

The Criminal Governance Model of Domestic Violence and Its Legislative Improvement

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Abstract: *Domestic violence is a serious threat to the basic human rights of family members, especially victimized women. In order to effectively prevent domestic violence, the criminal law needs to respond in an appropriate and timely manner. However, the traditional criminal governance model suffers from the problem of the lagging involvement of public power. At the same time, the public-private partnership governance model, based on the personal safety protection order system stipulated in the Anti-domestic Violence Law of the People's Republic of China, is also flawed in its institutional design and specific implementation. The criminal governance model for domestic violence should be guided by the view of positive criminal law, and the governance path should be further optimized from two aspects: strengthening the foundation of the public-private cooperation governance model and deepening the criminal-civil interface. This will help to fully protect the legitimate rights and interests of victims of domestic violence.*

Keywords: domestic violence ♦ human rights protection ♦ criminal governance model ♦ legislative improvement

I. The Necessity of Governing Domestic Violence According to Criminal Law

Since the 18th National Congress of the Communist Party of China (CPC), the Party Central Committee with Comrade Xi Jinping at its core has prioritized the development of women's cause and viewed the protection of women's rights as a firm will of the state. The 20th National Congress of the CPC included "committed to the fundamental national policy of gender equality and protect the lawful rights and interests of women and children" into the report to the National Congress of the CPC for the third time, fully reflecting the cordial care of the Party Central Committee with Comrade Xi Jinping at its core for women and children. Society-wide efforts are being made to eliminate all forms of violence against women to uphold their legitimate rights and interests. However, despite these efforts, incidents of domestic violence have unfortunately remained prevalent in recent years, posing significant threats to family members,

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especially the personal rights of abused women and children, and seriously impacting social security and stability. To maintain stable marital and family order, China has introduced and revised multiple laws aimed at eradicating violence within intimate relationships. A notable example is the *Anti-domestic Violence Law of the People's Republic of China* (hereinafter referred to as the “*Anti-domestic Violence Law*”), which officially came into effect on March 1, 2016. This law marks China's first nationwide civil legislation specifically targeting the prevention of domestic violence. It consolidates legislative and judicial experiences accumulated over years of addressing domestic abuse, defining the specific scope of domestic violence for the first time, and establishing a personal safety protection order system. The law also outlines the responsibilities of relevant authorities in providing protection and the legal consequences for failing to act, thereby establishing standardized procedures for public intervention in the case of domestic violence.¹

With the enactment and implementation of the *Anti-domestic Violence Law*, the household is no longer a place beyond the rule of law. The public is becoming increasingly aware of the imputability of domestic violence, and improvements have been made in judicial handling of such cases. However, the occurrence of extreme and malicious cases has made the public question whether the rights of domestic violence victims are truly protected, necessitating careful scrutiny. This article examines two cases to illustrate the issue:

Case 1: Attempted Homicide by Zhang (Defendant)²

The defendant Zhang and the victim Lv were spouses. Due to domestic conflicts and suspicions of infidelity, Zhang resorted to multiple acts of violence against Lv, including a beating resulting in hospitalization, applying sulfuric acid to the body, and tricking Lv into consuming sleeping pills. Unable to endure the abuse, Lv filed for divorce, but the court denied the request, leading Lv to leave home. In early 2021, Zhang located Lv and attempted to persuade Lv to return home, but was rebuffed. Zhang then pulled out a folding knife from home and stabbed Lv in the shoulder and chest, causing severe bleeding from multiple injuries, assessed by judicial experts as Class II serious injuries.

The first-instance court held that this case involved an attempted murder stemming from trivial family matters, and that Zhang had made voluntary surrender and confessed and pleaded guilty. Therefore, Zhang was sentenced to 10 years in prison for the crime of attempted homicide.

Case 2: Tang Lu Intentional Homicide Case (Lamu Case)³

The defendant Tang Lu and the victim Amuchu (internet celebrity “Lamu”) were originally a couple. Due to Tang Lu's repeated domestic violence against

¹ He Xin, “Why Does Justice Downplay Domestic Violence?” *China Law Review* 4 (2019): 6-22.

² Judgment No.128 Criminal Trial Division of Gansu [0403] People's Court, Pingchuan District, Baiyin City, Gansu Province (2021).

³ Guo Qidi, “Maintaining the Original Death Sentence!” March 25, 2022, *Modern Evening Times*.

Amuchu, they divorced in 2020. Subsequently, Tang Lu repeatedly attempted to reconcile with Amuchu but was refused. Fueled by resentment, Tang Lu poured gasoline on Amuchu when she was livestreaming and set her on fire, resulting in her death.

The first-instance court found that Tang Lu was guilty of intentional homicide, and due to the extremely cruel means of the crime and its extremely negative social impact, the crime was very serious and sentenced him to death, depriving him of political rights for life. The second trial upheld the original judgment and sentenced Tang Lu to death.

As shown in the above-mentioned two cases, the similarity of many cases of domestic violence that cause serious harmful effects is that domestic violence was not effectively contained in the early stages and later escalated into serious criminal cases. In other words, China's handling of domestic violence exhibits overly conservative and sluggish characteristics. The main reason for this is the profound influence of traditional culture in China. Although modern society continuously undergoes impacts from new systems and new concepts regarding the family, the "Ethics-based" governance model nurtured by the family unit still widely plays a role. Indeed, in traditional societies, strict ethical requirements among family members can form a hierarchical and structurally stable family order, and conflicts can be quickly resolved within the family. At this time, excessive interference from external forces may exacerbate conflicts,⁴ and even affect the stability of family relationships. Therefore, in such cases, the law rarely actively intervenes in the internal affairs of the family, hence the proverb "The law is not applicable in the household."⁵ However, with the development of society, family relationships are becoming increasingly free, and family forms are more diverse. At this time, relying solely on ethical requirements is not enough to maintain a stable family order. Issues such as maintenance and support obligations and the establishment and dissolution of marital relationships are extremely important for the family system and need to be enforced by legal provisions to form a specific legal order to maintain family order.⁶ This leads to an interlaced relationship between the law and family. As a private place, most internal affairs of the family are within the scope of autonomy, and the external environment should not be overly involved to ensure harmony and stability in family relationships. However, domestic violence harms the legitimate rights and interests of family members, such as personal safety, and has an extremely bad social impact. This makes it not just an internal

⁴ Yang Zonghui and Shang Pu, "The Dilemma and Countermeasures of Police Intervention in Civil Disputes," *Journal of Hubei University (Philosophy and Social Science)* 6 (2017): 113–118.

⁵ Zhang Jianyuan, "The Traditional Family Ethics and Situation Discriminant," *Chongqing Social Sciences* 7 (2015): 48–55.

⁶ Xie Ruyuan, "Family Order Under Criminal Law," *National Taiwan University Law Journal*, vol. 35, no. 6 (2006): 291–329.

conflict, and is difficult to resolve through family autonomy.⁷ At this point, the assertion that family ethics are the intrinsic moral force maintaining family order is not entirely inappropriate. However, faced with abnormal situations in family order, the state must assume the role of a “savior”⁸ to restore deviated family order, especially concerning potentially escalating domestic violence incidents. State agencies must intervene timely to prevent serious harmful consequences and promptly safeguard the personal safety and dignity of the vulnerable within families.

Typically, public power intervenes in family affairs through social remedies, civil remedies, administrative remedies, and criminal remedies. Among these, judicial remedies, supported by the criminal law, represent the most severe measures to restore deviated family order. Criminal law intervention is essential for handling criminal cases occurring within families, as it possesses significant deterrence effects from the penalties and the coercive power of state criminal prosecution agencies, making it more effective in risk management compared to civil law. Unlike administrative law, criminal law also offers the advantage of impartiality independent of politics and judiciary. In response to domestic violence, criminal law must make timely and appropriate responses to better protect the legitimate rights and interests of victims. This article focuses on the specific pathway of using criminal law to regulate domestic violence, advocating for the view of positive criminal law. The governance should adhere to the transition from the “traditional model” to the “new model,” and better leverage the preventive function of criminal law to stop violent conflicts among family members, thereby uniquely contributing to the construction of a harmonious society.

II. Transformation of the Criminal Governance Model for Domestic Violence

Due to the specific relationships between victims and perpetrators and the place of occurrence, domestic violence incidents differ significantly from general criminal cases in aspects such as the intimacy among the involved parties, the need for secrecy regarding relevant facts, and the fluid legal status.⁹ These differences determine significant variations in the manner and extent to which criminal law intervenes in such cases compared to other crimes. However, traditional criminal justice approaches have not adequately addressed the uniqueness of domestic violence, often overlooking the substantial risk of escalating violence inherent in domestic abuse itself. Therefore, a

7 Jiang Tao, “How Criminal Law Faces Family Order,” *Tribune of Political Science and Law* 3 (2017): 32-47.

8 Li Hongxiang, “Limitation of the State Intervention in Domestic Violence,” *Legal Forum* 2 (2020): 141-152.

9 Jiang Tao, “How Criminal Law Faces Family Order,” *Tribune of Political Science and Law* 3 (2017): 32-47.

transformation in the criminal governance model of domestic violence is imperative.

A. Issues with traditional criminal governance models

In traditional criminal law perspectives, driven by principles of restraint, criminal law primarily regulates actual damage offenses that have already caused harm to legal interests.¹⁰ This is particularly evident in the case of domestic violence. Currently, the *Criminal Law of the People's Republic of China* (hereinafter referred to as *Criminal Law*) lacks specific provisions for domestic violence crimes, and the *Criminal Procedure Law of the People's Republic of China* lacks specialized procedures for handling such cases. Severe incidents resulting in serious consequences, such as murder, intentional injury, abuse, or abandonment of family members, are subject to standard criminal proceedings based on the principle of legality in criminal sentencing. Conversely, behaviors such as confinement, harassment, or minor injuries, which fall under the *Public Security Administration Punishments Law of the People's Republic of China* or other administrative regulations, only result in corresponding administrative penalties for the perpetrators. This traditional approach treats domestic violence similarly to violence between strangers, which does not align with the logical framework for governing domestic violence.

Taking intentional injury cases as an example, according to criminal law theory and the *Guidelines for Sentencing of Common Crimes*, criminal liability is pursued only if the injurious act results in injuries classified as minor or worse. However, verbal abuse and physical violence often occur in domestic violence, inflicting significant physical and psychological harm on victims. Because these acts fail to meet the threshold for minor injuries, perpetrators cannot be criminally prosecuted for intentional injury. In such cases, consideration of alternative charges, such as the crime of abuse, may be warranted. Nevertheless, according to China's *Criminal Law*, domestic abuse requires execrable circumstances for prosecution, with judicial practice still predominantly evaluating the severity of abuse based on resulting harm. It is evident that China's *Criminal Law* predominantly targets violent acts that substantially harm the right to life or physical health, but it does not encompass forms such as verbal abuse, psychological violence, or minor injuries. This overly narrow framework is ill-suited for addressing domestic violence, where acts such as verbal abuse and minor physical harm, despite their lesser harm to legal interests, can induce lasting fear and cumulative harm in the enclosed family setting.¹¹

¹⁰ Sun Guoxiang, "On the Fundamental Standpoint of Criminal Law Development in New Era," *The Jurist* 6 (2019): 1-14.

¹¹ Zhou Anping, "Issues to Be Addressed by the Anti-domestic Violence Law: Analysis of the Draft of the Anti-domestic Violence Law," *Journal of Chinese Women's Studies* 2 (2015): 49-56.

Handling domestic violence with traditional criminal law approaches can easily lead to loopholes in punishments.

Furthermore, in terms of judicial proceedings, handling domestic violence cases remains mired in persistent practical difficulties, such as high rates of concealed crime numbers, low rates of both public and private prosecution, and challenges in discovering and preserving evidence. Based on relevant cases and statistical data from various regions, it can be observed that domestic violence primarily infringes upon personal rights such as the right to life, physical health, and liberty.¹² The main victims include women, children, and the elderly, with women being the most prominent victims of domestic violence.¹³ Among all types of domestic violence cases, wife-beating cases account for the vast majority. These three groups of domestic violence victims are often economically or psychologically dependent on the perpetrators, making it difficult for them to seek criminal remedies. In response, the *Anti-domestic Violence Law* stipulates a mandatory reporting system, whereby hospitals, schools, kindergartens, neighborhood committees, rescue agencies, welfare organizations, and other units are obligated to report such cases. This provision expands the channels for discovering domestic violence cases and increases the likelihood of judicial intervention. However, in practice, there are few reports, and the defendant — plaintiff relationship between perpetrators and victims often leads the public to overlook the criminal nature of such violence.¹⁴ Even some judicial personnel exhibit a passive attitude when handling such cases,¹⁵ which is particularly evident in cases of private prosecution for domestic violence. According to current criminal law, domestic violence involving crimes such as violent interference with marriage freedom, insult, and abuse falls under private-prosecution cases. If the victim does not file a lawsuit, the people's court will not actively pursue the criminal responsibility of the perpetrator. However, many domestic violence victims refrain from prosecuting due to concerns over family reputation or threats and intimidation from the abuser, thereby avoiding the courts. According to Article 98 of China's *Criminal Law*, in such cases, the people's procuratorate and close relatives of the victim may file on their behalf. However, in judicial practice, close relatives often refuse to do so due to emotional considerations or a reluctance to get involved in disputes, resulting in very few cases of domestic violence being prosecuted by the people's procuratorate. Moreover, in private-prosecution cases, the burden of proof rests

¹² The key words like “domestic violence” and “criminal sentence” in the judgment were searched in Wolters Kluwer China Law & Reference.

¹³ Zhao Shukun and Hu Aixiong, “Changes and Logic in the Discursive Practice of ‘Anti-domestic Violence’ in China,” *Seeking Truth* 6 (2022): 94-104.

¹⁴ Yang Weilun, “Law Inapplicable in Household? On the Impact Factors of Domestic Violence Sentencing,” *Crime and Criminal Justice International* 11 (2008): 99-132.

¹⁵ Sun Xiaomei and Qiu Qirong, “Thoughts on Perfecting Anti-domestic Violence Legislation,” *Journal of China Women's University* 3 (2018): 19-25.

with the prosecutor,¹⁶ but domestic violence victims often lack the professionalism and ethical conduct of judicial personnel, have weak awareness of evidence, and lack the means of obtaining evidence. If the people's court conducts substantive examination of the case, it is likely to be dismissed due to insufficient evidence.¹⁷ Before victims suffer severe harm, it is extremely difficult for them to protect their legitimate rights through private prosecution. It can be seen that the traditional criminal governance model is notably passive, making it difficult to effectively curb domestic violence at an early stage, thereby leaving room for violence to escalate. Under such a model, criminal law fails to give full play to its preventive role against domestic violence, resulting in the indulgence of domestic violence, and thereby seriously compromising the personal safety of victims.

B. Formation of the public-private cooperation governance model

“In the construction of criminal offenses, the severity of penalties escalates based on the proximity of the act to the outcome the legislator seeks to avoid and the severity of the outcome.” This implies that the closer an action is to causing actual damage, the more serious the violation, and accordingly, the punishment should be more severe. Moreover, the more serious the potential harm an action may cause, the more the legislator wishes to take measures to prevent such act as early as possible, thus moving forward to the punitive stage.¹⁸ Acts of domestic violence that have not yet resulted in serious harm already imply a high probability of causing significant harm to the life or physical health of the victim. This potential escalation of violence demands that criminal law must increase its level of intervention in family relationships. However, the traditional governance model constructed based on traditional criminal law views can not pursue the criminal responsibility of the perpetrator according to the usual criminal disposal process until violent behavior within the family has already caused serious substantive harm to important legal interests, resulting in an overly delayed intervention by public power.

In fact, with the advent of the risk society, traditional criminal law views have already faced great challenges. Faced with the threats that new social risks pose to social order, criminal law, as a social norm for maintaining social order, must respond accordingly to meet people's demands for stable social order. This is a genuine, inherent demand existing within society, requiring more intervention by state public power. This demand also manifests in the functional requirements of criminal law within social governance, increasingly

¹⁶ Long Zongzhi, “Issues Concerning Burden of Proof in Criminal Cases,” *Modern Law Science* 4 (2008): 107-114.

¹⁷ Shen Liulan, “The Deficiency of Criminal Prosecution Procedure in China and its Perfection,” *Journal of Political Science and Law* 6 (2005): 49-51.

¹⁸ Kui Jia, “Research on the Protection of Women in German Criminal Code: From the Perspective of the Crime of Stalking in the Article 238,” *Journal of Chinese Women's Studies* 3 (2018): 46-53.

emphasizing the preventive function of criminal law. Penalties often bear the responsibility of controlling risks before harmful outcomes occur. On such basis, scholars propose that criminal law views should be rooted in social realities, establishing a proactive response to social issues and fulfilling social functions.¹⁹ Combined with the formulation and implementation of several recent criminal law amendments, the view of positive criminal law has been established and become mainstream in China today.²⁰ This also provides new ideas for preventing domestic violence: to protect family members and social stability, the state should intervene in disordered family relationships in a more appropriate manner, and criminal law should adjust its social role accordingly, making timely and appropriate responses, and strengthening its own participation. Given the significant danger of escalation inherent in domestic violence itself, the criminal relief path for domestic violence should be guided by the view of positive criminal law, seeking effective legal intervention methods before serious actual damage occurs, to fully safeguard the legitimate rights and interests of domestic violence victims.

The *Anti-domestic Violence Law* offers a viable pathway for implementing this approach. Observing the principles of putting prevention first and combining education and punishment, the law outlines the legal responsibilities of domestic violence perpetrators through administrative and criminal remedies. Depending on the severity of the offense, perpetrators may receive public security administration punishments or face criminal penalties, aiming to establish comprehensive and multi-faceted approaches to addressing domestic violence. Particularly notable is Article 34 of the *Anti-domestic Violence Law*, which specifies: “If the respondent violates a personal safety protection order and commits a crime, they shall be investigated for criminal responsibility according to law; if it does not constitute a crime, the people’s court shall issue an admonition and may impose a fine of up to CNY1,000 or detention of up to 15 days depending on the severity of the circumstances.” This provision allows victims to seek a personal safety protection order for domestic violence acts that do not meet China’s criminal law standards. If the respondent violates this order, the victim can pursue criminal remedies, thereby ensuring effective enforcement of the protection order through stringent penalties. With this provision, criminal law aligns with civil legislation such as the *Anti-domestic Violence Law*, fostering a public-private cooperation governance model against domestic violence.

¹⁹ Zhang Mingkai, “The Concept of Creating New Crimes: In Support of the View of Positive Criminal Law,” *Modern Law Science* 5 (2020): 150-166.

²⁰ Zhou Guangquan, “On the Realization of Appropriate Punishment by Creating Misdemeanors: An Reinterpretation of the View of Positive Criminal Legislation,” *Journal of Comparative Law* 6 (2020): 40-53.

Compared with traditional criminal governance models, the criminal remedy approach constructed based on Article 34 of the *Anti-domestic Violence Law* demonstrates a clear progressive structure. Its initiation is independent of the domestic violence itself. At this stage, penalties target the perpetrator's violation of a personal safety protection order, thereby to some extent upholding criminal law as a "last resort" for protection. This progressive model differs from the traditional model in the types of domestic violence addressed, lacks temporal sequencing, and avoids logical dependence. Conversely, it exhibits a degree of exclusivity.²¹ It is because in traditional models, once domestic violence constitutes a crime and the corresponding criminal procedures unfold, there is typically no need for further application of personal safety protection orders. In contrast, in the progressive model, applicants first seek personal safety protection orders from the court against domestic violence acts that do not meet the criteria for criminal charges. Only if the respondent violates this protection order will they face criminal liability.

The public-private cooperation governance model places more incidents of domestic violence within the purview of criminal law, seeking effective remedies, thereby expanding the regulatory scope of criminal law on domestic violence. It establishes channels for criminal law intervention before serious harmful consequences occur, enhancing the comprehensive deterrent effect of criminal law against domestic violence. Criminal penalties are used to achieve specific prevention of offenders and special protection of victims. This model alleviates the burden of proof, which has been the most challenging issue in addressing domestic violence. Such acts are often concealed in residential settings, facilitating the perpetrator in destroying evidence and complicating evidence collection and preservation.²² In traditional criminal governance models, if existing evidence fails to meet the criminal proof standards required to exclude reasonable doubt, it cannot prove the existence of domestic violence, thus naturally precluding the criminal liability of the perpetrator.²³ The public-private cooperation governance model circumvents this issue. Since the personal safety protection order falls under civil judgments, when the applicant alleges domestic violence and applies for a protection order, the proof shall only meet the standard of proof of high degree of probability. This is much lower than that needed to directly initiate criminal prosecution. If the respondent continues to perpetrate violence, their breach of the civil judgment holds them criminally

²¹ Qian Song, "Selection and Optimization of the Criminal Remedy Pathway for Domestic Violence Crimes," *Issues on Juvenile Crimes and Delinquency* 4 (2016): 11-21.

²² Jiang Yue, "An Evaluation and Comment on Applied Effect of the Anti-domestic Violence Law of PRC — Based on Statistical Analysis for Civil Judgments (2016–2018) of the People's Court," *Journal of China Women's University* 3 (2019): 13-22.

²³ Lei Mingguang and Li Ying, "Evidence Verification in Cases of Family Violence," *Journal of Northwest Minzu University (Philosophy and Social Sciences)* 5 (2005): 81-88.

responsible, thereby easing to some extent the burden of proof on the victim regarding domestic violence.

III. Examination of the Public-private Cooperation Governance Model for Domestic Violence

The traditional criminal governance model can only provide ex-post remedies for domestic violence incidents that have already resulted in serious harm. In contrast, the public-private cooperation governance model, established under the *Anti-domestic Violence Law*, adheres to the principle of joint governance between criminal and civil sectors. It addresses the potential dangers of violence escalation stemming from the inherent concealment and uncertainty of domestic violence, offering preemptive measures for situations that pose significant threats to essential personal rights, even if serious harm has not yet occurred.²⁴ However, the current efficacy of this preemptive relief mechanism in fulfilling its preventive function remains less optimistic.

As previously mentioned, the cooperation governance model for addressing domestic violence represents a progressive criminal intervention approach, focusing on the system of personal safety protection orders. This new form of protecting personality rights has been initially established in China by means of the *Anti-domestic Violence Law*. It specifically applies the injunction system of personality rights outlined in Article 997 of the *Civil Code of the People's Republic of China* in the realm of family matters.²⁵ According to the *Anti-domestic Violence Law*, victims of or those at risk of domestic violence can apply to the court for a personal safety protection order. For applicants with no or limited capacity for civil conduct, or unable to apply due to coercion or intimidation, their close relatives or social institutions and government departments responsible for preventing domestic violence may apply on their behalf. The people's court may impose measures to protect the applicant's personal safety, such as prohibiting the respondent from committing acts of domestic violence, harassment, tracking, or contacting the applicant or their close relatives, and may order the respondent to vacate the applicant's residence, depending on the severity of the harm suffered by the victim from domestic violence in specific cases.²⁶ Depending on the urgency and the court's review period, personal safety protection orders can be general (issued within 72 hours) or emergency (issued within 24 hours), both are valid for less than six months and subject to revocation, modification, or extension before expiration. If the respondent violates the personal safety protection order, the court may issue an

²⁴ Lin Jianjun, "Nature and Content for the Writ of Habeas Corpus," *Journal of Law Application* 7 (2022): 34-42.

²⁵ Zhu Hu, "Procedural Realization of Injunctions Against Infringement of Personality Rights," *Modern Law Science* 1 (2022): 173-190.

²⁶ Lin Jianjun, "Nature and Content for the Writ of Habeas Corpus," *Journal of Law Application* 7 (2022): 34-42.

admonition, impose a fine of up to CNY1,000, or detain the respondent for up to 15 days; if the violation constitutes a crime, criminal liability may be pursued.²⁷

Since the official enactment of the *Anti-domestic Violence Law*, the system of personal safety protection orders has seen widespread application in judicial practice, significantly enhancing protection for victims of domestic violence. In terms of legal responsibility, this law empowers the people's courts with comprehensive punitive measures to enforce personal safety protection orders. Meanwhile, through a public-private cooperation governance model, the *Criminal Law*'s intervention in family matters has also been expanded. Yet, has the *Criminal Law* comprehensively regulated acts of domestic violence? Regrettably, judicial practice suggests otherwise.²⁸ As of June 2023, a search in the WoltersKluwer (a legal information database) using the keyword "domestic violence" had yielded a total of 18,064 first-instance judgments on domestic violence cases. Courts across China issued a total of 4,640 personal safety protection orders. However, no cases have been found where respondents were criminally prosecuted for violating such protection orders.

In light of the widespread occurrence of domestic violence cases, there has yet to be a single instance of criminal punishment for violating a personal safety protection order. This does not signify compliance with these orders but rather underscores the ineffectiveness of the personal safety protection order system. Take the case of intentional homicide involving Hu Lei²⁹ for instance. The defendant Hu Lei, suspecting his wife Liu Mou-er of infidelity, frequently assaulted her. In response, Liu Mou-er obtained a personal safety protection order from the court and applied to divorce Hu Lei. However, Hu Lei harbored resentment and proceeded to send numerous abusive, threatening text messages via mobile phone to Liu Mou-er, even threatening to kill her family members in revenge. One day, armed with a pre-purchased butcher's knife, Hu Lei went to Liu Mou-er's residence and indiscriminately attacked her family members, resulting in one fatality, one serious injury, and three minor injuries. Bijie Intermediate People's Court of Guizhou Province ultimately sentenced him to death for intentional homicide. The judicial authorities' failure to promptly recognize the escalating risk of violence after Hu Lei violated the personal safety protection order and their subsequent failure to intervene indirectly led to severe harm and casualties among the victims and their families.

This case is not an isolated incident. The public-private cooperation governance model based on personal safety protection orders theoretically can

²⁷ Chen Min, *Skills in Handling Domestic Violence Cases* (Beijing: People's Court Publishing House, 2013), 63-85.

²⁸ Chen Min, "Current Status, Challenges, and Solutions of Personal Safety Protection Orders Implementation," *Juvenile Delinquency Prevention Research* 3 (2016): 36-42.

²⁹ Judgment No. 28 Criminal Trial Division of Guizhou [05] Bijie Intermediate People's Court, Guizhou Province (2017).

enhance criminal law's effectiveness in combating domestic violence. However, in judicial practice, this model has not been effectively implemented. The protection for domestic violence victims under criminal law remains highly limited. This situation arises from deficiencies in the design of the personal safety protection order system under the *Anti-domestic Violence Law* and deviations in the alignment of criminal measures with civil procedures, thereby preventing the public-private governance model from achieving the legislative intent.

Firstly, the *Anti-domestic Violence Law* specifies a rather limited range of measures for the enforcement of personal safety protection orders. It explicitly lists prohibitions against violence, contact restrictions, and orders to vacate the residence. However, these types are too few and completely omit aspects such as property rights, guardianship and visitation of minor children, and rehabilitation plans for perpetrators. Although there is a catch-all provision for "other measures," indicating legislators' hope for courts to choose appropriate measures based on specific cases to safeguard applicants' legal rights and interests. However, the lack of specific guidelines and the judiciary's consistently cautious approach to handling domestic violence render it unrealistic for the judges to fully exercise discretionary powers. This situation also hampers the uniformity of judicial practices.³⁰ On July 16, 2022, the Supreme People's Court issued the *Provisions on Several Issues Concerning the Application of Law in the Handling of Cases Involving the Personal Safety Protection Order* (hereinafter referred to as the "*Provisions*"). Article 10 of the *Provisions* stipulates that "other measures" may include prohibiting the respondent from insulting, defaming, or threatening the applicant and their immediate relatives via telephone, text message, email, or other means; and prohibiting the respondent from engaging in activities within a certain range of places where the applicant and their immediate relatives frequently visit, which may affect their normal lives. In essence, this provision simply elaborates on the prohibition of contact, rather than expanding the scope of enforcement of the personal safety protection order.

Second, as stipulated by the *Anti-domestic Violence Law*, the people's courts are designated as the enforcement authority for personal safety protection orders. However, these courts lack specialized personnel to intervene in instances of domestic violence. Unlike public security agencies, courts operate within fixed working hours, unable to ensure 24-hour responses to promptly address incidents of domestic violence occurring at unpredictable times and in concealed

³⁰ Li Hanyan, "The Breakthrough of Personal Safety Protection Orders to the Traditional Marriage Law Conception: Observations on the Anti-domestic Violence Law," *Chongqing Social Sciences* 1 (2018): 78-86.

locations.³¹ Moreover, according to the *Reply of the Supreme People's Court on Procedural Issues Concerning Cases of Personal Safety Protection Orders* (hereinafter referred to as the “*Reply*”), these cases are processed by the people's courts under special trial procedures, typically trialed without further review at the primary level courts in civil cases subject to special trial procedures. This has led to a surge of applications for personal safety protection orders inundating the primary-level courts which already face limited judicial resources, further hindering effective oversight of order enforcement. In response, the *Anti-domestic Violence Law* grants public security agencies, neighborhood committees, and villagers' committees roles in assisting with enforcement outside the judiciary to facilitate smoother execution of these orders. However, due to vague responsibilities outlined in this provision, the assisting agencies remain in a fragmented state. In practice, when violations of personal safety protection orders occur, these agencies sometimes even engage in mutual blame-shifting over issues related to their respective authority to execute,³² exacerbating the challenges associated with enforcing these orders.

Finally, regarding disciplinary measures, in reference to the Ten Model Cases involving Personal Safety Protection Orders Published by the Supreme People's Court,³³ we can find that courts have addressed non-compliant respondents with admonitions, fines, and detentions. However, admonitions primarily serve as warnings and can not sufficiently deter respondents, especially those who are habitual violent offenders. The deterrent effect of fines is also inadequate; with improving economic conditions, paying a CNY1,000 fine is not a challenge for many individuals, and if applicants and respondents have a jointly owned property regime, fines might even jeopardize the applicants' interests. Regarding detentions of up to 15 days, these constitute judicial detentions requiring a prior written decision on detention of the respondent from court leadership for enforcement. This is because the judicial police at court are not authorized for on-spot detention of the respondent who violates the personal safety protection order. Such procedural hurdle discourages many judges from utilizing this measure.³⁴

According to Article 12 of the Supreme People's Court's *Provisions*, in cases of serious violations of personal safety protection orders, the applicable criminal charge under Article 313 of China's *Criminal Law* is refusal to enforce

³¹ Wang Dan, “Discussion on Some Practical Issues Concerning the System of Writ of Habeas Corpus,” *Journal of Law Application* 7 (2022): 11-21.

³² Sun Xiaomei and Qiu Qirong, “Thoughts on Perfecting Anti-domestic Violence Legislation,” *Journal of China Women's University* 3 (2018): 19-25.

³³ Han Xuguang, “Top Ten Typical Cases of Personal Safety Protection Orders by the Supreme People's Court,” May 25, 2022, official website of the Supreme People's Court, <https://www.court.gov.cn/zixun-xiangqing-274801.html>.

³⁴ Tong Guangfeng, “Handling Violations of Personal Safety Protection Orders,” *People's Judicature • Application* 7 (2018): 15-20.

judgments or rulings: “Whoever refuses to carry out a decision or order made by a people’s court while he is able to carry it out is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, or be fined if the circumstances are severe; if the circumstances are especially serious, imprisonment of more than three years but less than seven years, in addition to a fine.”³⁵ The object of this offense is judgments and rulings rendered by people’s courts with enforceable content and legal effect. However, according to relevant judicial interpretations, this offense typically involves pecuniary payment obligations as the content of enforcement, rarely touching upon personal rights, and does not encompass injunctions primarily focused on personal safety protection orders.³⁶ Moreover, cases where criminal liability is pursued for violating civil judgments are already rare, and “criminal cases for refusal to comply with family legal documents are even unheard of.”³⁷ The legal responsibility for violating personal safety protection orders does not sufficiently deter perpetrators, significantly weakening the role of preventing domestic violence.³⁸ The implementation effect of the progressive criminal remedy measures built on personal safety protection orders is far from ideal, contrary to the legislators’ original intent to construct a public-private cooperation governance model.³⁹

IV. Legislative Improvement of Criminal Governance Models for Domestic Violence

Compared with traditional criminal governance models, the public-private cooperation governance model built on personal safety protection orders can expand the scope of criminal law regulation regarding domestic violence by incorporating previously overlooked abusive behaviors that have not yet resulted in serious actual damage. However, its institutional design is inadequate, the execution is lacking, and the criminal remedies for domestic violence must be further optimized to better utilize criminal law in preventing domestic violence.

A. Strengthening the foundation of the public-private cooperation governance model

Due to the progressive nature of the public-private cooperation governance model, it is essential to first enhance its foundational element — the system of

³⁵ Li Hanyan, “Value and Realization of the Independence of Civil Protection Order,” *Journal of Anhui University (Philosophy and Social Sciences Edition)* 2 (2017): 124-131.

³⁶ Li Hanyan, “A Study of the Enforcement of Personal Safety Orders in the Improvement of Chinese Legislation,” *Journal of Chinese Women’s Studies* 6 (2017): 115-125.

³⁷ Chen Min, “Current Status, Challenges, and Solutions of Personal Safety Protection Orders Implementation,” *Juvenile Delinquency Prevention Research* 3 (2016): 36-42.

³⁸ He Xin, “Why Does Justice Downplay Domestic Violence?” *China Law Review* 4 (2019): 6-22.

³⁹ Tong Guangfeng, “Handling Violations of Personal Safety Protection Orders,” *People’s Judicature • Application* 7 (2018): 15-20.

personal safety protection orders. Such system is the prerequisite for the realization of comprehensive regulation of domestic violence by criminal law through subsequent criminal-civil interface.

According to the *Anti-domestic Violence Law*, personal safety protection orders are typically applied for by family members who have suffered domestic violence, as well as non-family members who live together. However, in reality, violent incidents often occur after separation or divorce, when victims may no longer meet the criteria for applicants. Article 29 of the *Law of the People's Republic of China on the Protection of Women's Rights and Interests* (2022 Revision) stipulates that women can apply to the courts for personal safety protection orders if they are harassed or stalked under the pretext of romantic relationships or after the termination of such relationships or divorce. This provision expands the scope of applicants for protection orders under the *Anti-domestic Violence Law*, aligning more closely with the practical needs of preventing domestic violence. Nevertheless, further enhancements are needed in the execution and implementation of this system.

In terms of execution, the current *Anti-domestic Violence Law* only explicitly enumerates three prohibitions: prohibition of abuse, harassment, and eviction orders. It does not sufficiently protect victims of domestic violence and requires additional and detailed specific enforcement measures, transforming personal safety protection orders into protection orders. Firstly, domestic violence has significant negative impacts on individuals with no or limited capacity for civil conduct, especially minor children. If necessary, judges may temporarily restrict the respondent's exercise of guardianship and right to visitation over their minor children, providing special protection for minors.⁴⁰ Second, in many domestic violence cases, victims are economically dependent on the perpetrator and may be compelled to endure violence. Therefore, the law can require the respondent to provide living expenses, medical expenses, and education expenses, and compensation for property losses to specific family members. It can prohibit the respondent from unauthorized use, profit, or disposal of jointly owned property, thereby removing concerns for domestic violence victims seeking judicial remedies. Third, beyond restraining violent behaviors, it is essential to impose mandatory correction and education on perpetrators to change their violent mindset and effectively prevent the recurrence of domestic violence from its roots. It is necessary for the state to implement wide-ranging treatment plans for perpetrators, including professional psychological therapy and mandatory participation in relevant courses, to

⁴⁰ Li Jing, "Juridical Protection for Minors Subjected to Domestic Violence," *Journal of Chinese Youth Social Science* 3 (2017): 114-120.

eliminate their reliance on violent behaviors. Behavior correction combined with psychological counseling aims to completely eradicate domestic violence.⁴¹

In terms of the enforcement subject, given the repeated difficulties encountered by the people's courts in enforcing protection orders, the *Anti-domestic Violence Law* should, in light of judicial practice, transfer the enforcement authority of protection orders from the people's courts to the public security organs. While the Supreme Court's *Guidelines* emphasize interdepartmental cooperation to ensure compliance with protection orders, currently the public security organs can only assist enforcement on par with neighborhood committees and villagers' committees, lacking sufficient initiative. Shifting the public security organs from auxiliary to primary enforcement subjects can motivate them to assume responsibility as primary enforcers, rather than merely assisting when problems arise in executing personal safety protection orders. As the judicial body, courts should accept applications for personal safety protection orders, decide whether to approve through judgments, and mandate delivery and supervise execution by the public security organs for effective personal safety protection orders. With better personnel and equipment, such adjustment can fully leverage public security organs' advantages in mandatory law enforcement and round-the-clock operations to better execute protection orders.⁴² Furthermore, in the cases where the respondent violates the protection order with violence, police can promptly arrive at the scene of domestic violence, manage the situation, and promptly and comprehensively collect all evidence that can prove the facts of the case, thus preparing for subsequent mediation, penalties, and possible criminal proceedings.

B. Deepening the criminal-civil interface and strengthening accountability measures

At the core of the public-private governance model lies criminal-civil coordination, guided by the view of positive criminal law aimed at proactively preventing domestic violence risks through punitive measures. Technically, the view of positive criminal law is implemented by adding new offenses or modifying existing ones to focus on offenses without actual damage outcomes.⁴³ Regarding the specific criminal governance of domestic violence, the first step is to expand existing offenses and adjust the object of crime for offenses such as refusal to comply with judgments or rulings, thereby strengthening existing

⁴¹ Li Hongxiang, "Limitation of the State Intervention in Domestic Violence," *Legal Forum* 2 (2020): 141-152.

⁴² Li Hanyan, "The Breakthrough of Personal Safety Protection Orders to the Traditional Marriage Law Conception: Observations on the Anti-domestic Violence Law," *Chongqing Social Sciences* 1 (2018): 78-86.

⁴³ Sun Guoxiang, "On the Fundamental Standpoint of Criminal Law Development in New Era," *The Jurist* 6 (2019): 1-14.

public-private governance models. Second, a new offense should be introduced: the “failure to rescue victims of domestic violence,” utilizing stringent punitive measures to enforce the obligation of responsible subjects to ensure protection orders are effectively carried out, thus decisively altering the current situation of delayed public power intervention.

1. Expanding prior offenses

Regarding legal liability for breaches of protection orders, as mentioned earlier, admonitions, fines of less than CNY1,000, and detention of up to 15 days are severely limited in their deterrent effect on perpetrators of violence, failing to effectively curb domestic violence. Additionally, due to current judicial interpretations and case guidance, China’s *Criminal Law* does not include failure to comply with judgments or rulings as a criminal offense when related to personal safety protection orders, leading to an inability in judicial practice to pursue criminal responsibility for respondents who violate personal safety protection orders.

To ensure the enforcement of criminal responsibility for violations of personal safety protection orders, some scholars have suggested drawing on foreign experiences and introducing offenses for violating protection orders into China’s *Criminal Law*.⁴⁴ Indeed, many countries with relatively mature protection order systems have established related offenses to facilitate their smooth implementation. For example, several states in the United States have laws on contempt of court or violations of civil protection orders.⁴⁵ As the origin country of such systems, the United Kingdom has clearly stipulated in its 1996 *Family Law* that victims of domestic violence may apply to the court for harassment injunctions and eviction orders.⁴⁶ Perpetrators who violate these orders may face arrest or mild penalties such as up to three years’ imprisonment, detention, supervision, or fines, thereby preventing further domestic violence.⁴⁷

Nonetheless, the author believes that, given the practical realities of criminal legislation in China, adding the new offense of “violating protection orders” in the *Criminal Law* may not be suitable. As a civil law jurisdiction, China strictly adheres to the principles of legality in criminal law dictating that offenses and penalties must be clearly defined. The offense of refusing to enforce judgments and rulings is not limited to cases involving pecuniary payments, thus allowing for the possibility of issuing new judicial interpretations to adjust penalties for this offense and include protection orders as objects of crime. Judicial

⁴⁴ Li Hanyan, “Value and Realization of the Independence of Civil Protection Order,” *Journal of Anhui University (Philosophy and Social Sciences Edition)* 2 (2017): 124-131.

⁴⁵ Chen Min, “Current Status, Challenges, and Solutions of Personal Safety Protection Orders Implementation,” *Juvenile Delinquency Prevention Research* 3 (2016): 36-42.

⁴⁶ Liu Xiaomei, “Legislation, Practice and Its Enlightenment of Anti-Domestic Violence in UK,” *Law Science Magazine* 3 (2006): 127-129.

⁴⁷ Mika Oldham, *Blackstone’s Statutes on Family Law* (2004-2005) (Oxford: Oxford University Press, 2004), 357-358.

interpretations, issued by the Supreme People's Court and the Supreme People's Procuratorate, play a crucial role in clarifying legal ambiguities and guiding lower courts in their judicial decisions, necessitating timely adjustments to reflect evolving societal norms. Furthermore, the abolition of outdated judicial interpretations that no longer reflect contemporary social realities can ensure the stability of the criminal law while maximizing the effectiveness of existing criminal offenses. In terms of offense characterization, "violating protection orders" could effectively be subsumed under the revised offense of refusing to enforce judgments and rulings. Regarding the range of statutory penalties, international standards often prescribe a basic term of imprisonment of less than three years for the offense of "violating protection orders," which is significantly less severe than penalties for the offense of refusing to enforce judgments and rulings. To enhance deterrence against perpetrators and reduce incidents of violating protection orders, refining the offense of refusing to enforce judgments and rulings through judicial interpretations represents an effective and economically feasible approach. It is worth noting that if the respondent violates a protection order through actions such as intentional harm or unlawful detention, thereby constituting separate offenses, consideration of concurrent sentencing becomes necessary. The principle of "Convicted and punished in accordance with the heavier provision" should be applied.

2. Establishing new offenses

Discovery is a prerequisite for governance. However, whether it is initial domestic violence or violations of protection orders by the respondent, the concealed setting of the crime (household) poses difficulties in detection. To this end, it is needed to enhance public legal education, raise awareness among citizens against domestic violence, and gradually change the traditional notion that domestic violence is a trivial domestic matter. More importantly, it is crucial to effectively implement the mandatory reporting system stipulated in the *Anti-domestic Violence Law*. Although the Supreme People's Court's Guidelines further delineate the mandatory reporting obligations of schools, hospitals, rescue agencies, and other relevant departments to ensure timely detection of domestic violence, provisions on whether and how personnel failing to report should be held accountable remain overly general. In practice, responsible parties often fail to bear substantive consequences for their negligence. To encourage proactive reporting by informed individuals and entities, consideration may be given to establishing specialized reception points for domestic violence cases, ensuring confidentiality of informants' identities, and offering certain incentives.⁴⁸ Simultaneously, efforts should be intensified to hold accountable those failing to fulfill reporting obligations, with penalties

⁴⁸ Sun Xiaomei and Qiu Qirong, "Thoughts on Perfecting Anti-domestic Violence Legislation," *Journal of China Women's University* 3 (2018): 19-25.

ranging from warnings to revocation of professional licenses or dismissal, based on the duty bearer's position and the severity of the domestic violence incident, thereby enhancing the operational feasibility of this system in judicial practice. In addition to mandatory reporting obligations, the personnel responsible for preventing domestic violence should actively fulfill their duties. Specifically, for qualified private prosecutions where victims are unable to do so themselves, and their legal representatives or close relatives are perpetrators or negligent in initiating prosecution, the people's procuratorate should promptly file lawsuits with the court, placing domestic violence squarely under criminal law regulation. This is to fundamentally change the current passive handling approach, actively fulfilling their statutory responsibilities.⁴⁹

Article 36 of the *Anti-domestic Violence Law* stipulates that state officials responsible for addressing domestic violence must be held criminally accountable for negligence of duties, abusing powers, or practicing favoritism. Under current criminal law standards, government officials who fail to intervene in domestic violence can be held accountable under general provisions of malfeasance on charges such as abuse of powers, negligence of duties, or practicing favoritism. However, when examining the section on malfeasance in China's *Criminal Code*, legislators often establish specific provisions for malfeasance in specialized areas following general criminal charges, reflecting a strict legislative approach against such behaviors and enhancing the targeted application of criminal law norms. For instance, Article 416 of the *Criminal Code* defines the crime of "failure to rescue abducted or kidnapped women and children," clearly outlining the responsibilities of relevant subjects to bolster protection measures. To ensure that responsible personnel effectively fulfill their duty to prevent domestic violence and reinforce their sense of responsibility, it is proposed to introduce an independent criminal offense specifically addressing malfeasance in the cases of domestic violence in the *Criminal Code*. This would involve adding a new provision after Article 416 titled "failure to rescue victims of domestic violence," with corresponding criminal norms as follows:

State organ personnel charged with the responsibility of rescuing victims of domestic violence, who fail to act at the request of the victims or members of their family or at information received from members of the public, resulting in serious consequences, shall be punished with imprisonment or criminal detention of less than three years.

Other personnel charged with the responsibility to intervene in domestic violence who commit the acts specified in the preceding paragraph should be convicted and punished according to the provisions thereof.

⁴⁹ Xiong Qihong, "On the Relation of Public Prosecution and Private Prosecution," *Chinese Criminal Science* 1 (2021): 17-38.

Unlike the so-called “violation of protection order” offense, the addition of the offense of “failure to rescue victims of domestic violence” does not duplicate the existing provisions of China’s *Criminal Law*. Instead, by specifically regulating acts of neglect related to domestic violence through criminal law, it can further strengthen the coordination between criminal law and other sectoral laws, thereby achieving a more cohesive legislative effect in criminal justice. Specialized norms for crime and punishment can demonstrate a firm stance of the criminal law against domestic violence, better fulfill the preventive function of criminal law, and provide more effective protection mechanisms for victims of domestic violence.

V. Conclusion

The *Anti-domestic Violence Law*, China’s first dedicated legislation against domestic violence, underscores the state’s proactive stance on and strengthened intervention in combating domestic violence. This law introduces the system of personal safety protection orders and uses it as a foundation to establish a public-private governance model, thereby expanding the criminal law’s regulatory scope over domestic violence. Consequently, domestic violence is no longer considered a private matter immune to state intervention; more and more victims can now seek criminal remedies, which is crucial for preventing domestic violence effectively.

However, upon assessing the implementation of this model, we unfortunately find numerous shortcomings, from its institutional design to practical execution. While it has somewhat altered the judicial delays typical in traditional criminal remedies, it has not fully achieved the comprehensive regulation of domestic violence expected by legislators. To fully harness the preventive role of criminal law in combating domestic violence, the governance approach must shift from “damage relief” to “risk prevention,” guided by the view of positive criminal law. It is crucial to improve the foundational structure of this model. Strengthening the criminal-civil law interface involves both expanding the current range of offenses and introducing new ones, thereby enhancing the level of criminal law intervention before serious actual damage occurs, thereby effectively protecting human rights in domestic contexts.

(Translated by *JIANG* Lin)