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Discussion on the Determination of Justifiable Defense in Domestic Violence

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Abstract. In today's society, domestic violence has stood out as a major social concern, given its profound influence on public harmony and stability. Severe physical and psychological damage is a common plight for victims, and under certain circumstances, they may be forced to resort to extreme means to break free from the abusive situation. However, in judicial practice, these defensive measures are often deemed intentional homicide or assault, failing to gain reasonable recognition as legitimate self-defense. Such a scenario leaves victims trapped in an awkward legal dilemma: enduring the abuse passively means continuing their suffering, while resisting actively brings heavy legal risks. China's Anti-Domestic Violence Law has established a legal system to handle abuse, yet it offers no explicit criteria for the application of self-defense in domestic violence cases. As such, developing legal mechanisms that well balance jurisprudential principles and humanitarian considerations has become an urgent mission.

Keywords: Domestic Violence, Self-Defense, Legal Conditions

1. Introduction

The biggest challenge in addressing domestic violence usually lies in verifying whether such violence has truly happened. In many scenarios, the trouble of distinguishing between abusive acts and defensive moves adds complexity to judicial processes and blocks the way to safeguarding victims' rights and safety.

In current judicial practice, victims of self-defense rarely receive recognition of legitimate self-defense. The judicial authorities often define their actions as intentional injury or murder crimes, rather than fully considering their defensive motives. Considering the special intimate relationship between the perpetrator and the victim in the context of domestic violence, such cases should be considered separately from ordinary violent crimes.

In the trial of such cases, in addition to the degree of physical injury, a comprehensive assessment of the multidimensional factors such as long-term psychological trauma, emotional pain, and social dysfunction suffered by the victim should be conducted, and the practical rationality of their defensive behavior should be thoroughly examined. The rigid standards set by traditional justifiable defense theory in terms of time requirements, cause requirements, and limit requirements are no longer suitable for the long-term persistence and cyclical nature of domestic violence. The gap between this institutional design and practical needs not only highlights the limitations of the

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existing legal framework in addressing systemic violence, but also actually hinders long-term victims from obtaining the judicial remedies they deserve.

This paper therefore explores the legal recognition and interpretation of self-defense in domestic violence cases within China's judicial practice.

2. The current legislative and judicial situation of the justifiable defense determination in domestic violence in China

2.1. China's relevant legal provisions

China's legal system for addressing domestic violence has shifted from scattered clauses to an integrated multi-law framework, with the 2016-enacted Anti-Domestic Violence Law of the People's Republic of China at its core.

This pioneering legislation officially defines "domestic violence," expanding its scope beyond physical harm to cover psychological abuse (including threats, harassment, and insults), sexual violence, and economic restraint. It also extends applicability—from immediate family members to those in cohabitation, guardianship, and foster care relationships.

The law establishes three key institutional mechanisms:

—Mandatory Reporting Obligation: Targeting special groups like minors, it mandates educational and medical institutions to fulfill statutory reporting duties for suspected domestic violence incidents;

—The written warning system of public security organs: For domestic violence that has not yet constituted a crime, public security organs can issue legally binding warning letters, which have the dual functions of behavior prevention and evidence fixation;

—The personal safety protection order system independent of divorce proceedings: The court can prohibit the perpetrator from contacting or harassing the victim based on this, and if necessary, order them to move out of their residence, achieving a transition from post engagement accountability to pre prevention system.

These legal provisions constitute an interlocking framework within China's judicial landscape: the Civil Code codifies opposition to domestic violence as a fundamental principle, specifying it as statutory grounds for divorce and establishing compensation mechanisms; the Criminal Law institutes penal accountability for abuse and related offenses; while the Public Security Administration Punishment Law enables administrative sanctions. This integrated approach has forged a comprehensive governance model spanning civil, administrative and criminal jurisdictions, connecting preventive measures, intervention protocols, and post-factum legal consequences.

2.2. Judicial practice of justifiable defense determination in domestic violence cases

Although the current legal framework provides a basis for dealing with domestic violence, the determination of the nature of the victim's defensive behavior still faces challenges in judicial practice. The intentional homicide case of Zhao Moumei, as a typical case, reveals how the court balances legal standards and individual justice in the trial of such complex cases.

The basic situation of the case shows that the defendant Zhao Moumei has continuously suffered from serious domestic violence in her marriage for more than ten years. Her husband Liu not only physically assaulted and insulted Zhao Moumei for a long time, obstructing her from filing a divorce lawsuit, but also threatened her relatives, and even abused both parties' children and their own parents. On March 20, 2023, after two hours of continuous beatings causing facial swelling and

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bleeding, Zhao Meimei stabbed Liu in the chest with a kitchen knife while he was sleeping. She then went to her relatives' residence for temporary shelter and voluntarily surrendered to the public security organs.

On the basis of confirming the fact that Liu had committed long-term violence, the trial court determined that Zhao Meimei's behavior was carried out in a state of extreme fear and despair. Taking into account the circumstances of his voluntary surrender, truthful confession, and the forgiveness expressed by the victim's close relatives, he was ultimately sentenced to five years in prison for the crime of intentional homicide.

The main points of the judgment in this case and its connection with the legal system have multiple enlightening significance:

Firstly, judicial philosophy is in line with the humanitarian core of the Anti Domestic Violence Law. On the basis of determining the perpetrator's fault responsibility, the trial court takes into account the psychological trauma caused by long-term domestic violence suffered by the victim in sentencing considerations and avoids the mechanical application of criminal law norms by incorporating humanitarian factors into the sentencing discretion.

Secondly, the mechanism of extending judgments highlights the social effects of legal implementation. Following the principle of active protection established by the law, the local women's federation provided economic assistance to the defendant's family after the judgment, forming a coordinated guaranteed system of judicial relief and social assistance.

Furthermore, this case exposes the limitations of the standard for determining legitimate defense. Although the court confirmed the defendant's desperate situation, it has not yet determined that their actions constitute justifiable defense, reflecting the dilemma of adapting traditional defense elements to the long-term and repetitive characteristics of domestic violence, which has become a core issue that urgently needs to be addressed in the current legal framework.

In summary, this case not only reflects the progress of China's systematic construction of violent governance but also reveals the urgent need to strengthen the protection of the legitimate rights and interests of victims through the improvement of defense recognition standards in judicial practice.

2.3. The concept and constituent elements of self-defense in domestic violence

According to China’s criminal law, for an act to be recognized as legitimate self-defense, it must satisfy several simultaneous conditions:

The existence of an unlawful infringement;

The infringement is ongoing;

The defender possesses a defensive intent;

The defense targets the aggressor directly;

The defensive act does not clearly exceed the necessary limits.

－ Existence of Unlawful Infringement

This means that the defender faces a real, unlawful threat to their rights. In domestic violence cases, a genuine act of abuse must have occurred—yet not all harmful behaviors qualify. Only those that pose immediate and severe danger justify self-defense. For example, minor corporal punishment by parents intended for discipline, while problematic, does not generally fall under criminally unlawful infringement unless it results in serious harm [1].

－ Ongoing Nature of the Infringement

Traditionally, self-defense is limited to the period when the unlawful act is “in progress.” Any retaliation after the threat has ended is deemed untimely and therefore not legitimate defense. In domestic violence, however, the boundaries are less clear. Once abuse begins—when the abuser

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initiates physical assault—the victim may act in defense. Yet, the law's strict temporal requirement often fails to account for the sustained and cyclical nature of domestic abuse [2].

－ Defensive Intent

The defender must act consciously to protect themselves or others' legal rights. In domestic violence, this means the victim's purpose is to stop the abuse or protect family members from harm, not to seek revenge. Recognizing this distinction is essential in differentiating self-defense from retaliatory violence [3].

－ Target of Defense

Legitimate self-defense must be directed at the aggressor. However, domestic violence occurs in a private, constrained environment where the victim's options are severely limited. If a third party assists the abuser—by preventing the victim's escape or helping to restrain them—this person may also be considered a co-aggressor and thus a legitimate target of defensive action.

－ Limits of Defense

The defensive action must be proportionate to the threat. The Guidelines on the Handling of Domestic Violence Cases state that if self-defense exists in domestic violence, it must conform to the Criminal Law's principles. When these conditions are met, the person acting in defense should not bear criminal liability.

3. The dilemma of determining justifiable defense in domestic violence cases in China

3.1. The difficult problem of defining the elements of legitimate defense causes

According to Article 20 of the Criminal Law of the People's Republic of China, the establishment of justifiable defense requires the existence of "unlawful infringement" as a prerequisite. However, the persistent, repetitive, and psychological characteristics of domestic violence make it fundamentally different from traditional forms of violence. In judicial practice, courts often interpret "unlawful infringement" narrowly, limiting it to immediate physical harm and excluding long-term mental abuse, sexual violence, or economic control.

This strict interpretation is difficult to reflect the substantive harm of domestic violence. Persistent intimidation, control, and mental coercion themselves constitute a serious violation of personal dignity and safety. Due to the lack of immediate lethality or explicit injury characteristics, such behavior is often excluded from the defense premise in judicial determination [4].

A deeper issue is that the cyclical nature of domestic violence poses a challenge to the traditional model of identifying "single isolated events". When the victim retaliates in a seemingly minor conflict, their behavior is essentially a collective response to years of accumulated fear of violence. If each violent incident is evaluated separately, the sustained danger state of the victim is ignored. To solve this dilemma, it is urgent to promote judicial cognition to engage in static judgments at the moment of onset, and shift towards a comprehensive understanding of the sustained dangerous state formed by long-term abuse.

3.2. Difficulties in establishing the timing of defense

A major challenge lies in interpreting the legal requirement that the unlawful act be "ongoing." In domestic violence, determining the beginning and end of an assault is often impossible. The abuser may pause temporarily but continue to pose a real threat through intimidation or physical presence.

If the victim strikes during a brief lull between attacks, courts often treat the act as "retaliation," denying the right of defense. Yet, expecting a victim to wait until the next blow or knife strike before

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reacting is unreasonable and endangers their life.

Victims, having lived under prolonged fear, can sense the signs of violence before it erupts. For them, a slammed door or a raised hand signals an imminent attack. Therefore, assessing timing should be based on the victim's reasonable perception of danger, not on a rigid, external timeline.

The core of legal evolution requires acknowledging domestic violence as an ongoing pattern of coercive control. Judicial assessments must account for the entire history of abusive dynamics rather than examining discrete episodes in isolation.

3.3. Difficulties in determining the limits of defense

In the judicial determination of defense limits, the current judgment standards often adhere to the equivalence judgment of objective behavior, and fail to fully pay attention to the substantive impact of long-term domestic violence on the psychological state of victims. Persistent abusive relationships often result in pathological changes in the victim's cognitive function, making it difficult for them to implement precise and moderate responses during the defense process. When the victim uses equipment for self-protection, this apparent "power imbalance" is actually a necessary product of long-term unequal power relations.

In a relatively enclosed home environment, the victim's defense choices are inherently limited by both physical space and social relationships. If the traditional principle of proportionality is strictly applied, it will essentially deprive vulnerable parties of the legal space to achieve effective self-protection. Judicial decisions should introduce a dynamic evaluation system that takes into account variables such as the cumulative effects of violent behavior, the persistence of danger, and the disparity in power [5].

Especially in situations where the victim uses lethal force to end long-term violence, it is necessary to carefully distinguish whether the defensive behavior exceeds the necessary limits or is the only feasible means of self-protection in a specific situation. The determination of defense in domestic violence should break through the judgment framework of ordinary mutual assault cases and establish a composite judgment standard that takes into account both the situational specificity and social equivalence of the behavior.

This professional judgment requires judicial personnel to have the professional ability to understand the special mechanism of domestic violence while adhering to legal norms. By integrating social science knowledge such as psychology into judicial cognition, the organic unity of normative judgment and individual case fairness can be achieved [5].

4. Solutions and practical recommendations for recognizing justifiable defense in domestic violence cases

4.1. Addressing the causal element dilemma

Traditional self-defense doctrine requires that protective measures address an immediate and specific illegal act. This criterion serves to prevent self-defense from becoming an instrument of retaliation. Although this principle functions effectively in typical assault cases—which usually involve singular confrontations—its practical application to domestic violence situations creates significant challenges.

Taking the Xue Moufeng case as an example, the violent behavior committed by her adoptive father has the characteristic of continuous recurrence. This kind of infringement is not an isolated

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event, but presents a long-term cyclical pattern. If it is treated as a single illegal act, it ignores the inherent systemic and cyclical characteristics of domestic violence.

Therefore, judicial practice should expand and interpret the concept of "unlawful infringement" to cover the complete temporal dimension of domestic violence. Identifying the repeated, cumulative harm sustained by victims is essential to safeguarding their legitimate right to defense.

For effective resolution of this problem, judicial institutions need a full grasp of domestic violence—surpassing immediate physical wounds to cover psychological coercion, long-term trauma, and social seclusion. This multidimensional perspective alone enables the legal system to avoid worsening victims' plight and truly defend the basic tenets of human rights protection.

4.2. The dilemma of determining the time requirement

The traditional theory of justifiable defense requires that the act of defense must correspond perfectly to the time of the infringement. However, in situations of domestic violence, the infringing behavior often lacks clear time boundaries.

Consider the case of Zhao Moumei: she had three potential windows for defense—

At the start of the assault, when her husband attacked her;

Moments after the attack ended but the threat persisted;

Before a future attack, during a calm moment when he was defenseless.

While only the first technically qualifies under existing standards, the extreme power imbalance and her weakened state after years of abuse rendered immediate resistance nearly impossible.

Legal theory should respond to this practical need. When the victim reasonably believes that waiting will result in more serious harm, they should be allowed to take preemptive defense. However, if the time requirement is excessively relaxed, it may improperly infringe on the rights of the counterparty and even lead to institutional abuse.

Therefore, judicial decisions need to seek a balance between safeguarding rights and preventing abuse - while moderately expanding the criteria for determining "continuous infringement", the judgment must be based on solid evidence of the victim's psychological state and living conditions [6]. The application of law should not be mechanically carried out in a vacuum, but should respond sensitively to the complexity of the real situation, and achieve the organic unity of legal principles and individual justice by establishing judicial review standards that conform to the characteristics of domestic violence.

4.3. Addressing the proportionality dilemma

In evaluating whether self-defense exceeded necessary limits, a multi-dimensional framework should be employed. Factors must include:

The severity of the original threat,

The immediacy of the danger,

The physical and psychological condition of the defender,

The scene of the act

Long-term abuse usually inflicts severe psychological harm on victims, impairing their "rational" judgment. Demanding a calm, proportionate response from someone on the verge of breakdown is both unjust and unworkable.

Furthermore, victims have the right to take necessary defensive actions—even using force. If mild confrontation methods cannot end the ongoing real danger, requiring the least harmful measures will essentially override the core function of the legitimate defense system.

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Take the case of He Jiasheng. Though his attacker Xiao Yonggui died from the defensive act, the court emphasized that Xiao initiated the violence. In such cases, excessive harm does not automatically invalidate the right to defense.

To define the bounds of legitimate defense, we must anchor the judgment in the defendant's unique situation and reject universal, inflexible standards. Criminal law serves two key roles: it upholds social stability, and more crucially, places the protection of disadvantaged groups' rights at the forefront. Court rulings should carry a human touch, instead of mechanically adhering to legal logic [7].

When determining the scope of legitimate defense, evaluations must be rooted in the specific circumstances of the case, adopting individualized criteria rather than applying uniform standards. Criminal law fulfills dual missions: preserving social order and placing the safeguarding of vulnerable groups' rights at the top. Judicial judgments should reflect humanistic concern, rather than rigidly abiding by legal structures.

If the law blindly requires the use of minimal means of harm, it may actually deprive the most in need of protection of their legitimate defense rights. Over time, the legitimate defense system will gradually lose its protective function, resulting in this statutory right being virtually non-existent.

5. Conclusion

To acknowledge legitimate self-defense amid domestic abuse, long-standing legal frameworks must be transformed. Such violence is no isolated occurrence; it forms a persistent cycle, typically hidden from view, consistently underreported, and often overlooked.

To truly protect victims, China's judiciary must evolve:

- Expand the definition of illegal infringement to encompass non-physical and long-standing harm;

- Appropriately loosen timing constraints to conform to the real-world dynamics of violence;

- Apply a sympathetic lens to proportionality evaluations—acknowledging the lived truth of systemic fear and accumulated trauma.

This enables legal systems to better tackle the profound vulnerabilities of victims. Such an evolution in interpretation is indispensable to align legal outcomes with the basic principles of both justice and humanity.

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