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

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

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

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

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1 Analysis on Positive Law

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

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