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Legal Countermeasures for Domestic Violence: From the Perspective of Family Law in China

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Abstract   Domestic violence, as its great harm to family members and family relationship, is one of the important issues to be tackled by family law. In this regard, China’s Marriage Law mainly adopts non-litigation measures, including dissuasion and curb of perpetrators, mediation for the parties concerned and imposition of administrative punishment. From the legal techniques in family resource sharing, the diversity of interests within a family, the complexity of family relationships and the privacy of family determine the non-antagonistic, nonlinear and non-proactive measures for adjusting family relationship. Further, in the principle of “family priority based on personal independence” and with the prerequisites of the prevention framework set up in the Marriage Law, it is suggested to make restrictive provisions on parental rights in protecting the minors, fully utilize the current civil mediation system to settle family disputes, and set up a system of “personal protection and behavioral correction.”

Keywords   domestic violence, family priority, dispute settlement, non-litigation settlement mechanism

If B is heavily beaten by A, A has to bear criminal and civil liabilities. However, how to deal with such issue if the same happens within a family? Should legal liabilities be prosecuted against the perpetrator? How to undertake the legal liabilities? Do the victims have the right to get remedies? What remedies can they have, and to what extent?

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1. Analysis on Positive Law

Generally, in line with the relevant provisions on domestic violence as provided for in China’s current Marriage Law, as to deal with a violence within a family, there are the following methods: (i) The victim may request the residents’ committee or the villagers’ committee where he/she lives or his/her work-unit to make dissuasion and mediation, and the police may also curb it; (ii) the victim may request the police to impose administrative punishment on the perpetrator according to law; (iii) the victim may file an application for divorce by reason of domestic violence to dissolve the marital relations while claiming compensations; (iv) in case any violence has constituted a crime, criminal liabilities shall be prosecuted against the perpetrator.

Dissolution of marriage and termination of family life eliminates the space for domestic violence; and without family, no domestic violence exists. Though it seems a thorough solution, it is not so in reality. On the one hand, it should be the last measure to be taken since avoidance of domestic violence is at the cost of dissolution of the whole family, and on the other hand, domestic violence is eliminated only theoretically by dissolution of marital relations and family, while the violence between the persons concerned will last, only the space is moved. This has been proven by the frequent occurrence of cases concerning violence and harassment between the (former) couple. For the purposes of the settlement of the issues concerning domestic violence, especially in the position of family law, not only violent behaviors shall be prevented and victims remedied, but more importantly, the harmony and stability of a family shall be maintained. To solve domestic violence by divorce, what is really eliminated is family rather than violence. Thus, as far as the relationship between domestic violence and divorce is concerned, domestic violence is only an indicator showing that the mutual affection of a couple no longer exists, and furthermore, it is a legal ground for decision of divorce by court, while it is not a specific way or means to the settlement of domestic violence prescribed in China’s marriage law. Similarly, the compensation resulted from domestic violence as provided for in the marriage law is limited to the precondition of dissolution of marital relationship. Thus, it is clear that such compensation is mainly aimed at the “dissolution of marital relationship” rather than the harm from domestic violence as such. What the compensation makes up for is the loss and sufferings of the innocent party or the victim due to dissolution of marital relationship. Just like as “bigamy” and “maltreatment,” “domestic violence” only shows the fact that the erring party or the perpetrator has faults and commits illegal behaviors. The compensation for harms from divorce occurs only when the divorce does result from domestic violence. In this logic judgment, “domestic violence” is merely a minor premise.
Therefore, the author holds divorce and compensation for harms from it are not the measures for disposal or settlement of domestic violence as provided for in marriage law.

Criminal liabilities are usually deemed as the legal consequences of domestic violence. However, the author holds that criminal liabilities shall only be the legal consequences of criminal behaviors, since domestic violence is an illegal behavior, different from criminal behaviors in nature. In line with Article 1 of the Interpretations (I) of the Supreme Court on Several Issues Concerning Application of the Marriage Law of the People’s Republic of China, domestic violence refers to the behavior of a person which causes certain physical or spiritual harm to his/her family members by means of beat, truss-up, persecution or compelling restriction of personal freedom, etc. In other words, what marriage law intends to solve and adjust is the harm and dispute arising from purely ordinary violent behaviors set forth above, and once the nature of the case changes, such as death by beat, such behavior is no longer purely illegal violent behavior, but criminal one. Injury disputes arising from a crime are subject to the jurisdiction of criminal law, where the perpetrator shall bear criminal liabilities for the consequences of his/her behaviors. However, the basis of criminal liabilities is criminal law rather than marriage law. Criminal liabilities are not the legal consequences of domestic violence, and the prosecution of criminal liabilities of the perpetrator is not the measures for disposal or remedies of domestic violence prescribed in marriage law.

Consequently, there are three measures for disposal and remedies of domestic violence provided for in marriage law: Dissuasion and curb of the person who conducts domestic violence; mediation for the parties concerned; and imposition of administrative punishment on the persons who conduct violent behaviors. Those prevention and treatment measures are mainly specified in Article 43 of the Marriage Law: If somebody conducts domestic violence or maltreats his/her family members, the victims have the right to request for help, and the relevant residents’ committee or the villagers’ committee or the employing work-unit of the victims shall make dissuasion and mediation for them. For any domestic violence under way, the victims have the right to request for help, and the relevant residents’ committee or the villagers’ committee shall dissuade and the police shall stop it. In case the victim file a request at the time of a domestic violence or maltreatment of family members, the police shall make administrative punishments according to the provisions on public security administration punishment. Though those three measures differ in subjects and specific contents, there are many common features in procedure and form. Firstly, those measures shall be initiated by victims, that is, either curb, dissuasion and mediation or imposition of administrative punishments by a third party shall be made at the request of the victims, and without such request, a third party is
neither entitled nor obliged to proactively participate in the domestic violence dispute of the persons concerned. Secondly, a non-litigation form is adopted in those measures. According to Article 43 of the Marriage Law, curb of the domestic violence under way, dissuasion of the person who conducts violent behaviors, and provision of mediation for the parties concerned are treated as the main measures for settling the disputes arising from domestic violence, and administrative punishments are treated as the form of liabilities that the person who conducts violent behaviors shall assume, while no litigation will be adopted with a view to make any decision for the persons concerned and prosecute the civil or criminal liabilities of the person who conducts violent behaviors.

Then, why the non-litigation dispute settlement measures initiated by the persons concerned are adopted in China’s marriage law under the modern law system where litigation has become the main method for dispute settlement? Is it an intentional avoidance of those litigations in judicial decision, or the omission of legislators? The author holds that the application of such dispute settlement measures depends on the substantive features of marriage and family life as an embodiment of the adjustment measure unique in (marriage) family law as well as a necessary conclusion from analysis from the standpoint and perspective of family law.

2 Analysis on the Adjustment Measures in Family Law

In form, branch laws are mainly divided by the fields where they operate. Different fields of social life are under regulation and adjustment of different branch laws. Every branch law has its unique adjustment measures.

Family law is the general name of legal norms on regulation of marital and family relations and the legal basis for settlement of disputes concerning marriage and family. Since marriage and family are special fields where family law operates, the design and choice of adjustment measures shall be adaptable to such field. Thus, it is the traits of family that determine the particularity of the measures for adjusting marital and family relations.

2.1 Family Sharing Nature Determines Non-Antagonism of Adjustment Measures

The forms and contents of family life differ in different regions and periods and in different cultural backgrounds. As for what is a family, scholars in such fields as sociologists, jurists and economists have provided different definitions. Though there are many definitions and even some of them are changing, some basic and core factors are constant, that is, “family is to share resources, care,
responsibilities and obligations”, (Cheal, 2005) which we may call the sharing nature of a family. Materials, especially properties, are the first resources to share. The so-called share means the properties and material resources, at a certain amount, within a specific scope and in a specific form, are supplied to support the common life of a community of family members. In ancient marriage and property systems represented by the dowry system and the assimilated property system, in the community property system popular in modern societies, or in the separation of property system implemented in the countries including the UK, the US, Japan and Australia. The essential difference between those systems is just the property ownership, that is, whether properties are owned by one person, jointly owned or separately owned. When it comes to using certain amount of properties and resources to support a family, those property systems are the same.

Share of material resources among family members is the basis for maintaining the existence of a family. In addition to share of material resources, the sharing nature of a family is also reflected by share of human resources, mainly referring to mutual care and support among family members. In actual life, when encountering difficulties or needing care, people always seek first help from their family members and relatives. Meanwhile, relatives are often willing to provide care and help. China’s Marriage Law just recognizes such share of human resources from the perspective of legislation. Article 4 thereof prescribes: Family members shall respect the old, care for the young and provide mutual helps, so as to maintain equal, harmonious and civilized marital and family relations.

It is far from enough to maintain and operate a family only by provision of material resources and emotional recognition by family members. Family members also need to observe the rules on family life, which is embodied as share of responsibilities and obligations of the family, where every family member shall bear his/her responsibilities for family. Meanwhile, each family member will benefit from assumption of the responsibilities and the performance of obligations by family members. Thus, a family can be maintained. Such responsibilities and obligations include loyalty and support to the spouse; obligations of parents to raise, protect and educate their children; obligations of the children to support their parents; and responsibilities and obligations for support between grandparents and grandchildren and between sisters and brothers.

Reflected in the relationships among family members, the sharing nature of a family is embodied as mutual support among family members. The consanguinity relationship and kinship builds a natural connection among family members and the sharing nature of family makes such connection more practical and effective. Family members care for, help and protect each other and share
limited resources and family life. Furthermore, such close relationships among family members based on consanguinity and kinship determine both parties to a contradiction in any family are not antagonists, and the parties concerned pursue settlement of disputes by maintaining mutual relations. Therefore, the legal measures for adjusting marital and family relations shall be non-antagonistic. The adjustment measures provided by family law shall be based on the principle of maintaining the stability and harmony of a family and aim at eliminating contradiction and mitigating disputes, rather than creating new conflicts and triggering antagonism in a family where contradictions and disputes have already existed.

2.2 Complexity of Family Relations Determines the Nonlinearity of Adjustment Measures

Firstly, family relations are based on consanguinity and kinship. Different consanguinities and close or distant relations result in complicated family relations. Secondly, sensibility and family love is an important link to family relations, but the sensitivity and variability also make family relations more complicated and even hard to command and control than other social relations. Thirdly, after all, a family consists of different family members, who play different roles in the family. Every family member has his/her own demands, which have to be satisfied in family life, and different demands are bound to conflict with each other. In disputes over sharing child-bearing rights by a couple and the care and education of children, they are reflected by the diversity and complexity of interests in family relations. The rights and obligations between a couple, between parents and children or between brothers and sisters may not be analyzed and judged linearly. Interweaving and confusion are the most basic external pattern of family relations.

The traditional dispute settlement mode by litigation, especially the civil litigation mode, is based on strict differentiation of individual rights. One of the premises of the thinking of litigation is that the rights of every individual are within certain scope and such limit shall be definite enough to differentiate. Any behavior beyond such limit may be deemed as an illegal behavior or

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1 A line refers to a graphic with length yet without width and thickness in geometry. In this paper, the linear thinking refers to a mechanical and rigid way of thinking, which only focuses on a single issue without consideration of other factors related. Due to the linearity of thinking, the measures taken must be linear, and linear adjustment measures mean the issues will be analyzed and treated by a linear thinking mode whereby the decisions and judgments made usually are absolutely and mechanically “yes” or “no,” or “right” or “wrong.” On the contrary, non-linear measures refer to taking flexible and various methods for settling issues after taking comprehensive considerations of the facts and relevant factors.
infringement. However, in family relations, interests are diversified and relations are complicated, and the rights based on are usually manifested as relative rights with more obscure demarcations of rights than those of the basic rights of individuals. Thus, the linear litigation mode cannot settle the disputes concerning marriage and family or eliminate the conflicts of relevant rights, but it is easy to intensify the contradictions among the persons concerned, and even lead to dissolution of a family. Just as Lynn Wardle said, when rigid individual right-based analysis is applied to resolve conflicts in domestic relations instead of seeking to balance the effected interests, distortion of and damage to the complex interwoven relationships and interests that families often result to. (Wardle, 2007) With respect to family disputes, it is better to seek the balance of interests, coordinate relations and pursue maximization of everyone’s interests on the basis of maintaining harmony of a family rather than making efforts to differentiate rights.

2.3 Privacy of Family Relations Determines the Non-Proactive Application of Adjustment Measures

A society consists of two totally different fields of life: Public field and private one… and the latter is composed of a family and kinship and friendship between and inside families. (Cheal, 2005) Since family is a private field and family life is a critical part of one’s private life, and inviolability of private life is one of the basic human rights shared by everyone. Thus, unless there is any criminal behavior or any circumstance seriously endangering public interests, it is improper and undue for public power to initiatively intervene in any internal relations of a family. As family law is a basic legal norm on adjustment of family relations, such feature of a family shall be taken into consideration in designing the basic adjustment measures, so as to avoid improper intervention in the private life of citizens. However, when any family dispute or even domestic violence occurs and family members fail to deal with it by their own competences, the intervention by a third party or legal means is necessary. Thus, the practice of making dissuasion and mediation with respect to family disputes and contradictions at the request of the parties concerned may not only safeguard the personal interests of family members, but also protect the privacy of the family to the maximum.

In summary, the nature of resources sharing of a family, the diversity of interests within a family, the complexity of family relations and the privacy of family life determine the non-antagonism, nonlinearity and non-proactive application of the basic measures for adjusting family relations in family law. Those flexible adjustment measures aiming at recovering and maintaining good family relations are not only the necessary results of the legislative design of
family law, but also the root of their values.

### 3 Analysis on the Legislative Ideology of Family Priority

The so-called ideology refers to the highest value and tenet of a system. (Liu, 2000) Then, what is the highest value and tenet of family law? In the thinking of a general civil law, family law is deemed as part of civil law and its distinct value orientations are covered by the basic value standards of the latter, where the “autonomy of will” is the valuable criteria of the whole civil law system. However, family law is different from civil law, as there is a big difference between the marital and family relations under family law and ordinary civil relations. Thus, the “autonomy of will” is not totally applicable to family law for the following two grounds. Firstly, a family is an organic unit of family members and it is neither a partnership nor a company. The relations among family members are not so definite as contractual relationship or relationship between creditors and debtors. When making any decision, a family member will inevitably consider the interests of other family members and the operation of the family relations as a whole. If safeguard of the autonomy of will of individuals is the basic principle of civil law in settling civil disputes, the balance of interests of family members to maintain the normal operation of the family as a well-organized community shall be the focus of family law. Secondly, civil law is a law of commodity economy, where people are selfish in market transactions. Just as the saying goes, “It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own self-interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages.” (Becker, 2005) The “autonomy of will” in civil law is based on recognition of “self-love,” but in family law, it is just the opposite. Generally, in a family, altruism is very important. (Becker, 2005) The so-called altruism is a kind of inner recognition and practice of bestowal that is a grant of love. “By mutual consideration and understanding and endless support, the family is curing for its members suffering from continuous harms from life. In this sense, family is an acting love.” (Hill, 1949) The mutual loyalty and support of a couple, raising of children by parents and support of parents by children can be explained by love, and such grant and expression of love may not be explained by the “autonomy of will.”

According to such trait of marital and family relations under adjustment by family law, the author holds that the basic ideology of family law is “family priority,” specifically, “family priority based on personal independence of individuals.”

Family priority is a value judgment of family law in legislative ideology,
which means the institutional design of family law shall focus on family as a whole with a view to maintain a harmonious and stable family. Voluntary establishment of a family by woman and man is the basis of a harmonious family. During the existence of the marital relation, the couple shall be loyal and respect for each other, jointly deal with community property, do housework, raise children, support parents and help sisters and brothers, which are the embodiment of the objective of establishing a harmonious family in a system. Even when the affection of a couple no longer exists and they decide to divorce, there are special mediation procedures in the divorce proceeding aiming at relaxing contradictions, settling disputes and resuming relations.

As for China’s family law, it is especially necessary to provide for the personal independence of individuals, which differentiates from the traditional marriage and family system featured by personal bondage in China’s feudal society. Personal independence means family members are liberated from patriarchy, no longer accessories of a family, but participants sharing family life. The establishment of the principles including freedom of marriage, monogamy and equality of men and women are the embodiment of “personal independence of individuals” in family law. Both man and woman have the freedom in deciding whether to establish a family or not, which recognizes the independent personality of family members at the establishment of a family. As a family being established, the husband and wife may use their own names, possess personal properties or make covenants on the ownership of properties, and have the freedom to work, study and participate in social activities. If the affections of a couple no longer exist and it is impossible for them to live together anymore, the couple may choose consensual divorce besides litigation to dissolve the marital relation.

Family priority in family law is based on personal independence of individuals. On the one hand, personal independence is the basic requirement of a civilized society. Personal rights are the cornerstone of modern private law system, and respecting the personality of an individual and safeguarding personal independence is the basis for the legitimate existence of law. On the other hand, a family is composed of family members and independent members are the factual foundation for it. Thus, similar to other private law systems including civil law and commercial law, personal independence is the basis of family law.

Meanwhile, it shall be noted that a family is not only the unity of time and space, but also the convergence of all relations. Relations such as conjugal relation, parentage and other kinship are complicated and interwoven. In modern society, though the forms of people’s life are mostly manifested as individual actions, a family is the last shelter. Though family members are separate in living, they are an organic whole. (Cheal, 2005) If an individual is the basic molecule of a family, the family is the home of the existence and soul of individuals. Family
emerges in response to the objective need of society and it bears many social functions including generation, production, education and support. “As a specific form of social relations, family, even today, cannot be replaced by other social forms in terms of its social functions.” (Wu, Xia, 2007) In addition, family is a balancing mechanism and a buffer of contradictions between individuals and the society, which may effectively mitigate social contradictions while satisfying the demands of individuals. Whereas civil law is a law concerning personal independence, family law is a law concerning a happy life. “To ignore the contributions of families in general to the health, happiness and success of the individuals is to overlook and devalue a significant resource and dimension of human identity and happiness.” (Wardle, 2007) Thus, family priority is the necessary choice of family law in value ideology.

Subsequently, with the basic ideology of family law, i.e., “family priority based on personal independence of individuals” as the basis, this paper tries to make use of the current legal resources of China to establish a domestic violence prevention and treatment system within family law.

4 Establishment of the Domestic Violence Prevention and Treatment System

As far as China’s current Marriage Law is concerned, the basic framework of the domestic violence prevention and treatment system has been established from prevention to curb and mediation and warning. The provisions on prohibition of domestic violence and creation of equal, harmonious marital and family relations as prescribed in Article 4 of the Marriage Law not only clarify the illegality of domestic violence, but also legislatively clarify the basic attitude of law to oppose domestic violence and maintain happy and harmonious families. The provisions on remedies for domestic violence in Article 43 state that the measures including check of the violence under way, dissuasion of the perpetrator and provision of mediation shall be adopted to protect the personal safety of family members and resume normal family relations. When the contradictions resulting from domestic violence are really beyond redress and the marital relation breaks up, divorce is allowed and the innocent party may claim for compensation for damages, which may warn the perpetrator and the whole society: Domestic violence may be used as a legal ground for divorce and directly lead to dissolution of a family. Meanwhile, the perpetrator shall assume the compensation liabilities for his/her violence leading to dissolution of the family.

It is indeed a progress of legislation in the marriage and family field to clearly prohibit domestic violence and put forward corresponding prevention and
treatment measures, which, however, is only a basic framework with many defects. Those defects are mainly reflected in two aspects: Firstly, there is no content involving protection measures for minors suffering domestic violence; and secondly, the current countermeasures are not operable and applicable in practice, which is hard to have expected effects. According to a survey on domestic violence in families of ordinary communities in Zhejiang, Hunan and Gansu provinces by the Anti-Domestic Violence Network under China Law Society in 2002, the occurrence rate of domestic violence was as high as 34.7%. (Chen, 2007) A survey conducted by All-China Women’s Federation showed that domestic violence existed to various extents in approximately 30% among total 270 million families in China. Thus, it is urgent to enrich and perfect the current framework and improve its operability and applicability in the legislation on marriage and family in China. Specifically, in addition to supplement and improvement of the remedial measures for domestic violence, which mainly include “curb, dissuasion and mediation,” more effective mechanisms shall be adopted. For this, the author puts forward the following three advices.

4.1 Providing Provisions on Restriction of Parental Rights

Minors are a group most vulnerable to domestic violence. A report from the UN indicated that every year, approximately 270 million children witnessed domestic violence over the world. (Stein, 2007) A survey from Xiamen, China showed that it was very common for parents to use violence against their children and more than a half of minors had suffered violence by their parents in their childhood. (Jiang, Pan, 2008) Since minors are immature physically and psychologically, both direct domestic violence against minors including beat, excessive corporal punishment and scolding and indirect ones witnessed including violence between parents and between parents and grandparents will bring great and incurable harms to them. Domestic violence not only hurts minors physically and psychologically, but also hinders their healthy growth. The study of the US scholars showed that children living under domestic violence are more inclined to do violence than those not under domestic violence and male children are more likely to become criminals after witnessing domestic violence. Those children who witness domestic violence are more vulnerable to disturbance of emotions and behaviors, such as recoil and post-nightmare and wound delirium.

2 See Political Advices Weekly of People’s Daily, 2005-5-27(13).
3 From the Questionnaire on domestic violence against students in primary and middle schools in Xiamen, Nanping, Ningde, Sanming and Longyan of Fujian Province from August 2004 to July 2005 by Jiang Yue and Pan Feng.
4 The conclusion is from Peled, Jaffee and Edleson et al: Ending the Cycle of Violence: Community Responses to Children of Battered Women, quoted from Laura Stein (2007).
Children are the hope of a family and the future of the society, and hence they shall be protected by parents, relatives and the society. Whether the interests of children or minors are considered or not and whether corresponding protection and remedial measures and channels are provided for them or not are the key to evaluate whether a domestic violence prevention and treatment system is scientific and perfect. China’s Marriage Law provides in its General Provisions that the legitimate rights and interests of women, children and the old shall be protected. However, there are only specific provisions on the obligations of parents to protect, raise and educate their children. As for specific forms for performance of such obligations and the legal consequences for violation of those provisions, there is no specific provision. Meanwhile, the provisions on anti-domestic violence in this law are vague and too general without any protection and remedial measures for minors. Thus, the author holds that the provisions on “restriction of parental rights” of those who conduct domestic violence behaviors shall be supplemented to the Chapter (Remedial Measures and Legal Liabilities of the Marriage Law), so as to ensure the sound physical and psychological growth of minors to the maximum.

The parental rights are the sum of rights and obligations borne by parents with respect to raising and education of minors and protection and management of their properties. (Xia, 2004) Restriction of parental rights refers to certain restriction on the exercise of such rights when parents do some behaviors in violation of the provisions on their obligations of guardianship. To create a healthy and happy family environment for minors is the basic obligation of parents. Hence, either violence between parents or against children is breach of the said obligation. When one party or both parties of the parents do violence against their children and bring harms to children, the parental power shall be restricted according to specific circumstances, and the rights of the parents to ward, raise and educate their children shall be prohibited or restricted.

Generally, the application for parental rights restriction is filed to the court by mother or father who does not do violence. In special circumstances, if the mother or father who does not do violence fails to file an application due to his/her serious suffering from violence, the grandparents or other close relatives of the minors or the residents’ committee or the villagers’ committee where the minors reside may file such application. Upon receipt of the application for “parental rights restriction” and after examination, the court shall issue the “restriction order” if it finds it necessary to restrict the parental rights of the respondent. The restriction order shall be issued in the principle of the maximum interests of children and under the prerequisite that the parents do have violence behaviors and such behaviors have caused or may cause serious harms to children. If necessary, the court may invite relevant scholars (i.e., experts in psychology and children pedagogy) to make demonstrations and assessment. The
The contents of the restriction order may include the following: The respondent may be prohibited from contacting his/her children within certain time and in certain space or from managing the properties of the children; and meanwhile, the restriction order may provide for protection of personal safety of minors and correction of the behaviors of the perpetrator.5

4.2 Full Use of the Current Civil Mediation System to Settle Disputes and Maintain the Harmony of Family

Mediation is popularly welcome in China, and as a settlement system of marital and family disputes, it is a deep-rooted tradition. The people’s mediation system, formally established in 1954 after the foundation of the People’s Republic of China, continues to be used today. The adoption of the mediation mechanism to intervene in domestic violence is of the following advantages: Firstly, the people’s mediation system adopts the voluntary principle, where the mediation by the people’s mediation committees may be made only at the request of the persons concerned; and therefore, the will of the persons concerned is fully respected. Secondly, mediation methods are flexible, where the interests of family members may be considered, hence conducive to the resumption and maintenance of family relations. Thirdly, over 20 years’ development, the people’s mediation system of China is relatively mature. Currently, there are various kinds of 840,000 people’s mediation committees in China with 5 million mediators who have explored many effective measures and accumulated rich experiences in mediation works. Every year, there are averagely over 1.33 million cases under mediation by the people’s mediation committees and the success rate exceeds 97%.6 To utilize fully the current system resources by adopting the people’s mediation to settle domestic violence is surely an economic and effective way.

4.3 System for Personal Protection and Behavioral Correction

Purely by stopping violence behaviors and mediating domestic violence disputes, the issues concerning domestic violence cannot be thoroughly solved, the harms thereof to victims and families cannot be effectively eliminated, and the re-occurrence of domestic violence cannot be avoided. Thus, the author holds the system of personal protection and behavioral correction shall be established in

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5 For details of the contents of personal protection and behavioral correction, refer to Section 4.3 of this paper.
6 Data source: Li Bing: Status and Role of the People’s Mediation System of China in Prevention and Mediation of Marital and Family Disputes, from Information of the Workshop on the Marital and Family Dispute Settlement System, October 2007.
addition to the measures of dissuasion and mediation.

4.3.1 Personal Protection of Victims

The personal protection refers to the protection of victims, including body protection and psychological assistance. With respect to body protection, the main measure is to segregate the perpetrator from the victim. On the one hand, a shelter may be provided for the victim, so as to temporarily prevent him/her from violence, and on the other hand, the perpetrator may be prohibited from entering into the residence and the places of work and/or study of the victim as well as other places frequently visited by the victim. Psychological assistances mainly include treatment of the psychological trauma of the victim who suffers violence by psychological advisors, so as to help them eliminate their psychological shadow and return to good health.

Nowadays, some regions in China (such as Shenyang, Xi’an and Ningbo) have set up assistance organizations for women suffering violence such as women’s shelters. Women who suffer domestic violence may apply to live in the shelters and seek assistance.7 Since most of those shelters are invested or supported by individuals or overseas programs,8 restricted by fund, place and human resources, the shelter and assistance provided are not always available and are not professional. Thus, in order to establish a long-time sound shelter system to prevent and reduce harms and losses caused by domestic violence, it is necessary nowadays to set up ordinary shelter organizations, operate those shelters by the whole society (for example, intervention of governments,9 establishment by more social organizations and formulation of certain regulations and rules) and increase the sources of fund for those shelter organizations (i.e., governmental appropriation).10

Since the restriction of the behaviors of perpetrators involves personal freedom

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7 For instance, the “Red Umbrella House” was set up in Xi’an on March 4, 2008. It is a professional shelter organization established for preventing and curbing domestic violence and preventing women suffering domestic violence from personal injury. It provides the temporary shelters for the women suffering domestic violence and protects them from further serious harms and avoids occurrence of serious cases.
8 Refer to: How to Stabilize Women’s Shelters. Beijing Youth Daily, 2003-6-23.
9 For example, the “Red Umbrella House,” a shelter organization for women suffering violence, was established by the women’s federations and the departments of civil affairs of Shaanxi Province and Xi’an City in 2008.
10 For example, the shelter organizations in Denmark are totally supported by state governments and those in Norway are supported half by the central government and half by state governments. The funds for those organizations in Sweden are mostly from the government, and the insufficient part is raised from the society. In Malaysia, some of the funds are provided by the government and others are donated by international funds and charitarians. The funds of American shelters are mostly appropriated by the government.
of citizens, it shall be subject to the decision of courts in line with legal procedures. Specifically, the residents’ committee or the villagers’ committee where the victim resides or the relevant domestic violence assistance organization may file an application with the court and the court may make special examinations, mainly focusing on the degree of danger of the behaviors of the perpetrator. Generally, the degree of danger shall be judged according to the combination of the following three factors: (i) the evidentiary materials provided by the victim, the resident’s committee or the villagers’ committee where the victim resides and by domestic violence assistance organizations, including injury examination certificates, medical examination certificates, filing records and mediation records; (ii) the materials collected by the court initiatively; (iii) the defense of the perpetrator. If the court holds the behaviors of the perpetrator are serious and the perpetrator is likely to do further violence, the court may issue the “prohibition order” to restrict the scope of activities of the perpetrator. In procedural designing, summary procedures shall be adopted to protect the personal safety of the victim more effectively in a timely manner.

As for psychological assistance to the victim, in addition to the assistance provided by the shelters discussed above, such assistance may be provided by the people’s mediation committee set up by the residents’ committee or the villagers’ committee where the victim resides. Generally, professional mediators have knowledge of psychology and may provide necessary psychological assistance and aids to the victim.

4.3.2 Behavioral Correction of Perpetrators

Behavioral correction is mainly designed against perpetrators. Usually, perpetrators do violence for a combination of various reasons. Acquired violence, improper sex and family concepts or great living and working pressure may be the reasons for the deviant behaviors of perpetrators. Thus, to effectively prevent and treat domestic violence, it is highly necessary to correct the behaviors of perpetrators.

Behavioral correction may include but not limited to: (i) psychological intervention with the perpetrators and adjusting and curing for the unbalanced or abnormal psychology of the perpetrators by professional psychologists; (ii) requiring the perpetrators to learn some relevant courses, such as social communication, family communication and laws and regulations; (iii) requiring the perpetrators to participate in community service or public service activities.

According to the current circumstances of China, the existing community

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11 Children who grow up in a family where there are violent behaviors are usually of violent tendency.
correction system may be used to prevent and treat domestic violence for correcting the behaviors of the perpetrators. Originally, community correction is the “collective activities of punishments enforced in communities for crimes of minor criminal character and social harms.” (Liu, 2004) From July 2003 to 2006 when the community correction system was undertaken as pilot in some places of the 6 provinces and municipalities directly under the Central Government including Beijing and Shanghai, the pilots of community corrections increased to 85 places in 18 cities. (Liu, 2004) Meanwhile, “correction is a neutral term, which is not limited to the criminal field.” (Lu, 2005) Thus, if community correction may be adopted to correct the behaviors of the persons who conduct domestic violence, not only judicial resources can be saved, but also the abnormal behaviors of the perpetrators can be corrected more effectively, which are conducive to thoroughly eliminating the re-occurrence of domestic violence and maintaining the stability and harmony of families.

With respect to the specific implementation of the correction system, firstly, victims, perpetrators, residents’ committees or the villagers’ committees or domestic violence assistance organizations may file an application with the court and the court may issue the “correction order” after examination, requiring the community correction organization to enforce it.

In summary, the addition of the provisions on restriction of the parental rights, the application of the people’s mediation system and the establishment of the system for personal protection and behavioral correction will, on the basis of full respect of the will of the persons concerned, be able to maintain the personal safety of family members, especially minors, and maintain family relations, conducive to ultimately preventing the occurrence of domestic violence, and hence maintaining harmonious family relations. Certainly, the establishment and implementation of those systems require the coordination and cooperation among the legal departments including procedural law and administrative law, which cannot be achieved in a short time. The author believes, however, with the improvement of China’s legal systems and publicity of the idea of rule of law, the issues concerning domestic violence will be settled ultimately.

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