

Analysis of the Application of Justifiable Defense to the “Violence Against Violence” Behavior of Women in Response to Domestic Violence

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Abstract: In recent years, cases of “violence against violence” of women against domestic violence have been increasing. Most of these cases arise when women need to defend themselves against extreme domestic violence. This paper attempts to explore the application of justifiable defense of abused women in domestic violence and discusses the nature and occurrence of the behavior from two dimensions. Situations in which the actions of the victim can be considered as justifiable defense are also discussed. Subsequently, two measures for preventing such cases and protecting women’s rights are proposed. The first measure is legal education and psychological intervention, and the second measure is raising awareness of domestic violence.

Keywords: Domestic violence; Abused women; “Violence against violence” behavior; Justifiable defense

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1. Introduction

Domestic violence has always been a major concern of society, and the act of “violence against violence” has triggered numerous discussions. In such cases, the victim of domestic violence is investigated for criminal responsibility because the act of harming the abuser can be constituted as an act of violence. However, there are differences in terms of societal harm and malicious intent when it comes to women responding to domestic violence compared to general violent crimes. To this end, the four ministries and commissions jointly issued “Opinions on the Handling of Domestic Violence Crime Cases According to Law,” of which Article 19 puts forward the limit of violent acts made while resisting domestic violence, and the acts within this limit are considered as a justifiable defense. China has implemented stringent criteria for acknowledging justifiable defense and introduced the concept of the “battered woman syndrome.” This term refers to the experience of women who, due to prolonged abuse by their husbands or cohabitating partners, develop a sense of helplessness, making it challenging for them to break free from the abuser. As a result, these women may overreact when being abused. This concept includes all the elements of justifiable defense, all elements of justifiable defense,

addressing issues related to insufficient defense time and limits. It serves as a reference for the conviction and sentencing of domestic violence victims.

2. The nature of “violence against violence” in response to domestic violence

Domestic violence cannot be eradicated due to its complexity. It not only inflicts significant physical and psychological harm on victims but also hinders the harmonious development of society. Moreover, deeply ingrained traditional notions such as “family issues should be kept private” and “outsiders should not interfere in family matters” create barriers for those seeking help. This leaves victims in vulnerable positions, often unable to receive timely and effective assistance. Unfortunately, such attitudes may inadvertently empower the abusers. The victims of domestic violence often resort to violence in order to get away from the abuser ^[1]. Early instances of domestic violence must be addressed promptly. Simply examining such acts of resistance, the harm they cause, or whether they jeopardize the rights to health, life, and other legitimate interests of others, and assessing their motives and intent, still warrants the recognition of the behavior as unlawful, constituting charges of intentional injury or homicide.

However, experts have argued that the act of “violence against violence” should fall under the category of justifiable defense. However, justifiable defense itself requires a more evident and urgent threat, with specific grounds. Many cases of “violence against violence” in judicial practice involve abused women responding when the abuser is unconscious, such as asleep or drunk. This does not meet the time limit requirements of “ongoing assault” proposed by justifiable defense. In other words, the act of “violence against violence” of the victim cannot be categorized as a single criminal act. Alternatively, it may be deemed non-criminal through the defense of justification, thereby interrupting its unlawful nature.

To put it simply, “violence against violence” at its core involves one family member using violent acts or language to control another, resulting in harm to the victim and a violation of legal interests ^[2]. Therefore, the core of the “violence against violence” behavior exhibited by abused women in cases of domestic violence is essentially a form of resistance against the abuser. This resistance is aimed at preventing violent sexual behavior that poses a threat to their life and physical well-being. In comparison to general assault cases, this behavior is more unique, making it challenging to categorize injury cases within the context of domestic violence as justifiable defense. Strict adherence to the identification criteria of justifiable defense in cases of “violence against violence” by victims of domestic violence may likely fail to achieve the objective of defending against domestic violence.

3. Analysis of the application of justifiable defense in the context of “violence against violence”

3.1. Intentional crime theory

3.1.1. Lack of defense time

In many cases, victims of domestic violence often harm the abuser when he is sleeping or drunk when there is no ongoing abuse. This behavior is usually regarded as intentional injury, or in cases where the abuser’s life is threatened, it is considered murder. On the contrary, the conditions for the establishment of legitimate defense are illegal infringements in reality, which are also the basic requirements for the establishment of legitimate defense. Therefore, in the determination of general justifiable defense, the time when the unlawful infringement is in progress should be judged on the basis that the unlawful infringement has begun and has not ended.

For the assessment of general justifiable defense, it is crucial to establish that the unlawful infringement

is ongoing, and determining the commencement time of this infringement becomes essential. In specific circumstances, the criterion of “direct confrontation” can be directly taken into account ^[3]. In other words, when the abuser is ready to commit an unlawful infringement, the situation would be considered “unlawful infringement in progress.” For example, if a woman commits an act of violence when her husband is not prepared, such as sleeping, the act is not considered a justifiable defense as an illegal deterrent. In judicial practice, it is difficult to determine the required defense time and defense limit for justifiable defense. Therefore, the results of such court cases vary. There is no unified standard, and the sentence given highly depends on the judges’ discretion, thus affecting the authority of Criminal Law.

To sum up, in the context of domestic violence, the “violence to violence” behavior of the victim is usually carried out when the abuser is not prepared. In such cases, it will not be classified as a justifiable defense.

3.1.2. Lack of defense time and defense limits

Many experts and scholars in the legal field believe that the theory of intentional crime, which lacks both defense time and defense limit conditions, is actually based on the premise of the lack of defense time, adding defense limit to the negative conditions of the theory of justifiable defense, which is a further affirmation of the behavior of abused women as intentional crimes. According to the theories related to justifiable defense in the field of criminal law, there are five definite factors of justifiable defense, which are the cause of defense, the object of defense, the intention of defense, the time of defense, and the limit of defense. Among them, the defense time has been denied according to the above, and the following is mainly analyzed for the defense limits.

Based on the analysis of cases where abused women respond to domestic violence with violence, it is observed that articles on justifiable defense encompass limits on defense. The actions of abused women are considered “just” in preventing the unlawful infringement by their abusers and do not surpass the limits of defense. Conversely, if a battered woman kills her abusive husband, it goes beyond what is necessary. Thus, the condition of defense limit should be disregarded, the violent acts committed by the wife cannot be classified as justifiable defense but rather may be subject to punishment for intentional crimes.

3.2. Theories and discussions related to justifiable defense

Convicting the victim of intentional homicide for killing the abusive husband, or using the related foreseeability as a ground for illegal obstruction liability, are both based on reasonable assumptions. However, the demand for defense and the need to improve the reference value of judicial practice remain essential aspects to consider.

The first theory that will be discussed is the theory of intentional crime. In order to maintain the accuracy of the theory of justifiable defense in practice, the elements of justifiable defense are taken as the reference standard, refuting the idea that abused women resorting to “violence against violence” can be considered justifiable. However, in cases where justifiable defense cannot be applied flexibly, it fails to acknowledge that the abuser has consistently engaged in domestic violence, neglecting the genuine suffering of abused women. Compared with typical intentional injury cases, actions carried out for self-protection purposes are less subjective and harmful to society, and judgment is not made based on the level of responsibility. This approach involves applying criminal responsibility to the crime, which fails to legally safeguard the rights and interests of abused women and may even contradict the modesty emphasized by criminal law.

The second theory that is involved is the anticipated possibility. When the anticipated possibility is not persuasive, and the victim can only defend herself but attacking the abuser when he is sleeping, this form of violence may be justifiable ^[4]. Based on the dimension of legal interest protection, the physical and

psychological conditions of the victim in this case should be compared with other groups of perpetrators. The lack of corresponding legal evaluation standards might endanger the life and legal interests of others. However, it is often difficult to accurately assess the psychological state of the victim when the act of violence is committed. According to the state detailed in the “battered woman syndrome” theory, when the victim believes that the only way to escape the abuser immediately is to kill the abuser, the victim can be convicted of homicide. On the other hand, victims who murder the abusers also do that to escape from them. Therefore, the anticipation of possibility needs to be judged based on the cognition of the individual at that moment to determine whether liability can be avoided. The sole purpose is to exempt or mitigate the criminal responsibility of abused women. However, this method is not convincing and it does not truly address the fundamental issue of the “violence against violence” behavior.

In this regard, it is necessary to re-examine and analyze justifiable defense based on current laws and regulations of our country and summarize the necessary conditions of justifiable defense. Firstly, the illegal infringement must be ongoing; secondly, the subject should be clearly under threat; thirdly, the person defended against must be the unlawful aggressor; lastly, any actions taken should not exceed necessary limits.

4. Suggestions of preventive measures

4.1. Conducting legal education and psychological intervention

4.1.1. Education and intervention for women victims of domestic violence

According to the National Coalition Against Domestic Violence, nearly 90% of domestic violence victims are not capable of leaving a long-term abusive relationship. The question of why abused individuals stay with their abusers has sparked controversy. One significant factor is the extreme dependence of most abused women on their abusers. Not all abused women have the means to divorce or leave smoothly. Another crucial reason is the fear of further harm. While leaving may seem simple, breaking free from the abuser’s control is often a complex and challenging process. To prevent extreme behaviors in cases of domestic violence, legal education, and psychological interventions should address ideological concepts, emphasizing equality and the right to happiness for all. Victims of domestic violence should find the courage to use legal means to protect themselves and expose the abuser. Furthermore, prolonged exposure to a violent environment can lead to significant inner fear and depression, resulting in serious consequences. Consequently, relevant authorities must provide psychological counseling for abused women in addressing domestic violence, aiding them in escaping the shadow of abuse and preventing extreme reactions such as “violence against violence.”

4.1.2. Education and intervention for the abusers

The root cause of “violence against violence” behavior lies in the actions of the domestic violence perpetrator. Without violence, abused women would not resort to “violence against violence.” Hence, it is crucial for perpetrators to recognize the independence, dignity, personal safety, and the right to health of their spouses. In the context of family life, fostering a harmonious and happy family requires every family member’s commitment to resolving issues and disputes through non-violent means, rather than resorting to physical harm or abuse.

4.2. Publicizing domestic violence and related laws

China’s Anti-Domestic Violence Law has effectively addressed legislative gaps in family affairs, integrating law and family while challenging traditional ideas. However, it is essential to raise awareness of the law. Domestic violence cases and information about the Anti-Domestic Violence Law should be publicized through various

channels such as the Internet, television, newspapers, and new media platforms like WeChat, Weibo, and TikTok. Increasing public awareness of this legal provision can significantly reduce the likelihood of abused women resorting to “violence against violence.” Creating awareness among abusers about the illegality of their actions and the serious consequences they may face will contribute to deterring domestic violence, fostering harmonious family relations, and promoting long-term social stability.

As a global social issue, domestic violence poses a challenge due to its hidden and complex nature within families. Over time, it has inflicted significant physical and psychological harm on vulnerable individuals, disrupting the harmonious development of society. Moreover, the traditional notion of keeping “family matters private” has deep roots, leaving victims in vulnerable positions without effective assistance and potentially exacerbating the situation. To address this, expanding relief channels and providing legal protection to victims are crucial steps in reducing retaliatory actions within the context of domestic violence.

It is recommended to create informative videos highlighting domestic violence cases with warning significance. Additionally, selecting representative cases for public sentencing can contribute to enhancing public awareness and understanding of the legal aspects of combating domestic violence. This approach aims to equip the public with knowledge to protect their legitimate rights and interests through the law when faced with instances of domestic violence in real life.

5. Conclusion

Through examining the “violence against violence” behavior of abused women in domestic violence cases, this paper outlines the conditions and elements determining whether such behavior constitutes a legitimate defense. Preventive measures within the legal framework are also proposed. These measures aim to protect the rights and interests of women while incorporating legal awareness, psychological intervention, and education to reduce the occurrence of domestic violence and the resort to “violence against violence.” The ultimate goal is to preserve family and social harmony.

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The authors declare no conflict of interest.

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