Analysis on the Limits of Public Power Intervening in Domestic Violence Cases

Jing-Fang ZHENG\(^{1,a,*}\) and Dong WANG\(^{1}\)

\(^{1}\)Law School of Minjiang University, Fuzhou, Fujian 350001, China
\(^{a}\)1525786796@qq.com
\(*\)Corresponding author

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**Abstract.** With the social standard value has become more apparent in the contemporary civil law, the individual private interest in special civil relations of marriage and family is impossible to implement an absolute protection, it needs state intervention, that is public power intervention. This paper studies legitimacy of public power that intervenes in domestic violence comprehensively and comparatively, through analyzing historical document, building the necessity and feasibility model of national public power that intervenes in domestic violence, exploring the conditions and limits of national public power that intervenes in domestic violence cases by using maximum algorithm, it finally comes to a conclusion that public power intervening in domestic violence reflects social and legal progress and also is an urgent need of protecting vulnerable groups.

**Introduction**

Family is the important cell of society, family harmony relates to the stability of society and the progress of civilization. Domestic violence is a ubiquitous and serious social problem, including our country[1]. Traditionally, family is the fortress of individual rights and the barrier of individual security and peace. Countries should respect autonomy in some degree, bring the public law order and social security, welfare property protection of vulnerable groups and altruistic tendency into relation of rights and obligation. There is an obvious boundaries between public law and private law, private autonomy area and public power exercised area, it is the basis of legal thought in classical period[2]. In the view of legal realism, there isn't an obvious boundaries between public and private. The boundary between public law and private law, public power exercised area and private autonomy area is not constant and absolute but mobile and live, and is rapidly forming some middle areas with the characteristics of two areas between public law and private law. At present, the issue of public power interning in domestic violence has attracted many scholars’ attention. For example: Lv Chunjuan introduced status quo of domestic violence prevention and problems existed in China, and based on the experience of domestic violence prevention in America and Chinese Taiwan area, put forward countermeasures and suggestions toward improving domestic violence prevention in China at an essay named The prevention of domestic violence—from the prospective of national public power intervention; Wang Guozhen and Song Hai'ou put forward that domestic violence has always been considered as a file that public power should try to avoid because of the particularity of the relationship between the subject of violence, but it can be seen that public power intervening in domestic violence is necessary from the serious harmfulness of domestic violence at an essay named Analysis of the character of public power in domestic violence prevention. Tian Mei put forward the principles that should be followed for improving legal system through the meaning of domestic violence and the introspection on the status quo of police intervention, and from four angles, that is coordinating contradiction as a fundamental, forensics work as an emphasis, positive intervention combined with limited intervention as a way and protecting responsibility under extremely dangerous as an exception at the essay named Analysis of the character of public power in domestic violence prevention. Fu Qingtao introduced that on the one hand, domestic violence violates human rights, it is an abuse of power, and it has public domain character, police should intervene. One the other hand, domestic violence is different from general violence, its private autonomy
character makes police should not intervene at the essay named Discuss on the limit issues of policy power intervening in domestic violence.

**The Analysis of the Legitimacy of National Public Power Intervening in Domestic Violence**

People have had a strong resistance against the violence of marital prosecution or other intimate relationships since ancient times. Domestic violence is considered as a kind of private matter for a long period time. But this conflicting phenomenon has a urgent new ideas, further causes landmarks of change in the legislature, police, procuratorial and judicial organs in attitudes.

**Attention of Western Countries National Power Toward Domestic Violence**

Over the past two decades, those western countries where feminist movement is popular has a significant development and breakthrough on no matter in the field of basic theory or criminal legislation and justice policies towards the cases of countries intervening domestic violence[4]. The following set America as an example, introduces the history of public power intervening domestic violence. As Figure 1 shown.

![Figure 1. The History of Public Power Intervening Domestic Violence.](image)

As can be seen from Figure 1, domestic violence did not get attention before 1860s, but American public power had been gradually improved and constantly intervened in domestic violence since then until the end of 1980s, to protect people's legitimate rights and interests through laws and regulations. The attention of child abuse is highest in these regulations, Figure 2 gives several forms of child abuse.

![Figure 2. Several Forms of Child Abuse.](image)

As can be seen from Figure 2, there is 63% of child abuse is ignored, 19% suffer from physical abuse, 10% suffer from sexual abuse, 8% children suffer from psychological abuse. The relativity of European Human Rights Act Section 3 that is inhuman and degrading treatment is verified in many cases that against children domestic violence directly, therefore children protection is given much attention in America.
Attention of Public Power for Domestic Violence in China

China's anti-domestic violence legislation took Beijing Fourth World Conference on Women in 1995 as an opportunity, paving ways for local legislation against domestic violence. A certain number of regulations about preventing and restraining domestic violence that was approved by Hunan Changsha Municipal Office and the Municipal People's Government Office jointly, it is the first local regulation against domestic violence. Marriage Law (Revise Version) which was published in 2001 brought the clause about domestic violence into it in the national legislative level for the first time, made regulations on the issue of domestic violence fist, and put police into domain of marriage and family. A certain number of opinions about preventing and restraining domestic violence issued by The national women's federations and other seven ministries jointly on July 31, 2008, it was a concrete reflection of treating local successful experience as national normative document. Many of these regulations have drawn on the successful practices of local legislation, such as strengthening the education of citizens' legal awareness, including domestic violence alarm into the scope of 110 police work, protecting the privacy of the parties concerned, and providing legal aid to eligible victims of domestic violence, etc., all of which have drawn on the positive results of existing local legislation.[5] In March 2008, the Supreme People's Court formulated the "Guidelines for the Trial of Marriage Cases Involving Domestic Violence" and launched a pilot program in nine grass-roots courts nationwide to try to introduce the habeas corpus system in domestic violence cases.

Examining the history of China's anti-domestic violence legislation carefully, we can find some interesting problems, that is, although China has accepted the foreign anti-domestic violence proposition, it has not accepted the ideological basis of this proposition, and has shown some haste and superficiality in approving the necessity of anti-domestic violence legislation.[6]

Analysis of Necessity and Feasibility of Intervention of Public power in Domestic Violence

Man that is entitled to the right of exercising violence against his wife since ancient times. This is the important reason of traditionally police playing the role of mediating negatively. Subsequently, countries increase the right protection of human as an independent individual, the theory of family autonomy and power first met with challenges and lash. Family autonomy or respect for the family under traditional model is actually distorted, it comes at the expense of sacrificing women and children's rights and interests. Domestic violence has become a public crime, its damage has already beyond the scope of family relations and it is harmful to society, country has responsibility to intervene positively.

From the above, we can learn the necessity and feasibility of the national public power intervening in domestic violence. From the angle of realism, the wealthiness of a country can give victims or children of domestic violence mental and physical help. The support and service to victims has to be emphasized, such as emergency shelter is critical to our entire intervention project[7]. Traffic, food and money always offered by these organizations; some shelters even help people to find new job and house. All of effective implementations of these strategies need the financial help from federal, state and local government.

Conditions and Limits of State Intervention in Domestic Violence Cases

National public power has the necessity and feasibility in intervening in domestic violence cases. Then, is there any need of premise and limit to the intervention of public power? From the perspective of the history of country and family relations, public power and private power are a process of wrestling, both cannot be ignored. The Supreme Judicial Court defines this power as a power to impose restrictions on private power for maintaining public order, security, ethnics and public welfare. Certainly, power is bound with corruption, if public power is expanded infinitely, while the scope of family autonomy is limited and reduced constantly it will turn into totalitarianism, will damage the rights of family and individuals[8]. This will be a human disaster.

The values of freedom, security and equality are rooted in the individualism of human nature.
Human beings hate those restrictions on freedom that undermine the above-mentioned purposes without justifiable reasons. According to the social contract theory, people relinquish their rights to the state based on their desire for safety. But if the country expands its power indefinitely, then people's fears will come from the country. Therefore, the intervention of public power in domestic violence cases should be limited and cautious. The author believes that we should restrict the public power of the state from two levels to intervene in domestic violence. First, we must presuppose the involvement of public power. Second, after allowing public power to intervene, set limits on the exercise of public power to prevent its abuse.

First of all, let's set certain conditions for the intervention of public power. Under no circumstances can public power interfere in private life at will with the will of the state. This kind of intervention of public power must be made by clear legislation, that is, the state intervention in domestic violence must have explicit legal provisions. How should the legislation respond when it is stipulated? There are different views of liberalism and interventionism on the relationship between the state and the family. Liberalism emphasizes the protection of family privacy (autonomy) and advocates that the law should only intervene in the regulation in case of abuse of rights. Interventionism calls on the welfare state to actively intervene in the traditional scope of autonomy in the private domain of the family in the name of safeguarding the substantive equality of the relationship between husband and wife, so as to adjust the unequal relationship between identity and power in the family. In the development of the new family law, the focus of state intervention is very different from the traditional mode. The most important thing is that the patriarchal system can no longer be used as the basis for state intervention under the cloak of public welfare or ethics. Now the focus of state intervention is instead to protect the vulnerable in the family, especially women and children, to protect their basic safety and gender equality rights as the premise of intervention.[9] Therefore, the author believes that we can combine the rationality of the two concepts and adopt a liberal interventionist view. The intervention of the public power of the state in the family must be to prevent the abuse of rights and prevent the family, a private field, from becoming a tool and place for one party to abuse the right of autonomy and one party to override the other. At the same time, the intervention of public power is to protect the interests of the vulnerable party and correct the family order deviating from the track.

Secondly, the exercise of public power should be cautious. We should not relax our vigilance just because we have set the conditions for its intervention in legislation. We must also restrict its power after it is connected to the field of domestic violence. 1. The principle of active intervention. Active intervention here is to actively prevent and treat domestic violence within the framework prescribed by law. In real life, it often happens that the victims report the case but the police are slow to report the case or the relevant departments turn a deaf ear to the protection of the victims. Effective prevention and control of domestic violence is not only a legal power of public power departments, but also their due obligation. 2. Principle of due process. After all, domestic violence occurs between close relationships with family kinship or emotional ties, which requires public power to follow procedural justice before or after intervening in domestic violence cases to avoid conflicts of interest with the parties. At the same time, the important point of the principle of due process is to set standards for the exercise of public power in order to avoid abuse of power and damage to the legitimate interests of the parties or others. 3. Principle of proportionality. That is, the adverse benefits that may result from public power intervening in domestic violence and taking measures must not exceed the benefits that it wants to protect. At the same time, as stated by the European Court of Human Rights in its jurisprudence, the method of intervention must be commensurate with the purpose of the legislation.

Conclusion

With the increasing prominence of the value of social standard in the contemporary civil law, the protection of individual private interests in the special civil relationship of marriage and family cannot be absolute, of course, it is necessary for the state to intervene, and its public law order, social security, welfare attribute, protection of vulnerable groups and altruistic tendency should be
incorporated into the relationship of rights and obligations. National public power intervening in domestic violence is a right limit to violence perpetrators, according to modern legal spirit, this kind of limitation should be the necessity to limit, and should try to avoid be abused at the same time. The best way to solve this issue is legislative stipulation expressly, that is stipulated applied situation and measures precisely by law, non-expressly provided by law shall not apply. In order to achieve the protection of victims' rights, but not to violate the rights of violence perpetrators.

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