue, 2016; Wei & Zhongwei, 2019). In practice, the public security agency created a series of new measures with Chinese characteristics for handling domestic violence cases. As the “main force” in handling domestic violence cases, public security agencies have multiple duties such as prevention, education, correction, and punishment. Based on the current situation of public security practices, this paper

summarizes the main experience and practices adopted by public security agencies when they handle domestic violence cases, so as to achieve an organic unity between the legal and social effects.

I. The Current Situation and Features of Domestic Violence Cases in China

1. The current situation of domestic violence

At present, there are many relevant laws, regulations, and normative documents in China for the handling of domestic violence by public security agencies. In the *Constitution of the People's Republic of China*, Article 48 stipulates «the protection of women's rights and interests» and Article 49 stipulates «the prohibition of the maltreatment of the elderly, women, and children». The *Anti-Domestic Violence Law* integrates civil, administrative, and criminal regulations, providing the practical legal basis for public security agencies to prevent and control domestic violence, protect the legal rights of family members, and guarantee the stability of social order.

According to the *Criminal Law of the People's Republic of China*, public security agencies should investigate the criminal liabilities of the corresponding alleged crimes committed by the perpetrator when their domestic violence behavior constitutes a criminal offense based on the subjective intent, behavior mode, and result of harm. According to the third section of the *Law of the People's Republic of China on Penalties for Administration of Public Security* with respect to the behaviors and punishments of the infringement of personal and property rights, when the physical and psychological harm committed to the victim through different methods of domestic

violence does not reach the level of criminal liability, public security agencies shall impose an administrative detention, a fine, or a warning on the perpetrator for the corresponding illegal acts based on the subjective and objective conditions of the perpetrator. In the *Civil Code of the People's Republic of China*, Book One General Principles, Book Four Personality Rights, Book Five Marriage and Family, Book Six Inheritance, and Book Seven Liability for Tort lists the relevant detailed provisions at the substantive law level on the civil liabilities to be undertaken when personal rights, personality rights, marriage relations, and inheritance relations are infringed by domestic violence. There are also the provisions on protecting the corresponding rights of vulnerable groups in families in the *Law of the People's Republic of China on the Protection of*

Women's Rights and Interests, the *Law of the People's Republic of China on the Protection of Minors*, and the *Law of the People's Republic of China on the Protection of the Rights and Interests of the Elderly*. In addition, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice have jointly issued the *Opinions on Handling Criminal Cases of Domestic Violence According to Law* and other judicial interpretations, and local laws and regulations against domestic violence have also been issued successively in Shandong Province, Guangdong Province, Jiangsu Province, etc. These provide practical legal support for public security agencies in handling domestic violence issues and play important roles in the effective implementation of anti-domestic violence work and the cracking down of domestic violence crimes.

2. Types of domestic violence cases

1. Domestic violence cases involving physical violence

Among domestic violence cases, the most common type is physical violence, which also causes the greatest harm. As the most common behavior pattern in domestic violence cases, physical violence is «asymmetric violence». The perpetrator forces the victim to accept being «dominated» by using methods such as beating, restraints, mutilation, and restricting personal freedom.

2. Domestic violence cases involving psychological violence

Psychological violence in domestic violence cases is relatively concealed and difficult to identify. It mainly manifests as the frequent use of verbal abuse, intimidation,

and other methods, resulting in psychological harm to others. Psychological violence behavior is a kind of long-term mental suppression of the victim, which is subjectively manifested as intent, and objectively as action. However, due to our country's condition and traditional culture, non-action «cold violence» is generally not included in the scope of domestic violence as stipulated by law. For example, in the case of «Zheng v. Ni Divorce Dispute» in the «Top 10 Typical Cases of Domestic Violence» released by the Supreme People's Court in 2014, for a long period of time, the perpetrator Ni would pat a basketball with the words «I want to kill Zheng» written on it in front of the victim, causing the latter to be in a state of great fear and depression for a long time. Later, the court determined that

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Ni's frequent action had caused mental harm to Zheng, which constituted as psychological violence behavior.¹

3. Domestic violence cases involving other forms of violence

The *Anti-Domestic Violence Law* uses enumeration when stipulating infringement behaviors. Apart from infringement methods such as physical and psychological violence, the word "etc." is also added at the end. The "etc." here is different from the "etc." used regular situations. The behavior must, at least, be equal to the two kinds of behaviors mentioned above in order to give the public security agencies the necessary space to deal with the domestic violence.

II. Comparison of the Handling of Domestic Violence Cases by the Police in China and Abroad

1. The understanding of domestic violence

Different from ordinary violent behaviors, domestic violence is a special social relationship based on the rights and obligations between relatives or similar family members. The pain caused by the violence can be forgotten constantly because of love, thereby resulting in a relationship that lies between the private and public spheres. The U.S.A and Britain have experienced the turning of domestic violence from the extreme end of belonging solely to the private sphere to the other extremity of the public sphere. The police's active intervention in domestic violence does not give the victim any freedom and ignores the special relations on which domestic violence is based. Although it has a certain deterrent effect on domestic violence, it has an adverse impact on the protection of family harmony. The laws of Germany and Japan recognize that domestic violence needs to be handled by police, but the victim is given freedom to choose. The victim can choose to drop the lawsuit against the perpetrator. German non-governmental organizations (NGOs) also play an important role in the prevention and control of domestic violence (Jiahui, 2020) so the police are not able to handle such cases further. The public security agencies in China adopt a measure that combines of law and morals. The agencies use response methods such as active prevention, differentiated treatment, and pursuit of results, as well as multiple social management mechanisms such as mediation, public security, and criminal treatment together with development strategies to manage domestic violence behaviors simultaneously.

2. Pursuit of law enforcement value

The handling of domestic violence crimes in countries such as the U.S.A., Britain, Germany and Japan are influenced by their social systems, with the pursuit of profits as their primary value. The legal systems of capitalist countries are

often guided by certain interests, and the ways of dealing with domestic violence that have the lowest cost are simple and crude arrests, and blind laissez-faire. The former avoids further losses, while the latter does not require too much investment. The police in the U.S.A. impose strict management and control of the perpetrator in the process of handling domestic violence and would separate the perpetrator from the victim so as to prevent the victim from being violated by domestic violence again (Shuqiao, 2016). There are strict regulations in American laws on the scope of the official duties of the police in the prevention and control of domestic violence and requires stringent enforcement by the police. This has a certain guiding significance (Ying, 2005). Therefore, the enforcement of the police in the U.S.A., Britain, Germany, Japan is inevitably imprinted with the typical economic-oriented values of a capitalist society, which is manifested in the pursuit of each individual case. China is a socialist country, the fundamental work direction of the public security agencies is for the masses, and serving the people is the principle of the public security agencies. In the process of handling domestic violence, public security agencies in China adhere to a people-oriented value concept and pursue the societal effect of the legal rights and interests of citizens, harmonious family relations, and stable and united social order.

3. Investment in social resources

Among the four countries of the U.S.A., Britain, Germany, and Japan, the U.S.A. and Britain adopt the methods of active intervention by the police in domestic violence. The public authorities obtain more resources in terms of social investment, which has a certain impact on the protection of the common anti-domestic violence work carried out by the whole society. For example, the British police actively intervene in domestic violence cases and set up special institutions to deal with domestic violence cases, so as to provide protection for the victims (Hester, 2000). Germany and Japan mainly make use of civil relief, and there is relatively less investment of social resources in the public authorities. As a result, the civil relief provided in Germany and Japan cannot assist the victims in staying away from domestic violence, which runs counter to the anti-domestic violence concept of maximizing the protection of victim's rights and interests (Chunbin, 2015). The initial response of the Japanese police to help requested due to domestic violence is legal advice and assistance (Lin & Yuzhen, 2021). Criminal arrest is imposed only when the domestic violence is suspected to constitute a crime or when it violates the protection order. This is more obvious in the treatment of domestic violence in Germany. The German police would only handle domestic violence cases that constitute a crime as battery (Chunbin, 2015). However, China's *Anti-Domestic*

¹ Typical cases of judicial intervention in domestic violence released by The Supreme People's Court - Zheng's v. Ni Divorce Dispute [EB/OL]. Retrieved September 07, 2021, from <https://www.chinacourt.org/article/detail/2014/02/id/1220836.shtml>

Violence Law stipulates the comprehensive governance method with government departments responsible and the whole society participating. More investment in social resources is needed for a comprehensive governance strategy in the entire process of handling domestic violence cases. Therefore, in the process of handling domestic violence problems, China's public security agencies can provide better protection in terms of prevention, handling, and protection.

III. Experience of China's public security agencies in dealing with domestic violence cases

1. Guiding ideology

1. Adhere to starting from national conditions, based on the creative combination of the ideological value of excellent traditional and moral culture and the practical needs of domestic violence control in the new era, creating a «good» system and a method that «can be learned from» to share China's wisdom of domestic violence control with the world.

General secretary Xi Jinping pointed out that morality is the basis of law. Only laws that are morally sound and have profound moral foundation can be consciously observed by more people. In the process of domestic violence governance, public security agencies should always proceed from the national conditions, adhere to the combination of rule of law and rule of morals, ensure integration of the values, principles, and rules of socialist morality into the purposes, principles, and norms of anti-domestic violence law enforcement, and strengthen the supporting role of morality in law enforcement by public security agencies. At the same time, public security agencies should make good use of the rights and obligations of the law and their function of punishing crime to promote and lead the society toward the moral trend of anti-domestic violence, giving full play to the role of the law in promoting and ensuring moral construction, and promoting the improvement of the moral quality of the whole society.

Adhere to the people-centered, problem-oriented approach, accurately respond to the key and difficult problems in the treatment of domestic violence, and implement the means and measures of «tenability, practicality, and effectivity».

In the Tang Dynasty of China, there was a provision about domestic violence which said that «the law does not enter the house». It was an early rule to deal with the contradiction between law and morality on the issue of domestic violence. Whether public security agencies should intervene and how to intervene in family life have always been the key and difficult questions in domestic violence cases. Understanding and solving this problem must be based on China's national conditions – adhere to a people-centered and problem-oriented thinking, be aware of the discretion and scale of the public security

agencies' involvement in the private life, and also consider the victim's will. Then, through a scientific grasp of the purpose and concept and accurately responding to the key difficult problems accordingly, the public security agencies should implement reasonable means and measures of intervention in family life, thus reflecting an organic unity of fighting domestic violence and respecting the citizens' will, protecting the victims' rights and maintaining family harmony.

Adhere to multiple governance and joint management and governance, actively explore the comprehensive linkage and deepening of the governance of domestic violence cases, and effectively respond to different degrees of violations.

Preventing and stopping domestic violence is the common responsibility of all sectors of society. Solving the problem of domestic violence is a social system work. Based on its functional orientation, public security agencies are always at the forefront of domestic violence governance, but the cooperation of other departments, units, groups, and other organizations is also essential. Public security agencies should adhere to multiple governance, work with other sectors of society so that each sector's advantages can be fully utilized, jointly manage and govern domestic violence, establish a long-term linkage mechanism, jointly promote the comprehensive linkage and deepening of the handling of domestic violence cases, effectively respond to illegal acts of domestic violence, and give full play to the maximum effectiveness of public security agencies in responding to domestic violence within the framework of the *Anti-Domestic Violence Law* (Dingmeng & Jun, 2018), prevent and stop domestic violence, protect the legal rights and interests of the victims, and finally achieve the goal of maintaining equal, harmonious, and civilized family relations and promoting family harmony and social stability.

2. Practical application

1. Practice prevention first – transform post-event handling to pre-event prevention

(1) Publicity and education to create an anti-domestic violence atmosphere

Publicity and education are the basis of the preventive mechanism against domestic violence. Public security agencies can use a series of measures to mobilize residents to join the local public security prevention work, guiding residents to independently discover family problems in their surrounding areas, teaching residents to behave rationally, and cultivating in the local residents the ability to help themselves and others, so that they can assist the public security agencies in effectively dealing with potential domestic violence. For example, dispelling the residents' misconceptions of domestic violence through media platforms like the Internet and films and television, as well as other forms of publicity; and education on human rights and family ethics in schools to establish the awareness of

equality, harmony, and civilization among residents, so as to form an atmosphere of anti-domestic violence in the whole society.

(2) Extend the tentacles to hit the core of domestic violence

Through the on-site visits by the community police of public security agencies and the comparison and query of big data, the key families in their jurisdiction that exhibit potential domestic violence tendencies are known. For these families, the public security agencies, in combination with the actual population management, actively fight against domestic violence. For families with a high risk of domestic violence, the agencies cooperate with other departments to timely, actively, and continuously carry out personal visits as prevention work against domestic violence, and reduce the risks through education, publicity, warning, and other means.

(3) Multi-party linkage to prevent and control domestic violence risks

The prevention of domestic violence is a complex and systematic project, which must be jointly carried out by all social parties. Public security agencies and other departments share information and cooperate to carry out prevention. First of all, public security agencies must timely inform social organizations when they discover those with records of domestic violence or those at risk of domestic violence and pay attention to those at high risk together with social organizations to strengthen joint prevention. Secondly, public security agencies should work with social organizations, government departments, and psychological intervention agencies to carry out prevention work for high-risk families and conduct psychological counseling and warning education for their members to reduce the risk of domestic violence. Finally, the public security agencies must, together with social organizations, arrange special personnel to conduct real-time supervision over key families, regularly conduct risk assessment and psychological counseling for potential perpetrators, avoid the recurrence or further deterioration of contradictions, and stop domestic violence from the source.

2. Closely weave the network of laws and promote the seamless connection of anti-domestic violence relief

Under the guidance of the Xi Jinping Thought on the Rule of Law, China's governance over domestic violence

has entered the legalized comprehensive governance track. Public security agencies should make full use of the existing laws, regulations, and policies, and respond according to the specific situation of each case, using the appropriate civil, administrative, and criminal relief for each case of domestic violence, so as to protect the legal rights and interests of the victims and maintain social stability and unity.

(1) Civil relief

For potential domestic violence or domestic violence behavior that does not constitute a crime, public security agencies in China generally use education, prevention, help, and mediation to aid in the execution of the personal safety protection order, etc. For families with potential for domestic violence, public security agencies should prevent further intensification of domestic violence through publicity and education. For domestic violence that has yet

to reach the level that requires administrative penalty, public security agencies should provide assistance according to the application of both parties to resolve the hostility between the two parties. For domestic violence cases that are already in the process of civil litigation, the victims should be protected from further illegal violation and their legal rights and interests should be safeguarded through assisting the court in executing the personal safety protection order.

(2) Administrative relief

For domestic violence cases with minor violations of law, public security agencies can

generally adopt administrative methods such as deterrence, mediation, warning, public security punishment and so on. Public security agencies can stop ongoing domestic violence according to law. Mediation shall be conducted in accordance with the law for illegal cases of domestic violence when both parties have applied for mediation, so the recovery of the relationship and family harmony are not harmed by any penalty. For perpetrators who do not face public security punishment according to law, public security agencies shall issue warning letters and monitor the perpetrator so that they stop committing domestic violence. If the degree of violence is not serious enough for criminal punishment, public security agencies shall impose public security penalties on the perpetrator such as warnings, fines, and administrative detention, according to law.

(3) Criminal relief

Public security agencies shall investigate the criminal responsibility of perpetrators who commit domestic

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violence, seriously endanger the legal rights and interests of the victims, and violate the relevant provisions of *The Criminal Law of the People's Republic of China*. The strategy of criminal punishment is used to protect the legal rights and interests of victims, maintain harmonious family relations, and ensure social stability and order.

3. Ensure the effect of anti-violence and promote the anti-domestic violence alliance to exert its effectiveness

As the main force to maintain social stability, public security agencies should intervene in time, actively promote, and build a joint management mechanism for the handling of domestic violence in the fight against domestic violence. They must «unite all anti-domestic violence departments to prevent mutual prevarication, form a set of combined fists to crack down on domestic violence» (Qi, 2017), and establish an «anti-domestic violence alliance sub-center». Through the way that the government purchases services or encourages volunteers to participate, professional organizations that provide psychological counseling, legal aid, and social assistance are introduced to track and review the entire process of the cases, provide timely feedback, and contact the victims of domestic violence cases so that they can obtain psychological and legal support, get out of the «haze» of domestic violence as soon as possible, ensuring the effect of domestic violence governance.

(1) Pre-guarantee

In dealing with the problem of domestic violence, public security agencies should cooperate with the Women's Federation and other government departments and service organizations to guide the public in establishing an understanding of zero-tolerance for domestic violence, broaden relief channels for those suffering from domestic violence, conduct public opinion guidance on domestic violence cases through multiple channels and media, and create an anti-domestic violence atmosphere in the whole society. At the same time, for families with a potential risk

of domestic violence in the local area, agencies should work with social organizations and social institutions to provide effective counselling and monitoring, and establish an anti-domestic violence linkage data network with the convenience of the informatized big data, so as to organically integrate all forces, realize information sharing, and provide a strong support for the prediction, warning, and scientific decision-making of public security agencies when dealing with domestic violence.

(2) Guarantee during the event

In dealing with domestic violence cases, public security agencies need to establish a collaborative mechanism with the functional departments of the government, social organizations, and social service institutions. When domestic violence occurs, relevant departments, organizations, and institutions shall help the victims of domestic violence to report the case. The public security agencies shall immediately stop the domestic violence, and take corresponding legal measures against the perpetrators according to the degree of harm. With the assistance of the linkage organizations in the «anti-domestic violence alliance», regional organizations and service institutions will visit and supervise the family, thus ensuring the effectiveness of the measures to combat domestic violence.

(3) Post-guarantee

After dealing with domestic violence cases, public security agencies should actively establish a sharing mechanism of mutual resources with the judicial, civil affairs, medical and health departments, autonomous organizations, and service institutions to provide further protection for the legal rights and interests of the victims. The channels for administrative assistance, judicial assistance, and social assistance should be cleared, and the «data-driven» police work mode should be actualized so as to provide strong help in ensuring the effectiveness of the fight against domestic violence.

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Authors' contribution

All authors made an equal contribution to the development of the research, the processing of its results and the writing an article.