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**CRIMINALIZING DOMESTIC VIOLENCE IN THE
PEOPLE'S REPUBLIC OF CHINA:
Limitations of the Law and Insights regarding
Criminal Cases**

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前言

“家庭暴力”已成为世界上许多国家试着解决的一大难题，中国也不例外，然而，多年来，中国对此话题仍然缺乏公开的讨论。根据相关数据显示，1995年中华人民共和国国务院首次讨论到有关家庭暴力的重要性，自此以后，中国全社会才开始增加对家庭暴力的关注。虽然如此，但在二十一世纪前，法律条款中仍然很难找到关于该术语的表述，从而导致其在实践中也无法落实。

2016年是中华人民共和国在反对家庭暴力的过程中最重要的一年：那年三月份《中华人民共和国反家庭暴力法》正式生效。不可否认，该法案的出台标志了这个时代的转折点。此法案表明中国政府在为受害者伸张正义此方面所做出的深刻认识。然而，《反家庭暴力法》的成效却不乐观，这一问题由许多不同但关系紧密的因素造成的，主要包括：第一，中国传统价值观因素造成受害者，尤其是妇女在面对施暴者时处于不利的地位；第二，人们普遍认为家庭事务必须得保密，将“家丑不可外扬”、“清官难断家务事”、“法不入家门”等错误理念当作是正确的。为此，警察都不敢制止施暴者再次对被害人施暴，甚至使后者感到被遗弃并落入施暴者手中，无能为力，此理念所造成的负面后果也包括受害者也许因为受到“面子在人际关系中很重要”此传统观念的深刻影响，而在某些情况下决定不举报施暴者，甚至让后者持续不断地采取暴力行动；第三，从立法角度来看，由于法院和法官过于强调受害者和施暴者之间的调解，以致家庭暴力案件在后期处理时方法不得当。

迄今为止，中国仍未对家庭暴力进行刑事定罪。施暴者所受到的只限于对受害者支付赔偿或行政拘留等惩罚。笔者以上述几点为由，通过对具体的资源与家庭暴力犯罪相关数据（诸如遗弃罪、虐待罪、故意伤害罪、故意杀人罪等犯罪）的分析，试图对这一如此敏感而复杂的主题进行慎重的研究，从而讨论对中国家庭暴力进行刑事定罪的解决方案。

第一章主要谈论的是家庭暴力的定义、如何认清家庭暴力的发生、其在全球范围内的现状（包括因新型冠状病毒肺炎而造成的全球大流行）、受害者的种类分为哪些（诸如妇女、儿童、老年人、等等）以及他们因家庭暴力而在身体

上和心理上所受到的痛苦。之后将会介绍关于家庭暴力在西方国家的历史及现有的影响。最后将会提供中华人民共和国家庭暴力的知识，强调受害者被强迫面临关于该现象的困难和障碍，特别是针对文化和社会性方面。鉴于在农村和城区的对比以及某些数据对进一步了解家庭暴力的频率也极其重要，从而第一章的结尾也会包括上诉因素的介绍。

第二章的重点先介绍中华人民共和国司法制度与 2016 年反家庭暴力法生效之前的立法程序，也就是说间接针对家庭暴力的某些法则，包括在这一点中提到的禁止此类现象发生的《中华人民共和国婚姻法》。其次，由于本论文的研究目的极强，除了提到在 2021 年刚立法的《中华人民共和国民法典》，第二章里还将谈论《中华人民共和国刑法》及其专门可以联系到家庭暴力的条款（虐待罪、故意伤害罪、故意杀人罪等等）。之后，将讨论《反家庭暴力法》的主要特征，包括申请人身安全保护令和申请法院发出警告，通过上述工具有效地制止虐待者再次施暴。然而，申请人身安全保护令的手续比想象的艰难。实践中，非得符合某些条件才能够申请人身安全保护令，例如《反家庭暴力法》第二十三、二十七条规定“受害者面临家庭暴力的现实危险，法院即可做出人身安全保护令”。这意味着，受害者必须提供遭受家庭暴力的证据，否则无法得到应得的保护。毫无疑问，在遭受家庭暴力，尤其是在较严重的情况下，受害者难以保持冷静，何况搜集遭受家庭暴力的证据。正是因此，此论文还将人身安全保护令实际问题来谈论其有可能改善的地方。

最后，第三章将为本论文试图强调的内容提供广阔的空间，也就是说家庭暴力定罪过程的重要性。通过对家庭暴力犯罪的广泛分析，笔者将试图讨论如何把《中华人民共和国反家庭暴力法》与《中华人民共和国刑法》正确结合，从而可以让其作为整个法律体系在处理家庭暴力时的契机。第一部分里将会提供家庭暴力刑事案件的相关数据，包括施暴者与受害者发起犯罪的频率、亲密伴侣的暴力以及发起家庭暴力的主要原因。之后，将专注于某些由最高人民法院和最高人民检察院发布的，专门针对家庭暴力刑事案件的典型案例。最后，笔者将讨论有关个人选出的，间接关系到家庭暴力的一个刑事案件，也就是“聂报忠故意伤害案”（全部刑事案件的原文可在论文底参考）。

综上所述，通过本论文，笔者将试图回答下列问题：在中华人民共和国可否对家庭暴力该现象进行刑事定罪？在阅读第三章之时，读者将会注意到中国人民法院光按照《家庭暴力法》或《刑法》其中的一个法则来判决施暴者是否有罪（像“聂报中故意伤害案件”），难以可以对家庭暴力刑事案件进行全面的判断。在处理该案例的过程中，人民法院同时利用《中华人民共和国反家庭暴力法》与《中华人民共和国刑法》来判决。

尽管笔者因实际原因而在此领域所积累的经验不够丰富，可仍会竭尽全力以专业的方式来表达出有关中国家庭暴力的个人想法和立场，并且希望为今后的研究作出贡献。

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INTRODUCTION

Discussions and debates about domestic violence in the People's Republic of China were virtually nonexistent until the mid-1990s. In the periods prior, legislation surrounding domestic violence was either vague or absent entirely in Chinese law. As China's economy erupted on the global scale in the late 1990s, their societal issues were presented in the spotlight for the world to see. Various changes became correlated with China's increased presence in the global market; including advancements in education, increased public awareness of domestic issues, and the overall perception of gender roles in families.

It wasn't until 2016 in which the Chinese government proposed and adopted anti-domestic violence reforms that swept the country, marking the first monumental initiative to combat domestic violence. By passing this special law, China showed greater awareness in dealing with the phenomenon and guaranteeing justice to the victims. However, it was soon realized that the aforementioned law, which is still in force, is not actually achieving the desired results.

The drafting of this thesis arose from a very specific assumption: domestic violence in the People's Republic of China does not constitute a crime. The most severe punishment an offender could receive may be a paltry fine or a few days' imprisonment, but nothing drastic enough to be preventative in deterring domestic violence. To understand the subject matter more, an in-depth analysis will be conducted; starting with a comparison of the Anti-Domestic Violence Law's objectives and results, followed with consultations of specific sources and statistics on crimes related to domestic violence (e.g., abuse, intentional injuries and homicide), and possible solutions for a criminalization of this phenomenon in the People's Republic of China.

The first chapter provides a detailed overview on what constitutes domestic violence; including who the main victims are, the current situation in the world (e.g., COVID-19 pandemic), and the trauma inflicted on domestic violence victims. Then, a deeper focus on domestic violence in the People's Republic of China, which highlights

the main obstacles victims have to contend with, a brief statistical analysis on domestic violence, and a comparison on violence in urban and rural areas of the Chinese territory.

Then, the second chapter shifts the focus on the Chinese judicial system and the legislative process before the 2016 Anti-Domestic Violence Law came into effect. Key characteristics of the latter will be discussed, including the possibility of requesting protection orders and issuing warnings to persuade the abuser to stop committing violence. Several issues regarding its actual effectiveness will then serve as a point to discuss possible improvements, both from legal and social standpoints.

Finally, the third chapter will give supportive commentary and analysis on the importance of a criminalization process for domestic violence. Through an extensive analysis of domestic violence, using real world examples, we will try to reason on how a balanced combination between the Anti-Domestic Violence Law and Criminal Law could represent a turning point for the entire Chinese legal system.

Chapter I: Domestic Violence in China and Worldwide

知晓我姓名，牢记我姓名，同一出悲剧何时彻底止息？
安葬我身躯，抚平我眉头，无声用眼泪擦拭墓碑石头。
知晓我姓名，牢记我姓名，同一出悲剧为何还在继续？
安葬我美梦，缝合我心口，无声用眼泪铭刻墓碑石头¹。

谭维维 *Tán Wéiwéi*

1.1 Defining Domestic Violence

Considering the generous number of different interpretations given in the past few years, both under a legal and sociological perspective, defining the phenomenon of domestic violence in a satisfying way might be an extremely hard task. In order to make it clear from the beginning, below is the definition given by the Council of Europe Convention on preventing and combating violence against women and domestic violence:

The term “domestic violence” means all acts of physical, sexual, psychological or economic violence that occur within the family or family unit or between current or previous spouses or partners, regardless of whether the perpetrator of such acts shares or has shared the same residence with the victim (Istanbul Convention RS.0.311.35).

What immediately draws attention is the term "domestic", deriving from the Latin *domus* which means "house". Although this leads us to consider that the place of the committed act is merely limited to a home shared by the abuser and the victim, in fact it can also

¹ “Know my name, remember my name. When the same tragedy will cease completely?
Bury my body, soothe my pain. Silent tears falling on my tombstone.
Know my name remember my name. Why does the same tragedy have to continue?
Lay to rest my dreams, suture my broken heart. Silent tears etched in my gravestone.”
谭维维 *Tán Wéiwéi* – 小娟 *Xiǎo Juān* (alias 化名 *huà míng*).

The aforementioned verse is referring to the abuser who often feels remorse once he committed domestic violence. In the most serious circumstances, a violent behavior will eventually lead to the homicide of the victim. In 2020 the famous Chinese singer Tan Weiwei wrote the song Xiao Juan, which is an alias for all Chinese women victims of domestic abuse. The song went viral as millions of Chinese women felt that the phenomenon of domestic violence is a shared concern which has to be stopped. Episodes regarding domestic violence are not limited to China. Their extent is global.

occur outside of the four domestic walls. This is because the meaning of domestic violence is more closely related to the relationship between the parties involved, whether it is an intimate relationship such as two heterosexual/homosexual partners (in that case we will speak of “Intimate Partner Violence”) or a family relationship, such as it can be the one between father and son, mother and daughter or grandfather and grandson.

What can be also deduced from the definition provided by the Istanbul Convention is that any person can easily identify himself as abuser or victim of domestic violence: women, men, children, the elderly, people with disabilities and so on. Consequently, the phenomenon can be expressed in a multitude of behaviors, including infanticide, parricide, matricide, patricide, physical and sexual abuse of minors, psychological and economic abuse, incest, stalking, violence within marriage, elder abuse, abuse spirituality and partner murder (Ross, 2018: 4).

Likewise, the visionary leader in the movement to end family violence Susan Schechter describes domestic violence also as a way by the offender to exercise a pressing control over the victim, in order to instill such a fear that the latter can no longer react. She described it as follows:

Domestic violence is not simply an argument. It is a pattern of coercive control that one person exercises over another. Abusers use physical and sexual violence, threats, emotional insults and economic deprivation as a way to dominate their victims and get their way (National Center on Elder Abuse, 2005).

Therefore, domestic violence cannot be considered as a simple quarrel. On the contrary, it follows a real cycle, made up of stressful but also apparently peaceful moments that will be analyzed later. A more serious consequence is related to the dominance towards the victim: in the long term, it might make them believe that the perpetrator's behavior is normal, something to forget and not to report because people are supposed “not to wash dirty laundry in public”².

² This concept becomes more serious if we ponder on some statistics: according to the Italian report “Rosa Shocking, violence, stereotypes... and other gender troubles”, every three days a woman gets killed by her partner, ex-partner or close relative. 7.2% of women victims of domestic violence decide not to report. Yet, 61% of interviewed women believes that what happens within a couple is not of others business and one Italian out of three believes that domestic violence is a private matter (WeWorld, 2014).

1.1.1 Identifying Domestic Violence

Domestic violence can emerge from behaviors of various kinds, including physical, psychological, sexual violence, homicide, psychological/economic abuse and so on. Now that the concept of domestic violence has been clarified, it is time to understand in what different shapes it may occur: Main types are listed as below:

- **Physical abuse** involves any kind of physical violence perpetrated against the victim. According to Federal Office for Gender Equality (2020), this kind of violence really often begins with simple and mere threats, including acts such as hitting, kicking, biting, punching, scratching, throw objects, hurting with or without an object (e.g., a stick), strangling or wounding someone, locking up or chaining. “Physical abuse also includes any non-accidental physical injury to a child that can include striking, kicking, burning, biting, or other actions that result in physical harm to a child” (Barnett et al., 2005; Ross, 2018: 5).
- **Sexual assault** is a more general term including any type of sexual activities without explicit consent of the recipient (Ross, 2018: 6). Furthermore, sexual assault also refers to forced sexual intercourse, forcible sodomy, child molestation, incest, fondling and attempted rape (Marshall & Barbaree 1990; Sommers, 2007; Ross, 2018: 6);
- **Psychological abuse** refers, in most of the cases, to causing fear by intimidation; threatening physical harm to self, partner, children or partner’s family or friends; forcing isolation from family, friends, or school and/or work (Barnett et al. 2005; Moeller et al. 1993; Ross, 2018: 5)
- **Economic abuse** is related to the economic resources of the abused. By making his/her partner economically dependent, the one who commits economic abuse obtains control of the partner’s or relative’s ability to become self-sufficient (Postmus et al., 2012). This is accomplished by maintaining complete control over his/her money and other economic resources by making all financial decisions, reducing his/her ability to acquire, use, and maintain money, and/or forcing the victim to rely on the abuser for all financial needs (Adams et al. 2008; Fawole, 2008; Postmus et al., 2012: 3);

- **Stalking** refers to specific repeated harassing or threatening behavior, causing another person to feel followed, watched and bothered. This kind of behavior will necessarily imply a sort of obsession of the perpetrator towards the victim, putting her safety in danger (Ross, 2018: 6). Stalking is very often committed by the offender to his intimate partner or ex intimate partner, causing the victimization of her personal and working life.

Besides these general definitions, more specific forms of this phenomenon, strictly related to the murder or abuse of one's relative, are worth mentioning for the purpose of this thesis:

- **Mariticide** is the act of intentionally murdering one's husband. Cases involving mariticide will be analyzed in detail later on;
- **Uxoricide** is the act of intentionally murdering one's wife. Data provided by the United Nations Office on Drugs and Crime, related to a global study on homicide of 2018, clearly show that women are more likely to be murdered by someone they know (e.g., husband, ex-partner, relative);
- **Infanticide** refers to the killing of a newborn (Ross, 2018: 6);
- **Matricide** is the murder of a mother by her son or daughter (Ross, 2018: 6);
- **Patricide** involves the murder of a father by his son or daughter (Ross, 2018: 6);
- **Parricide** the act of killing either of one's parents or close relatives (Collins, 2006)
- **Elder abuse** According to the World Health Organization (WHO) the term involves "a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust, which causes harm or distress to an older person".

The descriptions above make the most disparate means used by the aggressor in relation to the different types of domestic violence extremely clear. Furthermore, albeit in their diversity, they are linked by unfair and cruel conducts, having as main consequence the violation of fundamental human rights, preventing the victim from being

able to live his existence peacefully within what it supposed to be the safest and most welcoming place in the world. A phenomenon that nowadays, despite the evolution of human being and related laws, still remains deeply rooted (Forzan, 2018).

Through the next paragraphs, more insights about some of the aforementioned categories will be provided, introducing important information about sub-categories, real extent and the possible consequences on different victims.

1.2 Intimate Partner Violence

Since “Intimate Partner Violence” (hereinafter “IPV”) represents a specific aspect belonging to domestic violence and since cases in this respect will be introduced further on, a thoroughgoing analysis of this term would be necessary.

The WHO (2012) provided a clear definition, stating that IPV refers to any behavior within an intimate relationship causing physical, psychological or sexual harm to those in the relationship, existing along a continuum from single episode of violence to ongoing battering. An essential factor one needs to pay attention to is that the two partners don’t necessarily have to cohabitate or be classified as people of the opposite sex. Conversely, IPV denotes any behavior coming from the two people in a close relationship, including current partners, former spouses and dating partner (Ross, 2018: 84). “IPV occurs between both heterosexual and homosexual (same-sex) couples where victims and offenders are either male, female or transgendered (Ross, 2018: 84)”. Couples may be dating, cohabitating, or married and violence can occur either inside or outside the home or relatively nearby (Regan, 2011).

Logically speaking, and considering that IPV is a type of domestic violence, it can manifest itself in the same forms reported in the previous paragraph. In addition, Kelly & Johnson (2008) identified four major types of IPV, distinguished by the different type, motives of perpetrators and by social and cultural context. The first one is called *common couple violence*. As the term itself suggests, this type of IPV generally arises in a single argument where one or both partners physically lash out to the other; the second one is *intimate terrorism* which, as a main result, causes the control of one partner over the other, involving, for instance, emotional and psychological abuse; *violent resistance* is comparable to a form of self-defense and reflects violence perpetrated by victims

against their abusive partners (Kingsnorth & MacIntosh, 2007). Last one, always according to Kelly & Johnson (2008), is *mutual violent control*, for which both partners act in a violent manner, often leading to dual arrest provisions within mandatory arrest statutes.

As we will see further on, violent resistance may lead to extreme consequences such as the homicide of the perpetrator by the victim of IPV. This raises the question whether it can be legally considered as an excess of legitimate defense, and it clearly depends on the single circumstances causing the violent resistance to happen. In the third chapter, some key cases in this respect will be discussed and analyzed thoroughly.

1.3 Domestic Violence Against Women: A Global Emergency

Although, theoretically, all individuals can be either victims or perpetrators of domestic violence, women are most likely to be the main victims: according to the World Health Organization (2013), the vast majority of crimes concerning domestic violence sees women as the main victims. This is easily attributable to the evident weakness and inferiority, from a physical point of view, of the female gender compared to the male one. Furthermore, discrepancies are more dramatic in case of societies whose cultures place extreme importance to gender roles, such as a society with a purely patriarchal structure in which the patriarch is considered the one and only leader. In the household, the patriarch is represented by the father, who is usually the figure who must be respected, at the expense of the woman. Indeed, the man believes that, in the event that the woman has committed a sin, punishing the other sex is his right, thus maintaining order within the family (Kaur & Garg, 2008). It happens very often, therefore, that this inequality of power favors systematic violent behavior (Hagemann-White & Grafe, 2016).

As Kaur & Garg (2008: 73-76) mention in their article from Indian Journal of Community Medicine, “domestic violence is a global issue reaching across national boundaries as well as socio-economic, cultural, racial and class distinctions. This problem is not only widely dispersed geographically, but its incidence is also extensive, making it a typical and accepted behavior”.

In 2013, the World Health Organization published the most accurate global and regional prevalence estimates so far, regarding IPV and non-partner sexual violence,

having female as the main victims. According to these estimates, the global prevalence of physical and/or sexual IPV among all ever-partnered women was 30.0% (95% confidence interval³ = 27.8% to 32.2%), reaching its peak in the WHO African, Eastern Mediterranean and South-East Asia Regions, where approximately 37% of ever-partnered women reported having experienced physical and/or sexual IPV at some point in their lives:

WHO region	Prevalence, %
Low- and middle-income regions:	
Africa	36.6
Americas	29.8
Eastern Mediterranean	37.0
Europe	25.4
South-East Asia	37.7
Western Pacific	24.6
High income	23.2

(Prevalence of IPV in different regions. Source: WHO, 2013)

Speaking about the age of the victims, WHO also showed how prevalent is IPV among ever-partnered women, reaching its peak in the age group of 40-44 years. Yet, the range 15-19 years, which is the lowest taken in consideration, is quite alarming, as the percentage is equal to 29.4%:

³ In statistics, a confidence interval (CI) is a type of estimate computed from the statistics of the observed data. This gives a range of values for an unknown parameter (for example, a population mean). The interval has an associated confidence level that gives the probability with which the estimated interval will contain the true value of the parameter **Invalid source specified**.

Age group, years	Prevalence, %
15-19	29.4
20-24	31.6
25-29	32.3
30-34	31.1
35-39	36.6
40-44	37.8
45-49	29.2
50-54	25.5
55-59	15.1
60-64	19.6
65-69	22.2

(Prevalence of IPV based on victims' age. Source: WHO, 2013)

As shown in the table above, there is a stable increase of the percentage from 15-19 to 40-44 years gap. This should let people ponder on the importance of tackling domestic violence by reporting any minimum sign of perceived danger. The biggest challenge so far would be finding an efficient response based on different aspects, such as: addressing the immediate practical needs of victims experiencing abuse, providing long-term assistance, focusing on changing those cultural norms, attitudes and legal provisions that promote the acceptance of and even encourage violence, and undermine women's enjoyment of their full human rights and freedoms (Kaur & Garg, 2008).

1.4 Children as Victims

Children are the most vulnerable and innocent individuals in the world. They have almost no possibility of self-defense, they are unable to understand what is right and wrong, except with the assistance of their parents who are absolutely indispensable figures for the child's education. From the perspective of children, having a parent who abuses them almost inevitably leads them to develop cognitive and emotional trauma, thus having serious repercussions in the short and long term.

The practice of child abuse⁴ is also a global phenomenon occurring in various forms such as child neglect, physical abuse, sexual abuse, psychological maltreatment. As reported by the Department of Health and Human Services (USDHHS, 2013) and the National Children's Alliance (2013/2014) in research carried out in 50 states, the Commonwealth of Puerto Rico and the District of Columbia, in 2013 nearly 1,520 children died of abuse and neglect; among them roughly 80% experienced neglect, 18% experienced physical abuse and 9% experienced sexual abuse.

The numbers presented above are alarming: domestic violence against children will eventually compromise the entire existence of the child, causing "cognitive impairments, alcohol and drug abuse, eating and sleep disorders, poor school performance, poor relationships, reproductive health problems, post-traumatic disorders, depression and anxiety suicidal behavior" (Ross, 2018: 67). Finally, the child would most likely to assume, once adult, a violent attitude towards his own children, falling into a vicious circle.

1.5 Elder Abuse

WHO defines elder abuse as "a single, or repeated act or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person" (WHO, 2015). While one might consider this definition as referring to elder abuse more under a general perspective, in practice a significant difference exists, which is "the expectation of trust of the elder towards their abuser" (Ross, 2018: 73), suggesting us to narrow it down to a family environment or at least to a close relationship between the elder and the abuser. Hence, elder abuse can be considered as the act of harming an older person perpetrated by people with whom they have a relationship, such as a spouse, partner or family member, a friend or neighbor, or people on which the older person relies for services (Dixon et al., 2010; Ross, 2018). Elder abuse can be basically committed through negligence of the caregiver⁵, physical and

⁴ In the context of domestic violence, the term "child" generally refers to an individual who has not come of age yet (therefore, it depends on different legislations which are based on different parameters to define the beginning of adulthood.

⁵ Caregiver is the person who is expected to provide proper assistance to the elderly.

psychological abuse, financial abuse, sexual harassment/abuse (Dixon et al., 2010; Ross, 2018).

Elderly is one of the most vulnerable categories both physically and psychologically. Together with women and children, elder abuse has been representing a public health problem that is sometimes underestimated: victims in this regard often tend not to report abuse as the perpetrator of domestic violence is someone who typically assist them (Kosberg, 1988).

1.6 The Cycle of Violence

Once the various forms of domestic violence that victims may face, whether they are mild or more serious, have been made abundantly clear, it is now appropriate to delve further into the subject and understand how any episode in this regard follows a very specific path.

In 1979, Dr. Lenore Walker carried out extensive research within couple relationships, formulating a theory called “cycle of violence” which, according to estimates, is likely to be constantly present in two-thirds of battering relationships. The whole cycle consists of three stages: the tension-building phase, the acute battering incident and the honeymoon phase. During the tension-building phase, there is a gradual escalation of tension as the batterer acts in a way which is more and more dangerous, such as name-calling and/or physical abuse (Walker, 2009: 91). The batterer expresses dissatisfaction and hostility but not in an extreme or maximally explosive form (Walker, 2009: 91). The acute phase is characterized by the uncontrollable discharge of the tensions that have built up during phase one (Walker, 1979: 59), in which the batterer typically unleashes a barrage of verbal and physical aggression that can leave the woman severely shaken and injured (Walker, 2016: 138). In the third and last phase of the honeymoon, the batterer may apologize profusely, try to assist his victim, show kindness and remorse, and shower her with gifts and/or promises (Walker, 2016: 138). The batterer is likely to try getting her back by giving her more attention. Yet, he may believe at this point that he will never allow himself to be violent again and the woman may believe that the relationship could go back to a positive direction (Walker, 2016: 138).

The cycle of violence may last for different periods of time without any particular reason; nevertheless, one can say for sure that this cycle is likely to come to an end just because of an intervention, separation or, in the most serious circumstances a homicide⁶. Its frequency is variable and both single phases and the whole cycle can differ in duration, from several hours/days for phase one, to more than one year for phase two (Walker, 2016: 134).

According to Walker research, by showing a woman how is structured the cycle she has experienced or just giving her assistance in identifying the three phases, it is possible for her to break the cycle of violence and no longer be under the abuser's control (Walker, 2016: 139). In particular, teaching the woman how her perception of tension and danger rises to an acute battering incident after which she experiences feelings to relief and then gets seduced back into the relationship by the batterer's loving behavior, has been found to be helpful in breaking the cycle of violence that keeps the woman in the relationship (Walker, 2016: 140).

Undoubtedly, becoming aware of the existence of the problem and refusing of getting over it can represent a turning point in the struggle against domestic violence. Women, as well as other victims of such phenomenon, shall take action in advance, so that even the most apparently innocuous sign in this context could be rapidly and efficiently handled by authorities, eventually preventing cycle of violence from beginning.

1.6.1 Health Issues Concerning Domestic Violence

Domestic violence is a global phenomenon with many collateral damages and a substantial price tag (Ross, 2018). Generally, after the event has taken place, victims tend to suffer physically, emotionally and even in the working and social life; these negative outcomes might affect their entire lives, as well as the one of other family members (e.g., children or other family members witnessing the act of violence, depending on who is the suffering from violence). This is to explain that domestic violence must not be interpreted as a temporary problem which may disappear after a short period of time, because it might

⁶ Swiss Confederation, Federal Department of the Interior, Swiss Office for Gender Equality, Dynamics of violence and strategies of intervention, July 2020

have a significant impact on victims in the short term, medium term or even in the long term.

Among the most significant consequences, physical ones can include contusion, bruises, lacerations, burns or head trauma, fractures and spontaneous miscarriage⁷, whereas psychological ones include depression, anxiety and panic attacks, nervousness, insomnia, concentration problems (Campbell, 2002; Flury et al., 2010). Furthermore, according to a research conducted by Hornberg et al. (2008: 17-18) concerning mental illness linked to violence, in case of children victims of violence they might experience damages to the emotional and cognitive development, and the appearance of attachment disorders (Brisch 2012; Hornberg et al., 2008). As for consequences which are working and social life related, victims may probably have to bear radical changes concerning their residence, job, school⁸. Furthermore, victims may need a treatment program in order to recover properly; this is the case of a woman who has been battered by her partner and takes the courage to report him to authorities. After the worst has passed, the woman might encounter serious difficulties in establishing new relationships with other men due to the scars left by previous experiences.

1.7 History of Domestic Violence: A Focus on Western Countries

Now that the most essential knowledge about domestic violence has been thoroughly provided, it is appropriate to place the phenomenon temporally in the human history, thus having a clearer picture of its real importance and why it took centuries of struggles in order to educate societies in the world.

Earliest evidence of domestic violence in the West can be traced back to ancient times: from a religious point of view, we can take as an example the passage 4:8 of the book of Genesis in the Christian Bible: it was narrated that, one day, Cain told his brother Abel to reach the countryside together. Once there, Cain attacked his brother and killed him out of sheer jealousy, as the Lord respected Abel and his gifts more than Cain

⁷ Federal Department of Home Affairs FDHA, Federal Office for Gender Equality (June, 2020). Dynamics of violence and intervention strategies. Taken from the Swiss Confederation. www.bfeg.admin.ch

⁸ Supra note 7

(Moberly 2009; Hendel 1987; Ross, 2018: 32). According to Christian religion, as Cain and Abel were Adam and Eve's sons, Abel was the first man to commit a type of domestic violence called fratricide (murder of a brother), thus demonstrating that it already existed since biblical times (Ross, 2018: 32).

Although nowadays the presence of laws advocating for victims of domestic violence seems quite implied, history teaches us that it has not always been the case. On the contrary, in ancient times, but also more recent ones, laws in favor of the aggressor were systematically adopted, tolerant of the violence committed by the husband against his spouse as long as it served as a punishment for an alleged offense (Brown, 2010; Pleck, 1987; Ross, 2018: 33). The primary aim of the punishment was to restore order within the family; however, most of the time, it led the man to cause much more serious damage than simple bruises and wounds, such as the murder of the victim.

During the reign of Romulus in 753 BC the so-called *Laws of Chastisement* were adopted, thanks to which abuses against his wife were accepted and forgiven (Ross, 2018: 34). It was at that time that the concept of *pater familias*⁹ was born, based on the social system of patriarchy and for which the father was a fundamental point of reference for the entire family. Roman society recognized the father as a pillar and an indisputable guide with absolute powers (Stedman, 1917; Ross, 2018: 33).

With the lapse of time, laws regulating domestic violence started becoming less lenient. Nonetheless, even if in the 1700s, the social system of patriarchy seemed to remain a model to be followed as different laws supported a “moderate” chastisement, comparing it with the corrections towards children's negative behavior (Siegel, 1996, Ross, 2018: 34). According to the previous statements, domestic violence was likely to be accepted by law within the modern society, more than how one could have ever imagined.

Despite some official documents issued in the 18th century, such as the Declaration of the Rights of Woman and of the Female Citizen of 1791, revealed the importance of women within society, the turning point in this regard came long after the 18th century, as some crucial episodes in 20th century marked a profound change in terms

⁹ In the Roman family, *pater familias* was the one who, having no longer living ascendants in the male line, was the head of the family, acquiring a complex of powers over the *fili familias* (family children) and over the servants (Treccani Dictionary).

of fundamental human rights. Just think about the official document of the Universal Declaration of Human Rights adopted by the United Nations, an intergovernmental organization established right after the end of second world war. There is no doubt that, what came after it, was a more civilized world in many ways, making it easier to enact laws combating domestic violence in favor of women.

1.8 Domestic Violence According to Intergovernmental Organizations

On November 25th 1960, in the Dominican Republic, three sisters were murdered for opposing the regime of dictator Rafael Trujillo. The event soon became symbolic throughout the world, and resulted in the intensification of the already numerous protests in which any form of violence against women and girls was condemned. In addition, the United Nations (UN), one of the most important intergovernmental organizations whose main purpose is to maintain peace and security worldwide, asserted its position about this worldwide matter. Consequently, and as a response to violence against women, in 1994 the United Nations General Assembly adopted the resolution¹⁰ of the Declaration on the Elimination of Violence Against Women (DEVAW), requiring that states should allow domestic violence survivors¹¹ to be safeguarded by the justice system and stipulating that “states should exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women [...]” (Chia, 2012).

Since the beginning of the resolution, The UN General Assembly identified domestic violence as a “human rights issue”, a “societal problem” and “a manifestation of unequal power relations between women and men”, which has to be addressed thanks to the “important role of the family (Chia, 2012). They recognized “the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings”. Furthermore, the UN General Assembly declared that “in condemning violence against women, States should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination”. Finally, on November 25th 1999, UN General Assembly

¹⁰ A formal text adopted by a United Nations body.

¹¹ Term used to describe a person who survived after being victim of domestic violence (e.g. the abuser has been arrested or sent away from home thanks to the intervention of law).

officially set up the International Day for the Elimination of Violence against Women, in honor of the three sisters and all the women who fight every day to put an end to this injustice.

Through this decision, the UN wanted to send a clear signal to all countries: to intervene jointly, making all citizens of the world aware of a social phenomenon that has existed for too long and that unfortunately, precisely because of its continuous impact, it is often taken for granted by some people.

1.8.1 COVID-19: A Breeding Ground for Domestic Violence to Proliferate

On December 31st 2019, Chinese authorities reported the first cases of COVID-19 in 武汉 *Wūhàn*¹² a mysterious virus which, in the most serious circumstances, could lead to death. Originally, for most people living in western countries, the risk COVID-19 could reach their houses was perceived as incredibly low. Nonetheless, as weeks went by, it has revealed to be a global emergency: the virus spread rapidly from Wuhan across China and to other parts of the world.

As a response to this unmanageable situation, governments adopted some containment measures, including nationwide lockdowns, which basically have obliged people to stay home and not having any contact with other people except their close relatives. On the one hand, lockdowns helped reducing the risk of infection as confirmed cases eventually diminished up to that moment; on the other hand, impositions by countries around the world have forced people to spend more time at home, leading to increasing levels of family violence worldwide (Taub, 2020). In this regard, just think about the Chinese police officers in the city of 荆州 *Jīngzhōu*¹³, who received three times as many domestic violence calls as in the same time in 2019 (Bettinger-Lopez, 2020); moreover, Chinese media reports have also identified two more reasons of the surge of domestic violence: the large-scale economics crisis leading to tension among family members and a weaker social support for victims.

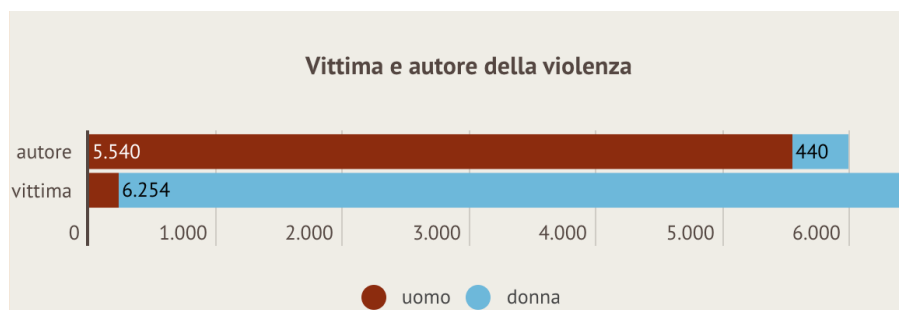
¹² Capital of Hubei province, in China

¹³ A prefecture-level city in Hubei

As the problem was getting worse and worse, United Nations tried urging all governments to safeguard women's and the other victims' health. However, the late response caused domestic violence to proliferate as abusers got more freedom in terrorizing their victims (Bettinger-Lopez, 2020): while some sources predicted relationship within the family to become closer, other sources warned that the lockdown and long-term isolation measures could lead to family violence (Zhang, 2020).

In order to further explain to which extent pandemic contributed in the rise of domestic violence during lockdowns, several proofs of abuses around the world have been collected. When the Chinese government imposed outdoor restrictions in 安徽 *Anhui*¹⁴ province, a 26 years old woman named Lele was stuck at home with her husband. On March 1st, while holding her 11-month-old daughter, she was beaten by her husband with a high chair, causing her left calf a huge hematoma (Zhang, 2020). As Lele said: "During the epidemic, we were unable to go outside, and our conflicts just grew bigger and bigger and more and more frequent" (Zhang, 2020).

On March 8, 2020, Italy was the first nation who followed China example, as it was forced to resort to a nationwide lockdown. Undoubtedly, even in this sensitive situation, domestic violence episodes were not lacking. The data collected were frightening: according to a survey carried out by the Italian National Institute of Statistics (ISTAT) in Italy, episodes of violence against women have doubled compared to 2019, with 6,254 female victims who have been abused both by their partner and their own children, brothers or sisters (Istat, 2020). 442 perpetrators of domestic violence are the sons of female victims (three times more than in 2019) and 172 are brothers or sisters (again three times the previous year):



(Source: Istat 2020)

¹⁴ A province situated in eastern China.

In addition, domestic violence episodes in 2020 accounted for more than double those that occurred in the previous year, with 5,016 people calling emergency numbers (Istat, 2020).

The statistics reported above mainly refer to physical violence. The complaints for episodes of psychological violence, in the same year, were 2,285 against 1,100 in 2019 (Istat, 2020). Most of the events in this regard occurred between intimate partners, with reports by the husband or wife (from 1,085 to 2,263 in 2020), cohabitants (from 445 to 997) and non-cohabitant partner (from 156 to 257), representing significant increases (Istat, 2020). Furthermore, among the most common reasons that lead victims not to report, is the fear of the one who has committed violence, negative repercussions on the stability of the family, the risk of being judged. Through a report published on August 13th 2020, ISTAT thoroughly explained what are the main questions victims ask ourselves before reporting to police:

- **“Where can I go?”**: this is a question the victim asks to himself/herself when he/she would like to report but doesn’t have a safe place to stay in order to keep the aggressor away (6 people out of 100 have no longer reported) (Istat 2020; Da Rold 2020);
- **“How will I get through this?”**: the victim is afraid to report because he/she does not know how the situation could evolve and whether the aggressor can still react in a violent way (Da Rold, 2020);
- **“What will they say?”**: the victim does not want to report because he/thinks his/her family will judge him/her, without offering any support (there are 65 people under this category in 2020) (Istat 2020; Da Rold 2020);
- **“Can you help me?”**: 166 people do not report or withdraw report under the police advice (Istat, 2020, Da Rold, 2020);
- **“Can I trust them?”**: victims who eventually did not report are 66 and they have declared that they do not trust the police for post-report procedures (Istat, 2020, Da Rold, 2020).

1.9 Domestic Violence in the People's Republic of China

According to All-China Women's Federation (ACWF)¹⁵ research, a Non-Governmental Organization (NGO) under the leadership of the Chinese Communist Party, about one in four women in the People's Republic of China (hereinafter "PRC") experienced domestic violence and every 7.4 seconds a woman falls victim of this deeply entrenched problem¹⁶. In 2011 approximately 24.7% of married women, aged 24-60, had experienced various kinds of domestic violence; victims of domestic violence were primarily women, children and the elderly (NetEase, 2011; Wei, 2017). From 2014 to 2016, the courts handled 94,571 first-instance divorce cases claiming to involve domestic violence, among which male perpetrators represented the 99.9996% (NetEase, 2011; Wei, 2017). Another study of 2016 by All-China Women's Federation, 60% of suicides among women revealed to be related to domestic violence¹⁷.

The statistics shown above offer a clear idea of the extent of domestic violence in a huge nation such as China, a "continent" with over five thousand years of history and counting 19.5% of the world population. Thus, China is not an exception at all, "with a high rate of family violence" (Parish et al., 2004). As previously mentioned, domestic violence against women has been representing the vast majority of cases worldwide, and Chinese women have been the main victims too (Jiao & Meng, 2004); however, the aforementioned statistics cannot be taken as a main index of domestic violence in China. As a matter of fact, the real amount is likely to be higher as many other cases have not been reported. In addition, research on domestic violence in China has progressed relatively slowly as it was commonly perceived as a private matter (Song & Dong, 2016) and somehow accepted.

¹⁵ All-China Women's Federation (ACWF) 中华全国妇女联合会 *zhōnghuá quánguó fùnǚ liánhéhuì*, is a people's organization under the leadership of the Communist Party of China 中国共产党 *zhōngguó gòngchǎndǎng* that unites women of all ethnic groups and from all walks of life in China, and strives for their further emancipation and development. ACWF serves as a bridge linking the party and the government with women and as an important social pillar of the state power. Its fundamental tasks are to establish links with and serve women, while its main responsibilities are to represent and safeguard women's rights and interests, and to promote gender equality and women's all-round development. For further information about ACWF and its main tasks of safeguard, visit the official website:

<http://www.womenofchina.cn/womenofchina/html1/about/1503/2333-1.htm>

¹⁶ Cfr. <https://www.channelnewsasia.com/news/cnainsider/every-7-4-seconds-women-china-face-domestic-violence-patriarchy-14744216>

¹⁷ Supra note, 16

1.9.1 The Influence of Chinese Traditional Values

The influence of traditional Chinese culture is the key point we have to give priority to, in order to better understand how society's awareness towards the concept of domestic violence matured over time, between values and beliefs which endured for centuries despite the profound changes that China has undergone during the civilization process of the very latest century.

In this regard, it is necessary to start from the philosophical, religious and political current that has always influenced the millenary Chinese culture and still remains a landmark for numerous Chinese families nowadays, that is Confucianism. The founder of this movement was Confucius 孔夫子 *Kǒng Fūzǐ*, a Chinese philosopher dating back to the 6th century BC. and whose doctrine and thought, thanks to the spread of other important characters of Chinese history, managed to establish itself in a decisive way in the culture and in this way to shape the most important traditional Chinese values.

Confucius aimed to transform society into a harmonious one, giving particular emphasis to the role of the family and social interactions. Harmony 和 *hé* is regarded as one of the most essential elements in Chinese culture to such a degree that is viewed as the cardinal cultural value in Chinese society (CHEN & Starosta, 1997; Wei & Li, 2013). According to Confucius and other representatives of Confucianism in ancient China such as Mencius 孟子 *Mèngzǐ* and Xunzi 荀子 *Xúnzǐ*, a society characterized by harmonious human relations is possible once the values of 任 *rèn* and 礼 *lǐ* are pursued. The former is basically regarded as a faculty possessed by human beings that refers to showing love and affection to one's counterparts in social interaction, whereas the latter as the fundamental regulatory etiquette, which refers to propriety and respect for social norms and is considered the best way to realize harmony (Wei & Li, 2013). For Confucius, a sensible person should be able to respect different opinion and work with different people in a harmonious way (Wei & Li, 2013).

Nowadays, the concept of harmony seems to be necessary for people, guiding their interaction manners and norms in every type of relationship, from family and friends to school, business and even when talking with strangers (Wei & Li, 2013).

Han, 2017 stated that “the advocacy of family harmony reflects a strong traditional belief in family unity over separation, which places a premium on the virtue and obligation of women to tolerate abuse”.

According to the previous expressions, it is clear that Confucianism always advocated for a harmonious society made of positive relations among people, boosting the idea of the welfare of people belonging to a society. This leads us to another profoundly embedded aspect in Chinese society, which is likely to have caused the process of awareness towards domestic violence to further slow down, that is the concept of collectivism, for which the welfare of the group has always been the most important thing, thus placing the individual in a profoundly disadvantaged position. This last feature makes Chinese culture (but also the one of other Asian countries) significantly different from Western culture. The self-conscious adoption of this Confucian model to shape the Chinese society, which is essentially valuing duty to the community over the assertion of rights, resulted in the elevation of the family unit as the building block of society and the development of governmental policies focus on the preservation of the family unit, sometimes at the expense of individual protections (Chia, 2012).

The woman must abide by the 三从 *sān cóng*, which represent three types of obedience towards three different men: first, she has to be obedient to her father at home; second, she must submit to her husband after she gets married; third, she must obey to her son when her husband dies (Chia, 2012).

Another important aspect concerning Confucian ethics is the one concerning Chinese family, with a particular focus on its structure, the hereditary system and the role of man and woman within the family unit. According to Confucian ethics, Chinese families are regarded as patriarchal, patrimonial and patrilineal, putting women at a severe social disadvantage relative to men (Xie, 2013), among which the last two are respectively referring to an inheritance established by rules of descent and the inheritance left to the child exclusively following the male line. The idea of a patriarchal society, completely embracing the Chinese family, has contributed, in a certain sense, to the common acceptance of the phenomenon, with the state’s reluctance to interfere in family matters¹⁸. Everybody knows a saying that goes “don’t wash your dirty linen in public”

¹⁸ Zhao, R., & Zhang, H. (2017). Family Violence and the Legal and Social Responses in China. In V. Contributors, *Global Responses to Domestic Violence* (p. 189-204). Eve S., Buzawa; Carl G., Buzawa

家丑不可外扬 *jiāchǒu bùkě wàiyáng*, meaning that family disputes stay a private matter, or 家务事 *jiāwù shì*. As we will see further on, this expression is often taken too scrupulously in China, even when conflicts are too serious and resorting to legal proceedings seems to be the only way for defeating domestic violence.

Just like in the Western world, in China there is the expression “losing face” 丢面子 *diū miànzi*, in which “face” is intended as one’s reputation; however, it is possible to trace a substantial difference in the usage of this expression in China and in the Western world, since face has a greater social significance for Chinese people, and for which there is a Chinese proverb saying: “A person needs face as a tree needs bark” (Wei & Li, 2013). Face 面子 *miànzi* is so important among interpersonal relationship in Chinese society that it can modify people’s perception towards themselves. As a rule, saving face for others can prevent conflicts and criticism of others, whereas giving or making face for others can enhance interpersonal relationship (Wei & Li, 2013); moreover, this concept and harmony together contribute to the development of social harmony, which is, according to Wei & Li, preserved when all parties in a social situation behave in a proper way, accepting and respecting each person’s need to maintain his or her face (Wei & Li, 2013).

As for the correlation between face and domestic violence, on the one hand, failing to demonstrate a certain authority towards the woman led the husband to lose face and be considered as inferior or equal to the opposite gender, so consequently making the figure of the patriarch to start waning. This was clearly unacceptable; therefore, episodes of domestic violence working as a “shield” against the threatening of the patriarch frequently took place. On the other hand, since women already found themselves in a degrading position, there was no way to make resistance. Zhao & Zhang, 2017 pointed out that, nowadays, abused women are often reluctant to report their victimization and to seek assistance from authorities due to concerns about losing face and the belief that family violence is a private matter. Furthermore, according to statistics of the Chinese Women’s Federation, female victims of domestic violence on average endure 35 incidents before choosing to call the police (Zhang & Zhu, 2015); thus, aside from the fact that reasons for unreported incidents of domestic violence might be related to profound sense of fear of the perpetrator and possible future consequences, it is clear that rooted traditional values contributed significantly at the expense of women.

Despite significant transformations in recent decades, between modernization and westernization processes, China is still deeply influenced by the moral and social doctrine of Confucianism and the social system of patriarchy remains a pillar for most Chinese families. According to Watts & Zimmerman, 2002, “domestic violence is not only seen as a manifestation of gender inequality, but it also serves to maintain an unequal balance of power between men and women”.

1.9.2 Extent of Domestic Violence in Urban and Rural China

China is becoming more and more sophisticated as several not-first-tier cities are literally growing in the blink of an eye. The new Silk Road initiative, promoted by the current President of the People’s Republic of China *Xi Jinping*, has been contributing to a rapid change affecting a huge variety of sectors, from investments in new technologies and infrastructures to the establishment of closer relations with other countries taking part to the initiative; nevertheless, while profound transformations of China starting from *Deng Xiaoping* reforms and opening-up in 1978 and following with *Xi Jinping* gave some people the chance to make a fortune, the same thing can’t be said for many other people who are still living in destitution.

China is full of several rural areas covering the 45% of the whole territory; that’s where the poorest part of the population lives and where domestic violence is likely to happen more frequently. According to the All-China’s Women Federation, in 2011 7.8% of women in rural areas claimed to have been physically abused by their husbands, compared with 3.1% of women in urban areas. Studies carried out in the previous years showed how domestic violence is prevalent in rural China mainly because of two factors: first one is something that has been already mentioned, that is a persisting patriarchal vision of society in rural areas “rooted over the centuries and common to oriental Asia as a whole” (Santelli, 2021) which strengthens the idea that “even an upright official will have difficulty resolving a family dispute”, and “a husband is justified in beating his wife” (Liu, 2007); the second one is linked to a gender inequality concerning education, income. Men’s educational level, as well as income, are clearly higher than those of women, creating a significant discrepancy between the roles of gender, “men go out to work and

women stay at home” is still a quite powerful saying within families in rural China (Liu, 2007).

Chapter II: Domestic Violence and Legal Framework in the PRC

*At any given moment you have the power to say:
“This is not how the story is going to end.”
Christine Mason Miller*

Introduction

Having illustrated some statistics on the occurrence of domestic violence in the People’s Republic of China, as well as some peculiarities regarding the influence of traditions and values, this second chapter will get straight to the point by illustrating Chinese legal framework in depth.

Firstly, as a preliminary introduction, the preamble of Chinese Constitution will be introduced, as to clarify some significant obligations both of State and society regarding human rights. Then, the discussion will cover the most important stages that have led to domestic violence awareness at a national level, thus allowing Chinese society to detach itself, albeit in an almost irrelevant way, from the patriarchal vision that has been lasting for many centuries in China. It is also essential to understand main regulatory texts such as Civil Code and Criminal Code, as they can help to fully grasp the way Chinese judicial system treats citizens and conceives their fundamental rights.

Secondly, the enactment of the first Anti-Domestic Violence Law in 2016 was the result of long-lasting battles against the phenomenon. Thanks to this ad hoc law, victims can, for instance, request protection orders to prevent the abuser from further committing violence. Overall, the Anti-Domestic Violence Law helped to raise awareness within Chinese society. However, being the topic quite sensitive due to factors discussed in the previous chapter, this law presents significant limitations, even starting from the system of protection orders.

Lastly, some general insights about possible solutions and adjustments, both of Chinese legal framework and society in general, will be thoroughly discussed.

2.1 Constitution of the PRC

Along with the foundation of People's Republic of China and the profound changes taking place in the country, it was extremely essential to make a fundamental law which could define all the norms and rules concerning State and its society.

As it is pointed out in the preamble, Constitution of the PRC 中华人民共和国宪法 *zhōnghuá rénmin gònghéguó xiànfǎ* “affirms the achievements of the struggles of Chinese people of all ethnic groups, [...] it is the law of the state and has supreme legal force”¹⁹. The first enactment of Chinese Constitution took place in 1954 and it was subject of several revisions over the years. The current version is dated 2018.

Inside the section of basic rights and obligations of citizens, article 49 makes it clear that family, and everything related to it, is under protection of the nation. It also prohibits abuse of more vulnerable people, such as women, the elderly and children:

婚姻，家庭，母亲和儿童受国家的保护。

[...] 父母有抚养教育未成年人子女的义务，成年子女有赡养扶助父母的义务。禁止破坏婚姻自由，禁止虐待老人，妇女和儿童²⁰。

Marriage, family, the mother and children are protected by the State.

Parents have the duty to rear and educate their children who are minors, and children who have come of age have the duty to support and assist their parents.

[...] Violation of the freedom of marriage is prohibited. Maltreatment of old persons, women and children is prohibited.

2.2 Development of Domestic Violence Legislation in the PRC

Concerning the process of legally defining the term “domestic violence”, China is a bit late. As it was already reiterated, China has always hosted episodes in this sense, but just in recent times family violence against wives, children, the elderly, and disadvantaged family members have become a common concern (Zhang & Zhao, 2018). Throughout its long history of civilization, this country encountered some significant barriers in properly addressing domestic violence, because it was seen neither as a crime nor as a societal problem to be addressed by courts or legislative bodies (Zhao, 2000).

¹⁹ (National People's Congress – 中华人民共和国宪法 Constitution of the PRC, 2018)

²⁰ Supra note 19

October 1st of 1949 was a meaningful day for Chinese society because of the foundation of the People's Republic of China by the then President of the Communist Party of China Mao Zedong, representing a milestone in Chinese history. Established in the same year, the All-China Women's Federation sent a clear message to the whole nation: it was time to take action and prevent violence against women from happening again. Nevertheless, the organization had, and still has, major limitations as it remains subordinate to the Communist Party, which can choose with extreme freedom whether to approve or reject proposals, thus resulting in a lack of free expression and thought by the organization. There was a real lack in the development of policies and guidelines against domestic violence; as a result, the phenomenon was not given the proper weight.

Mao Zedong himself is responsible for a famous quote in 1968 that says “妇女能顶半边天” *fùnǚ néng dǐng bànbiāntiān* which is translated into “women hold up half the sky”, representing a real invitation to gender equality. The biggest issue was that, at least theoretically, Communist Party tried to combat on behalf of women's rights. Especially in the last twenty years the Chinese government has developed a series of programs, among which "The five-year development program for women" and "The ten-year development program for women", aimed at achieving gender equality on various levels. As a matter of fact, until today these programs have not been implemented yet (Ponzini, 2018). Hence, what women really benefited from the several promises of the Communist Party was just a crumb. In the Mao era (1945-1976) there were no provisions for dealing with domestic violence neither in Chinese Marriage Law nor in other laws, and this was also due to the unconcern of Chinese government regarding domestic violence and abuse of women, considered as common under traditional feudal culture (Qi, Wu, & Wang, 2020).

In 1995, during the Fourth World Conference on Women held in Beijing and convened by United Nations, the State Council of People's Republic of China published the official *Program for the Development of Chinese women*, in which China officially started talking about domestic violence 家庭暴力 *jiāting bàoli* for the very first time. The program stipulated some tasks and major objectives related to the development of Chinese women in the next six years, putting forward the measures related as well²¹. Since then,

²¹ Cfr. <https://www.un.org/esa/documents/ga/conf177/natrep/china/nap1997-china.htm>

the program began arousing public attention, and “raised awareness of domestic violence as a serious social and human rights issue among academic communities and policy makers” (Song & Dong, 2016).

What follows in the next few paragraphs are the laws in which the term domestic violence and abuse within the family appeared, so as to give an idea of how the phenomenon was recognized and regulated.

2.2.1 *The Marriage Law of 2001*

Despite the tortuous path starting from 1949 concerning their rights, women have undoubtedly saw some improvements, with the most significant ones in the new marriage law of 1980, which established an explicit consensus of both spouses and made divorce procedures easier for wives (Santelli, 2021). However, regarding domestic violence within marriage, divorce was not ensured yet in case of domestic violence, but just in case of 感情破裂 *gǎnqíng pòliè*, that is the disruption of mutual affection between the two spouses²². This was due to the complete absence of the term until 1995, thus there was no trace of it inside the provisions of the marriage law until the revision of 2001.

Article 3 contained in the law of 1980 merely prohibited abuse 虐待 *nièdài* and abandonment 遗弃 *yíqì* between family members:

[...] 禁止家庭成员间的虐待和遗弃。

[...] Maltreatment and desertion of one family member by another shall be prohibited²³.

The marriage law of 2001 中华人民共和国婚姻法 *zhōnghuá rénmín gònghéguó hūnyīnfǎ* marked a turning point as it regulated domestic violence within married couple. Adopted by the National People’s Congress of the People’s Republic of China, the marriage law of 2001 was made up of five sections, regulating all the rights and obligations of the two spouses about the free will of get married and filing for divorce,

²² 人民法院审理离婚案件，应当进行调解；如感情确已破裂，调解无效，应当予离婚。 In dealing with a divorce case, the People’s Court should carry out mediation; divorce shall be granted if mediation fails because mutual affection no longer exists. (The Marriage Law of the PRC, 1980)

²³ The Marriage Law of PRC, 1980

bureaucracy related guidelines, assistance obligations towards the other spouse as well as potential children and so on.

First of all, article 3 immediately gives a clarification about the prohibition of domestic violence:

禁止家庭暴力。禁止家庭成员间的虐待和遗弃。

Family violence shall be prohibited. Maltreatment or desertion of any family member shall be prohibited²⁴.

Whereas article 32 added domestic violence to the list of reasons helping the weak part to file for divorce:

有下列情形之一的，调解无效的，应准予离婚：

[...] (二) 实施家庭暴力或虐待，遗弃家庭成员的。²⁵

Divorce shall be granted if any of the following circumstances occur or mediation fails:

[...] family violence or desertion of any family member is committed²⁶.

The fifth section of the revised marriage law was about the remedies and legal liabilities of the two spouses, yet providing some information concerning domestic violence; in particular, article 43 states thus:

【家庭暴力与虐待】实施家庭暴力或虐待家庭成员，受害人有权提出请求，居民委员会，村民委员会以及所在单位应当予以劝阻，调解²⁷。

In the case of family violence or maltreatment of any family member, the victim thereof shall be entitled to make petitions, and the villagers' committees, the relevant urban resident's committee or the entity where the victim is staff member shall make dissuasions or mediation²⁸.

²⁴ The Marriage Law of PRC, 2001

²⁵ Supra note 24

²⁶ Supra note 24

²⁷ 对正在实施的家庭暴力，受害人有权提出请求，居民委员会、村民委员会应当予以劝阻；公安机关应当予以制止。实施家庭暴力或虐待家庭成员，受害人提出请求的，公安机关应当依照治安管理处罚的法律规定予以行政处罚。

The victim shall be entitled to make petitions concerning the family violence that is happening, and the relevant urban residents' committee or villagers' committee shall make dissuasions, and the public security organs shall stop such acts.

Where the victim of family violence or maltreatment makes a petition, the public security organ concerned shall give administrative punishment to the actor according to the provisions on the administration of public security (Supra note 24).

²⁸ Supra note 24

Some regulations about Criminal Law procedures in case of bigamy (the law of China does prohibit it) and domestic violence in article 45 were provided:

第四十五条：【家庭暴力、虐待，遗弃犯罪 对重婚的】，对实施家庭暴力或虐待，遗弃家庭成员构成犯罪的，依法追究刑事责任。

受害人可以依照刑事诉讼法的有关规定，向人民法院自诉；公安机关应当依法侦查，人民检察院应当依法提起公诉。

Article 45: Criminal liabilities shall be meted out of bigamists and those who have committed family violence or maltreated or deserted any family member so seriously as to have constituted a crime. The victim may, in accordance with relevant provisions of the Criminal Procedure Law, lodge a private prosecution with the People's Court; the public security organ shall make investigations according to the provisions of law and the People's Procuratorate concerned shall make a public prosecution in accordance with law²⁹.

Finally, article 46 stipulates victims of domestic violence who fill for divorce can also claim for compensation:

【损害赔偿】有下列情形之一，导致离婚的，无过错方有权请求损害赔偿：

[...] (三) 实施家庭暴力的。

Where one of the following circumstances lead to divorce, the unerring part shall have the right to claim compensation³⁰.

The regulation of domestic violence in such an important law set an important goal and a hope for all the victims of this cruelty. The greatest problem was that marriage law merely took into consideration the violence between couples and in general within the family setting, thus making nonmarried couples essentially unprotected under this law (Zhang & Zhao, 2018).

²⁹ Supra note 24

³⁰ Supra note 24

2.2.2 Law on Protection of Women's Rights and Interests of the PRC

Aside from the Marriage Law of 2001, domestic violence was also regulated in another law concerning women and their legitimate rights. In 2005, the Standing Committee promulgated the law on protection of Women's Rights and Interests of the PRC 中华人民共和国妇女权益保障法 *zhōnghuá rénmin gònghéguó fùnǚ quányì bǎozhàngǎ*, attempting to discipline the phenomenon in a more comprehensive way. The text was revised in 2018, yet it has not influenced in any way the provisions containing the term domestic violence. In particular, article 46 and 58 stipulate as follows:

第四十六条：禁止对妇女实施家庭暴力。

国家采取措施，预防和制止家庭暴力。

公安、民政、司法行政等部门以及城乡基层群众性自治组织、社会团体，应当在各自的侄子范围内预防和制止家庭暴力，依法为受害妇女提供救助。

Article 46: Domestic violence against women is prohibited. The State takes measures to prevent and stop domestic violence. The departments of public security, civil affairs, judicial administration, etc., as well as urban and rural mass organizations of self-government at the grass-roots level and public organizations shall, within the scope of their respective duties, prevent and stop domestic violence, and provide succor to female victims.

第五十八条：违反本法规定，对妇女实施性骚扰或者家庭暴力，构成违反治安管理行为的，受害人可以提请公安机关对违法行为人依法给予行政处罚，也可以依法向人民法院提起民事诉讼。

Article 58: Where a person, in violation of the provisions of this Law, commits sexual harassment or domestic violence against a woman, if such act constitutes a violation of the regulations for administration of public security, the victim may apply to a public security organ for an administration sanction against the violator according to law, and may also bring a civil suit in a People's Court according to law.

Some differences between this law and the Marriage Law are fully explained by Cheng & Wang, 2018: once the victim reports domestic violence, administrative penalty, which includes a detention for not more than five days or a written warning³¹, is

³¹ A written warning is a letter sent to the abuser that basically prohibits the abuser to further commit violence (more details are provided in paragraph 2.6.1)

implemented; female victims shall be succored and supported; information about the rights to bring a lawsuit by a victim are provided (Cheng & Wang, 2018).

2.2.3 *The Law Protecting Minors, the Elderly and Disabled Persons*

The first law made especially for the protection of children and minors in the PRC 中华人民共和国未成年人保护法 *zhōnghuá rénmin gònghéguó wèi chéngniánrén bǎohùfǎ* was promulgated in 1991, followed by the revised versions of 2006, 2012 and 2020.

Just like the versions of 2012 and 2006 (wherein the term domestic violence appeared for the first time), the last revised one of 2020 contained an article regulating domestic violence and maltreatment against children:

第十七条：未成年人的父母或者其他监护人不得实施下列行为：

（一）虐待、遗弃、非法送养未成年人或者对未成年人实施家庭暴力³²。

Article 17: The parents or any other person who is guardian of the minor cannot commit the following acts:

(1) Maltreat, abandon, place out for adoption or commit domestic violence against minors.

As for laws protecting the elderly, in 1996 the Standing Committee enacted the Law of the People's Republic of China on the Protection of the Rights and Interests of the Elderly 中华人民共和国老年人权益保障法 *zhōnghuá rénmin gònghéguó lǎoniánrén quán yì bǎozhàngfǎ*, with the last version of 2018.

Article 3³³, 25³⁴ and 76³⁵ regulate prohibition of domestic violence, maltreatment 虐待罪 *nièdài zuì*, humiliation 侮辱罪 *wǔrǔ zuì* and discrimination 欺负罪 *qīfu zuì* towards

³² Law of the PRC on the Protection of Minors, 2020

³³ [...] 禁止歧视、侮辱、虐待或者遗弃老年人。

Every form of discrimination, humiliation, maltreatment and abandonment towards the elderly is prohibited (Law of PRC on the Protection of the Rights and Interests of the Elderly, 2018).

³⁴ 禁止对老年人实施家庭暴力。

Domestic violence against the elderly is prohibited (Law of PRC on the Protection of the Rights and Interests of the Elderly, 2018).

³⁵ 干涉老年人婚姻自由，对老年人负有赡养义务、扶养义务而拒绝赡养、扶养，虐待老年人或者对老年人实施家庭暴力的，由有关单位给予批评教育；构成违反治安管理行为的，依法给予治安管理处罚；构成犯罪的，依法追究刑事责任 (English translation at p. 34) (Law of PRC on the Protection of the Rights and Interests of the Elderly, 2018),

the elderly; furthermore, article 76 touches upon criminal responsibilities to be investigated in case of crime.

Finally, Chinese law cares a lot about disabled people as in 1990 the first Law of the People's Republic of China on the Protection of Disabled People 中华人民共和国残疾人保障法 *zhōnghuá rénmin gònghéguó cánjírén bǎozhàngfǎ* was enacted, with the last revision happening in 2018. People belonging to this category are extremely weak as they don't have any possibility to defend themselves, especially in case of serious mental and physical disability. As with the other laws, the one protecting people with disabilities regulates prohibition of domestic violence and maltreatment as well as the main obligations, by caregivers 抚养人 *fǔyǎngrén* and guardians 监护人 *jiānhùrén*, in providing support, respecting disabled wills and safeguarding their legitimate rights³⁶.

2.2.4 Public Security Administration Punishments Law of the PRC

Having already discussed the Chinese laws including elements somehow related to domestic violence, a mention must be also made for the Public Security Administration Punishments Law of the PRC 中华人民共和国治安管理处罚法 *zhōnghuá rénmin gònghéguó zhìān guǎnlǐ chǔfá fǎ*, as it also mentions crimes within the family and gives a further idea of how violence in this context was treated before the enactment of an anti-domestic violence law.

Interfering with the freedom of marriage of the elderly, refusing to support or support the elderly, abuse of the elderly, or committing domestic violence against the elderly shall be criticized and educated by the relevant unit; if it constitutes a violation of public security management, it shall be punished in accordance with the law Public Security Management; if a crime is constituted, criminal responsibility shall be investigated in accordance with the law. (Law of PRC on the Protection of the Rights and Interests of the Elderly, 2018)

³⁶ 第九条： 残疾人的抚养人必须对残疾人履行抚养义务。残疾人的监护人必须履行监护职责，尊重被监护人的意愿，维护被监护人的合法权益。残疾人的亲属、监护人应当鼓励和帮助残疾人增强自立能力。禁止对残疾人实施家庭暴力，禁止虐待，遗弃残疾人。

Article 9: Supporters of disabled people must perform their duty of supporting the disabled. The guardians of the disabled must perform guardianship duties, respect the wishes of the ward, and safeguard the legitimate rights and interests of the ward. The relatives and guardians of the disabled shall encourage and help the disabled to strengthen their self-reliance. Committing domestic violence, abusing or abandoning the disabled is prohibited. (Law of PRC on the Protection of Disabled People, 2018).

The last version was issued by the Standing Committee of the National People's Congress in 2012. Although this law leaves little room for family related matters, it equally expresses itself through article 45 about maltreatment and abandonment:

有下列行为之一的，处五日以下拘留或警告：

- (一) 虐待家庭成员，被虐待人要求处理的；
- (二) 遗弃没有独立生活能力的被抚养人的。

Anyone who commits one of the following acts shall be detained or warned for less than five days:

- (1) Maltreating family members, and the abused person make a request for the matter to be handled;
- (2) Abandoning a supported person who cannot look after himself independently.

2.3 Opinion on Handling Criminal Cases of Domestic Violence

In March 2015, one year before the official enactment of the first law ad hoc for the regulation of domestic violence, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice of the PRC issued the Opinion on how to Legally Handle Domestic Violence Cases³⁷ (hereinafter, "the Opinion"). It belongs to the judicial interpretation documents 司法解释性质文件 *sīfǎ jiěshì xìngzhì wénjiàn* and presumably aimed at providing some essential guidelines for authorities and courts in order to efficiently handle domestic violence.

The opinion was made up of four sections: basic principles 基本原则 *jīběn yuánzé*, case acceptance 案件受理 *ànjìàn shòulǐ*, conviction and punishment 定罪处罚 *dìngzuì chǔfá* and other measures 其他措施 *qítā cuòshī*. What is worth of our attention is the pronouncement about the handling of domestic violence cases based on the safeguard of victims through realistic, practical and efficient interventions by Chinese courts and authorities, as well as their obligations.

³⁷ 最高人民法院、最高人民检察院，公安部、司法部印发《关于依法办理家庭暴力犯罪案件的意见》的通知 *zuìgāo rénmin fǎyuàn, zuìgāo rénmin jiǎncháyuàn, gōngānbù, sīfǎbù guānyú yīfǎ bànlǐ jiātíng bàolì fànzuì ànjìàn de yìjiàn de tōngzhī*.

The provisions contained in the basic principles immediately appeared to diverge from the concept of domestic violence being a private matter, rigorously affirming that it cannot be neglected³⁸ (courts and authorities shall intervene in an efficient way 有效干预 *yǒuxiào gānyù*) and inspiring hope in the victims for tearing down the wall which separates the shame of spoiling family private affairs from a major awareness and courage in addressing the spectre of domestic violence.

The third paragraph stated: “Respect the wishes of injured part 尊重被害人意愿 *zūnzhòng bèihàirén yìyuàn*, in accordance with law and when addressing domestic violence.” The plaintiffs³⁹ must be given the chance to express their wishes and authorities shall listen to their opinions⁴⁰.

The collection of evidence is considered one of the most delicate passages when episodes of domestic violence take place, since it can determine whether the defendant shall be convicted. The eleventh paragraph explains that public security authorities shall promptly collect evidence in an overall way 及时、全面收集证据 *jíshí, quánmiàn shōují zhèngjù*.

Among the several provisions of the paragraph “conviction and punishment”, instructions on how to convict somebody in case domestic violence crimes were included,

³⁸ 依法及时，有效干预。针对家庭暴力持续反复发生，不断恶化升级的特点，人民法院、人民检察院、公安机关、司法行政机关对已发现的家庭暴力，应当依法采取及时、有效的措施，进行妥善处理，不能以家庭暴力发生在家庭成员之间，或者属于家务事为由而置之不理，互相推诿。

Intervene in a timely and effective manner in accordance with the law. In response to the continuous recurrence of domestic violence and its deteriorating and escalating characteristics, the People’s Courts, People’s Procuratorates, public security organs, and judicial administrative organs shall take timely and effective measures in accordance with the law to deal with domestic violence that has been discovered. (Authorities) shall not neglect domestic violence just because it is considered a private matter or because it happens between family members and thus shirk each other (The Opinion on Handling Criminal Cases of Domestic Violence, 2015).

³⁹ Victims of domestic violence in civil cases.

⁴⁰ 尊重被害人意愿。办理家庭暴力犯罪案件，既要严格依法进行，也要尊重被害人的意愿。在立案、采取刑事强制措施、提起公诉、判处刑罚、减刑，假释时，应当充分听取被害人意见，在法律规定的范围内作出合情、合理的处理。对法律规定可以调解、和解的案件、应当在当事人双方自愿的基础上进行调解、和解。

Respect the wishes of the plaintiff. The handling domestic violence crimes must be conducted in strict accordance with the law and respecting the wishes of the plaintiff. When filing a case, adopting criminal compulsory measures, initiating public prosecutions, imposing penalties, commutation, and parole, the plaintiff’s opinions shall be fully listened and reasonable handling shall be made within the scope prescribed by law. For cases that can be mediated or settled by law, mediation and settlement shall be carried out on the basis of the willingness of both parties (The Opinion on Handling Criminal Cases of Domestic Violence, 2015).

which are extremely useful for further embarking upon the topic of domestic violence together with criminal justice:

对故意杀人、故意伤害、强奸、猥亵儿童、非法拘禁、侮辱、暴力干涉婚姻自由、虐待、弃等侵害公民人身权利的家庭暴力犯罪，应当根据犯罪的事实、犯罪的性质、情节和对社会的危害程度，严格依照刑法的有关规定判处。对于同一行为同时触犯多个罪名的，依照处罚较重的规定定罪处罚⁴¹。

Intentional homicide, intentional injury, rape, child molestation, illegal detention, insults, violent interference with the freedom of marriage, abuse, abandonment and other domestic violence crimes that violate the personal rights of citizens shall be based on the facts of the crime, the nature of the crime, the circumstances and the social degree of harm shall be sentenced in strict accordance with the relevant provisions of the Criminal Law.

Finally, according to paragraph seventeen, crimes such as beating, intimidation, restriction of personal freedom, abuse and torture against minors, the elderly, disabled people, pregnant women shall be punished if circumstances are serious and included in the Criminal Law⁴².

2.4 The Civil Code of the PRC

The first Civil Code of the PRC 中华人民共和国民法典 *zhōnghuá rénmín gònghéguó mínfǎ diǎn* was enacted in January 2021. Following the official promulgation of the Civil Code, all the previous laws regulating civil matters were abrogated and merged into the new juridical text, which is now made up of 1260 articles and composed of seven sections:

⁴¹ (The Opinion on Handling Criminal Cases of Domestic Violence, 2015)

⁴² 依法惩处虐待犯罪。采取殴打、冻饿、强迫过度劳动、限制人身自由、恐吓、侮辱、谩骂等手段，对家庭成员的身体和精神进行摧残、折磨，是实践中较为多发的虐待性质的家庭暴力。根据司法实践，具有虐待持续时间较长、次数较多；虐待手段残忍；虐待造成被害人轻微伤或者患较严重疾病；对未成年人、老年人、残疾人、孕妇、哺乳期妇女、重病患者实施较为严重的虐待行为等情形，属于刑法第二百六十条第一款规定的虐待“情节恶劣”，应当依法以虐待罪定罪处罚。

Punish the crime of abuse in accordance with the law. The use of beatings, freezing and starvation, forced overwork, restriction of personal freedom, intimidation, insults, and abuse to torture and torture the body and spirit of family members is a relatively common type of abusive domestic violence. According to judicial practice, the abuse has a longer duration and more frequent; the methods of abuse are cruel; the abuse caused minor injuries or more serious diseases; More serious ill-treatment and other situations fall within the “evil circumstances” of abuse as stipulated in the first paragraph of Article 260 of the Criminal Law, and shall be convicted and punished as the crime of abuse in accordance with the law (The Opinion on Handling Criminal Cases of Domestic Violence, 2015).

general provisions 基本规定 *jīběn guīdìng*, rights in rem 物权 *wùquán*, contracts 合同 *hétóng*, personality rights 人格权 *rén gé quán*, marriage and family 婚姻家庭 *hūnyīn jiātíng*, inheritance 继承 *jìchéng* and tort liability 侵权责任 *qīnquán zérèn*.

For sure, the enactment of the first-ever Civil Code represented a milestone for China's legislative system as much effort has been made. According to NPC Observer, the lives of the general public have been affected in the most direct and intimate way as the code received a level of intense public engagement (NPC Observer, 2020; Di Costanzo, 2021). Yet, the code would likely reduce inconsistencies between the autonomous civil statutes enacted over the years; it would solve some of the new legal issues that have arisen since then (NPC Observer, 2020; Di Costanzo, 2021) and constitute a systematization, harmonization and adaptation to the changed socio-economic situations of the rules already contained in the single laws (Novaretti, 2021).

Apart from the provisions in the marriage and family section, it is hard to tell whether the Chinese Civil Code will include others concerning domestic violence, but a potential addition of a dedicated section on anti-domestic violence would doubtlessly represent a beginning for a greater awareness and regulation of the phenomenon, considering the important impact of the Civil Code on society and because it prevails on any other law. However, as it will be explained later, the discrepancy between different areas of China (rural and urban areas) makes the process of awareness extremely tough as important differences in terms of education and understanding of domestic violence crimes exist.

Sadly, as for domestic violence related matters, the law appeared to have underestimated the threats that victims might encounter. In particular, feminists around China fiercely complained about the article 1077⁴³ contained in the section of marriage and family of the new Civil Code. The article regulates that, after having filed for divorce, one of the two parties may freely withdraw the application during a cooling-off period lasting thirty days. Considering that, in case of domestic abuse, one of the last things a

⁴³ 第一千零七十七条：自婚姻登记机关收到离婚登记申请之日起三十日内，任何一方不愿意离婚的，可以向婚姻登记机关撤回离婚登记申请。

Article 1077: Where either party is unwilling to divorce, he may withdraw the divorce registration application within thirty days after such an application is received by the marriage registration authority (National People's Congress – 中华人民共和国民法典 Civil Code of the People's Republic of China, 2021)

victim would like to do is going back home together with the abuser, this article seems to completely not take care of the former, while giving the latter further space for committing violence. As a response to the protests, some law experts argued that the cooling-off period would be useful in case of impetuous decisions by the two spouses and that, in case of domestic violence, the victim could initiate a lawsuit (Qi, 2021). The substantial issues in such a situation would be two: the first involves the considerable costs to file a lawsuit which discourage victims to proceed; the second is about the rigorous tendency of Chinese courts to rely on the collection of evidence as a proof of violence (Qi, 2021), for which, most of the time, victims have to collect on their own.

2.5 Criminal Law

While many obstacles were encountered in enacting a Civil Code, the first text of Chinese Criminal Law 中华人民共和国刑法 *zhōnghuá rénmín gònghéguó xíngfǎ* already existed since 1979. It was subject to some modifications with the passing of time and the last version was issued in 2020. It is important to point out that China, as well as most of the East Asian countries, is currently implementing capital punishment, which existed since China's dynastic period. The crimes punishable with death sentence included homicide, corruption, fraud, bigamy, disturbance of citizens' lives, use of dangerous methods causing death or major injuries and so on and so forth.

The current Criminal Code is made up of 452 articles and divided into two parts: general provisions, containing generic provisions such as the basic principles, the scope of the Criminal Law, crimes, criminal responsibilities and punishments; special provisions, explaining in detail how to deal with all the crimes, from endangering national and public security and disrupting public order to infringing the rights of citizens.

As already mentioned in the previous paragraph, Criminal Law in China does not include the term domestic violence in its provisions. However, and this is essential for the discussion of the thesis, chapter four contained within the special provisions is about crimes infringing upon the rights of the person and the democratic rights of citizens 侵犯公民人身权利、民主权利罪 *qīnfàn gōngmín rénshēn quánlì, mínzhǔ quánlì zuì*. Among these, crimes of intentional homicide, injuries, rape, harassment, abuse and

abandonment are relevant as they are supposed to be intrinsic to the meaning of domestic violence.

Firstly, article 232 regulates intentional homicide 故意杀人罪 *gùyì shā rén zuì* with different punishments depending on the seriousness of crime:

故意杀人的，处死刑、无期徒刑或者十年以上有期徒刑；情节较轻的，处三年以上十年以下有期徒刑⁴⁴。

Intentional homicide shall be sentenced to death, life imprisonment, or fixed-term imprisonment of more than ten years; if the circumstances are relatively minor, the sentence shall be from three to ten years imprisonment.

Crime of injuries 故意伤害罪 *gùyì shānghài zuì* is included in the article 234, whose punishments are strictly related with the aforementioned article:

故意伤害他人身体的，处三年以下有期徒刑拘役或者管制。

犯前款罪，致人重伤的，处三年以上十年以下有期徒刑；致人死亡或者以特别残忍手段致人重伤造成严重残疾的，处十年以上有期徒刑、无期徒刑或者死刑 [...] ⁴⁵。

Whoever intentionally injures the body of another person shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or surveillance.

Whoever commits the crimes mentioned in the preceding paragraph and causes serious injury to a person shall be sentenced to fixed-term imprisonment of not less than three years but not more than ten years; whoever causes death or severely disabled a person by particularly cruel means shall be sentenced to fixed-term imprisonment of not less than 10 years, life imprisonment or death.

Rape against women and children 强奸罪 *qiángjiān zuì* is regulated by article 236 and, depending on different circumstances, the punishment goes from three years of detention to death sentence:

以暴力、胁迫或者其他手段强奸妇女的，处三年以上十年以下有期徒刑。奸淫不满十四周岁的幼女的，以强奸论，从重处罚⁴⁶。

⁴⁴ Criminal Law of the People's Republic of China 中华人民共和国刑法, 2020)

⁴⁵ Supra note 44

⁴⁶ 强奸妇女、奸淫幼女、有下列情形之一的，处十年以上有期徒刑、无期徒刑或者死刑：（一）强奸妇女、奸淫幼女情节恶劣的；（二）强奸妇女、奸淫幼女多人的；（三）在公共场所当众强奸妇女、奸淫幼女的；（四）二人以上轮奸的；（五）奸淫不满十周岁的幼女或者造成幼女伤害的；（六）致使被害人重伤、死亡或者造成其他严重后果的 (English version at p. 41) (Criminal Law of the PRC, 2020).

Whoever uses violence, coercion, or other ways to rape women shall be sentenced from three to ten years of imprisonment. Heavier punishment shall be given in case of sexual intercourse with girls under fourteen years of age as it will be considered rape.

Article 237 regulates harassment 强制猥亵 *qiángzhì wěixiè* against women and children in particular, yet the term referring to generic people was included since the version of 1999:

以暴力、胁迫或者其他方法强制猥亵他人或者侮辱妇女的，处五年以下有期徒刑或者拘役 [...] ⁴⁷。

猥亵儿童的，处五年以下有期徒刑 [...] ⁴⁸。

Whoever uses violence, coercion, or other methods to forcibly harass others or insult a woman shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

Lastly, crimes of maltreatment 虐待罪 *nüèdài zuì* and abandonment 遗弃罪 *yìqì zuì* are included in articles 260, 261, with reference to family members:

第二百六十条：虐待家庭成员，情节恶劣的，处二年以下有期徒刑、拘役或者管制。犯前款罪的，致使被害人重伤、死亡的，处二年以上七年以下有期徒刑 [...] ⁴⁹。

Article 260: Whoever abuses a family member with a bad circumstance shall be sentenced to fixed-term imprisonment of not more than two years, criminal detention or surveillance.

If any of the following circumstances occurs in case of rape against women and sexual intercourse with young girls, a fixed-term of imprisonment of over ten years, life imprisonment or death sentence shall be imposed: (1) Circumstances are serious; (2) raping more women and young girls; (3) raping in public; (4) raping women with one or more people in succession; (5) raping young girls under fourteen years of age or causing them injuries; (6) causing serious injuries or death to the plaintiff or any other serious consequences (Supra note 44, p. 40).

⁴⁷ 聚众或者在公共场所当众犯前款罪的，或者有其他恶劣情节的，处五年以上有期徒刑。

Whoever gathers a crowd or commits the crimes mentioned in the preceding paragraph in public, or under other bad circumstances, shall be sentenced to fixed-term imprisonment of not less than five years (Supra note 44, p. 40).

⁴⁸ 有下列情形之一的，处五年以上有期徒刑：（一）猥亵儿童多人或者多次的；（二）聚众猥亵儿童的、或者在公共场所当众猥亵儿童，情节恶劣的；（三）造成儿童伤害或者其他严重后果的；（四）猥亵手段恶劣或者有其他恶劣情节的。

In any of the following circumstances occurs, a fixed-term of imprisonment of over five years shall be imposed: (1) If more people molest a child for many times; (2) gathering crowds to molest children, or molesting children in public with serious circumstances; (3) causing injury to a child or other serious consequences; (4) if the methods used are bad or there are bad circumstances (Supra note 45, p. 45).

⁴⁹ Supra note 44, p. 40

Whoever commits the crime mentioned in the preceding paragraph and causes the victim to be seriously injured or killed shall be sentenced to fixed-term imprisonment of not less than two years but not more than seven years.

第二百六十一条：对于老年、年幼、患者或者其他没有独立生活能力的人，负有抚养义务而拒绝抚养，情节恶劣的，处五年以下有期徒刑、拘役或者管制⁵⁰。

Article 261: Those who have the obligation to support and refuse to support the elderly, young persons, patients or persons who are incapable of live independently, shall be sentenced to fixed-term imprisonment of not more than five years, criminal detention or surveillance.

2.6 *The Anti-Domestic Violence Law of the PRC*

Nowadays, Chinese society have made progress in the battle of awareness of independence of women and gender equality and devalued family life (Zhang & Zhao, 2018), with “a changing attitude concerning sexual and gender issues (Faure & Fang, 2008; Zhang & Zhao, 2018): for instance, according to empirical research, the rates of divorces in this regard have increased significantly since China’s economic reform began in 1978, with a percentage of national divorces at 0.18% in that year and 3.01% in 2016 (Zhang & Zhao, 2018).

The real turning point was represented by the enactment of the first Anti-Domestic Violence Law of the PRC 中华人民共和国反家庭暴力法 *zhōnghuá rénmín gònghéguó fǎn jiātíng bàolífǎ* (hereinafter ‘ADV L’), the first-ever national law against domestic violence which came into effect in March 2016, with the intent of protecting all the victims of domestic violence, thus women, men, children, the elderly, people with disabilities and so on. The ADVL enactment “marked a landmark achievement for China’s women’s rights activists, who had been pushing for such domestic violence legislation for two decades” (Feldshuh, 2018). Since then, the responsibility of anti-domestic violence has to be shared between the state, society and each family, putting an official end to the era in which domestic violence is only a private matter (Jue, 2019).

Aside from several demonstrations which played a critical role on the side of victims of domestic violence, there were of course some key events which triggered such

⁵⁰ Supra note 44, p. 40

a strong response. The first one is 李彦 *Lǐ Yàn*'s case, a woman from the Chinese province of *Sìchuān* 四川 who was sentenced to death by the Intermediate People's Court of China⁵¹ after killing her husband *Tán Yǒng* 谭勇. They got married in 2009 and, one year later, during a fight, Li Yan hit Tan Yong with the butt of an air rifle, dismembered his body and eventually self-reported to authorities. There was evidence of sexual, physical abuse and the presence of several wounds on her. She stated that Tan Yong used to batter her, scalding her face with a cigarette butt and cutting one finger. However, the Court rejected it and sentenced Li Yan to death in 2011. In August 2012 she also appealed against the death sentence on self-defense grounds, but the appeal was rejected by the Sichuan high court as there was no probative evidence that Li Yan suffered domestic violence for a long time. The case triggered the reaction of several lawyers and activists who asked for Li Yan claims of domestic violence to be further investigated. They argued that the law had to take into consideration not only the way Tan Yong had been killed, but also the strong evidence of domestic abuse⁵² (Ye, 2014).

The second key event is the one of Kim Lee, an American citizen who accused his husband Li Yang (a Chinese multimillionaire entrepreneur) of domestic violence, filling for a divorce and requesting sole custody of their three daughters. In August 2011 Kim Lee posted several pictures on Sina Weibo (the same as Twitter for westerners) showing that she was victim of Li Yang's violence. The pictures spread rapidly on the internet, triggering the anger of Chinese netizens. The court eventually granted divorce on the grounds of domestic violence and a three-month restraining order to Kim Lee (Wu, 2013). The court ordered Li Yang to pay Kim Lee 50,000 yuan for mental anguish, alimony for their daughters until they turn 18, plus 12 million yuan as compensation⁵³.

The ADVL of 2016 is made up of 38 articles and divided into six sections: general provisions 总则 *zǒngzé*, prevention of domestic violence 家庭暴力的预防 *jiāting bàoli de yùfáng*, handling of domestic violence 家庭暴力的处置 *jiāting bàoli de chǔzhì*,

⁵¹ Courts in China are divided into four types: Basic People's Court (基层人民法院 *jīcéng rénmin fǎyuàn*), Intermediate People's Court (中级人民法院 *zhōngjí rénmin fǎyuàn*), High People's Court (高级人民法院 *gāojí rénmin fǎyuàn*) and Supreme People's Court (最高人民法院 *zuì gāo rénmin fǎyuàn*)

⁵² Cfr. https://www.bbc.com/zhongwen/simp/china/2014/06/140624_china_domestic_violence

⁵³ Cfr. <https://www.bbc.com/news/world-asia-china-21332273>

personal safety protective orders 人身安全保护令 *rénshēn ānquán bǎohù lìng*, legal liabilities 法律责任 *fǎlù zérèn* and supplementary provisions 附则 *fùzé*.

Article 2 of ADVL provides a legal definition of domestic violence as written below:

本法所称家庭暴力，是指家庭成员之间以殴打、捆绑、残害、限制人身自由以及经常性谩骂、恐吓等方式实施的身体、精神等侵害的行为。

For the purpose of this Law, “domestic violence” means the inflicting of physical, psychological or other harm by a family member or another by beating, trussing, injury, restraint and forcible limits on personal freedom, recurring verbal abuse, threats and other means⁵⁴.

Article 3 gives the most important indications in order to prevent domestic violence between family member as well as responsibilities of the whole country, society and Chinese families:

家庭成员之间应当互相帮助，互相关爱，和睦相处，履行家庭义务。反家庭暴力是国家，社会和每个家庭的共同责任。国家禁止任何形式的家庭暴力。

Family members shall assist each other, love each other, live in harmony, and fulfill family obligations. Anti-domestic violence is the common responsibility of the State, society and each family. The State prohibits any form of domestic violence⁵⁵.

Finally, years of battles resulted in a strong stance by Chinese society, having the chance to count on the ADVL in order to address domestic violence. Chen says, these extremely encouraging outcomes are “the result of a decade-long campaign driven by the country civil society groups” (Chen, 2016).

Nevertheless, although “the law is groundbreaking for addressing what has long been deemed a private matter in China” (Chen, 2016), it is certainly missing something, as the definition itself contained in article 2 neither addresses sexual abuse or economic control nor regulates marital rape or sexual harassment. Therefore, the law might not achieve the desired results in efficiently protecting victims.

⁵⁴ (Anti-Domestic Violence Law of PRC, 2016)

⁵⁵ Supra note 54

Further details on how the ADVL works in practice and its limitations will be provided in the next paragraphs, giving an idea on how ancient traditions are still affecting the decisions of authorities and courts in China and why the ADVL is still in a rudimental state.

2.6.1 Personal Protection Orders 人身安全保护令 *Rénshēn ānquán bǎohùlìng*

Thanks to the ADVL, victims are given the chance to request for a personal protection order 人身安全保护令 *rénshēn ānquán bǎohù lìng*, which is, by definition, a civil court order that can protect them from threats coming from an abuser.

This kind of protection was experimented years ago, when some courts were not able to efficiently handle marriage cases involving domestic violence because the solution was far beyond traditional experience and knowledge (LawInfoChina, 2008; Jue, 2019). Therefore, a Guideline for Trying Marriage Cases Involving Domestic Violence was issued in 2008. For the first time since then, new types of domestic violence including sexual violence, emotional abuse and economic abuse were identified, as well as the creation of the system of personal protection orders (Huang, 2008, Jue, 2019).

Concerning the ADVL, a clear explanation of when the victim is eligible to request a protection order is contained in article 23 and 27 of the fourth section:

第二十三条：当事人因遭受家庭暴力或者面临家庭暴力的现实危险，向人民法院申请人身安全保护令的，人民法院应当受理⁵⁶。

Where a party concerned applies to the People's Court for personal safety protection writ due to suffering domestic violence or facing real danger of domestic violence, the People's Court shall accept the application.

第二十七条：做出人身安全保护令，应当具备下列条件：（一）有明确的被申请人；（二）有具体的请求；（三）有遭受家庭暴力或者面临家庭暴力现实危险的情形。

In order to issue a protection order, the following conditions shall be fulfilled: (1) a definite respondent; (2) a specific request; (3) circumstances of suffering domestic violence or facing real danger of domestic violence⁵⁷.

⁵⁶ Supra note 54, p. 44

⁵⁷ Supra note 54, p. 50

Article 28 establishes a limit of seventy-two hours by which the court may decide to accept or deny a request of personal protection order in normal circumstances, whereas this limit reduces to twenty-four hours in case of urgent circumstances⁵⁸.

As established in article 29, the exploitation of protection orders can inhibit the perpetrator from further committing violence, harassing, stalking, following, getting in contact with the plaintiff and his close relatives⁵⁹.

According to article 30, the validity of a protection order does not exceed six months and it can be extended or revoked before its expiration⁶⁰.

Article 34 contained in the fifth section established that, if the perpetrator of domestic violence does violate the protection order and constitutes a crime, he shall be investigated for criminal responsibility according to law; if it does not constitute a crime, the People's Court shall give reprimand and the abuser may be imposed to pay a fine of less than 1,000 yuan and detention for less than 15 days according to the seriousness of the circumstances⁶¹.

The victim may also request the authorities (e.g., employers, government officials, social workers) to intervene by issuing a written warning 告诫书 *gàojiè shū*. This is granted in case of relatively minor circumstances of domestic violence, thanks to which the abuser will be prohibited to further commit violence:

⁵⁸ 人民法院受理申请后，应当在七十二小时内做出人身安全保护令或者驳回申请；情况紧急的，应当在二十四小时内做出。

After the People's Court accepts the application, it shall make issue a personal safety protection order or reject the application within seventy-two hours; if the situation is urgent, it shall make it within twenty-four hours (Supra note 54, p. 44).

⁵⁹ 人身安全保护令可以包括下列措施：（一）禁止被申请人实施家庭暴力；（二）禁止被申请人骚扰、跟踪、接触申请人及其相关近亲属；（三）责令被申请人迁出申请人住所；（四）保护申请人人身安全的其他措施。

The personal safety protection order may include the following measures: (1) Prohibit the respondent from committing domestic violence; (2) The respondent is prohibited from harassing, stalking, or contacting the applicant and his relatives; (3) Order the respondent to move out of the residence of the applicant; (4) Other measures to protect the personal safety of the applicant (Supra note 54, p. 44).

⁶⁰ 人身安全保护令的有效期不超过六个月，自做出之日起生效。人身安全保护令失效前，人民法院可以根据申请人的申请撤销、变更或者延长。

The validity period of the personal safety protection order shall not exceed six months and shall take effect from the date it is issued. Before the personal safety protection order expires, the People's Court may revoke, modify or extend it based on the applicant's application (Supra note 54, p. 44).

⁶¹ 被申请人违反人身安全保护令，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，人民法院应当给予训诫，可以根据情节轻重处以一千元以下罚款、十五日以下拘留 (Supra note 54, p. 44)。

第十六条：家庭暴力情节较轻，依法不给予治安管理处罚的，由公安机关对加害人给予批评教育或者雏菊告诫书。告诫书应当包括加害人的信息，家庭暴力的事实陈述，禁止加害人实施家庭暴力等内容。

Where the circumstances of domestic violence are lighter and public security administrative sanctions are not given in accordance with law, the public security organs are to give the perpetrator criticism and education or issue a written warning. Written warnings shall include content such as the identity of the perpetrator, a statement of facts on the domestic violence incident, and a prohibition against the perpetrator continuing to commit domestic violence⁶².

2.7 Does the Anti-Domestic Violence Law Really Work so far?

Up to 2021, five years have passed since the first ADVL in China came into force; thus, one might wonder whether the battle against domestic violence have been seeing some positive outcomes. At least theoretically, the ADVL is working in getting justice for the victims; nevertheless, the actual results appear not to be encouraging in any way, as the following distinct elements are hindering a correct implementation of the law.

As Turquet says, and this has also been the case of the Chinese ADVL, “laws existing on paper do not translate into equality and justice” (Turquet, 2011). Once a Chinese court or even a police officer have to take action, what happens frequently is that the Chinese term 法治 *fǎzhì* would be translated more as “rule by law” instead of “rule of law”. The law is not the undisputed leader, it is an instrument of the leader, meaning that a norm which is written is not necessarily followed, but it all depends on how authorities apply the law to the specific case (Santelli, 2021).

The ADVL does cancel all its juridical power and appears to be completely ineffective as, in many circumstances, domestic violence itself is still considered by some Chinese as a family matter. Judicially speaking, although it has been already mentioned in the previous chapter, it’s now essential to reiterate that the concept is strengthened by the idea that “even the wisest police officer cannot settle domestic troubles” 清官难断家务事 *qīngguān nán duàn jiāwùshì*, as well as “the law should not step into the home” 法不入家门 *fǎ búrù jiāmén*. Being these two concepts profoundly rooted into Chinese culture, they generally prove themselves to be stronger than law. Furthermore, Chinese

⁶² Supra note 54, p. 44

women are sometimes extremely reluctant to seek assistance and report violence also because of the concept of patriarchy surviving for many centuries and which is still challenging to completely eradicate for the newest generations.

According to ADVL, domestic violence is merely considered as a civil infraction rather than as a criminal offense (Feldshuh, 2018). Criminal liabilities come in not for domestic violence itself but just in case of other crimes normally regulated by Criminal Law, preceding or following episodes of domestic violence (e.g., intentional injuries or homicide of the victim). However, this does not appear to be pointed out clearly in the ADVL and courts will intervene to further investigate only if the actions of the abuser constitute a crime⁶³. Article 34 explains that, depending on the seriousness of the circumstances, the People's Court shall admonish the abuser with a fine of no more than 1,000 yuan and no more than 15 days of detention⁶⁴. Penalties are just a crumb of what they should be in practice, which certainly do not deter abusers from further committing violence.

The reluctance of some police officers who still consider that domestic violence is a family dispute represents a significant obstacle to the enforcement of the system of personal protection orders. Article 32⁶⁵ of ADVL stipulates that the police shall assist the court in the execution of protection order. In fact, in some cases, police officers are even “slower in responding to calls for help” from victims if they already have been granted a protection order by the court (Li, 2016; Jue, 2019). Among the different reasons of this

⁶³ 第三十三条：加害人实施家庭暴力，构成违反治安管理行为的，依法给予治安管理处罚；构成犯罪的，依法追究刑事责任。

Article 33: If the perpetrator commits domestic violence and constitutes a violation of public security management, he shall be given public security management penalties according to law; if a crime is constituted, criminal responsibility shall be investigated according to law (Supra note 54, p. 44).

⁶⁴ [...] 尚不构成犯罪的，人民法院应当给予训诫，可以根据情节轻重处以一千元以下罚款、十五日以下拘留。

If it does not constitute a crime, the People's Court shall give admonishment, and may impose a fine of not more than 1,000 yuan and detention for not more than 15 days according to the seriousness of the circumstances (Supra note 54, p. 44).

⁶⁵ 人民法院作出人身安全保护令后，应当送达申请人、被申请人、公安机关以及居民委员会、村民委员会等有关组织。人身安全保护令由人民法院执行，公安机关以及居民委员会、村民委员会等应当协助执行。

After the People's Court makes a personal safety protection order, it shall be served on the applicant, the respondent, the public security organs, residents' committees, villagers' committees and other relevant organizations. Personal safety protection orders are executed by the People's Courts, and the public security organs, residents' committees, village committees, shall assist in the execution (Supra note 54, p. 44).

reluctance, some police officers even try to belittle, persuade women to let it go, otherwise the whole family might lose face 丢脸 *diūliǎn* (Santelli, 2021).

Nowadays, during judicial proceedings, the tendency of judges to rely on mediation in order to maintain social harmony and stability is not rare at all. Jue, 2019 shed a light on a contradiction in the response to domestic violence in judicial practices: while it seems that China is working on proactive intervention of public power, “it promotes the use of mediation instead of protecting victims’ safety and rights”. As a result, although clear evidence of violence against the victim, there is an over-reliance on mediation or refuse by courts (Feldshuh, 2018; Jue, 2019), making them more vulnerable than before. The truth is that, it does exist a wrong perception by judicial organs concerning the concept of domestic violence, considered as a mere family dispute. Even article 10 of ADVL itself contains an explicit reference of the term 家庭纠纷 *jiāting jiūfēn*⁶⁶. According to Lu, 2020, in the current judicial practice, mediation is the most used measure for handling cases involving domestic violence, but it should not be utilized as a main criterion: specifically, for minor and fortuitous domestic violence, mediation should be applied, whereas, for medium or high-risk cases, it would not be suitable and a prompt public power intervention must be used to break the cycle of violence (Lu, 2020; Huang, 2020).

Along with the ADVL and the other laws which are struggling to respond to domestic violence and to bring justice into Chinese families, an important mention has also to be made for a Chinese NGO advocating for women’s rights. In 1988, *Wáng Xíngjuān* 王行娟, an expert about women’s issues, together with some voluntary organizations, feminist groups as well as intellectual women defending their cause, established the Maple Women’s Psychological Counseling Center of Beijing 北京红枫妇女心理咨询服务中心 *Běijīng hóngfēng fùnǚ xīnlǐ zīxún fúwù zhōngxīn* (hereinafter, “the Center”), which is still active in 2021. As stated in the official website, everyday more than seven-hundreds volunteers⁶⁷ coming from fields such as research, psychology, education and law “provide community-based quality, professional and multi-

⁶⁶ 人民调解组织应当依法调解家庭纠纷，预防和减少家庭暴力的发生。

People’s mediation organizations shall mediate family disputes in accordance with the law to prevent and reduce the occurrence of domestic violence (Anti-Domestic Violence Law of the PRC, 2016).

⁶⁷ Up to 2016

dimensioned psychological and social supports for women and children fighting for claiming their legitimate rights”⁶⁸ through counseling services. The Center provides the first women’s telephone hotline in China and victims of violence can contact them to receive psychological support and sometimes even to have given legal advice. Nevertheless, in practical terms, the Center may not provide adequate support for getting rid of the abuser, especially if the damage inflicted is not considered to be serious: in his book “La Cina non è una sola”, the Italian journalist Santelli reported that, in 2018, he visited the Center during research on how domestic violence and violence against women has been regulated by Chinese law. The employee working at the Center said: “If the husband turns out to be a threat for society, he will be reported to police. In case of just beating, we suggest the wife to come here for counseling” (Santelli, 2021).

The aforementioned case doesn’t remain isolated: A Lian, a twenty-five years old woman from *Jiāngxī* 江西 province was continuously battered by her husband after their wedding in 2016, even while she was pregnant. After reaching the local Women’s Federation for seeking assistance and support, they said she had to tolerate violence from her husband or “have an abortion and then send relatives to teach him a good lesson” (Zou, 2017). Even worse was when police officers said they had no idea about the existence of written warnings once A Lian inquired for one (Zou, 2017). Eventually, A Lian’s request of protection order, as well as her filing for divorce, were accepted by the court. However, since protection orders are just temporary, A Lian has had to flee from her hometown in order to not risk any other kind of violence by her husband (Zou, 2017).

This is yet to explain that victims of domestic violence in China are still far from getting justice and feeling safe. NGOs like the Center may contribute and play a major role in reducing violence in practice, but appear to be almost futile if adjustments from the perspective of judicial system and training of public security organs are not being implemented.

Lastly, as for people living together without any family connection, article 37 of the ADVL law stipulates that:

⁶⁸ “以专业化心理社会服务，维护妇女儿童合法权益” Cfr. <http://www.maple.org.cn/>

家庭成员以外共同生活的人之间实施的暴力行为，参照本法规定执行⁶⁹。

Violent acts committed by co-residents who are not family members shall be punishable in accordance with the provisions of this Law.

At first glance, the term co-residents would apparently refer to any other individual apart from family members. As a matter of fact, homosexual individuals seem not to be protected under this law as the National People's Congress clarified that "co-residents" does not include gay couples living together (Xie, 2016; Qi et al. 2020), meaning that all the individuals belonging to the LGBT⁷⁰ groups cannot request for a protection order in case of domestic violence (Xie, 2016). Furthermore, article 1041 of the Civil Code stipulates that "A marriage system based on the free choice of partners, on monogamy and on equality between man and woman shall be applied" which, legally speaking, solely refers to two individuals of opposite sex (Qi, Wu, & Wang, 2020). This is not the first example non-heterosexual people are left behind in Chinese society: In 1992, the WHO confirmed that homosexuality is a natural phenomenon for a minority of people and no longer classifies it as a mental disorder. China decriminalized homosexual behavior in 1997 and only removed homosexuals from the list of mental disorders in 2001⁷¹.

2.7.1 Substantive vs Substantial Evidence

In order to obtain justice and allow the courts to invoke ADVL for the issuance of a protection order, plaintiffs must provide sufficient evidence of violence. Just consider the period between 2016 and 2018, in which only 2.25% of the parties involved in domestic violence cases chose to apply for a protection order (Jiang, 2019; Qi, Wu, & Wang, 2020). Victims find themselves in a situation of profound abandonment when they have to provide evidence on their own and must prove they had been harmed by the abuser but nothing else. Sometimes it happened that, although plaintiffs succeeded in providing probative evidence, "the courts likewise rejected the appeals if the judges did not

⁶⁹ (Anti-Domestic Violence Law of the PRC, 2016).

⁷⁰ LGBT is the acronym for lesbian, gay, bisexual and transgender

⁷¹ Cfr. <https://www.sohu.com/a/128209397260616>

recognize the abusive conducts as domestic violence” (Cheng & Wang, 2018). Yet, the concept of rule by law and the tendency of relying on mediation are fundamental in order to understand why such contradictions happen. If on one hand the PRC wanted to tackle domestic violence with ADVL, on the other hand courts and their judges seem to not keeping up (Cheng & Wang, 2018).

In terms of statistics, the first year after the ADVL was enacted, a generous amount of rejections of restraining orders by courts in Shanghai was registered (Qi, Wu, & Wang, 2020): the Public Security Bureau received 5746 reports of domestic violence in the period between 15 November 2016 and 1 March 2017, but the Shanghai District Court eventually issued 41 restraining orders (New-Media-Women, 2017; Qi, Wu, & Wang, 2020). Furthermore, once Chinese police officials are requested to collect evidence, they clearly prove themselves to lack training and eventually not be persuasive in court (Feldshuh, 2018). “If an officer writes “family disturbance” instead of “domestic violence”, it will limit the victim’s access to domestic violence law protections, [...] as paperwork needs to be filled using uniformly identifiable language.” (Feldshuh, 2018).

At this point, a correlation between the ADVL and other laws concerning domestic violence worldwide would be necessary, so as to understand how different judicial systems implement countermeasures. The Chinese *pro bono*⁷² lawyer *Lǚ Xiàoquán* 吕孝权 pointed out that, at an international level, relatively advanced countries made anti-domestic violence laws which efficiently prevented and stopped domestic violence. Generally speaking, when a court issues a protection order, only formal examination of evidence is required, excluding substantive examination (Lu, 2020; Huang, 2020). In China, due to the strict proof system stipulated by the law, even if victimized women expect to use legal means to protect their rights, they are often unable to collect evidence due to their weak position, and the evidence against the infringer is insufficient, so they give up resorting to law to solve the problem (Zhang & Yang, 2020). Hence, the key difference lies in a higher threshold for Chinese courts, which are more cautious for the issuance of a protection order. (Lu, 2020; Huang, 2020). Furthermore, Lu, 2020 additionally stated, protection orders are supposed to be coercive measures with the aim of protecting victims of domestic violence, thus, once the latter provides basic

⁷² A *pro bono* lawyer generally fights for the public interest of people by giving advice and assistance on a voluntary basis.

evidence of having suffered violence, the court shall issue a protection order. Currently, within the PRC judicial practice, certain judges conduct substantive examination of evidence, indicating that their perception concerning domestic violence related provisions has some misunderstandings and even deviations (Lu, 2020; Huang, 2020).

An important solution for easing the process of collection of evidence might be an implementation, inside the ADVL, of the high probability principle 高度盖然性原则 *gāodù gàiránxìng yuánzé*, contained in article 108 of the “Interpretation of the Supreme People’s Court on the application of the Civil Procedure Law of the PRC”⁷³, aiming at appropriately lowering the standard of proofs⁷⁴ (Jiang, 2019). According to this principle, since the courts would follow a lower standard for accepting evidence, the weak part in the family will get more protection as the pressure of providing proofs will be considerably reduced (Jiang, 2019).

According to Mu, 2021, the problem of issuing protection orders is also attributable to a discrepancy between theory and practice as solutions formulated in the former cannot achieve the expected results in the latter, thus failing to provide appropriate protection. In this regard, Criminal Law, given its social deterrence, should take the initiative where protection orders cannot guarantee victim’s safety (Mu, 2021).

In short, the system of protection orders in the PRC reveals different issues, even starting from the prerequisites to obtain a protection order. Chinese Law can strengthen it by taking as an example the experience of other countries, as well as integrating the ADVL with some key provisions and allowing Criminal Law to intervene once the ADVL have to deal with its practical limitations. This will most likely enhance its overall efficacy concerning domestic violence prevention.

⁷³ 最高人民法院关于适用《中华人民共和国民事诉讼法》的解释 *zuìgāo rénmin fǎyuàn guānyú shìyòng zhōnghuá rénmin gònghéguó mínshì sùsòngfǎ de jiěshì*

⁷⁴ 第一百零八条：对负有举证证明责任的当事人提供的证据，人民法院经审查并结合相关事实，确信待证事实的存在具有高度可能性的，应当认定该事实存在。

For the evidence provided by the party who bears the burden of proof, the People’s Court shall, after reviewing and combining the relevant facts, believe that the existence of the fact to be proved is highly probable, thus it shall determine that the fact exists (Interpretation of the Supreme People’s Court on the application of the Civil Procedure Law of the PRC, 2020).

2.7.2 Consequences of Misjudging Cases of Domestic Violence

On August 3rd, 2017, The Supreme People's Court issued Ten Model Cases for the First Anniversary of Implementing the ADVL⁷⁵ (hereinafter "Ten Model Cases"), aimed at giving essential instructions to judges and courts under a practical perspective, so that courts and judges could follow the example and be prepared for similar cases. Each situation was characterized by requests for protection orders due to abusers' misbehavior (maltreatment, violence after consuming alcohol, trivial matters and so on). However, there is a case which is worth of particular attention:

The case in question involved the wife *Lǐ Mǒu* 李某 as the applicant of protection order and the husband *Sòng Mǒu* 宋某 as defendant. They got married in November 2011; in 2015, Song began to have violent behaviors such as bundling, beating and verbal abuse against Li. On March 15, 2016, after Li was beaten for three consecutive days, she was forced to commit suicide by jumping from her house, but Song caught her on time and continued to beat until Li could not bear it anymore. Afterwards, her husband called the emergency number and Li was sent to the hospital, where Song continued to harass her in many occasions, insulting doctors, patients and Li's family members. On September 28, 2016, Li filed an application with the People's Court of Liaoning Province, prohibiting Song from committing domestic violence as well as harassing and stalking Li and her close relatives. The People's Court, based on Li's statement, public security agency records as well as other evidence, determined that Li was facing domestic violence and, in accordance with the provisions of the ADVL, Song was prohibited from committing domestic violence to Li and her close relatives.

According to what has been stated in the case significance, the court intervened in a timely and appropriate manner, demonstrated the authority of the law and efficiently protected Li's rights and interests by granting a protection order. In spite of that, Song's violence against Li was persistent (lasted for, apparently, one year) and almost compelled her to commit suicide, thus the court's decision should have been much more severe. Aside from the fact that Song was this close to causing Li's suicide, in any case he most

⁷⁵ 最高人民法院发布反家庭暴力法一周年十大典型案例 *zuìgāo rénmin fǎyuàn fābù fǎn jiātíng bàolìfǎ yì zhōunián shí dà diànxíng ànlì*.

probably committed crime of intentional injuries⁷⁶. That's why, in this particular case, a perpetrator like Song should have been convicted and not merely receive a prohibition to not further commit violence. Concerning Li and Song's case, Zhang & Yang, 2020 explained that, since Criminal Law does not include special provisions for domestic violence, the perpetrator's acts will be regarded as crimes of abuse. However, the law stipulated that crime of abuse is a private prosecution case, which means that, unless the victim is not seriously injured or killed, judicial organs will not intervene in accordance with the principle of no trial without complaint⁷⁷ (Zhang & Yang, 2020).

Misjudging cases of domestic violence may lead to negative outcomes for victims, representing a double-edged weapon as they would never get rid of their abusers.

2.8 Analysis on How to Make the ADVL Effective

Although the elements discussed in the previous chapter make it hard for Chinese victims to knowingly tackle domestic violence, precautions and adjustments in the judicial system, as well as professional trainings for legal professionals might be carried on in order to address the phenomenon in an effective way.

Firstly, since the enactment of ADVL in 2016, the number of protection orders issued annually in the PRC has been seeing a considerable increase: according to the All-China Women Federation, up to 2019, the courts nearly issued 5749 protection orders (Wang & Tian, 2020; Chen Y. , 2020). It is thus clear that such implementation is playing a remarkable role in preventing domestic violence, especially when one ponders about the idea that 5749 victims could have suffered further violence without taking advantage of protection orders. Nevertheless, one of the most critical issues when requesting one is the collection of evidence.

⁷⁶第二三十四条：故意伤害他人身体的，处三年以下有期徒刑拘役或者管制。Article 234: Whoever intentionally injures the body of another person shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or surveillance (Criminal Law of the PRC, 2020).

“直至李某坚持不住，宋某才将李某送往医院救治”。”Song took Li to the hospital only after she could not bear it anymore” (Ten Model Cases for the First Anniversary of Implementing the ADVL, 2017);

⁷⁷ According to the principle of no trial without complaint, the People's Court cannot actively hear and judge a case without a public or private prosecution. Further insights will be provided later on.

As mentioned early, though ADVL is granting a protection order, the probability it is rejected by courts is quite high: Shen et al., 2019 pointed out that, in 2018, within one hundred cases of domestic violence involving protection order requests, 81% was correctly issued and 19% was rejected. Among the rejections by courts, 47.4%, was due to the lack of evidence provided by plaintiffs, who merely described they were battered by the abuser or that they had been facing danger of domestic violence⁷⁸; in 5.2% of rejected cases, abusers admitted their mistakes and apologized; as a result, the courts determined domestic violence not to exist anymore. On the opposite, 12.3% of abusers acknowledged domestic violence, allowing the courts to grant protection orders for the victims (Shen et al., 2019). Thus, lack of evidence would inevitably reduce the authority of courts in determining domestic violence causing futile rejections and making victims even more weak.

Shen, Wang & Chen, 2019 also explain that, the first thing Chinese victims think about when they feel in danger, is calling the police. However, the courts would not determine domestic violence just with the help of police registers. Accordingly, once victims call for assistance, the policemen should immediately reach the spot and collect as much evidence as possible, take note of the specific circumstances and so on. Moreover, and this is one of the most crucial points, police officers should, in the first place, inform victims about the importance of collecting and keeping evidence of violence: sufferers should report to the police in time, go to the hospital for treatment and obtain medical diagnosis. Materials such as videos, chat records and vocal recordings regarding threats and intimidations by the perpetrator are likewise considered of vital importance (Chen, 2020).

The collection of evidence in China is a tough work, both from the perspective of plaintiffs, who are required to be sharp during the whole process, and police officers, who need to receive professional trainings regarding the protection of victims and prevention of domestic violence. Insights such as the ones given above are required for enhancing this process.

⁷⁸ Article 23 and 27 clearly state that the court shall grant a protection order if the victim suffered domestic violence or is facing real danger of domestic violence (see p. 45).

One provision included in the Opinion⁷⁹ states that, if victims are unable to report the crime, a substitute (attorney or close relatives) can report⁸⁰. In this context, Chen, 2020 suggests to expand the scope of protection orders to individuals who are not family members or relatives of the victim. Accordingly, subjects like neighbors, guardians and even friends can request protection orders so as to facilitate the process and to guarantee a more efficient application (Chen, 2020).

The fact that a customized law regulating domestic violence only appeared in 2016, together with several failed attempts in giving justice to victims, seem to be consequences of less awareness by legal professionals and legal institutions towards the phenomenon. So, how to comprehensively increase awareness? Jiang, 2019 showed that, in order to improve the level of understanding and enforcement concerning domestic violence, there is need to steadily carry on anti-domestic violence trainings: police officers, judges, lawyers and related legal subjects need to be aware of gender equality, but at the same time to seriously consider the actual role of the weakest subjects within society and the household (especially women).

Hence, when adjudicating cases, they should not put formal gender quality before substantial gender quality; on the contrary, they should give priority to fairness and protect the legitimate rights and interests of the parties (Jiang, 2019).

⁷⁹ See p. 35

⁸⁰ 对于家庭暴力犯罪自诉案件，被害人无法告诉或者不能亲自告诉的，其法定代理人、近亲属可以告诉或者代为告诉；被害人是无行为能力人、限制行为能力人，其法定代理人、近亲属没有告诉或者代为告诉的，人民检察院可以告诉。

For private prosecution cases of domestic violence crimes, if the victim is unable to tell or cannot tell in person, his legal representative or close relative can inform or do so on his behalf; if the victim is an incapacitated person or a person with restricted capacity, and his legal representative or close relative did not inform, the People's Procuratorate can do so (The Opinion on legally handling domestic violence crimes, 2015).

2.8.1 Education and Society

The ADVL has specific provisions included in the section “prevention of domestic violence” 家庭暴力的预防 *jiātíng bàoli de yùfáng*, with the aim of spreading knowledge about the phenomenon through school, kindergarten, network, newspapers and so on⁸¹. The children of today are the adults of tomorrow; thus, it is essential to teach them how to distinguish right from wrong. Article twelve of the ADVL precisely explains the obligations for those who are supposed to take care of children, explicitly prohibiting domestic violence⁸².

Raising awareness in citizens by promoting a concept of harmonious family without any form of domestic violence might as well be indispensable as more and more people would have the possibility to inquire about their rights when finding themselves in danger. However, an important complication arises: Santelli, 2021 believes that, what is missing in the first place is an adequate understanding of the existence of domestic violence crimes, especially in rural China. People in urban areas can easily have access to sources, so that a woman from Shanghai is aware that she has been suffering from domestic violence by her husband and that she has the possibility to resort to law in order to obtain justice. By contrast, a woman from Guizhou⁸³ is not likely to be aware of her rights as a citizen, let alone the ones as a victim of domestic violence. Even the promulgation of the new Civil Code is not sufficient enough. The real issue is the lack of a public debate, a voice which can spread to the whole nation, functioning as a process of education of society (Santelli, 2021). Hence, a real perception by victims of experiencing

⁸¹ 第六条：国家开展家庭美德宣传教育，普及反家庭暴力知识，增强公民反家庭暴力意识。工会、共产主义青年团、妇女联合会、残疾人联合会应当在各自工作范围内，组织开展家庭美德和反家庭暴力宣传教育。广播、电视、报刊、网络等应当开展家庭美德和反家庭暴力宣传。学校、幼儿园应当开展家庭美德和反家庭暴力教育。

Article 6: The state develops publicity and education on family virtues, popularizes anti-domestic violence knowledge, and enhances citizens' awareness of anti-domestic violence. Trade unions, communist youth leagues, women's federations, and disabled persons' federations shall organize and carry out publicity and education on family virtues and anti-domestic violence within their respective scope of work. Radio, television, newspapers, and the Internet should carry out propaganda on family virtues and anti-domestic violence. Schools and kindergartens should carry out education on family virtues and anti-domestic violence (Anti-Domestic Violence Law of the PRC, 2016).

⁸² 第十二条：未成年人的监护人应当以文明的方式进行家庭教育，依法履行监护和教育职责，不得实施家庭暴力。

Article 12: Guardians of minors should conduct family education in a civilized manner, perform guardianship and education duties in accordance with the law and must not commit domestic violence (Anti-Domestic Violence Law of the PRC, 2016).

⁸³ Guizhou is located in the southwest and it is one of the poorest provinces of China.

domestic violence is missing. Therefore, in connection with what has been discussed previously, a propaganda of anti-domestic violence spreading all over the nation might represent a good starting point as some people, especially those living in poor rural areas, cannot access to sources and inquire about news related to domestic violence. A great propaganda, not just made of mere slogans but disseminated through many channels, is helpful in order to form a sort of anti-domestic violence culture (Chen, 2020).

Finally, as previously discussed in chapter 2⁸⁴, although the efforts of the Communist Party in promoting a few programs aimed at achieving gender equality, China is still lacking into this issue. As it can be easily deduced, gender inequality contributes to the ongoing domestic violence in a significant way. In today's society, the idea of equality is deeply rooted into people; however, equality only remains at a level of awareness and principled regulations, lacking of substantive rules, so that, when the Criminal Law was drafted, it couldn't fully consider gender factors, leaving women to a disadvantaged state (Zhang & Yang, 2020). Assuming that clichés about women within society can also be found in the Western countries, in China the terms 二奶 and 小三 (as well as other derogatory terms)⁸⁵ (Zhang & Yang, 2020), which can be translated as "mistress", have further contributed to reinforce this misperception. Therefore, in order to change this concept, it's necessary to begin from personality rights of women. The Supreme People's Court and the Supreme People's Procuratorate shall issue guiding cases or promulgate corresponding judicial interpretations to promote the convergence of the relevant provisions of Criminal Law and personality rights of Civil Code (Zhang & Yang, 2020).

⁸⁴ See p. 27, para. No. 2.1.

⁸⁵ In Chinese language there are several bad words whose characters are formed by a woman 女 (婬 *biǎo*, 姘 *pīn*, 嫖 *piáo*, 娼 *chāng*, "prostitute"; 奸 *jiān*, "rape"; 奴 *nú*, "slave"; 妖 *yāo*, "demon").

Chapter III: Criminal Cases of Domestic Violence in the PRC

“我曾经认为那个男人是这个世界上我最爱的人。
他多次举枪对着我的头，猥亵说要杀掉我”⁸⁶。

Leslie Morgan Steiner

Introduction

To date, acts of domestic violence in the PRC do not constitute a crime, meaning that Criminal Law cannot actively intervene unless the perpetrator attempts to seriously harm the victim's safety. Nevertheless, based both on the comparison among different scholars and personal thinking, in the first part of this last chapter some of the possible measures to be implemented in order to make significant improvements in the field of justice are here presented, so as to ponder on an eventual criminalization of domestic violence.

Since having an idea on the occurrence of domestic violence crimes, both from the perspective of perpetrators and victims, is necessary in order to explain the overall impact on Chinese society, some statistics involving crimes of intentional injuries and intentional homicide will be introduced according to some research. As the same statistics show, often related to domestic violence crimes is the use of legitimate defense by victims: a forced, natural countermeasure which sometimes aims at saving their own life. Unfortunately, as a result of legitimate defense, especially for serious injuries and intentional homicide, victims will be held criminally responsible if the reasons why they acted in that way are not enough exhaustive to persuade the courts.

Model cases involving domestic violence crimes actively contribute in the improvement of decisions by courts and judges while handling such situations. Moreover, victims have to be assisted by public security organs in investigating the specific circumstances of each case, in order to facilitate the final judgement with equitable decisions. Therefore, model cases concerning domestic violence crimes, issued by the

⁸⁶ “I thought that man to be the person I would have loved the most in this world. He took the gun and beat me for several times, harassed me saying he would have killed me.”

Supreme People's Court and the Supreme People's Procuratorate, are here analyzed in order to shed a light on the importance of key duties to be carried out both by courts and procuratorial organs.

Finally, a case study of intentional injuries, judged by combining the ADVL and Criminal Law provisions, will be discussed thoroughly, representing a good, practical example and, perhaps, the beginning of a real process of domestic violence criminalization in the PRC.

3.1 Criminalizing Domestic Violence: A Possible Turning Point

Despite some provisions of the ADVL mention criminal liabilities in case of committing a crime, procedures by which criminal law can intervene are not quite clear as domestic violence in China generally does not constitute a crime, except in case of more serious circumstances 情节恶劣 *qíngjié èliè*. On the contrary, unless serious injuries are caused, the court will follow the principle of no trial without complaint 不告不理原则 *bùgào bùlǐ yuánzé*. Following this principle, the People's Court cannot actively hear and judge a case without a public or private prosecution. Specifically, while hearing a case, it cannot go beyond the range of the defendant charged in the indictment, shall not proactively try the uncharged person and shall not investigate the facts of the case that are not stated in the indictment (Qiu, 2009).

Generally, when suffering domestic violence, women (as well as other vulnerable victims) have to report, collect evidence on their own and are unable to foresee the consequences of reporting (Zhang & Yang, 2020). These aspects inevitably lead them to renounce to criminal law for protecting their rights, causing the latter to be merely considered as a “ornament” of the Chinese judicial system. Hence, it would be essential to have special rules, different from the general ones, regulating aspects such as the collection of evidence, legal liabilities and the proceeding itself in order to efficiently protect the victims' rights (Zhang & Yang, 2020).

Mu, 2021 stated that the hard implementation of Criminal Law is also due to the abuser's behavior when committing domestic violence. When trying to exercise control by frightening and maltreating the victim, he often follows a determined strategy. Indeed, unless the abuser's actions cause significant injuries and occur systematically, the Criminal Law cannot intervene. This so called “mild domestic violence” is understood as a temporary loss of control and it is difficult to determine the real intentions of the abuser, but even in cases domestic violence occurs systematically, determining domestic violence is a tough work as well. Just because of this reason, the judicial practice has decided to tackle domestic violence in a moderate way. In handling cases, it's not rare to see that, after the woman victim of mild violence calls the police, the latter cannot take substantial countermeasures also because, being the household a private place, it is often arduous to understand the control that the abuser has towards the victim (Mu, 2021).

As previously analyzed in paragraph 2.5, murder, injury, harassment, maltreatment and abandonment are crimes regulated within the Chinese Criminal Law. In this context, an important contradiction arises: if the meanings of injury and abuse (虐待 *nüè* “cruel, brutal”, and 待 *dài* “to treat”) are necessarily intrinsic to the definition of domestic violence as established by the ADVL itself, then the infringement of its provisions should as well constitute a crime⁸⁷. Similarly, an express reference to the domestic violence within Criminal Code is missing. Therefore, the real step forward for the ADVL, which hasn’t been revised since its first enactment in 2016, could be including the terms contained in the Criminal Code itself. By including the terms “maltreatment”, “injury”, “murder”, “abandonment”, the ADVL would be more transparent and less subject to misunderstandings. After all, even globally, it is not rare to see final verdicts proving to be unfair due to a misinterpretation by judges and courts. However, this measure would inevitably lead to a criminalization of domestic violence, a tricky process even for the Chinese law itself, whose approach towards what “harming” a family member or a cohabitant means is made difficult by factors discussed previously. It would take time, but a few cases to be presented in the next paragraphs suggest this process has, perhaps, already begun.

3.2 Data on the Occurrence of Domestic Violence Crimes

In order to give a clear idea on the incidence of domestic violence crimes, some statistical research in this field will be thoroughly discussed, both from a qualitative and quantitative perspective. Moreover, as domestic violence against women takes place most frequently, the data below will be examined in this regard.

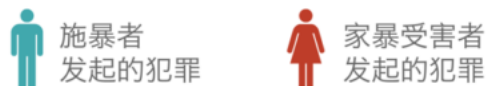
According to the public data of China Judgement Online⁸⁸ among 192 episodes of domestic violence handled by the courts between 2016 and 2017, 107 were classified as criminal cases and 85, in the same context, in which victims committed crimes due to

⁸⁷ For the purpose of this Law, “domestic violence” means the inflicting of physical, psychological or other harm by a family member or another by beating, trussing, injury, restraint and forcible limits on personal freedom, recurring verbal abuse, threats and other means (Anti-Domestic Violence Law of the PRC, 2016).

⁸⁸ 中国裁判文书网 *zhōngguó cáipàn wénshū wǎng*.

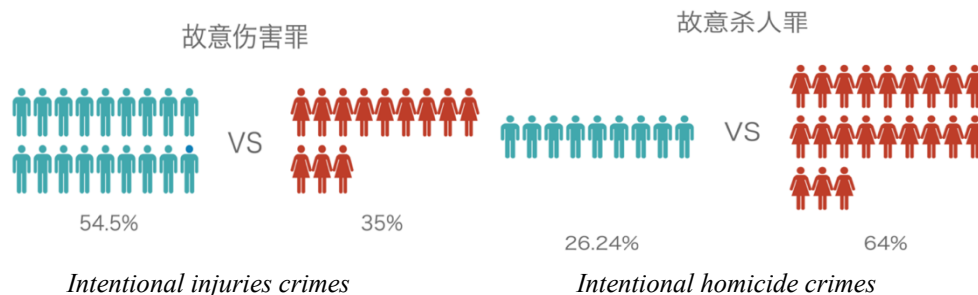
intolerable violent behaviors (Mo & Lai, 2017). Yet, among the criminal cases committed by the perpetrator, intentional injuries turned out to be the most common crime with an impact of 54.5%, followed by 26.2% of intentional homicide. Conversely, in the context where victims committed crimes due to intolerable violence, intentional injuries and intentional homicide accounted for 99% of all charges. This is clearly indicating that, when victims of domestic violence initiate resistance, they often resort to more radical and fierce measures, hoping to liberate themselves by killing the perpetrator (Mo & Lai, 2017).

家暴类犯罪常见罪名



*Common Charges of Domestic Violence Crimes:
Crimes Committed by Perpetrator (left) and Crimes Committed by Victim (right)*

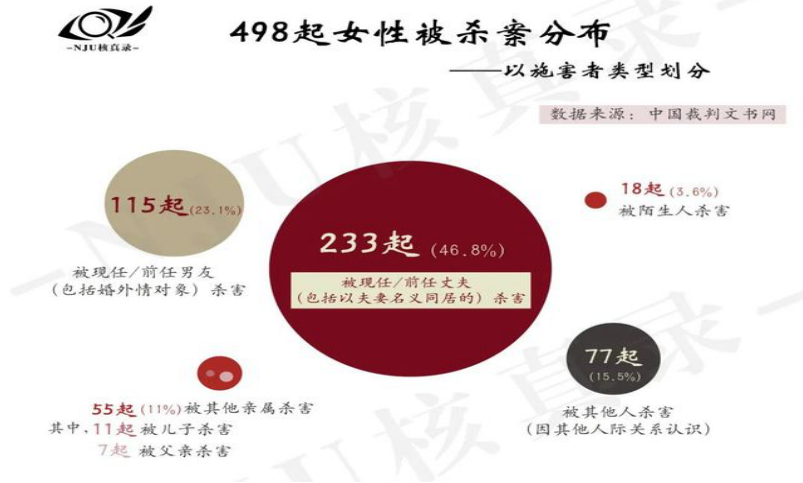
(Source: 理脉 Legal Miner, 2017)



(Source: 理脉 Legal Miner, 2017)

As for domestic violence crimes involving intentional homicide, the Chinese reporter *Hé Zhēnlù* 核真录 conducted an analysis based on the public data of China Judgement Online. According to his research, He Zhenlu analyzed the 10% of cases every year from 2016 to 2020, with a total of 2083 cases collected. Excluding 573 cases whose circumstances did not allow to publish (cases closed by mediation, involving State secrets situations that the People’s Court considered inappropriate and so on), 1510 were considered valid cases. The reporter found that the cases involving women as victim were 498, accounting for 33% of the total. Of these 498 cases, 233 women (46.8%) were

murdered by the husband or ex-husband, 115 (23.1%) were murdered by the boyfriend or ex-boyfriend, 55 (11%) were murdered by other relatives (11 of them were sons and 7 were fathers), 77 (15.5%) were victims of other people recognized by other relationships and 18 (3.6%) were murdered by strangers (Wang & Ni, 2020).



Analysis on Domestic Violence Crimes Involving Intentional Homicide: Data of 2016-2020
(Source: 核真录)

Among the main reasons triggering domestic violence crimes, trivial matters 家庭琐事 *jiā tíng suǒ shì* are the most frequent ones, followed by the excess of alcohol 酗酒 *xù jiǔ*, suspect of being betrayed by the partner/spouse 怀疑对方出轨 *huái yí duì fāng chū fāng* and divorce 离婚 *lí hūn*:

家暴常见原因出现次数



Occurrence of domestic violence based on the most common reasons
(Source: 理脉 Legal Miner, 2017)

In addition, the Chinese reporter quantified sentencing both of perpetrators and victims within Intimate Partner Violence 亲密伴侣暴力 *qīnmì bànlǚ bàoli*. Specifically, among 348 cases in this respect, only one perpetrator was exempted from criminal responsibility, because he confessed the facts of the crime after committing violence and was forgiven by the victim himself. 97 perpetrators (27.9%) were given a two-year reprieve⁸⁹, 75 (21.6%) were sentenced to life imprisonment and 72 (20.7%) were sentenced to less than five years of imprisonment; death sentence was given to 23 people (6.6%), 45 people (12.9%) were sentenced to 5-10 years imprisonment and other 45 people (12.9%) were given 10-15 years imprisonment (Wang & Ni, 2020).

In case of boyfriend (including current and ex-boyfriend) as the perpetrator and woman as victim, 32.2% of the former was sentenced to two-year reprieve and 11.3% of the latter was sentenced to death sentence. On the contrary, the percentage for husband (including current and ex-husband) was 25.8% and 4.3% (Wang & Ni, 2020):



Source: 核真录, *Sentences for Intimate Partner Violence Crimes* (Data of 2016-2020)

These data showed occurrence of domestic violence crimes starting from the period ADVL was enacted (2016). Astonishingly, when the perpetrator did not cause significant harms or the medically diagnosed injuries were not serious, the ratio of

⁸⁹ A two-year reprieve 死刑缓期执行 *sǐxíng huǎnqī zhíxíng* is a common commuted death sentence in the PRC, with forced labor and judicial review after two years.

perpetrators being prosecuted and sentenced was not high. In other words, although several partners have suffered mental and physical shocks within the household, common injuries on the skin surface are not considered enough in order to justify the imprisonment of perpetrators (Mo & Lai, 2017). Moreover, since details of the single cases collected are not clear, it's hard to understand whether the sentencing, both of perpetrators and victims, can be considered fair and consistent with the provisions of ADVL and Criminal Law. Certainly, over-reliance on substantive evidence, causing victims' safety to hang in the balance, is one of the main issues which needs to be urgently addressed.

3.3 Legitimate Defense

When suffering domestic violence, victims may, doorway in a blind rage or just to save themselves from dying due to the abuser, resort to physical self-defense.

Chinese Criminal Law regulates legitimate self-defense within article 20 of general provisions, speaking about its admissible use in case of unlawful infringement by an offender, as long as it does not exceed the limit. If that is the case, the victim will not bear criminal responsibilities⁹⁰. Conversely, if legitimate defense exceeds the limit, thus inflicting a damage which is not necessary, the victim will bear criminal responsibilities, yet the punishment shall be mitigated or exempted depending on its seriousness⁹¹. Furthermore, in case legitimate defense, in the form of homicide, is used within the limit in order to stop violent behaviors causing extremely serious consequences such as

⁹⁰ 为了使国家、公共利益、本人或者他人的人身、财产和其他权利免受正在进行的不法侵害，而采取的制止不法侵害的行为，对不法侵害人造成损害的，属于正当防卫，不负刑事责任。Acts taken to stop the illegal infringement in order to protect the country, public interest, personal, property and other rights of oneself or others from ongoing illegal infringements that cause damage to the illegal infringers are considered legitimate defense and shall not be held criminally responsible. (Criminal Law of the PRC, 2020).

⁹¹ 正当防卫明显超过必要限度造成重大损害的，应当负刑事责任，但是应当减轻或者免除处罚。

If legitimate defense has caused significant damage clearly beyond the necessary limit, criminal responsibility shall be borne, but the punishment shall be mitigated or exempted. (Criminal Law of the PRC, 2020).

homicide, rape and kidnapping, no criminal responsibility shall be held⁹². This provision plays a considerable role as it encourages women to make use of legitimate defense when their safety is threatened, this way reducing apprehension and safeguarding their rights and interests to the utmost (Zhang & Yang, 2020).

Although the ADVL does not contain any reference to legitimate defense, the Opinion issued by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice of the PRC⁹³ clarified this point: provision 19 provides guidelines for accurately determining legitimate defense against domestic violence, that is, as long as it is conform to the conditions of Criminal Law provisions, it shall be regarded as such⁹⁴. In addition, considering the concept of "exceeding the limit" inside Criminal law to be easily misunderstandable, the Opinion provided a clarification for this issue as well. Specifically, the necessity of stopping domestic violence, thus allowing the victim to avoid suffering from unlawful infringements, should be considered the standard in order to determine whether the limit has been exceeded⁹⁵. An overall judgement shall be carried on according to diverse reasons, such as the seriousness of domestic violence acts, the cruelty of methods used, the degree of damage inflicted to the perpetrator and so on⁹⁶.

⁹² 对正在进行行凶、杀人、抢劫、强奸、绑架以及其他严重危及人身安全的暴力犯罪，采取防卫行为，造成不法侵害人伤亡的，不属于防卫过当，不负刑事责任。 Taking defensive actions against ongoing assaults, murders, robberies, rapes, kidnappings, and other violent crimes that seriously endanger personal safety, causing unlawful infringements on human casualties without exceeding the limit is not considered excessive defense and shall not be held criminally responsible (Criminal Law of the PRC, 2020).

⁹³ Opinion on Handling Criminal Cases of Domestic Violence. See p. 38, para. 2.2

⁹⁴ 为了使本人或者他人的人身权利免受不法侵害，对正在进行的家庭暴力采取制止行为，只要符合刑法规定的条件，就应当依法认定为正当防卫，不负刑事责任。

In order to prevent the personal rights of oneself or others from unlawful infringements, actions taken to stop ongoing domestic violence, as long as the conditions stipulated in the criminal law are met, should be recognized as legitimate defense in accordance with the law and not liable for criminal responsibility (Opinion on Handling Criminal Cases of Domestic Violence, 2015).

⁹⁵ Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, Ministry of Justice, 2015.

⁹⁶ 认定防卫行为是否“明显超过必要限度”，应当以足以制止并使防卫人免受家庭暴力不法侵害的需要为标准，根据施暴人正在实施家庭暴力的严重程度、手段的残忍程度，防卫人所处的环境、面临的危险程度、采取的制止暴力的手段、造成施暴人重大损害的程度，以及既往家庭暴力的严重程度等进行综合判断。

Determining whether the defensive behavior "clearly exceeds the necessary limit", should be based on the necessity to stop and protect the defender from the illegal infringement of domestic violence. An overall judgement should be carried on according to the seriousness of the domestic violence being committed by the perpetrator, the cruelty of the method, the environment in which the defender lives, the degree of danger faced, the methods used for stopping violence, the degree of serious damage caused by the perpetrator as well as the seriousness of previous domestic violence episodes (Criminal Law of the PRC, 2020).

Even if the use of legitimate defense is permitted for personal protection, it is hard for victims to not exceed the limit, especially if they have been suffering mild domestic violence for a long time. While physical injuries in such situations are likely to disappear after a period of time, this kind of violence might also cause victims to suffer psychological injuries for a long time. At this point, they might act irrationally due to the deep hatred, disgust, anger and disappointment towards the person who was supposed to be a role model (in the case of a husband or a boyfriend), a person to rely on within the family (e.g., a brother) or a figure who could offer protection (e.g., a father or a mother). However, courts and judges could hardly go in favor of victims if their reactions are considered disproportionate.

In the next paragraphs, legitimate defense will represent a necessary countermeasure as a few key model cases to be analyzed involved intentional homicide as an extreme reaction by victims.

3.4 Model Cases Involving Crimes of Domestic Violence

Over the years, the Supreme People's Court issued different model cases. Just like the Ten Model Cases and the Opinion, these model cases attempted to provide some guidelines for courts and judges around China for efficiently managing domestic violence crimes in a practical way, including the basic facts of violence 基本案情 *jīběn ànqíng*, the result of judgement 裁判结果 *cáipàn jiéguǒ* and the significance of case 典型意义 *diǎnxíng yìyì*.

The following cases, dated respectively 2015 and 2021, are primarily related to crimes such as intentional injuries, intention homicide, maltreatment. A thorough analysis, together with insights regarding every single case, will be fundamental for this thesis as they can clarify how the courts resorted to different laws and procedures in order to judge perpetrators before and after the ADVL.

3.4.1 Model Cases Published by the Supreme People's Court

In 2015, one year before the enactment of the ADVL, the Supreme People's Court published a document, belonging to the judicial interpretation, which contained a few model cases concerning domestic violence crimes⁹⁷. The crimes presented were five in total, related to different crimes such as intentional injuries, intentional homicide and maltreatment. Two cases (third and fifth) are analyzed as below:

The third case involved *Cháng Lěi* 常磊, who intentionally injured his father *Cháng Xīnchūn* 常新春 to death. Xinchun had a bad temper after drinking, often insulting and beating his family members. On August 29th 2012, after getting drunk again, he abused his wife *Zhèng Líng* 郑玲 for trivial matters. Xinchun continued to insult her and beat his son as well, threatening to kill the whole family and got a knife from the kitchen. In righteous indignation, Lei used the knife kitchen to chop Xinchun's head, neck and shoulders and then sent him to the hospital. The next day, Lei went to the public security organ to surrender. That night, Xinchun died of hemorrhagic shock. The People's Court of Chongqing held that the act of intentionally injuring Xinchun with a knife had constituted the crime of intentional injury. However, some reasons explained why the punishment was reduced: firstly, his acts were considered to be defensive; secondly, Lei himself took the initiative to report the fact to police, sent his father to the hospital and his mother expressed her understanding; lastly, it was not the first time that the victim Xinchun committed domestic violence to family members. Lei was given a reduced punishment of three years imprisonment and a suspended sentence of five years. The significance of this case lies in the defense of Lei which was justified by the ongoing violence of Xinchun. Indeed, considering that the latter frequently got drunk and committed violence, the possibility of more serious consequences could not be excluded, even if he didn't cause injuries before his son's reaction. Lei's acts were considered inappropriate but, considering the elements clarified above, plus the demanding by Xinchun's relatives and neighbors for a lighter punishment, the final punishment was considered completely appropriate.

⁹⁷ 最高法发布涉家庭暴力犯罪典型案例 *zuìgāofǎ fābù shè jiātíng bàolì fānzui diǎnxíng ànlì*, 2015.

The fifth case took place in 2012. The defendant *Dèng Mǒu* 邓某⁹⁸, a woman who became pregnant when she was unmarried, left home to live with relatives and friends. One morning, when Deng was in an Internet cafe, she suddenly felt abdominal pain and gave birth to a baby girl in the toilet. Fearing to be discovered, Deng stuffed a bundle of tissues into the baby's mouth, dumped her in the trash can, then moved it to the window sill outside the toilet so that she was difficult to be found. This caused the baby to die from asphyxiation. After trial, the Intermediate People's Court of *Nánjīng* 南京 held that Deng's deliberate and illegal deprivation of other's lives constituted the crime of intentional homicide. At the time she committed the crime, Deng was under the age of eighteen, admitted her guilt and showed repentance, thus she was given a lighter punishment according to law. In accordance with the relevant provisions of the Criminal Law, the defendant was sentenced to three years in prison for intentional homicide. The judgement immediately become legally effective as there was no appeal by the defendant. The Supreme People's Court explained that Deng did not dare to let her family know about her pregnancy while unmarried. She did not want to the duty of support for the baby and acted in that way. Deng actively pursued the death of the newborn, thus her behavior constituted intentional homicide.

3.4.2 Notice by the Supreme People's Procuratorate

On April 28th, 2021, the Supreme People's Procuratorate 最高人民检察院 *zuìgāo rénmin jiǎncháyuàn*⁹⁹ published a notice containing six model cases of domestic violence crimes¹⁰⁰ (hereinafter, "the Notice"). The beginning included the main goal of the document, drawing attention to the importance of fighting against violence through a correct application of law, as follows:

⁹⁸ *Mǒu* is a character frequently used in Chinese when the name of person concerned is not made public for privacy reasons.

⁹⁹ The Supreme People's Procuratorate is China's highest procuratorial organ. Its function mainly include: formulating interpretations, policies and guidelines; acting as public prosecutor in criminal cases; reviewing cases investigated by the public security agencies and deciding whether a suspect should be arrested, and whether a case should be prosecuted (Reuters, 2021).

¹⁰⁰ Notice by the Supreme People's Procuratorate of issuing model cases of legally punishing domestic violence crimes 最高人民检察院关于印发依法惩治家庭暴力犯罪典型案例的通知 *zuìgāo rénmin jiǎncháyuàn guānyú yìnfā yīfǎ chéngzhì jiātíng bàoli fànzui diǎnxíng ànlì de tōngzhī*.

各级人民检察院:

为进一步引导检察机关依法妥善办理家庭暴力犯罪案件, 推动开展反家庭暴力宣传教育, 促进建立平等、和睦、文明的家庭关系, 维护社会和谐稳定, 现将张某某虐待案等六件依法惩治家庭暴力犯罪典型案例印发你们, 供办案时参考借鉴。

People's Procuratorates at all levels:

In order to further guide the procuratorial organs to properly handle domestic violence criminal cases in accordance with the law, promote the development of anti-domestic violence publicity and education, promote the establishment of an equal, harmonious and civilized family relationship, and maintain social harmony and stability, Zhang's¹⁰¹ abuse as well as six typical cases are now issued to you for reference when handling cases in accordance with the law¹⁰².

Compared to the previous model cases, the following ones also contained a paragraph called “performance of procuratorial organs” 检察机关履职情况 *jiǎnchá jīguān lǚzhí qíngkuàng*, showing how they acted in order to efficiently handle each case. Considering the similarity that exists among some of the cases, only two of them (second and fourth) will be discussed below.

The defendant of the second case is the girl *Hú Mǎumǎu* 胡某某, who caused the death of her six years old daughter *Cāo Mǎumǎu* 曹某某. When the little girl was alive, she mainly lived with her grandparents, but later moved to live with her mother because of school necessities. Hu frequently punished Cao physically for “urinating pants”, “not being obedient”, “not doing homework well” and so on, repeatedly beat her with fly swatter handles, clothes supports and plastic slippers. In the morning of April 2, 2019, Hu scolded Cao for peeing on her pants, beating her with plastic slippers. Then Hu reached out to pull Cao, who retreated and fell off the stairs of the second floor. She died the same day after the rescue failed. After inspection, Cao's head, back buttocks, chest and abdomen and limbs peeled off with subcutaneous hemorrhage. The Public Security Bureau of *Hénán* 河南 province field a case for investigation on April 3, 2019, and transferred it to the procuratorial organ for review and prosecution on June 17, 2019. On next September the People's Procuratorate of *Huáibīn* 淮滨 filed a prosecution with Hu

¹⁰¹ The defendant of the first case inside the Notice.

¹⁰² *Supra* note, 100.

for suspected abuse. On January 6, 2020, the People’s Court of Huaibin sentenced Hu to four years and six months in prison for maltreatment.

First of all, in order to efficiently handle the case, procuratorial organs intervened in advance to guide the investigation. In particular, they collected objective evidence from the scene of the crime, such as slippers, fly swatters and so on.; they visited school and relatives of Cao to investigate about the life, study and usual abuse of the deceased before the incident; they found out the cause of the deceased’s injuries and the cause of death through autopsy reports, injury identification and so on. Secondly, the law was applied correctly and the reasons of punishment were explained: the procuratorial organs conducted hearings on issues of qualitative and legal application and invited Cao’s close relatives together with representatives of the People’s Congress, people’s supervisors, lawyer representatives to participate. Procuratorial organs carried on a discussion on the nature of Hu’s behavior and the possible punishment, to which close relatives expressed their understanding and agreement. Lastly, procuratorial organs promoted the implementation of the system and formed a protective collective force. Specifically, they took this case as an opportunity, combined with the investigations and analysis of criminal cases against minors in Chinese jurisdiction in the past five years, and issued procuratorial advice to related departments because of the weak links in the process of implementing the mandatory reporting system. Procuratorial organs, in conjunction with public security education and civil affairs departments, established a joint conference system to prevent violations of minors’ rights and interests, effectively building a “protective wall”.

Through the guidance of evidence collection, the facts were accurate and qualitative. According to the “Opinion on handling domestic violence cases”¹⁰³, the defendant did not infringe the victim’s health or deprived the victim’s life intentionally. Nevertheless, the death shall not be considered an accident and should still be attributed to the defendant due to abuse “causing serious injury or death to the victim”¹⁰⁴. Procuratorial organs promoted the implementation of the reporting system for domestic violence cases and plugged management loopholes, strengthened the combination with relevant departments, promoted the improvement of systems and mechanisms, and

¹⁰³ See p. 35, para. 2.3.

¹⁰⁴ 虐待 “致使被害人重伤、死亡” “*nüèdài* “*zhìshǐ bèihàirén zhòngshāng、sǐwáng*”

formed an effective connection between judicial protection, family protection, school protection, government protection and social protection¹⁰⁵.

The fourth case involved two deaf-mute, the woman *Máo Mǎomǎo* 毛某某 and her husband *Wáng Mǎomǎo* 王某某. The latter frequently battered Mao after getting drunk. On June 25, 2019 in the noon, Wang came to know that his wife told her friends about the violence. He started threatening her by telling he would have cut her feet once back home. Mao felt in danger, thus bought a knife and hide it in the bedroom. After Wang came back home, he beat Mao while drinking in the living room and put a kitchen knife on a table. Mao took out the knife and hacked Wang on his head, arms and abdomen. Later, Mao went to Wang's sister, *Wáng Mǎojiān*, told her about the event and called the police. After identification, *Wáng* was severely injured and *Máo* was slightly injured. On June 26, 2019, the Public Security Bureau of *Zhèjiāng* 浙江 province opened the case for investigation and transferred it to the procuratorial organ for review and prosecution on August, 6, 2019. On December 2, 2019, the People's Procuratorate, in accordance with the provisions of article 177, paragraph 2, of the Criminal Procedure Law¹⁰⁶, decided not to prosecute *Máo*.

The procuratorial organ sent personnel to carry out a thorough investigation about Wang and Mao's family conditions. Wang's family circumstances were very tough: he worked as a laborer before the case occurred, had no income after the incident; his parents were sick, old and unable to work. *Máo* was looking after two children and her main economic source was *dībǎo* 低保¹⁰⁷. The village committee, together with the procuratorial organ, wanted *Máo* to not be punished severely because her behavior was a legitimate response to domestic violence. Although Mao's act was considered excessive defense, she faced real danger of domestic violence and did not use methods that could endanger life or cause serious injuries, thus it was decided to not prosecute her.

¹⁰⁵ *Supra* note, 100

¹⁰⁶ 对于犯罪情节轻微，依照刑法规定不需要判处刑罚或者免除刑罚的，人民检察院可以作出不起诉决定。

If the circumstances of the crime are minor and do not need to be sentenced or exempt from punishment in accordance with the provisions of the Criminal Law, the People's Procuratorate may make a decision not to prosecute (Criminal Procedure Law of the PRC, 2018 revised version).

¹⁰⁷ A subsidy to all families below a certain income threshold, one of the most important welfare measures in China.

In response to Wang’s financial difficulties, the procuratorial organ applied for judicial assistance¹⁰⁸. After the decision not to prosecute *Máo*, the procuratorial organ conducted a follow-up education for the two. Through return visits, *Wáng* did not commit domestic violence anymore against *Máo*.

The “Opinion on Handling Criminal Cases of Domestic Violence”¹⁰⁹ stipulates that, if acts stopping ongoing domestic violence in order to protect one’s or others’ personal rights from illegal infringements are considered in compliance with article 20 of Criminal Law, it shall be deemed as legitimate defense.

As mentioned in paragraph 3.5, defensive behaviors that clearly exceed the necessary limits and cause serious injury or death to the perpetrator are considered excessive defenses and shall be held criminally liable, but the punishment shall be mitigated or exempted¹¹⁰. Furthermore, judgement about whether the defensive behavior exceeds the limit should be based on several factors, such as the severity of domestic violence, the cruelty of the means, the degree of danger faced by the victim, the intensity of previous domestic violence and so on.

The Supreme People’s Procuratorate states that it is necessary to properly grasp the particularity of these cases. If the criminal suspect made use of defensive behavior, surrendered and victim’s forgiveness is obtained, he can be punished with leniency and in accordance with the law.

The two cases early mentioned should let one ponder on the importance of providing such guidelines for future criminal cases caused by domestic violence. Collecting more tangible witnesses in this respect, through an overall education of judicial organs, public security organs and society itself, can significantly contribute to increase awareness about the phenomenon, thus guaranteeing more protection to victims.

¹⁰⁸ Judicial assistance (司法救助 *sīfǎ jiùzhù*) is a system based on financial aids requested by judicial organs to the Central Political and Legal Affairs Commission (中央政府委员会 *zhōngyāng zhèngfǔ wěiyuánhui*) in case of financial difficulties encountered by the parties involved. Generally, the People’s Courts implement related systems of delay, reduction and exemption of litigation fees in order to ensure that parties who are in financial difficulties protect their legal rights in civil and administrative litigation (Gong, 2005).

¹⁰⁹ See p. 35, para. 2.3.

¹¹⁰ Cfr. Criminal Law of the PRC, 2020.

3.5 Criminal Verdict Involving Domestic Violence

Having thoroughly analyzed model cases involving domestic violence crimes, with important insights regarding practical limitations of the law in responding to the phenomenon, in the very last part of this thesis, a criminal verdict will be examined in detail, aiming at better understanding how a combination between the ADVL and provisions of Criminal Code might lead the handling of domestic violence cases to positive outcomes.

3.5.1 Criminal Verdict of Intentional Injuries

The case study concerned intentional injuries committed by the male perpetrator *Niè Bàozhōng* 聂报忠 to his wife *Wèi Mǒu* 魏某.

Firstly, the verdict begins by providing relevant information:

- Criminal verdict at first instance No. 61/2017, People's Court of Yong'an, Fujian (闽 *mǐn* is used as abbreviation)
- Public prosecution organ: the People's Procuratorate of Yong'an;
- The defendant: Nie Baozhong
- The circumstances leading to the arrest of Nie, suspected of committing intentional injuries by the police department.

Secondly, other information is provided, such as the date in which People's Procuratorate, through the People's Court of Fujian, brought a public charge against Nie. The court accepted to hear the case, the People's Procuratorate of Yong'an appointed two public prosecutors, Nie attended the legal proceedings. The court declared that the case is over.

Thirdly, the verdict included all the circumstances of violence: the People's Procuratorate accused Nie for intentionally cutting Wei's face with a kitchen knife after a dispute. According to the forensic investigator, Nie violent acts caused a second-grade injury. Afterwards, Nie was arrested by the police in his house. There was so much evidence showing his guilt starting from Wei's statements and Nie's confessions. During the trial, the victim submitted a letter of understanding to the People's Court, believing

that her two children needed protection from Nie, thus requested the court to treat him with leniency.

In conclusion, the court thoroughly examined the facts of crime, showing that Nie's acts were aimed at intentionally harming the health of his wife. It reminded that the defendant truthfully confessed the facts of his crime, he felt guilty, hence he can be given a less severe punishment in accordance with the law. The court also invited a psychological counselor to conduct corrective intervention for the defendant. Nie has been deeply aware of the seriousness of his crime after the court's joint and education, showed repentance and urged the court to give him a lighter punishment. Thus, based on several factors such as the seriousness of the defendant's crime, the letter of understanding submitted by Wei, social harm and repentance of Nie, the court decided as follows:

- The defendant committed crime of intentional injuries and was sentenced to one year of imprisonment and two years of probation;
- The kitchen knife was confiscated and turned over to the state treasury.

The trial has now ended.

3.5.2 ADVL and Criminal Law Provisions for Niè Bàozhōng Judgement

Since "intentional injuries by Niè Bàozhōng" represents one of the few criminal verdicts in which a court judged the perpetrator resorting to both the ADVL and Criminal Law, substantial importance must be given to it for the aim of this thesis. Below are the main provisions for the final judgement.

• Criminal Law of the People's Republic of China, 2020 中华人民共和国刑法
zhōnghuá rénmín gònghéguó xíngfǎ:

- Article 234, Paragraph 1: Whoever intentionally injures the body of another person shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or surveillance;

- Article 67, Paragraph 1: After committing a crime, the offender who voluntarily surrenders and confesses his crime, can be given a lighter punishment. Where crimes are relatively minor, he may be exempted from punishment. Criminal suspects, defendants and criminals who are under compulsory measures are surrendered if they truthfully confess to their other crimes that the judicial organ has not yet known;
- Article 72, Paragraph 3: While being sentenced to probation, additional punishment still has to be implemented if criminals have been sentenced to it;
- Article 73, Paragraph 2, 3: The period of probation given together with fixed-term imprisonment is not less than the original sentence but not more than five years and not less than one year. Period of probation shall be calculated from the day when the judgement is confirmed;
- Article 76: For criminals whose suspended sentence has been announced, community corrections shall be implemented in accordance with the law during the probation period. If there are no circumstances stipulated in Article 77 of this law, and the probation period expires, the original sentence will no longer be executed and the sentence will be announced publicly;
- Article 64: [...], contraband and personal property used for crime shall be confiscated. All confiscated property and fines shall be turned over to the state treasury, and shall not be misappropriated or handled by oneself.

- Anti-Domestic Violence Law of the People’s Republic of China, 2016 中华人

民共和国反家庭暴力法 *zhōnghuá rénmin gònghéguó fǎn jiātíng bàolìfǎ*:

- Article 2: For the purpose of this Law, “domestic violence” means the inflicting of physical, psychological or other harm by a family member or another by beating, trussing, injury, restraint and forcible limits on personal freedom, recurring verbal abuse, threats and other means;
- Article 3: Family members shall assist each other, love each other, live in harmony, and fulfill family obligations. Anti-domestic violence prevention is the common responsibility of the State, society and each family. The State prohibits any form of domestic violence;

- Article 20: People's courts hearing cases involving domestic violence can determine the facts of domestic violence based on evidence such as the police record of the public security organ, the warning letter, and the injury appraisal opinion;
- Article 33: If the perpetrator commits domestic violence and constitutes a violation of public security management, he shall be given public security management penalties according to law; if a crime is constituted, criminal responsibility shall be investigated according to law.

3.5.3 Translation of Criminal Judgement

Criminal Case of Intentional Injuries by *Niè Bàozhōng*

People's Court of Yong'an, Fujian
Criminal Verdict

Fujian, 0481, Criminal verdict at first sentence n. 61(2017)

The People's Procuratorate of Yong'an as public prosecution organ.

The defendant Nie Baozhong was criminally detained by Yong'an Public Security Bureau on December 28th, 2016, on suspicion of intentional injuries. With the approval of this court on January 5th, 2017, he was arrested by Yong'an Public Security Bureau the next day.

Yong'an People's Procuratorate charged the defendant Nie Baozhong with the crime of intentional injuries with Yongjian Gong criminal prosecution [2017] No. 64 and filed a public prosecution with this court on February 17th, 2017. This court formed a collegiate panel in accordance with the law and opened a court session to hear the case. Yong'an People's Procuratorate appointed prosecutor Chen Anyun and acting prosecutor

You Zhangwang to appear in court to support the prosecution, the defendant Nie Baozhong appeared in court to participate in the litigation. The trial has now ended.

The public prosecutors allege that at 20 o'clock on December 27th, 2016, the defendant Nie Baozhong and his wife Wei had a dispute over life matters in Room 302, Building 26, Chemical Fiber Factory, Caoyuan Town, Yong'An city. The defendant Nie Baozhong grasped a kitchen knife and cut Wei's face. According to the forensic identification of the Yong'An Public Security Bureau, the injury of the victim Wei is a second-grade minor injury. On December 27th, 2016, the defendant Nie Baozhong was arrested by the police in Room 302, Building 26, Chemical Fiber Factory, Caoyuan Town, Yong'An city.

During the trial, the defendant Nie Baozhong had no objection to the above-mentioned facts. Household registration certificate, documentary evidence of the case, the testimony of Nie, the statement of the victim Wei, the confession of the defendant Nie Baozhong, the forensic appraisal opinion concerning personal injuries of Public Security Bureau of Yong'An city and photos of the identification site confirmed that it was sufficient to determine facts. During the trial, the victim Wei submitted a written letter of understanding to this court. She believed that her two children needed the common care and protection of Nie Baozhong. She expressed that out of family considerations, expressed her understanding for Nie Baozhong's behavior and requested the court to treat him with leniency.

This court believes that the defendant Nie Baozhong intentionally harmed the health of others by slashing his wife Wei, causing minor injuries. His behavior has violated Criminal Law and constituted crime of intentional injuries; hence the accusation of public prosecution organ shall be supported by this court. After the incident, the defendant Nie Baozhong truthfully confessed the facts of his crime, and voluntarily pleaded guilty in court, showing repentance. Thus, he can be given a lighter punishment in accordance with the law. The victim Wei Mou forgave the defendant Nie Baozhong's behavior. During the trial, the court invited a psychological counselor to conduct psychological counseling and corrective intervention for the defendant Nie Baozhong. The Yong'An People's Procuratorate, the defendant's daughter and the victim Wei jointly participated in the court's assistance and education work. Defendant Nie Baozhong has been deeply aware of the seriousness of his crime after the court's joint help and education,

and said that he will definitely abstain from drinking in the future, and showed repentance. He urged the court to give him a lighter punishment.

Based on the circumstances of the defendant's crime, social harm and degree of repentance, and the written understanding issued by the victim Wei, this court believes that probation can be applied to the defendant. Therefore, the defendant Nie Baozhong's reasons for requesting a lighter punishment and a suspended sentence were accepted. Accordingly, in accordance with Article 234, Paragraph 1, Article 67, Paragraph 1, Article 72, Paragraph 3, Article 73, Paragraph 2 and 3, Article 76, Article 64 of the Criminal Law of the People's Republic of China, Article 2, Article 3, Article 20, and Article 33 of the Anti-Domestic Violence Law of the People's Republic of China, the judgement is as follows:

- Defendant Nie Baozhong, who committed crime of intentional injuries, was sentenced to one year's imprisonment and two years of probation (the period of probation shall be calculated from the date when the judgement is confirmed. During the probation period, community correction shall be implemented in accordance with the law);
- The tool used by the defendant Nie Baozhong for intentional injuries was confiscated and turned over to the National Treasury.

If refuse to accept the final judgement, an appeal can be filed through this court or directly to the Intermediate People's Court of Sanming city, Fujian Province, within ten days from the second day of receipt of the judgement. In case of a written appeal, one original and two copies of the appeal petition shall be submitted.

CONCLUSION

This thesis tried to answer the following question: can a country, as invariable and unique as the People's Republic of China, reinvigorate its legal system enough to effectively and directly overhaul domestic violence prosecution?

To do this, it was first necessary to explore how traditional values have been influencing both the concept of family and domestic violence. Certain obstacles exist such as the deep-rooted patriarchal vision of society, the responsibility of preserving harmony within the household, the difficult process of collecting evidence among victims, and the poor initiative of public training and education on the matter. When all of these obstacles are present, the resulting effectiveness of any legislation directed towards domestic violence will be apprehended and diminished.

Then, an extensive discussion on the Chinese judicial system, highlighting some of its important limitations in regulating and addressing domestic violence. Each important limitation is backed with supporting statistics in order to understand domestic violence's impact on victims and the need for an enhanced process, including criminalization.

Finally, an in-depth analysis of criminal cases with domestic violence as the main cause. In particular, Nie Baozhong's criminal verdict showed how a combination between the ADVL and Criminal Law is crucial: on one hand, solely resorting to Criminal Law would inevitably make domestic violence provisions pointless, as Criminal Law does not contain any reference to it; on the other hand, given the current limitations of ADVL, judging such cases just by referring to it would mean punishing perpetrators too shallowly, thus representing a high risk for victims in the first place. Criminalizing domestic violence would not only mean punish the perpetrator and deter the crime from happening in the first place, but would also provide protective services to victims.

This work certainly has limitations, both due to the lack of personal experience in the field and because, as it was already reiterated, the quantity of criminal cases of domestic violence is still not sufficient to be able to provide an ultimate solution on the

possible changes within the ADVL. Despite this, having compared some of the most important sources on the subject and considering that domestic violence does constitute a crime in several developed countries, the People's Republic of China could, through the experience of cases similar to that of Nie Baozhong, adopt a more in-depth approach to fighting the phenomenon. An approach that aims at giving social and legal consideration to acts of violence perpetrated against subjects who may not possess the same physical or psychological capacity compared to their aggressor.

APPENDIX 1 – CASE 3

三、常磊故意伤害案

（一）基本案情

被告人常磊与其父常新春（被害人，殁年 56 岁）、母郑玲共同居住，常新春饮酒后脾气暴躁，经常辱骂、殴打家人。2012 年 8 月 29 日 18 时许，常新春酒后又因琐事辱骂郑玲，郑玲躲至常磊卧室。当日 20 时许，常新春到常磊卧室继续辱骂郑玲，后又殴打郑玲和常磊，扬言要杀死全家并到厨房取来菜刀。常磊见状夺下菜刀，常新春按住郑玲头部继续殴打。常磊义愤之下，持菜刀砍伤常新春头、颈、肩部等处，后将常新春送往医院救治。次日，常磊到公安机关投案。当晚，常新春因失血性休克死亡。

（二）裁判结果

重庆市江津区人民法院经审理认为，常磊持刀故意伤害致一人死亡的行为已构成故意伤害罪，但其行为属防卫过当，依法应当减轻或免除处罚。案发后，常磊投案自首，其母表示谅解，同时考虑被害人常新春平时饮酒后常常对家庭成员实施家庭暴力，故对常磊减轻处罚并适用缓刑。依照刑法有关规定，以故意伤害罪判处常磊有期徒刑三年，缓刑五年。宣判后，在法定期限内没有上诉、抗诉，判决已发生法律效力。

（三）典型意义

本案被告人常磊已经将被害人常新春手中的菜刀夺下，但常新春对郑玲的不法侵害仍在继续，虽然殴打的不是常磊，但其扬言要杀死全家，结合常新春平时酒后常有严重的家庭暴力行为，不能排除其暴力行为造成更严重后果的可能。因此，常磊针对常新春正在进行的家庭暴力，有权进行防卫。但从常磊持菜刀砍击常新春造成多处损伤并致其因失血性休克死亡分析，确实与常新春徒手家暴行为的手段和严重程度不对等，因此可以认定常磊的行为构成防卫过当，同时考虑到常磊将常新春砍伤后立即送往医院救治，案发后投案自首，得到其母亲的谅解。常新春具有家庭暴力既往史，常新春的其他亲属和邻居也要求对常磊从轻处罚等情节，对常磊减轻处罚并适用缓刑，是完全适当的。

APPENDIX 2 – CASE 5

五、邓某故意杀人案

（一）基本案情

2012年7、8月间，被告人邓某未婚先孕后，便离家到亲戚朋友处借住。同年12月下旬的一天上午，邓某在网吧上网时，突然感到腹痛，遂至网吧卫生间产下一名女婴。因担心被人发现，邓某将一团纸巾塞入女婴口中，将女婴弃于垃圾桶内，而后将垃圾桶移至难以被人发现的卫生间窗外的窗台上，致该女婴因机械性窒息死亡。

（二）裁判结果

江苏省南京市中级人民法院经审理认为，邓某故意非法剥夺他人生命的行为已构成故意杀人罪。邓某犯罪时未满十八周岁，归案后认罪态度好，有悔罪表现，可依法从轻处罚。依照刑法有关规定，以故意杀人罪判处被告人邓某有期徒刑三年。宣判后，在法定期限内没有上诉、抗诉，判决已发生法律效力。

（三）典型意义

本案系少女因未婚先孕，遗弃自己刚出生的婴儿并致婴儿死亡的案例。被告人邓某因不敢让家人知道未婚先孕的情况，在隆冬之际生下女婴后，为达到不履行扶养义务的目的，将一团纸巾塞进新生儿口中，并将新生儿置于户外难以被人发现之处。从其主观上看，并不希望婴儿被他人发现后捡走或得到救治，而是积极追求新生儿死亡，最终造成婴儿被遗弃后死亡多日才被发现的严重后果，故邓某的行为构成故意杀人罪。鉴于邓某作案时未满十八周岁，系新生儿的亲生母亲，且是在无助并不敢让家人知道的情况下选择的错误之举，故对其从轻判处有期徒刑三年。

APPENDIX 3 – CASE 2

胡某某虐待案

【基本案情】

被告人胡某某，女，1989年11月出生。

被害人曹某某，女，歿年6岁，系胡某某次女。

曹某某生前主要跟爷爷奶奶生活，后因上学搬来与母亲同住。2019年2月至4月间，胡某某照顾曹某某日常生活、学习中，经常因曹某某“尿裤子”“不听话”“不好好写作业”等以罚跪、“蹲马步”等方式体罚曹某某，并多次使用苍蝇拍把手、衣撑、塑料拖鞋等殴打曹某某。

2019年4月2日早7时许，胡某某又因曹某某尿裤子对其责骂，并使用塑料拖鞋对其殴打，后胡某某伸手去拉曹某某，曹某某后退躲避，从二楼楼梯口处摔下，经抢救无效当日死亡。经检验，曹某某头部、面部、背臀部、胸腹部及四肢等多处表皮剥脱、伴皮下出血。其中，右大腿中段前侧两处皮肤缺损，达到轻伤二级程度。

河南省淮滨县公安局于2019年4月3日立案侦查，6月17日移送检察机关审查起诉。

2019年9月6日，淮滨县人民检察院以胡某某涉嫌虐待罪提起公诉。

2020年1月6日，淮滨县人民法院以虐待罪判处胡某某有期徒刑四年六个月。一审宣判后，胡某某未上诉。

【检察机关履职情况】

（一）提前介入，引导侦查。检察机关第一时间介入侦查提出建议：一是全面提取案发现场的客观性证据，如拖鞋、苍蝇拍等，以印证胡某某的供述；二是围绕死者生活、学习轨迹，走访学校、亲属等，查明死者案发前生活、学习及平时被虐待的情况；三是通过尸检报告、伤情鉴定、理化检验报告等，查明死者损伤原因及死因。经侦查查明胡某某虐待致曹某某周身多处损伤、死亡的犯罪事实。

（二）准确适用法律，充分释法说理。被害人的父亲曹某飞及其他近亲属提出，曹某某是被伤害致死，为此多次上访。检察机关就定性、法律适用问题开展听证，邀请曹某某的近亲属、人大代表、政协委员、人民监督员、律师代表等参

与。检察机关对胡某某的行为性质及可能受到的处罚进行了论证说理。通过听证，曹某某的近亲属对检察机关的意见表示理解、认同。

（三）推动制度落实，形成保护合力。检察机关以本案为契机，结合近五年辖区内发生的侵害未成年人刑事案件调研分析，针对相关部门在落实强制报告制度过程中的薄弱环节，向相关部门发出检察建议。在检察机关推动下，由政法委牵头，检察机关联合公安、教育、民政等部门建立预防侵害未成年人权益联席会议制度，有效筑牢未成年人权益保护的“防护墙”。

【典型意义】

（一）通过引导取证，查清事实准确性。未成年人的监护人在较长一段时期内持续殴打、体罚子女，情节恶劣的，应当依法以虐待罪定罪处罚。检察机关通过介入侦查，引导侦查机关在案发初期及时固定证据，为案件性质认定筑牢事实、证据基础。

（二）准确区分故意伤害致人死亡、虐待致人死亡、意外事件的界限。根据“两高两部”《关于依法办理家庭暴力犯罪案件的意见》规定，被告人主观上不具有侵害被害人健康或者剥夺被害人生命的故意，而是出于追求被害人肉体和精神上的痛苦，长期或者多次实施虐待行为，逐渐造成被害人身体损害，过失导致被害人重伤或者死亡的，属于虐待“致使被害人重伤、死亡”，应以虐待罪定罪处罚。本案被害人的死亡结果虽然不是虐待行为本身所导致，但被害人的后退躲避行为是基于被告人的虐待行为产生的合理反应，死亡结果仍应归责于被告人，属于虐待“致使被害人重伤、死亡”，不属于意外事件。

（三）注重发挥各方作用，构建联动保护机制。检察机关推动家暴案事件报告制度落实落细，堵塞管理漏洞。加强与相关部门联动，促进完善制度机制，形成司法保护、家庭保护、学校保护、政府保护、社会保护的有效衔接。

APPENDIX 4 – CASE 4

毛某某故意伤害案

【基本案情】

被不起诉人毛某某，女，1994年12月出生。

被害人王某某，男，1981年10月出生。

二人系夫妻，均系聋哑人。王某某酗酒，经常酒后打骂毛某某。

2019年6月25日中午，王某某得知毛某某将自己被打的事情告诉了朋友，说晚上回家要砍断毛某某的脚。于是，毛某某买了一把刀，藏在卧室衣柜内。当晚，王某某回家后在客厅一边喝酒一边打毛某某，并将菜刀放到饭桌上。后因孩子哭闹，毛某某回卧室哄孩子。王某某酒后进入房间，继续打毛某某，说要用菜刀砍断毛某某的脚，并走出房间拿菜刀。毛某某从衣柜拿出刀向王某某身上乱砍，分别砍在王某某头顶、手臂、腹部等处。王某某夺下刀后，受伤倒地。毛某某到王某某的二姐王某某家求助，王某某的丈夫报警。经鉴定，王某某损伤程度为重伤二级，毛某某为轻微伤。

浙江省江山市公安局于2019年6月26日立案侦查，8月6日移送检察机关审查起诉。

2019年12月2日，浙江省江山市人民检察院依据刑事诉讼法第一百七十七条第二款的规定对毛某某作出不起起诉决定。

【检察机关履职情况】

（一）全面了解案件情况。检察机关派员多次走访，了解到王某某一家6口生活困难，王某某的父母年迈患病无劳动能力；王某某案发前在当地务工，被砍伤后没有收入；毛某某在家照顾两个孩子，低保补助是家庭主要经济来源。村民反映，王某某经常酒后对毛某某实施家暴，还多次殴打亲友、邻居，认为毛某某的行为是反抗家暴，希望对其从轻处理。

（二）准确定性，依法妥善处理。检察机关认为，毛某某面对现实、紧迫的人身危险取刀反击，属于正当防卫，虽事先准备刀具，但不影响防卫性质。王某某徒手殴打，实施的是一般暴力行为，虽声称要拿菜刀砍毛某某，但在尚未使用可能危及生命或可能造成重伤的工具或高强度手段时，毛某某用刀砍王某某，其防卫手段及损害后果与不法侵害明显失衡，属于防卫过当。鉴于本案系家庭矛盾

引发，毛某某有自首情节，依法决定对毛某某不起诉。

（三）开展司法救助和跟踪回访。针对王某某一家经济困难情况，检察机关为其申请司法救助，并与村委会沟通，由村委会监督司法救助款的使用，以管束王某某不再实施家暴。作出不起诉决定后，检察机关对二人进行动态跟踪教育，经回访，王某某未再对毛某某实施家暴。

【典型意义】

（一）正确认定因家庭暴力引发的故意伤害犯罪与正当防卫。“两高两部”《关于依法办理家庭暴力犯罪案件的意见》规定，为使本人或者他人的人身权利免受不法侵害，对正在进行的家庭暴力采取制止行为，符合刑法第二十条第一款规定的，应当认定为正当防卫。防卫行为明显超过必要限度，造成施暴人重伤、死亡的，属于防卫过当，应当负刑事责任，但应当减轻或者免除处罚。是否“明显超过必要限度”，应当以足以制止并使防卫人免受家庭暴力不法侵害的需要为标准，根据施暴人正在实施家庭暴力的严重程度、手段的残忍程度，防卫人所处的环境、面临的危险程度、采取的制止暴力手段、造成施暴人重大损害的程度，以及既往家庭暴力的严重程度等综合判断。

（二）妥善把握家庭暴力引发刑事案件的特殊性。家暴引发的刑事案件不同于其他案件，有家庭因素牵涉其中，要兼顾维护家庭稳定、修复被损坏的家庭关系、尊重被害人意愿。对犯罪嫌疑人具有防卫性质、自首等法定情节，获得被害人谅解的，可以依法从宽处理。

（三）依法履行司法救助职能。对符合司法救助条件的，检察机关要积极开展司法救助，彰显司法人文关怀，帮助被救助者解决面临的生活困难、安抚心灵创伤，避免“因案致贫”“因案返贫”，促进家庭、社会和谐稳定。

APPENDIX 5 – LI MOU CASE

李某申请人身安全保护令

（一）基本案情

申请人李某（女）与被申请人宋某系夫妻关系，2011年11月结婚。2015年宋某开始对李某实施捆绑、殴打、谩骂等暴力行为。2016年3月15日，李某在被连续殴打三天后，逼迫无奈从家中跳楼，跳楼又被宋某抱回楼上继续殴打，直至李某坚持不住，宋某才拨打120急救电话，将李某送往医院救治。在医院治疗期间，宋某又多次到医院骚扰李某，辱骂医生、病人及李某家属。李某于2016年9月28日向辽宁省沈阳市皇姑区人民法院提出申请，禁止宋某实施家庭暴力，禁止宋某骚扰、跟踪、接触李某及其近亲属。

（二）裁判结果

辽宁省沈阳市皇姑区人民法院根据李某的陈述及公安机关记载材料、医院病情介绍单、皇姑区妇联出具的意见等材料，认定李某面临家庭暴力风险，依照反家庭暴力法的相关规定，依法裁定禁止宋某实施家庭暴力；禁止宋某骚扰、跟踪、接触李某及其近亲属。

（三）典型意义

根据反家庭暴力法的规定，人身安全保护令涵盖了诉前、诉中和诉后各时间段，当事人申请人身安全保护令无需依附离婚诉讼，本案李某就是在两次离婚诉讼间隔期间申请的人身安全保护令。当地妇联也发挥了积极作用，为李某出具意见，有效维护了家暴受害者的权益。法院通过发出人身安全保护令，依法、适时、适度干预家庭暴力，保护了受害人的人身安全和人格尊严，彰显了法律的权威。

APPENDIX 6 – CRIMINAL VERDICT

聂报忠故意伤害案

福建省永安市人民法院

刑事判决书

(2017)闽 0481 刑初 61 号

公诉机关永安市人民检察院。

被告人聂报忠。因涉嫌故意伤害罪于 2016 年 12 月 28 日被永安市公安局刑事拘留，2017 年 1 月 5 日经本院 批准，次日由永安市公安局执行逮捕。

永安市人民检察院以永检公刑诉[2017]64 号起诉书指控被告人聂报忠犯故意伤害罪，于 2017 年 2 月 17 日向本院提起公诉。本院依法组成合议庭，公开开庭审理了本案。永安市人民检察院指派检察员陈安 云、代理检察员尤张旺出庭支持公诉，被告人聂报忠到庭参加诉讼。现已审理终结。

公诉机关指控，2016 年 12 月 27 日 20 时许，被告人聂报忠与其妻子魏某在永安市曹远镇化纤厂 26 栋 302 室因生活琐事发生争执，被告人聂报忠持菜刀将魏某的面部砍伤。经永安市公安局法医鉴定，被害人魏某 的损伤为轻伤贰级。2016 年 12 月 27 日，被告人聂报忠在永安市曹远镇化纤厂 26 栋 302 室被民警抓获。

上述事实，被告人聂报忠在开庭审理过程中亦无异议，并有户籍证明、到案经过等书证、证人聂某的 证言、被害人魏某的陈述、被告人聂报忠的供述、永安市公安局法医学人身伤害鉴定意见书及指认现场照 片等证据证实，足以认定。庭审中，被害人魏某向本院递交书面谅解书，认为家里两个孩子，需要聂报忠 的共同关心爱护，表示出于家庭的考虑，对聂报忠的行为表示谅解，请求法庭给予从宽处理。

本院认为，被告人聂报忠以故意损害他人身体健康为目的，将妻子魏某砍伤致轻伤贰级，其行为已触 犯刑律，构成故意伤害罪，公诉机关指控的罪名成

立，本院应予支持。案发后，被告人聂报忠如实供述自己的犯罪事实，并当庭自愿认罪悔罪，依法可以从轻处罚。被害人魏某对被告人聂报忠的行为予以谅解。庭审中，法庭邀请心理咨询师对被告人聂报忠进行了心理疏导、矫正干预，永安市人民检察院、被告人的女儿、被害人魏某等共同参与法庭帮教工作。被告人聂报忠经过法庭共同帮教后已深刻认识到自己所犯罪行的严重性，表示今后一定戒酒，具有悔罪表现，恳请法庭从轻处罚。根据被告人的犯罪情节、社会危害性和悔罪程度以及被害人魏某出具的书面谅解书等情况，本院认为可以对被告人适用缓刑。因此被告人聂报忠要求从轻处罚、判处缓刑的理由成立，予以采纳。据此，依照《中华人民共和国刑法》第二百三十四条第一款、第六十七条第一款、第七十二条第三款、第七十三条第二款、第三款、第七十六条、第六十四条、《中华人民共和国反家庭暴力法》第二条、第三条、第二十条、第三十三条之规定，判决如下：

一、被告人聂报忠犯故意伤害罪，判处有期徒刑一年，缓刑两年。

（缓刑考验期限，从判决确定之日起计算。在缓刑考验期限内，依法实行社区矫正）。

二、没收被告人聂报忠作案工具菜刀一把，并上缴国库。

如不服本判决，可在接到判决书的第二日起十日内，通过本院或者直接向福建省三明市中级人民法院提出上诉。书面上诉的应提交上诉状正本一份，副本二份。

审 判 长 罗志龙

人民陪审员 黄 瑾

人民陪审员 邓天清

二〇一七年三月十日

书 记 员 肖 莉

附:本判决中所适用的主要法律条文:

《中华人民共和国刑法》

第二百三十四条故意伤害他人身体的,处三年以下有期徒刑、拘役或者管制。

犯前款罪,致人重伤的,处三年以上十年以下有期徒刑;致人死亡或者以特别残忍手段致人重伤造成严重残疾的,处十年以上有期徒刑、无期徒刑或者死刑。本法另有规定的,依照规定。

组织他人出卖人体器官的,处五年以下有期徒刑,并处罚金;情节严重的,处五年以上有期徒刑,并处罚金或者没收财产。

未经本人同意摘取其器官,或者摘取不满十八周岁的人的器官,或者强迫、欺骗他人捐献器官的,依照本法第二百三十四条、第二百三十二条的规定定罪处罚。

违背本人生前意愿摘取其尸体器官,或者本人生前未表示同意,违反国家规定,违背其近亲属意愿摘取其尸体器官的,依照本法第三百零二条的规定定罪处罚。

第六十七条犯罪以后自动投案,如实供述自己的罪行的,是自首。对于自首的犯罪分子,可以从轻或者减轻处罚。其中,犯罪较轻的,可以免除处罚。

被采取强制措施的犯罪嫌疑人、被告人和正在服刑的罪犯,如实供述司法机关还未掌握的本人其他罪行的,以自首论。

犯罪嫌疑人虽不具有前两款规定的自首情节,但是如实供述自己罪行的,可以从轻处罚;因其如实供述自己罪行,避免特别严重后果发生的,可以减轻处罚。

第七十二条【适用条件】对于被判处拘役、三年以下有期徒刑的犯罪分子,同时符合下列条件的,可以宣告缓刑,对其中不满十八周岁的人、怀孕的妇女和已满七十五周岁的人,应当宣告缓刑:

- (一) 犯罪情节较轻;
- (二) 有悔罪表现;
- (三) 没有再犯罪的危险;
- (四) 宣告缓刑对所居住社区没有重大不良影响。

宣告缓刑,可以根据犯罪情况,同时禁止犯罪分子在缓刑考验期限内从事特定活动,进入特定区域、场所,接触特定的人。

被宣告缓刑的犯罪分子,如果被判处附加刑,附加刑仍须执行。

第七十三条【**考验期限**】拘役的缓刑考验期限为原判刑期以上一年以下，但是不能少于二个月。有期徒刑的缓刑考验期限为原判刑期以上五年以下，但是不能少于一年。缓刑考验期限，从判决确定之日起计算。

第七十六条【**缓刑的考验及其积极后果**】对宣告缓刑的犯罪分子，在缓刑考验期限内，依法实行社区矫正，如果没有本法第七十七条规定的情形，缓刑考验期满，原判的刑罚就不再执行，并公开予以宣告。

第六十四条犯罪分子违法所得的一切财物，应当予以追缴或者责令退赔；对被害人的合法财产，应当及时返还；违禁品和供犯罪所用的本人财物，应当予以没收。没收的财物和罚金，一律上缴国库，不得挪用和自行处理。

《中华人民共和国反家庭暴力法》

第二条本法所称家庭暴力，是指家庭成员之间以殴打、捆绑、残害、限制人身自由以及经常性谩骂、恐吓等方式实施的身体、精神等侵害行为。

第三条家庭成员之间应当互相帮助、互相关爱，和睦相处，履行家庭义务。

反家庭暴力是国家、社会和每个家庭的共同责任。

国家禁止任何形式的家庭暴力。

第二十条人民法院审理涉及家庭暴力的案件，可以根据公安机关出警记录、告诫书、伤情鉴定意见等证据，认定家庭暴力事实。

第三十三条加害人实施家庭暴力，构成违反治安管理行为的，依法给予治安管理处罚；构成犯罪的，依法追究刑事责任。

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