

REFLECTIONS ON THE PRACTICE AND SYSTEMATIC IMPROVEMENT OF CHINA'S LEGAL FRAMEWORK ON DOMESTIC VIOLENCE

Kui Jia

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Kui Jia^{*}

In response to the high incidence of domestic violence, China has implemented a series of laws and policies aimed at preventing and eradicating violence within the family. Over time, this has led to the development of a comprehensive governance system centered on the Anti-Domestic Violence Law, encompassing civil law, administrative law, and criminal law. Despite this progress, challenges persist due to inconsistencies in conceptual definitions, overlapping scopes of application, and conflicting provisions regarding liability across various legal frameworks. These issues have hindered the overall effectiveness of domestic violence prevention efforts and the protection of victims' rights. This paper, acknowledging the unique nature of domestic violence and the specific demands of its prevention, systematically explores effective pathways to resolve conflicts among the diverse legal norms within the current legal framework. The focus is on promoting greater coordination among legal regulations and developing mechanisms for the seamless integration of civil, administrative, and criminal measures. The goal is to establish a more cohesive and efficient collaborative system, thereby enhancing the overall effectiveness of the legal governance framework for addressing domestic violence.

I. INTRODUCTION

Domestic violence is a pervasive global social issue that not only inflicts severe physical and psychological harm on its victims but also poses a significant threat to social harmony and stability. As a result, it has attracted increasing attention from both the international community and governments worldwide.¹ Domestic violence continues to be a significant social problem in China. Data from the *Fourth Survey on Chinese Women's Social Status*, undertaken by the All-China Women's Federation and the National Bureau of Statistics of China, indicate that 8.6 percent of married women have experienced physical or psychological violence from their spouses,

^{*} Associate Professor at the Law School of Nankai University.

¹ Dasarath Neupane & Arputhem Lourdusamy, *Beyond Borders: The Accelerating Momentum of Domestic Violence Research Worldwide*, 2 NPRC Journal of Multidisciplinary Research 34-52 (2024).

representing a 5.2-percentage-point decrease compared with 2010.²

These developments are supported by China's progressively refined legal framework. An expanding set of laws, regulations, and policy measures designed to prevent and combat domestic violence has laid a crucial foundation for the rule of law. In particular, the *Civil Code of the People's Republic of China* (hereinafter referred to as the Civil Code), within its Book of Marriage and Family, reaffirms the prohibition of domestic violence, establishes it as a statutory ground for divorce, and allows victims to seek damages.³ Under the *Criminal Law of the People's Republic of China* (hereinafter referred to as the Criminal Law), the crimes of maltreatment and abandonment are codified, holding perpetrators criminally liable for particularly egregious acts of abuse and abandonment. For instances of domestic violence that do not constitute criminal offenses, administrative penalties such as detention or fines may be imposed in accordance with the *Law of the People's Republic of China on Penalties for Administration of Public Security* (hereinafter referred to as the Law on Penalties for Administration of Public Security). In addition, laws such as the *Law on Protection of Minors*, the *Law on Protection of the Rights and Interests of the Elderly*, and the *Law on the Protection of Rights and Interests of Women* contain provisions specifically designed to protect vulnerable groups from domestic violence.

Most notably, the *Anti-Domestic Violence Law of the People's Republic of China* (ADVL), which came into effect on March 1, 2016, represents a landmark moment in China's legislative history regarding domestic violence.⁴ As the first nationwide law specifically addressing domestic violence, it consolidates years of legislative and judicial experience, provides the first explicit statutory definition of domestic violence, a historically controversial issue, expands its scope to include psychological abuse and violence against cohabitants beyond just family members, establishes a system of personal safety protective order (PSPO), and clarifies the responsibilities of relevant authorities, along with the legal consequences of inaction. In doing so, the law offers legal safeguards for victims' rights and creates a standardized pathway for public authorities to intervene in cases of domestic violence.⁵

2 Research Team of the Fourth Survey on the Social Status of Women in China, *Main Data Report of the Fourth Survey on the Social Status of Women in China*, 1 *Journal of Chinese Women's Studies* 1 (2022).

3 Peng Liuyu & Ye Mingyi, *Identification and Remedies for Intra-Marriage Torts Involving Domestic Violence Under the Perspective of the Civil Code*, 1 *Social Science Research* 129 (2025).

4 Qian Song, *The Choice and Optimization of the Criminal Relief Path of Domestic Violence Crimes*, 4 *Issues on Juvenile Crimes and Delinquency* 11 (2016).

5 Kui Jia, *The Criminal Governance Model of Domestic Violence and Its Legislative Improvement*, 4 *Human Rights* 140 (2024).

Thus, China has gradually developed a comprehensive governance framework to address domestic violence, centered around the ADVL and extending across civil, administrative, and criminal law. However, as the legislation and policies related to domestic violence have become increasingly detailed, conflicts between legal norms and deficiencies in institutional coordination have become more apparent. Inconsistencies in conceptual definitions, overlapping scopes of application, and conflicting liability provisions have undermined the overall effectiveness of domestic violence prevention efforts and victim protection measures.

This paper, recognizing the unique nature of domestic violence and the specific demands of its prevention, systematically explores effective strategies for resolving conflicts among various legal norms and promoting better regulatory coordination within the existing legal framework. It aims to establish a coordinated mechanism in which civil, administrative, and criminal measures are seamlessly integrated, thereby enhancing the overall effectiveness of the legal governance system for addressing domestic violence.

II. THE PARTICULARITY OF DOMESTIC VIOLENCE AND ITS LEGAL GOVERNANCE

Family relationships differ significantly from other types of social relationships. Family order is grounded in rights, duties, and responsibilities, and spans a range of areas including personal rights, property rights, marital freedom, sexual autonomy, and other aspects. Within this framework, family ethics also play an important role.⁶ These distinctive features result in domestic violence being markedly different from other forms of violence, both in its manifestations and in the way it is legally regulated.

A. The Particularity of Domestic Violence Compared with General Violence

According to articles 2 and 37 of the ADVL, domestic violence refers to acts of physical or psychological abuse committed by family members or by individuals cohabiting outside the immediate family. Such abuse may take the form of beating, binding, maiming, restricting personal liberty, as well as persistent verbal humiliation, intimidation, and other similar forms of conduct. The particularity of domestic violence is primarily manifested in the following aspects:

6 Jiang Tao, *How Criminal Law Faces Family Order*, 3 Tribune of Political Science and Law 32 (2017).

1. *The Concealed Environment of Domestic Violence.* — Unlike violent acts committed in public settings, domestic violence typically occurs within the relatively closed environment of the household, reflecting a distinct spatial specificity. This private context renders abusive behavior more concealed and allows it to persist for long periods without external detection. Statistical data from different regions show that the principal victims of domestic violence are women, children, and the elderly, with women bearing the most severe harm. Among all domestic violence cases, incidents of wife-beating account for the overwhelming majority. These vulnerable groups are often economically dependent on the perpetrator, which makes it extremely difficult for most victims to free themselves from the abuser's control.⁷ As a result, victims are highly likely to conceal their experiences of abuse due to fear, shame, or financial dependence. In contrast to general acts of violence, which tend to be reported promptly and thus exhibit higher visibility, domestic violence is marked by a substantial 'dark figure of crime', with a large number of cases remaining unreported and hidden from the formal legal system.

2. *The Particularity of Relational Dynamics in Domestic Violence.* — In domestic violence cases, the perpetrator and the victim are connected through relationships of marriage, kinship, guardianship, dependency, or cohabitation. Owing to the intimate nature of these ties, victims often articulate their demands ambiguously.⁸ Psychologically, they tend to experience contradictory emotions: on the one hand, they hope for the intervention of public authorities, expecting judicial organs to admonish or educate the abuser in order to improve their family circumstances; on the other hand, they fear that external intervention may disrupt familial relations and further worsen their situation. Moreover, under the influence of traditional cultural norms such as the deeply rooted belief that 'family disgrace should not be made public', many victims, even after filing a police report, are unwilling to pursue accusations against the perpetrator.⁹ This lack of clarity and determination in victims' demands often causes judicial proceedings to stall, resulting in a deadlock in the handling of such cases.

3. *The Diverse Manifestations of Domestic Violence.* — Unlike general violence, which typically takes the form of direct physical assault, domestic violence manifests in far more diverse ways. It includes physical acts such

7 Zhao Shukun & Hu Aixiong, *Changes and Logic in the Discursive Practice of 'Anti-Domestic Violence' in China*, 6 *Seeking Truth* 94 (2022).

8 ZHAO SHUHONG, *THE PERPETRATOR-VICTIM RELATIONSHIP: AN IMPORTANT CLUE TO UNDERSTANDING INTIMATE PARTNER HOMICIDE IN CHINA*, at 45 (Springer, 2022).

9 He Xin, *Why Does Justice Downplay Domestic Violence*, 4 *China Law Review* 6-22 (2019).

as beating, binding, and restricting personal liberty, as well as psychological abuse, such as humiliation, threats, intimidation, and prolonged emotional neglect. Some scholars further contend that economic control and sexual violence should likewise be incorporated into the scope of domestic violence. In recent years, public awareness of domestic violence has broadened beyond physical abuse, leading to a growing number of cases filed in people's courts seeking injunctions against psychological violence. Judicial practice has confirmed the existence of various forms of psychological abuse beyond routine verbal insults or threats. For instance, in the *Case of Wang v. Li* concerning an application for a PSPO, the husband repeatedly threatened his wife by engaging in acts of self-harm, including ingesting pesticide and attempting to jump from a building. Although he did not employ direct verbal abuse or explicit threats, his self-destructive conduct placed his wife in a state of constant fear. This psychological coercion, depriving the victim of mental freedom, was duly recognized as a form of psychological abuse.¹⁰

Moreover, domestic violence is generally characterized by its long-term and cyclical nature, often manifesting in a recurring pattern of 'violence, apology, reconciliation, and renewed violence'. If the perpetrator's initial act of abuse is not effectively curbed, subsequent incidents are highly likely to occur with increasing frequency and severity.¹¹ The repetitive cycle not only deepens the victim's physical and psychological trauma but also entrenches patterns of control and dependence within the relationship. In practice, judicial authorities frequently face significant difficulties in detecting domestic violence during its early stages, given its hidden and private nature. By the time such cases come to the attention of law enforcement or judicial organs, the harm inflicted upon the victim is often already profound and, in many instances, irreversible.

B. Special Requirements for the Legal Governance of Domestic Violence

Building upon the distinctive characteristics of domestic violence, it becomes evident that its legal governance must be carefully tailored to address these complexities. In this regard, domestic violence cases impose unique and heightened demands on the scope, mode, and limits of legal intervention, which necessarily diverge from the standards applicable to

10 Wang Chunxia, *Number of Cases Seeking Restraining Orders Against Psychological Violence Increases*, China Women's News, November 27, 2023, at 1.

11 Guo Xiaofei, *On the Meaning, Limitations and Acceptance of 'Battered Women's Syndrome' in China: A Comparative Law Perspective*, 6 Journal of Chinese Women's Studies 107 (2023).

ordinary violent offenses. Only through specialized approaches that are sensitive to both the vulnerabilities of victims and the intricate dynamics of family relations can the legal system effectively address domestic violence and ensure meaningful protection of victims' rights.¹²

1. The Macro Level: Balancing Ethical Cohesion and the Protection of Legal Rights. — Given the intimate relationship between perpetrators and victims, the legal regulation of domestic violence must navigate the profound tension between safeguarding individual rights and preserving family order. The foremost objective of such regulation is to protect the personal safety and human dignity of family members, with particular emphasis on guaranteeing victims' rights to life, health, and freedom from psychological oppression. At the same time, the distinctive nature of the family sphere necessitates a degree of consideration for the maintenance of familial relationships. It must be emphasized, however, that the principle of 'combating violence' takes precedence over the goal of 'preserving family integrity'. Only when the safety of victims has been ensured should mediation or psychological intervention be pursued as a means of alleviating intra-family conflict, and never as an instrument of compelled reconciliation.

Of particular concern is that the intimacy between perpetrators and victims often obscures domestic violence under the perception of being merely a family matter, thereby causing delayed intervention. Consequently, the law must move beyond the traditional retributive paradigm of regulating violent crimes — centered on punishing offenders, deterring society, and restoring social order — and instead establish a preventive framework. Such a framework entails early intervention to disrupt cycles of abuse, the correction of entrenched social misconceptions regarding domestic violence, and the incorporation of private acts of violence into the domain of public governance. This paradigmatic value shift, from 'punishing perpetrators' to 'protecting and rescuing victims', constitutes the cornerstone of the legal governance of domestic violence.¹³

2. The Meso Level: Multi-Dimensional Interventions. — Unlike ordinary violent cases, which are typically addressed primarily by the police, procuratorates and courts through judicial means, the effective governance of domestic violence requires broad societal participation.¹⁴ This involves the

12 Jiang Tao, *supra* note 6.

13 Guo Xiajuan & Zheng Xi, *The Evolution of Anti-Domestic Violence Policy Framework in Foreign Countries and Its Enlightenment to China*, 2 *Journal of Zhejiang University (Humanities and Social Sciences)* 174 (2017).

14 Tong Wenying & Zhang Haibo, *Preliminary Analysis of Judicial-Involved Family Social Governance Under the Holistic Approach to National Security*, 6 *Journal of South-Central Minzu University (Humanities and Social Sciences)* 119 (2025).

establishment of a multi-agency collaborative network capable of providing victims with sustained support in areas such as psychological rehabilitation, legal assistance, and economic empowerment. Particularly significant is the ADVL, which introduced a preventive intervention framework centered on a mandatory reporting mechanism.¹⁵ By transforming social responsibility into a legally enforceable obligation, this framework enables victims to overcome the predicament of being either unwilling or unable to seek help.

The modes of liability in ordinary violent cases are comparatively limited, typically confined to the imposition of administrative penalties or criminal sanctions, with only marginal recourse to civil compensation. By contrast, liability in domestic violence cases is highly diversified and multi-layered. It encompasses corrective and educational measures, such as criticism and behavioral rehabilitation; civil liability, including compensation for medical expenses and damages for psychological harm; and administrative sanctions, such as warnings, fines, or short-term detention, imposed for abusive conduct that does not rise to the level of a criminal offense. In cases where domestic violence constitutes crimes such as abuse or intentional injury, perpetrators are subject to full criminal liability. At the same time, the legal framework has been reinforced by robust victim protection mechanisms, including the establishment of dedicated shelters, the provision of psychological counseling, and the availability of legal aid, thereby ensuring that survivors of domestic violence receive comprehensive and sustained support.

3. The Micro Level: Special Features in Legal Application. — At the level of concrete legal application and case-specific adjudication, domestic violence cases exhibit distinctive flexibility in both evidentiary standards and the attribution of liability, diverging from the treatment of ordinary violent offenses. On the one hand, in recognition of the concealed nature of domestic violence and the evidentiary disadvantages under which victims often labor, the law deliberately relaxes the burden of proof. For instance, in the application for a PSPO, it is sufficient for the applicant to demonstrate only a ‘realistic likelihood of danger’. In judicial proceedings, courts are authorized to establish facts on the basis of indirect or composite forms of evidence, such as police reports, medical documentation, or reports issued by women’s federations. Moreover, intangible evidence, including chat records and counseling files, is explicitly admissible as valid proof of psychological abuse.

On the other hand, the adjudication of domestic violence cases requires

¹⁵ Du Qishun, *The Implementation Dilemma and Legal Resolution of China’s Anti-Domestic Violence Law*, 5 Journal of Beijing Administration Institute 106 (2024).

a carefully calibrated application of restorative justice principles.¹⁶ In cases of minor severity where both parties express a willingness to reconcile, mediation may be attempted, provided the victim's safety is guaranteed, to encourage the offender's remorse. Governance of domestic violence therefore emphasizes the integration of education and correction, treating psychological intervention and behavioral rehabilitation as essential modalities of liability. Moreover, where perpetrators exhibit sincere repentance, judicial leniency in sentencing may be appropriately granted. Such an approach not only underscores the law's preferential protection of the more vulnerable party but also preserves the potential for repairing familial relationships under safe and equitable conditions.

III. PROBLEMS IN CURRENT LEGAL REGULATIONS ON DOMESTIC VIOLENCE

As previously noted, China regulates domestic violence not only through the specialized ADVL but also through several other legislative instruments, including the Civil Code, the Law on Penalties for Administration of Public Security, and the Criminal Law. However, inconsistencies remain among these legal frameworks with respect to crucial definitional elements, such as the scope of subjects involved and the types of conduct that qualify as domestic violence. In addition, the provision of legal remedies and the imposition of liability in domestic violence cases face challenges in terms of ensuring effective coordination and seamless integration across these different branches of law.

A. Ambiguity in Defining the Scope of Subjects Involved in Domestic Violence

Defining the scope of subjects constitutes a foundational issue that requires priority attention in conceptualizing domestic violence. Article 2 of the ADVL confines the subjects to family members. Prior to the implementation of the Civil Code, Chinese legislation provided no clear definition of the meaning or scope of 'family members', which led to divergent understandings and inconsistent application in practice. The Marriage and Family Book of the Civil Code explicitly delineated, for the first time, the specific scope of family members, including spouses, parents, children, siblings, grandparents on both paternal and maternal sides, as well

16 Liu Xuemin, *The Application of Restorative Justice in Juvenile Justice*, 5 Social Science Journal 86 (2020).

as grandchildren from both paternal and maternal lines, provided that they cohabit. This marked an important step toward concretizing the concept of family members in the legal framework.¹⁷

To address the practical demands of preventing and controlling domestic violence, article 37 of the ADVL further extends the scope of subjects to include ‘non-family members living together’ through a reference provision. This provision not only preserves internal coherence within the legal system but also brings acts of violence occurring in non-traditional household relationships within the scope of legal regulation. Nevertheless, the concept of ‘non-family members living together’ has proven difficult to apply in judicial practice. On the one hand, the category of ‘non-family members’ is inherently open-ended and cannot be exhaustively defined. On the other hand, the forms and interpretations of ‘living together’ vary significantly, in the absence of clear and operational standards for determination.

Scholarly interpretations of the legal meaning of ‘non-family members living together’ remain divided.¹⁸ The Formal Cohabitation Theory contends that the mere fact of sharing a physical living space between the perpetrator and the victim suffices to meet this requirement, thereby encompassing not only long-term, stable cohabiting partners but also temporary cohabitants, such as individuals sharing rented accommodation.¹⁹ By contrast, the Substantive Equivalence Theory maintains that the defining characteristics of family relationships should serve as the reference point. It advocates for a comprehensive assessment based on multiple factors, including the duration of cohabitation, the closeness of emotional ties, and the degree of economic interdependence, so that the scope of covered subjects achieves substantive equivalence with the scope of family members.²⁰ Against this backdrop, the *Provisions of the Supreme People’s Court on Several Issues Concerning the Application of Law in the Handling of Cases Involving the Personal Safety Protection Order* undertook the first attempt to concretize the definition of regulated subjects. It explicitly brought within its ambit daughters-in-law, sons-in-law, parents-in-law, and others who cohabit with the family, as well as individuals in relationships of guardianship, support, or foster care.

17 Dan Shuhua, *Expansion and Concretization of the Definition of Domestic Violence*, 4 *Journal of Zhejiang University (Humanities and Social Sciences)* 132 (2025).

18 Pan Zhuoxi, *Determination of Criminal Offenses for Intra-Familial Asymmetrical Sexual Conduct*, 3 *Peking University Law Journal* 740 (2025).

19 Jiang Yue, *Interpretation of the Concept and Implications of Domestic Violence*, 1 *Journal of Chinese Women’s Studies* 7 (2016).

20 Dan Shuhua, *Subject of Quasi-Domestic Violence: Interpretation of Article 37 of the Anti-Domestic Violence Law in China: Regarding ‘Persons Who Are Not Family Members but Living Together’*, 4 *Journal of Chinese Women’s Studies* 33 (2017).

Building on this foundation, the *Guidelines to Strengthen the Implementation of the Domestic Violence Warning System of 2024*, jointly issued by the Ministry of Public Security and eight other ministries, further extended the enumerated categories to explicitly encompass cohabiting relationships.

However, these enumerative provisions at the normative level have not fully eliminated systemic divergences in the definition of eligible subjects. The ambiguity of legal concepts has directly generated uncertainty in judicial practice, leading to inconsistent rulings even in cases with similar factual contexts. For example, in the *Zhuo Case*, the court applied a strictly formalistic cohabitation standard premised on physical residence and dismissed the application for a PSPO on the grounds that the applicant ‘had ceased cohabitation for several months following the breakup and thus no longer met the requirement of shared living’.²¹ By contrast, the *Yin Case* adopted a substantive approach. The judge held that the category of domestic violence perpetrators ‘includes not only family members but also individuals in cohabitation relationships involving guardianship, support, foster care, or romantic cohabitation. In addition to the period of actual cohabitation, it should also extend to a reasonable period following the cessation of cohabitation’. On this basis, the court granted a PSPO, finding that ‘a real risk of domestic violence occurring or recurring existed within a reasonable period after the end of cohabitation’.²² Although both cases concerned post-separation violence between former intimate partners, the judicial reasoning diverged sharply, highlighting the fragmented and inconsistent standards governing the application of the law.

Article 37 of the ADVL extends its scope to include ‘non-family members living together’, which constitutes an important legislative advance. However, the ambiguity of this legal concept has weakened its effectiveness in practice. A more critical issue lies in the fact that both the Law on Penalties for Administration of Public Security and the Criminal Law, in regulating domestic violence, have not incorporated this extended provision and instead continue to confine their scope of application to family members. The notion of ‘family members’ has long been centered on kinship within legally recognized families, thereby excluding *de facto* intimate relationships lacking formal

21 *The Case of Zhuo v. Chen*, No. 1 Civil Ruling on Personal Safety Protective Order of the People’s Court of Wuhou District, Chengdu, Sichuan Province (2016).

22 *The Case of Yin & Xiang v. Xiang I*, No. 2 Civil Ruling on Personal Safety Protective Order of the People’s Court of Pengzhou, Sichuan Province (2021).

marital recognition, such as non-marital cohabiting partnerships.²³ It was only in the wake of the *Mu Linhan Case* that widespread public debate was triggered concerning the scope of subjects to whom the crime of abuse should apply.

In that case, although *Mu Linhan* and *Chen* were not legally married, their explicit mutual intention to live together, the sustained and stable fact of cohabitation, and their close emotional reliance and economic interdependence were sufficient to establish a substantive family relationship. To deny recognition of their status as subjects under the crime of abuse solely on the basis of the absence of formal marital status would not only contravene the principle of substantive justice but also result in disproportionate punishment. The designation of this case as a guiding case by the Supreme People's Court marks an adaptive expansion in judicial practice concerning the scope of family members, reflecting the evolving diversity of family structures in modern society. Nevertheless, systemic contradictions within the legal governance framework for domestic violence remain unresolved: How can the scope of protected subjects be harmonized across different legal branches? How should the standard of 'living together' be interpreted? Can violence committed against former spouses, former cohabitants, or other intimate partners after the termination of the relationship be brought within the regulatory scope? These unresolved questions highlight the pressing need for greater doctrinal clarity and legislative coordination.

B. Narrow Scope in the Definition of Domestic Violence

The accurate delineation of domestic violence requires a careful balance between family autonomy and state intervention. As a private sphere, the family should ordinarily address routine conflicts through communication, negotiation, and moral restraint, without undue legal interference. Nevertheless, when acts of violence surpass the limits of family autonomy, where one party intentionally inflicts harm for the purpose of controlling, intimidating, or suppressing another, thereby gravely infringing upon fundamental human rights and creating a risk of escalation, the state has legitimate grounds to intervene through legal mechanisms. In such circumstances, the state assumes a 'rescuer' role aimed at restoring order to disrupted family relations. Accordingly, judicial practice must draw a clear distinction between domestic violence and ordinary family disagreements,

23 INTERPRETATION OF THE ANTI-DOMESTIC VIOLENCE LAW OF THE PEOPLE'S REPUBLIC OF CHINA, at 7 (Legislative Affairs Commission of the Standing Committee of the National People's Congress, Social Law Office ed., China Legal Publishing House, 2016).

avoiding definitions that are either overly narrow or excessively broad. In general, ordinary family disputes are characterized by sporadic, reciprocal, and low-intensity conflicts, whereas domestic violence is marked by a systematic pattern of domination by one party over the physical integrity, autonomy, or livelihood of another.²⁴

The ADVL employs a legislative technique that combines abstract generalization with enumerative specification in defining domestic violence. This approach not only articulates the essential characteristics of domestic violence in a general form but also concretizes the concept by listing its principal behavioral manifestations. In enumerating specific acts, the law preserves traditional forms of physical violence such as beating, binding, maiming, and unlawful restriction of personal liberty, while simultaneously removing the result-oriented requirement of ‘causing certain physical or psychological harm to family members’ that had been set forth in the *Interpretation No. 1 of the Supreme People’s Court on Several Issues in the Application of Marriage Law of the People’s Republic of China of 2001*. Consequently, violent conduct between designated family members may be identified as domestic violence irrespective of the severity of the resulting harm, thereby lowering the evidentiary threshold for such identification. Moreover, article 2 explicitly incorporates ‘repeated verbal abuse and intimidation’ as a form of psychological violence, thereby formally recognizing psychological violence as an autonomous category of domestic violence. This expansion not only broadens the scope of behaviors encompassed by the law but also more fully reflects the state’s zero-tolerance policy toward domestic violence.²⁵

The Law on Penalties for Administration of Public Security and the Criminal Law do not emulate the ADVL in broadening the categories of conduct recognized as domestic violence. Within the current statutory framework, offenses such as intentional injury and maltreatment remain largely confined to the dimension of physical harm, with insufficient attention paid to acts of psychological abuse. Fundamentally, however, the essence of domestic violence lies in the perpetrator’s exertion of power and control over an intimate partner or family member.²⁶ Perpetrators often harbor a deep-seated belief that they are entitled to dominate and restrict their partners, sometimes even deriving gratification from the exercise of such control. Guided by this

24 Li Hongxiang, *Limitation of State Intervention in Domestic Violence*, 2 Legal Forum 148 (2020).

25 Dan Shuhua, *supra* note 17.

26 Sun Jingjing, *Study on the Reason and Countermeasure of Family Violent Crime: Taking Intimate Partner Violence in the Bao’s Case as Clue*, 4 Dynamics of Social Sciences 55 (2022).

distorted cognition, they elevate their own emotions and needs above all else, employing violence to dismantle the foundation of equality within intimate relationships. This coercion drives victims into a state of depreciated self-worth and stripped dignity. Although physical violence is frequently regarded as the most visible form of domestic abuse, its underlying pathology lies in a broader pattern of coercive control. Such control may be exercised through non-physical means, including emotional maltreatment, economic domination, social isolation, relentless criticism, and intrusive surveillance, all of which serve to oppress and psychologically devastate the victim. Persistent psychological abuse should not be considered a secondary harm; rather, it operates as invisible shackles that systematically erode the victim's autonomy, self-confidence, and sense of identity. Over time, continual subjugation and fear render the victim increasingly vulnerable, ultimately entrapping them in a position of acute powerlessness. From the essential characteristics of domestic violence, it becomes apparent that China's legal framework still contains deficiencies. The Law on Penalties for Administration of Public Security, the Criminal Law, and even the ADVL may need to provide a sufficiently comprehensive enumeration of domestic violence behaviors. In practice, several common forms of abuse, including internationally recognized forms such as sexual violence, remain outside the scope of legal regulation. Where acts of violence are not explicitly defined in legislation, their meaning and constitutive elements remain ambiguous. This lack of clarity not only creates difficulties and divergent outcomes in judicial determination, but also weakens the overall effectiveness of legal interventions against domestic violence.²⁷

C. Insufficient Accountability for Domestic Violence

Public authority intervention in domestic violence primarily takes place through four channels: social assistance, civil remedies, administrative remedies, and criminal remedies. The effective implementation of civil, administrative, and criminal relief requires the coordinated application of the ADVL alongside other relevant statutes, such as the Civil Code, the Law on Penalties for Administration of Public Security, and the Criminal Law. These legal measures seek to hold perpetrators accountable by addressing their civil, administrative, and criminal liabilities, respectively.

Regarding civil liability, article 1079 of the Civil Code expressly provides that 'committing domestic violence or maltreating or deserting

²⁷ Zhao Shukun & Hu Aixiong, *supra* note 7.

a family member' constitutes statutory grounds for divorce. However, the statute does not clearly stipulate whether, and in what manner, domestic violence should affect issues such as the division of marital property or the allocation of child custody. At the same time, the Civil Code allows the innocent party to claim damages when divorce is granted on these grounds. This effectively conditions the availability of civil compensation for victims of domestic violence on the dissolution of marriage. For victims who are either unwilling or unable to seek divorce yet remain subjected to abuse, such a remedy proves ineffective. In practice, this institutional design compels victims to make a painful choice between enduring continued abuse and initiating divorce proceedings in order to claim compensation — a dilemma that significantly undermines the effective protection of victims' rights.²⁸

Article 33 of the ADVL provides that where a perpetrator commits domestic violence constituting a violation of public security administration, an administrative penalty shall be imposed in accordance with the law; where the conduct constitutes a crime, criminal liability shall be pursued according to law. The specific imposition of administrative and criminal penalties shall be governed by the relevant provisions of the Law on Penalties for Administration of Public Security and the Criminal Law.

Article 53 of the Law on Penalties for Administration of Public Security provides: 'Where a family member is subjected to abuse, and the abused person or their guardian requests disposition, the perpetrator shall be subjected to detention of up to five days or a warning; where the circumstances are more serious, the perpetrator shall be detained for not less than five days but not more than ten days, and may also be fined up to 1,000 yuan'. Compared with the pre-revision provision, which merely prescribed 'detention of up to five days or a warning' and only applied upon request by the abused party, the new law significantly enhances the severity of sanctions and expands the category of persons entitled to request intervention. However, a notable discrepancy emerges when this is contrasted with article 51 of the same statute, which provides: 'Whoever assaults another or intentionally inflicts bodily harm shall be detained for not less than five days but not more than ten days, and shall also be fined not less than 500 yuan but not more than 1,000 yuan; where the circumstances are relatively minor, the offender shall be detained for up to five days or fined up to 1,000 yuan'. A comparison of these provisions demonstrates that the penalties prescribed for abuse within the family are,

28 Cao Weiwei, *The Dilemma of Judicial Remedy and Solutions Under the Legislative System of the Protection of Women's Rights and Benefits*, 4 Legal Forum 92 (2025).

in fact, more lenient than those for comparable acts of assault committed against non-family members. The statutory baseline and overall severity of punishment for domestic abuse are set at a lower level, reflecting a relatively restrained legislative approach to violence occurring within the family sphere.

Regarding criminal liability for domestic violence, the Criminal Law does not establish a distinct offense specifically addressing domestic violence, nor does the *Criminal Procedure Law* contain special procedural provisions tailored for such cases.²⁹ In judicial practice, when particularly egregious acts occur within the family, such as intentional homicide, intentional injury, abuse, abandonment, or violent interference with marital freedom, resulting in grave consequences, perpetrators may be prosecuted under the corresponding offenses prescribed in the Criminal Law, in accordance with the principle of legality. By contrast, acts that fall within the regulatory scope of the Law on Penalties for Administration of Public Security or other administrative regulations, such as short-term confinement, harassment, or minor injury, are subject only to administrative sanctions. In essence, the current model of criminal disposition does not adequately reflect the distinctive dynamics of domestic violence. Criminal proceedings are triggered only once intrafamilial violence has inflicted substantial harm on legally protected interests. Such a passive and *ex post* intervention framework not only undermines the preventive function that criminal law ought to perform in addressing domestic violence, but also does not completely reflect the governance logic advocated by a proactive, policy-oriented conception of criminal law.

The inadequacies of judicial intervention are particularly pronounced in private prosecution cases involving domestic violence.³⁰ Offenses such as violent interference with marital freedom, insult, and abuse fall within the category of cases that are prosecuted upon complaint. Unless the victim formally lodges a complaint, courts generally refrain from intervening. In practice, however, many victims of domestic violence are unable or unwilling to exercise this right due to concerns over their family's reputation or as a result of threats and intimidation by the perpetrator. Although article 98 of the Criminal Law provides that the people's procuratorate or the victim's close relatives may file a complaint on the victim's behalf where coercion or intimidation prevents the victim from doing so, in reality, close relatives often decline to act because of emotional considerations or a desire to avoid conflict. Instances in which the procuratorate initiates proceedings on behalf

29 Kui Jia, *supra* note 5.

30 Sun Xiaomei & Qiu Qirong, *Thoughts on Perfecting Anti-Domestic Violence Legislation*, 3 Journal of China Women's University 19 (2018).

of victims and successfully secures a case filing remain rare. Moreover, in private prosecutions the burden of proof rests with the complainant. Yet victims of domestic violence typically lack legal expertise and awareness of evidentiary standards, while also having limited access to means of collecting evidence. Their frequent economic dependence on the perpetrator further constrains their ability to retain legal counsel or investigative support. When conducting substantive reviews of private prosecution cases, courts often dismiss complaints on the ground that the evidence submitted fails to meet the requisite standard of 'clear facts and sufficient evidence'.³¹ Consequently, victims of domestic violence encounter obstacles in seeking to safeguard their lawful rights and interests through the avenue of criminal legal remedies.

IV. WAYS TO IMPROVE THE LEGAL REGULATION OF DOMESTIC VIOLENCE

The legal regulation of domestic violence must give primary consideration to the intimate nature of the relationship between perpetrator and victim. In light of the evolving structure of the modern family, the concept of domestic violence should be defined with precision, both in terms of the scope of subjects involved and the types of proscribed conduct. At the same time, mechanisms of legal accountability must be reinforced to ensure a coherent integration between the ethical norms governing family relations and the normative logic of law.

A. Clarifying the Scope of Subjects in Domestic Violence

Article 37 of the ADVL goes beyond the traditional confines of kinship and marriage by extending protection to 'persons living together outside the family'. This reflects the legislature's intent to ensure comprehensive regulation of violence within intimate relationships. Pursuant to article 2 of the ADVL and article 1045 of the Civil Code, the category of 'persons cohabiting outside the family' expressly excludes spouses, parents, children, and other cohabiting close relatives. Its purpose is to fill the gap in legal protection between family members and unrelated individuals.³² It is worth noting, however, that article 1050 of the Civil Code provides that 'After a marriage has been registered, by mutual consent, the woman may become

31 YU HAISONG, AMENDMENTS TO THE CRIMINAL PROCEDURE LAW AND ANALYSIS OF DIFFICULT ISSUES IN JUDICIAL APPLICATION, at 249 (Peking University Press, 2021).

32 Feng Yuan, *On Subject Scope of Domestic Violence*, 1 Journal of Shanghai University of Political Science & Law 125 (2018).

a member of the man's family or vice versa'. This provision, in essence, establishes family membership on the basis of marriage. Accordingly, relationships formed under article 1050 should fall directly within the scope of the ADVL's provisions applicable to family members.

Regarding 'cohabitation', its essence lies in the functional analogy to the family. The 'quasi-application' of quasi-domestic violence requires that the definition of cohabitation reflect substantive similarity to the core functions of family life. Living under the same roof is the most intuitive indicator of cohabitation, yet spatial unity is not an absolute criterion. The decisive consideration lies in whether daily life is closely integrated and shared, rather than merely whether individuals occupy the same physical location.³³ Key factors include whether daily routines such as eating, resting, and social interaction form stable and frequent intersections and dependencies, and whether the parties jointly assume living expenses or provide one another with financial support. Such economic interdependence serves as a vital foundation of a shared community of life. At the same time, spatial proximity alone is insufficient; the essence of cohabitation lies in mutual emotional support, reliance, and companionship. For example, modern urban tenants who share an apartment but remain strangers lack the emotional bond necessary to constitute 'cohabitation' in the legal sense. This emotional connection is the animating force that transforms shared space into a community of life. It is manifested when individuals turn to one another for support during hardship or psychological stress, thereby fostering trust and dependency akin to familial relationships.

Specifically, former spouses or cohabiting partners may retain quasi-family characteristics even after separation. This is due to their shared emotional history, the possibility of ongoing entanglements, and legally mandated financial obligations such as child support or other forms of economic assistance. Acts of violence within these relationships often display distinctive patterns of control, recurrence, and harm, making them quintessential subjects for the application of article 37 of the ADVL.³⁴ Stable non-cohabiting partners may also fall within the scope of covered subjects under substantive criteria where their lives are deeply intertwined. Indicators include one partner regularly staying overnight at the other's residence, jointly bearing living expenses, active involvement in each other's family affairs, and the development of strong emotional dependence and mutual financial support. Other intimate

33 Chen Honglei & Chen Mingjing, *Empirical Observation on Judicial Application of Anti-Domestic Violence Law: Based on the Collation and Analysis of 3,961 Judgment Documents*, 2 Chinese Journal of Human Rights 105 (2022).

34 Xia Yinlan, *Analysis of the Main Contents of the Concept of Domestic Violence*, 5 Collection of Women's Studies 51 (2014).

cohabitants, such as long-term close friends who live together and provide mutual care and support, should likewise be encompassed within the regulatory ambit of this provision, provided that they maintain stable emotional bonds, reciprocal economic assistance, and a high degree of shared daily life. Where such relationships achieve a level of stability and interdependence comparable to that of a 'quasi-family', they merit equal protection under the law.

In summary, the definition of 'persons cohabiting outside the family' ultimately depends on whether the individuals have established a 'family-like' functional community, characterized by spatial integration, emotional reliance, and intertwined economic mutual support. Only by capturing this substantive essence can the law accurately identify groups situated beyond traditional family boundaries yet nonetheless profoundly affected by domestic violence in today's increasingly diverse forms of intimate relationships. In adjudicating such cases, courts should avoid the mechanical application of rigid, single-factor standards. Instead, they should adopt a comprehensive and dynamic approach that evaluates multiple elements including spatial proximity, the intensity of emotional dependence, and the extent of financial interdependence, in order to delineate with precision the category of 'persons cohabiting outside the family'.

Unlike the ADVL, which takes the groundbreaking step of extending the category of perpetrators to include 'persons cohabiting outside the family', the Law on Penalties for Administration of Public Security and the Criminal Law continue to confine the subject of abuse strictly to 'family members'. Landmark cases such as the *Mu Linhan Case* vividly expose this disjunction in the legal framework.³⁵ Within the current legislative structure, if one were to mechanically require absolute alignment between the definitional scope of criminal law and that of preceding statutes, a substantial number of violent acts occurring within *de facto* family relationships would fall outside the ambit of criminal regulation.

Some scholars contend that the principle of unity in the legal order does not necessitate the formal uniformity of legal concepts. In criminal law, the offense of abuse can move beyond the formal constraint of 'legitimate kinship relations' by adopting a substantive standard centered on the objective fact of sustained and stable cohabitation, coupled with mutual subjective consent.³⁶ This argument rightly highlights that the normative purposes of different branches of law are not identical. The offense of abuse under criminal law is intended to safeguard the personal security of

35 Huang Jie, *Presiding Judge Responds to Five Key Issues in the Mu Linhan Case*, Legal Daily, June 16, 2023, at 4.

36 Zhao Tianhong & Shi Jieyang, *Reconstructing the Criteria and Defining the Scope of 'Family Members' in the Crime of Abuse Against the Background of Social Change*, 20 The Chinese Procurators 28 (2023).

individuals within a community of shared life, rather than to preserve the legal validity of familial relationships.³⁷ By analogy, just as the definition of ‘marriage’ in the context of bigamy diverges from that in civil law, the notion of ‘family member’ in abuse offenses may also be independently construed in light of its specific protective purpose. Accordingly, the author submits that it is necessary to recalibrate the scope of subjects in abuse offenses around the core aim of normative protection, thereby promoting effective coordination among civil, administrative, and criminal law.

Firstly, in criminal law, the scope of perpetrators in abuse offenses may be reconstructed on the substantive basis of a ‘shared living community’, so as to address the protection needs of non-traditional family members.³⁸ In adjudicating individual cases, judges may apply three evaluative criteria: (1) Living patterns: whether the parties have established a stable and sustained cohabitation with a high degree of integration in their daily routines; (2) Emotional bonds: whether their relationship goes beyond ordinary friendship or commercial cohabitation, and involves mutual reliance and support in emotional and practical aspects of life; (3) Economic ties: whether the parties jointly bear living expenses, share property resources, or provide ongoing financial support. Particular attention should be paid to *de facto* family members who constitute a life community through relationships such as foster care or the long-term upbringing of nieces and nephews. In such cases, abuse offenses under criminal law may properly apply. Conversely, where no community of life exists and the relationship rests solely on a commercial contract, such as that between nursing home residents and caregivers, the appropriate charge should be the offense of abusing a ward or person under care, rather than the offense of abuse within a family.

Secondly, the Law on Penalties for Administration of Public Security should be coordinated and adjusted by adopting substantive criteria for defining ‘family members’ in abuse cases. This expanded interpretation would encompass not only traditional family members, but also cohabiting partners (including non-marital partners), as well as former spouses or partners who, after separation, continue to cohabit or maintain close personal entanglements. Violent conduct within these relationships, insofar as it does not rise to the level of a criminal offense, should fall within the scope of administrative penalties. The concept of ‘cohabitants’ under the ADVL provides a foundational basis:

37 Han Hanqi, *Restatement of the Legal Interests and Normative Delimitation of the Crime of Abuse*, 3 *Western Law Review* 61 (2025).

38 Liu Luming, *The Crime of Abuse and the Value of Family in Criminal Law*, 1 *Journal of Gansu University of Political Science and Law* 113 (2022).

it both supports early-stage intervention and serves as a reference point for determining liability under administrative and criminal regimes. By employing substantive interpretation, legislative discrepancies can be bridged, thereby reconciling internal conflicts among different branches of law concerning the scope of perpetrators in domestic violence cases.

B. Accurately Defining Types of Domestic Violence

The ADVL explicitly distinguishes domestic violence into two principal categories: physical abuse and psychological abuse. Physical abuse covers acts such as beating, tying up or restraining, maiming, and restricting personal freedom. Psychological abuse, by contrast, refers to conduct that inflicts mental suffering, such as repeated verbal insults and intimidation. In practice, however, psychological abuse manifests in a broader range of behaviors. These include not only verbal abuse and intimidation, but also persistent humiliation and degradation of an individual's dignity; direct or indirect threats to harm the victim, relatives, or friends, as well as threats of suicide or deprivation of child custody; stalking, harassment, and invasion of privacy; enforced social isolation; and prolonged neglect (often referred to as cold violence) when used as a form of punishment.

When addressing domestic violence cases, the Law on Penalties for Administration of Public Security ought to be interpreted in harmony with the ADVL. It should transcend the narrow focus on visible physical harm and extend its coverage to encompass acts of psychological abuse. In this context, psychological abuse, although not resulting in serious bodily injury, should be recognized if it causes victims to live in conditions of fear, humiliation, or oppression, thereby impairing their mental health or disrupting their normal lives.³⁹ In such circumstances, public security authorities are required to impose appropriate administrative sanctions, including warnings, fines, or detention, in accordance with the law.

When dealing with domestic violence cases, criminal law must take into account its distinctive nature. Domestic violence arises within closed intimate relationships and is marked by recurrence, escalation, and a pervasive pattern of control. Victims often encounter multiple barriers to leaving, so that while individual acts may appear minor in isolation, their cumulative harm is profound. Accordingly, the criminal justice system must

39 Hao Jia, *Legal Deconstruction and Reconstruction of Domestic Violence*, 1 Journal of Xinjiang University (Philosophy, Humanities & Social Sciences) 58 (2016).

depart from the approach of treating domestic violence as equivalent to ordinary violent crime. For instance, in applying the offense of intentional injury, the objective threshold of ‘minor injury or above’ should be upheld, yet the cumulative effects of repeated minor physical assaults in domestic settings must also be duly acknowledged. As the principal offense governing psychological violence and controlling patterns of abuse, the crime of maltreatment requires courts to undertake a holistic assessment of whether the circumstances qualify as ‘particularly egregious’. Such assessment should consider the overall pattern of abusive conduct, the extent of control exercised, the psychological harm inflicted, and the victim’s specific vulnerabilities. Prolonged and high-frequency psychological torment, such as relentless verbal abuse, death threats, or sustained humiliation, resulting in depression, anxiety, or suicidal tendencies, as well as psychological persecution during vulnerable periods (e.g., pregnancy or illness), or long-term oppression combining psychological, economic, and social isolation, should be deemed particularly egregious, even absent physical injury.⁴⁰

Furthermore, some scholars argue that, compared with the internationally recognized four-category classification of domestic violence, the ADVL enumerates only two types: physical abuse and psychological abuse. They contend that sexual violence and economic control ought also to be explicitly recognized.⁴¹ The refinement of domestic violence classifications, however, should be grounded in the specific national context while balancing international consensus with practical demands. Based on an objective assessment of the actual harm caused by violent conduct and the feasibility of existing legal frameworks, the author suggests that sexual violence warrants recognition as an independent category, whereas the inclusion of economic control as a statutory category at this stage should be approached with caution.

Specifically, the distinct categorization of sexual violence is both necessary and urgent. Some scholars argue that sexual violence is adequately encompassed by physical or psychological violence, which overlooks the fact that sexual violence primarily infringes upon the right to sexual autonomy — a fundamental interest that transcends the narrower concerns of physical integrity or psychological well-being.⁴² Conflating sexual violence

40 Ye Xiaolin & Zhou Yijie, *Study on Factors Related to the Conviction for Physical Infringement Behavior Among Family Members: Empirical Analysis Based on 349 Judgments*, 4 *Nanjing University Law Journal* 1 (2024).

41 Chen Min, *Understanding and Application of Definition of ‘Domestic Violence’ in Law on Domestic Violence*, 10 *People’s Judicature · Application* 4 (2016).

42 Li Chunbin, *Sexual Violence Is a Type of Domestic Violence: Based on the Draft Anti-Domestic Violence Law*, 5 *Collection of Women’s Studies* 56 (2015).

with other forms of abuse not only diminishes the autonomous legal value of sexual autonomy but also risks rendering remedial measures ineffective or misdirected. Victims of sexual violence require specialized forms of support, including confidential procedures for privacy protection, targeted psychological interventions tailored to survivors of sexual assault, and appropriate medical assistance, and needs that conventional mechanisms of redress are ill-equipped to address. Accordingly, it is necessary to amend article 2 of the ADVL by adding 'sexual violence' as a distinct category following physical and psychological abuse. Sexual violence may be defined as 'acts that infringe upon sexual autonomy, including forced sexual intercourse or sexual humiliation'. Importantly, current judicial practice regards marital sexual relations as part of the rights and obligations between spouses. Consequently, marital rape is generally not prosecuted as rape, except in exceptional circumstances such as during divorce proceedings or periods of separation, where a husband may be held criminally liable if he compels sexual intercourse against his wife's will. This approach risks underestimating the gravity of sexual violence within marriage. Moreover, the legal definition of rape does not treat the marital or extramarital status of the relationship as a constitutive element, which complicates the judicial recognition of such acts. In adjudicating these cases, judicial authorities should undertake a case-specific assessment of the factual circumstances to determine whether sexual relations were coerced, so as to safeguard women's sexual autonomy within marriage and the family context.

The current decision to refrain from incorporating economic control into the statutory definition of domestic violence primarily reflects practical constraints within the existing legislative framework. First, the boundaries of economic control are difficult to delineate, such as distinguishing between legitimate household expenditure arrangements and abusive financial domination, which poses significant challenges. The absence of authoritative judicial precedents, well-established evaluative criteria, and a general societal consensus means that premature legislative intervention risks generating interpretive confusion and weakening the authority of the law. Second, economic control principally infringes upon property rights and economic autonomy. Yet the remedial measures available under the ADVL, such as admonitions and PSPOs, are designed to interrupt physical violence and psychological coercion, not to resolve issues such as the withholding of wage cards or the unilateral freezing of bank accounts. This creates a fundamental misalignment between the logic of regulation and the existing legal framework on domestic violence. Given this, a gradual and incremental

regulatory approach should be adopted for addressing economic control. From a judicial perspective, courts should be encouraged to treat economic control as a relevant factor in determining abuse or irretrievable breakdown in divorce and child custody proceedings, with sanctioning effects reflected in the distribution of marital property. At the policy level, the Ministry of Civil Affairs and the All-China Women's Federation should take the lead in establishing economic empowerment initiatives, such as priority access to employment opportunities and vocational training programs. Once these measures have been sufficiently tested and institutionalized in practice, the prospect of codifying them into legislation, whether through detailed rules under the *Law on the Protection of Rights and Interests of Women* or through provisions of the ADVL, may then be considered. In other words, due to systemic divergences in regulatory logic and the still-evolving social consensus, economic control is best addressed initially through progressive civil remedies and social policy interventions, thereby laying the groundwork for more mature legislative incorporation in the future.

C. Enhancing the Accountability Framework for Domestic Violence

The effective legal governance of domestic violence hinges upon the precise coordination and integrated application of different branches of law. Civil, administrative, and criminal liabilities must be interlinked and applied in a graduated manner so as to construct a multi-layered and comprehensive system of legal accountability that effectively safeguards victims' physical security and personal dignity.

1. Strengthening Civil Remedies and Liability in Domestic Violence Cases. — Civil remedies for domestic violence are primarily provided under the ADVL and the Civil Code. However, deficiencies remain, particularly in the areas of divorce and guardianship, which call for further improvement. Article 1077 of the Civil Code establishes the divorce cooling-off period, which is intended to encourage spouses to approach divorce more rationally. Yet in cases involving domestic violence, there is widespread concern that prolonging the marriage through such a cooling-off period may increase the risk of further harm to the victim.⁴³ In response, the Legislative Affairs Commission of the Standing Committee of the National People's Congress has clarified that the cooling-off period applies only to divorces by mutual

⁴³ Yang Lixin & Jiang Xiaohua, *The Legislative Evaluation of Divorce Cooling-Off Period in the Draft of Marriage and Family Law in the Civil Code*, 6 *Henan Social Sciences* 35 (2019).

consent. Victims of domestic violence, as stipulated in article 1079 of the Civil Code, may seek divorce through litigation and are not subject to the cooling-off requirement.⁴⁴ Nevertheless, this approach may restrict the avenues of relief available to domestic violence victims, thereby forcing them to resort to the more onerous and time-consuming litigation process. To better safeguard victims' right to divorce freely, it is necessary to explicitly exclude domestic violence cases from the scope of the cooling-off period. In light of judicial realities, victims often face an escalation of violence during divorce proceedings. Judges presiding over divorce cases involving domestic violence must therefore decisively abandon practices such as persuading reconciliation or prolonging mediation without achieving resolution. Where there is sufficient evidence of domestic violence, even in an initial divorce petition, and mediation proves ineffective, courts should promptly grant the divorce so as to prevent victims from being trapped in even more perilous circumstances.

Under article 34 of the ADVL, if the respondent violates a PSPO and the act constitutes a criminal offense, criminal liability shall be pursued in accordance with the law. If the violation does not reach the threshold of a criminal offense, the people's court must issue a warning and may, depending on the circumstances, impose a fine of up to 1,000 yuan or detention for up to 15 days. This provision indicates that in cases of domestic violence falling short of the criminal standards under the Criminal Law, victims remain entitled to seek a PSPO. Should the respondent breach the order, the victim may pursue criminal remedies, with the court holding the respondent liable under the offense of refusing to comply with a judgment or ruling. During divorce proceedings, judges have a duty to actively inform victims of their right to apply for a PSPO, while also simplifying application procedures and expediting review to ensure that effective protection of personal safety is available throughout the litigation. The integration of civil remedies with criminal sanctions thus serves both to safeguard victims and to deter the escalation of domestic violence.

Divorce cases involving domestic violence should fully apply the principle of protecting the rights of the non-fault party, as established in article 1087 of the Civil Code. In the division of marital property, courts should award a reduced share to the party responsible for domestic violence, thus both compensating the victim economically and imposing civil sanctions on the perpetrator. When determining child custody under article 1084 of the

44 Wang Chunxia, *Legislative Affairs Commission of the Standing Committee of the NPC Responds to Six Major Issues in the Draft Civil Code, Including Several Concerning Marriage and Family: Divorce Cases Involving Domestic Violence Are Not Subject to the Cooling-Off Period*, China Women's News, May 15, 2020, at 2.

Civil Code, courts must treat domestic violence as a primary and decisive factor. As a general rule, custody should not be granted to the abusive party, in order to prevent the intergenerational transmission of violence and to maximize the protection of the best interests of the child.

2. Optimizing the Coordination of Administrative Penalties and Criminal Liability. — Pursuant to article 33 of the ADVL, article 53 of the Law on Penalties for Administration of Public Security, and articles 260 and 261 of the Criminal Law, perpetrators of abusive acts are subject to administrative penalties or criminal liability depending on the severity of the conduct. Specifically: in ordinary cases, a warning or detention of up to five days; in cases of greater severity, detention of five to ten days, which may be accompanied by a fine of up to 1,000 yuan; and in especially serious cases, imprisonment of up to two years, criminal detention, or public surveillance.

The core of the dual governance model of administrative and criminal measures lies in the judicial determination of especially serious circumstances, which directly dictates whether an act should be subject to administrative penalties or criminal sanctions. In judicial practice, however, the application of this criterion has long been characterized by ambiguous standards and inconsistent applications. This is particularly evident in courts' overemphasis on physical harm. In many cases, they rely primarily on injury thresholds, such as requiring proof of 'minor injury or above', as the principal basis for criminal liability, while overlooking other critical factors, including the duration, frequency, and subjective intent of the abusive conduct. Consequently, numerous serious forms of abuse, such as psychological violence and coercive control, have not been adequately addressed within the scope of criminal accountability.⁴⁵

Assessing the severity of abusive conduct requires a comprehensive evaluation that integrates both objective and subjective factors. From an objective standpoint, three elements merit particular attention: the intensity of the methods employed, the duration and frequency of the conduct, and the consequences of the harm inflicted. The latter must be assessed with equal regard to physical injury and psychological trauma. From a subjective perspective, the perpetrator's motives and post-incident attitude are of central importance. Malicious purposes, such as gratifying personal desires or degrading the victim's dignity, should be clearly distinguished from any purported intent of legitimate discipline. In addition, the absence of remorse

45 Mu Lei, *Analysis of the Dilemma About Domestic Violence Crime in Criminal Law: From Perspective of Husband Domestic Violence*, 3 *Journal of Huazhong University of Science and Technology (Social Sciences Edition)* 119 (2021).

and the presence of threats of retaliation should be regarded as significant indicators of the perpetrator's potential danger to others.⁴⁶ Only through a holistic evaluation of both the objective harm of the conduct and the subjective malignancy of the perpetrator can a precise distinction be drawn between administrative violations and criminal offenses.

It is important to note that current laws impose specific preconditions for judicial intervention in abuse cases. Article 53 of the Law on Penalties for Administration of Public Security provides that administrative penalties may be imposed only upon the request of the abused person or their guardian. Likewise, article 260 of the Criminal Law defines the crime of abuse as a private prosecution offense, which can be pursued only if the victim lodges a complaint. Although this system is intended to respect family autonomy and the victim's wishes, it risks causing undue delays in judicial intervention.⁴⁷ To address this concern, public security authorities, people's procuratorates, and people's courts should promptly review reports, accusations, or complaints and decide in accordance with the law whether to initiate proceedings. In cases that meet the statutory criteria but where the victim is unable to file a private prosecution because the perpetrator is their legal representative or close relative, or because the representative fails to act on their behalf, the procuratorate should initiate a public prosecution pursuant to law. At the same time, the supervisory function of the procuratorate in case-filing must be reinforced to prevent failures to register cases and to ensure the smooth commencement of criminal proceedings. In private prosecution cases, courts should also take into account the victim's often limited ability to present evidence, provide timely guidance on evidentiary matters, and, upon request, collect necessary evidence, thereby ensuring that victims have access to adequate legal remedies.

V. CONCLUSION

China has progressively established a comprehensive governance framework for domestic violence, centered on the ADVL and integrating provisions from civil, administrative, and criminal law. This represents a significant shift, as public authorities have adopted a proactive stance toward addressing domestic violence, thereby moving away from the traditional perception of it as a mere 'private family matter' beyond the reach of public

46 Wen Jinzi, *Adjudication Path and Key Points of Abuse Crime*, 5 People's Judicature · Case 25 (2022).

47 ZHOU LIN, RESEARCH ON THE PREVENTION AND CONTROL OF DOMESTIC CRIMES, at 30 (China University of Political Science and Law Press, 2019).

intervention. As a result, an increasing number of victims are actively seeking legal remedies to safeguard their legitimate rights and interests following incidents of abuse, a development that plays a crucial role in the prevention and suppression of domestic violence.

Nevertheless, despite the continuous advancement of anti-domestic violence legislation and policy, normative conflicts and deficiencies in institutional coordination have become increasingly evident. Core elements, such as the scope of subjects covered and the types of conduct defined across different branches of law, are frequently inconsistent or contradictory. Moreover, the mechanisms governing legal remedies and the imposition of liability in domestic violence cases face significant challenges in ensuring effective coordination and integration across legal domains.

The legal regulation of domestic violence must take the intimate relationship between the perpetrator and the victim as a primary point of reference. It should define the concept of domestic violence with precision, encompassing both the scope of subjects and the forms of conduct involved, while remaining responsive to the evolving structures of modern families. Strengthening accountability mechanisms and employing more sophisticated legislative techniques are essential for achieving a reasonable balance between family ethics and legal logic. Such an approach would help to construct a more rigorous and efficient framework for legal accountability. Only through substantially increasing the severity of sanctions and enhancing the effectiveness of preventive measures can the law provide victims with more comprehensive and robust protection.

(Edited by Gong Li)

中国家庭暴力法律规制的实践反思与体系完善

内容提要 为应对家庭暴力的多发态势，中国制定了一系列法律、政策力图防止并消除家庭中的暴力现象，逐步构建了以《反家暴法》为中心，广泛涉及民法、行政法、刑法的综合治理体系。然而，不同法律法规之间存在概念界定不一、适用范围交叉、责任规定冲突等问题，影响家庭暴力防治的整体效能与受害者的权益保障。本文基于家庭暴力的特殊性及其防治需求，在现行法律规范框架下，系统探究消解多元规范冲突、促进规范协同的有效路径，致力于构建民事、行政与刑事相互衔接、高效联动的协作机制，以全面提升家庭暴力法律治理体系的效能。
