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Police intervention in domestic violence cases: mediation, warning or administrative penalty?



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Abstract

China's first law on domestic violence (DV) was passed in 2015 and implemented in 2016, which creatively established the DV warning system. It provides a way for police stations to intervene in DV and ensures family harmony and stability to some extent. However, there are regional and individual differences in implementation. In this study, information was collected during personal interviews with 12 police officers from three police stations in the same city in China. Through the discussion of police intervention in DV, we found that mediation was still the main way to settle a DV case due to the traditional concepts, ambiguity of related terms, weak deterrent of a warning paper, and inadequate understanding of related guide. Also, the support and cooperation mechanism to intervene in DV has not been established. Based on our findings, we will put forward suggestions on improving work norms and procedures, strengthening training and guidance, and establishing multi-party cooperation mechanisms.

Ключевые слова

administrative warning system, anti-domestic violence law, domestic violence, mediation, administrative penalty

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Вмешательство полиции в дела о домашнем насилии: посредническая деятельность, предупреждение или административное наказание?

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Аннотация

Первый закон о домашнем насилии в Китае был принят в 2015 году и стал реализовываться в 2016 году, позволив установить систему профилактических мер относительно случаев домашнего насилия. Закон дает возможность полицейским участкам вмешиваться в дела о домашнем насилии и в определенной степени гарантировать гармонию в семье и стабильность. Впрочем, существуют региональные и индивидуальные различия в его исполнении. В этом исследовании собрана информация о проведении интервьюирования 12 сотрудников полиции из трех полицейских участков в одном городе Китая. В ходе обсуждения полицейского вмешательства в случаи домашнего насилия мы обнаружи-

ли, что посредническая деятельность оставалась основным способом для урегулирования дел о домашнем насилии вследствие традиционных понятий, неоднозначности схожих условий, слабого сдерживающего фактора предупреждений со стороны полиции и недостаточного понимания соответствующего направления. Также, не были созданы поддержка и механизм сотрудничества в отношении вмешательства в дела о домашнем насилии. Основываясь на наших результатах исследования, мы выдвинем предположения об улучшении юридических нормативов и процедур, усилении обучения и руководства, и установлении механизмов многостороннего взаимодействия.

Ключевые слова

административная система предупреждения, закон против домашнего насилия, домашнее насилие, посредническая деятельность, административное наказание

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Introduction

The police represent the front line in the quick response to DV cases. The Anti-domestic Violence Law was passed formally by the National People's Congress on 27 December 2015. It stipulates that the police department has duties to send the police on time, stop violence, investigate and collect evidence, apply the warning system, give a punishment, and assist the victims. In particular, the warning system formally established by the law expands the legal ways for public power to intervene in DV.

The warning system plays an important role in protecting the victim in time, deterring and educating the violator, and providing evidence for subsequent litigation procedures. Since its implementation, many provinces and cities in China have successively issued relevant implementation rules and guidelines, but have not yet put into a national unified version. In August 2021, the Shanghai Public Security Bureau issued the Manua for Dealing with DV Cases ("The Manua") detailing the application situation of the warning paper and relevant procedure. However, in practice, the law was applied differently. In some areas, mediation has become the main way of disposal. Police rarely issue warning papers, which makes the warning system become a dummy; In other areas, the standard for issuing warnings is low. The warning papers were repeatedly issued to the same person and even issued to both parties, resulting in the abuse of the warning system.

This study focuses on the actual situation of police handling DV cases in Shanghai through individual interviews. And we will put forward suggestions to improve the service of police response to DV cases.

Literature review

Yet some domestic studies focused on the problems of police intervention in DV. Social culture, cognitive bias, law enforcement basis and difficulties in collecting evidence are interfered with the effect of police intervention in DV (Lan, 2021; Wu, 2022). Some scholars have examined the effect of the warning system and analyzed the factors affecting law enforcement, such as the backward concept of the

police, the low awareness of the warning system, the lack of standardized guidelines, the lack of a review system, and the lack of follow-up measures (He, 2020; Jiang, 2019; Li & He, 2017). These scholars also put forward suggestions on clarifying the legal nature of warning papers, standardizing the application and process, strengthening the training of law enforcement personnel, and establishing an anti-domestic violence linkage mechanism. The current literature mainly uses the methods of case study and questionnaire survey. Few are carried out in-depth interviews with the police officers in the local police stations. As a result, it is not possible to know detailed views of police intervention in DV.

Methods

Based on literature research, the interview outline was prepared in advance, and three police stations in Shanghai were selected as the samples (Between May 2022 and May 2023, two police stations haven't issued any warning papers, and the other has issued nine warnings). The participants were selected by the heads of each police station. There were 12 participants, including 6 community police officers, 2 security officers and 5 case handling officers. All the officers interviewed were male. Fifty percent had less than five service years, 17% had 5-10 service years and the rest worked for more than 10 years. This study was carried out separately in each police station, and the interview for each police officer was usually 20-30 minutes.

An interview guide containing seven questions was developed to guide the interviews. The questions were as follows:

1. What is the difference between domestic violence and domestic dispute?
2. Under what circumstances should the warning paper be used?
3. Do you know the process for issuing a warning paper?
4. What is the role of warning paper in the fight against DV? Is it useful?
5. Who will supervise the implementation of the warning paper after it is issued?

6. In the handling of a DV case, which way do you prefer to settle the case, mediation, warning, or administrative penalty? Why?

7. What support do you seek in handling DV cases?

Using the recordings and the notes made for interviews, we composed a transcript of each interview. All transcripts were then checked for accuracy by a second researcher. We coded each of the participants, such as A1 (referred to Officer 1 working in Police Station A) or B1 (referred to Officer 1 working in Police Station B). According to the content of the transcript, particular ideas were selected and categorized into corresponding themes. The researchers identified the facts and problems found in the interviews through the discussion afterward.

New findings of the study

1. The awareness of DV

The understanding of the concept of DV decides the extent of police intervention in family affairs and the protection of victims. According to the Anti-Domestic Violence Law, DV refers to physical and mental violations between family members including beatings, injuries, restraint or forcible limits on physical liberties, as well as recurring verbal threats and abuse. The concept of DV seems clear, but it is still vague for enforcement. Just as "a thousand readers have a thousand Hamlets in their minds", the interviewed police officers made free judgments on whether the case was DV based on their own experience.

It is difficult to distinguish between DV and domestic disputes. With the implementation of the Anti-Domestic Violence Law, most police have been able to recognize the harm of DV. Due to DV often evolving from family disputes, it is confusing when the adverse effects are not serious. When asked how to distinguish DV from domestic disputes, the interviewees had different views. Some officers determined that physical altercation should be taken as the standard. Physical altercation here can be broadly understood as "pushing, grabbing, slapping, kicking, threatening with a knife or weapon, etc." However, it is still difficult to grasp what level of physical violence can be identified as DV. Some officers believed that the distinction should be based on whether the parties are injured.

When someone gets hurt, it's considered DV. (B1)

Some respondents believed that DV took place repeatedly and continuously, and the times of violence happening should be taken as the basis for measuring.

Depending on the number of times, the first call to the police is generally not recognized (DV). You should check the previous records. If a man reports to the police again, the incident could be regarded as DV. (A1)

DV doesn't just happen once. The difference is a family dispute is accidental, impulsive, and will be stopped immediately after realizing one's mistake. It is just a minor dispute, such as a scratch. (A3)

Non-traditional violence is difficult to identify. The Anti-Domestic Violence Law extends the protection of victims to psychological abuse, which reflects legislative progress. Psychological abuse can include: Hostile behaviors or silent treatment as part of a pattern of behavior to make the victim feel fearful; Being insulted in front of others; Repeatedly being belittled and so on. Psychological abuse is more hidden and private than physical violence. Therefore, the burden of proof for the victim is bigger, such as only providing the victim's testimony cannot effectively prove the existence of psychological abuse, the victim needs to collect audio or video evidence. At the same time, the effect of psychological abuse is subjective and intangible, and there is no clear standard in practice for determining whether the victim is afraid and then feels psychological coercion. In the case of PUA (Pick-up Artist), it has changed in the Chinese context in recent years. It has become a specific term for a kind of behavior of controlling another person by belittling or abusing him. However, this kind of behavior may continue for a longtime to have a serious effect on the victim. This makes it difficult for a single act to be directly identified as DV.

Psychological violence is more abstract and harder to identify than physical violence. For example, a wife called the police because her husband scolded her, and when we arrived at the scene, the husband had stopped scolding her, which required the wife to take evidence herself. (C1)

People always say something unpleasant in a quarrel and may regret it later. Therefore, you can't just call it mental violence. My point of view is that mental violence should be long-term and lasting. For example, when a husband humiliates his wife in front of neighbors and outsiders, he causes psychological damage to his wife, and this damage has to be serious. (C2)

PUA is also a form of DV. There was such a case two years ago where a girl who didn't feel good enough for her boyfriend killed herself in despair. The couple's chat records were exposed, in which the man let the woman prove their love with extreme behavior. The boy was so arrogant that he ordered his girlfriend to call him master and belittled her all the time. He's trying to control his partner's life by destroying her self-esteem. But this is difficult to identify, it is difficult for outsiders to know these things happened between them. In this case, it wasn't until the girl died that her mother discovered the truth. (B5)

Furthermore, some respondents mentioned "cold violence," which is manifested as "coldness" or "indifference" toward family members. For example, though ignoring one's partner for a long time does cause damage to the mental health of the victim, this kind of deviant behavior corresponds to the moral responsibility of the perpetrator, and "anti-indifference" is difficult to implement in judicial practice.

Parent-to-child incidents are controversial. Influenced by the traditional idea of "bringing out filial children under

the stick" (filial children are beaten to be obedient), most respondents believe that parents' beating their children belongs to the punishment in general family education and cannot be completely equated with DV. At the same time, the Chinese Civil Code also stipulates that parents have the right and duty to educate their children, which means that the law does not explicitly exclude parents' right to discipline their children for wrongdoing.

Parents beating their children generally cannot be considered DV, it is because the parents' original intention is to wish their children well. When my son makes a mistake, I will also hit him, but this behavior is related to love. I think good parents sometimes have to spank their children. Of course, spanking should be limited and you can't spank children too often. (A1)

Parents beating their children should also be counted, but children rarely report to the police. Society generally agrees with this way of educating children, as long as it is not very serious. (B2)

2. *The understanding of the function of the warning paper.*

The warning paper is a written warning issued by the public security organ to urge the abuser not to commit DV again where the adverse effects are minor and no administrative punishment should be given according to law. The warning paper has the following legislative value: 1) Deterrent effect. In the eyes of lawmakers, the police officially record the facts of DV in the form of a warning paper and will prohibit the perpetrator from committing DV again. For the perpetrator, the warning paper leads to psychological shock, to achieve the purpose of preventing the recurrence of DV; 2) Function of education. The warning paper confirms the illegality and illegal consequences of the perpetrator's behavior in written form. It transmits the signal that DV is not a private affair, it is a crime against the law; 3) Function of evidence. The DV warning paper issued by the public security organs can be used as effective evidence in the follow-up judicial procedure. According to the provisions of Article 20 of the Anti-Domestic Violence Law, the people's court can directly determine the facts of DV based on the warning paper. From the practical results of the warning system, respondents generally believe that the warning paper is a kind of administrative guidance; It doesn't have a direct impact on the rights and obligations of the counterpart, so its educational and deterrent effects are limited.

The warning paper has an educational effect. It has a deterrent effect on ordinary people, but for a drunkard it is difficult to restrain his behavior and the role of warning paper cannot be guaranteed. (A1)

Some officers interviewed confessed that a few family conflicts were mixed with interests, and in this case, warning papers could not act as constraints on both sides.

(Whether the warning paper has an effect) depending on the situation. I once met an old couple who had remarried. The husband beat his wife to separate the house.

The warning paper was not effective at all in this case. They will continue to fight, and fighting is just a means to gain profits. (A4)

In addition, whether the victim applied to the court for a Restraining Order or applied for divorce, the proof role of the warning paper in the subsequent litigation activities was affirmed by the officers.

Sometimes the victim will ask for a warning paper, which is usually taken to court as evidence. (B2)

I recommend asking the court for a Restraining Order. After the court issues a Restraining Order, the local police station will enforce it. For example, when the perpetrator appears in the community where the applicant is located, the community police officer can ask him to leave immediately. He also can warn the perpetrator not to affect the normal life of the applicant. I think this can have a protective effect on the applicant. (A3)

3. *The awareness of the issuing process of warning paper.*

The supporting rules of each province and city further specify the application and issuance process of the warning papers. "The Manua" lists four circumstances in which a DV warning paper should be issued, respectively: 1) the adverse effects are extremely minor; when voluntarily eliminate or mitigate the consequences and obtain the victim's understanding; 2) if the adverse effects are minor, can be handled by public security organs through mediation, and the two parties have reached and performed a mediation agreement; 3) Other circumstances. However, from the interviews, we found the understanding of the warning letter varied from person to person, and some officers were not clear about when to apply and how to apply the warning paper. The description of the so-called "adverse effects are extremely minor" in The Manua is still vague. The discretion of the police is relatively large, which affects the issuance of the warning paper to a certain extent.

Can not fully understand, the provisions are too general. In practice, the law is applied cautiously. (C1)

Yes, I know (the conditions of the issue). If the victim has called the police three times, and believes that the other party has a violent tendency, then you can issue a warning. (B1)

In practice, warning papers are rarely issued. I understand that it is usually issued after an act of violence. In the case of non-accountability, the circumstances are minor, which means that the physical conflict is small and the victim has no serious trauma; The parties are willing to settle. (B4)

It is not clear (how to issue warning papers). I haven't used it. (A4)

For the return visit after issuing the warning paper, most police said that the community police officer and the residential (village) committee (also named Ju Wei Hui) should cooperate, but no other departments are mentioned. It can be seen that the level of cooperation between multiple departments in reality is not enough.

4. *The way police intervene in DV cases*

Article 15 of the Anti-Domestic Violence Law stipulates that police must respond to DV reports. “The Manua” further clarifies the whole process of police handling DV cases: 1) Quickly arrive at the scene, turn on the law enforcement recorder, and declare yourself as a police officer; 2) stop the ongoing violence in time, control the perpetrator according to law (If anyone gets hurt, you should assist or call 120 to treat the injured), and maintain order at the scene; 3) investigate, collect relevant evidence at the scene (like questioning victims, witnesses at the scene, simultaneous collection of evidence by using law enforcement recorders, and carrying out on-site inspection if necessary); 4) handle the situation according to different circumstances. In practice, the ways of handling the cases are flexible and diverse, including legal publicity, criticism and education, separation of the two sides, mediation, warning, administrative punishment and other means. The police will choose the intervention method based on the severity of the violence, whether it is repeated, whether tools are used, and the emotional state of the perpetrator.

I will assess the situation: if there is a verbal conflict, I will mediate; If there is a physical conflict, I will recommend checking the wound in the hospital; If tools are used, I will take both sides to the police station. (A3)

I'll issue a warning if it's a first call. If the person commits violence again after the warning is issued, I will deal with it according to the procedures and circumstances under the Public Security Administration Punishment Law. (C3)

In interviews, most of the police expressed their preference for mediation for the purpose to promote harmony.

Sometimes couples fight over trivial things. I would pull the man to the side, persuade him to compromise with his wife, and let him apologize. If he agrees, I will try to persuade the wife. There is a foundation of love between couples, and when the man apologizes, they usually get back together. (A1)

Except or being influenced by the traditional concept of "One would rather demolish ten temples than destroy an intimate relation", the respondents gave their reasons for choosing mediation as a mild way to intervene in DV. First, from the perspective of family harmony, mediation provides a platform for equal dialogue between the two parties and can resolve disputes and contradictions within the family to the greatest extent.

I always deal with (DV cases) in the way of mediation, which may be related to my work as a community police officer, hoping that the family can be harmonious. (A3)

For the sake of family stability and preventing conflicts from escalating, I prefer mediation. Some of the vicious cases stem from the most ordinary family conflicts. If the family conflict can be found in time at the early stage, it can be resolved, and the tragedy can be avoided. (B5)

Mediation allows couples to move on with their lives. Punishment can't fundamentally solve the conflict. (B3)

Second, from the perspective of the relationship between family members like the mouth and teeth, punishing the abuser often inevitably hurts other members. Under normal circumstances, victims don't want the public security organs to punish the violators for maintaining family relations and property interests.

If the caller has an injury, we will listen to his intention on whether to check the injury. If the victim wants to end the relationship, both parties will be taken to the police station for further processing. Whether to enter the case process depends on the situation. ... In most cases, women are soft-hearted and feel that [punishing their partners] affects their family. (B1)

Because family members are in the same household register book, who are close to each other. One party will worry that the punishment may affect the child of the family in the future. Thus, he does not want his partner to be punished. (B2)

From the perspective of work efficiency, some officers believed that mediation does not have too many procedural requirements and can be concluded as soon as possible.

5. *The supporting handling DV cases*

Anti-domestic violence work cannot rely on a single department; various departments should work together. The Anti-Domestic Violence Law also stipulates the responsibilities of different departments, including courts, women's federations, residential (village) committees, and social service agencies. In practice, mediation organizations under the neighborhood (village) committee take the initiative to participate in the mediation of DV cases. A community police officer introduced to us that through the "Multiple Disputes and Conflicts Resolution Platform", the local residential (village) committee shared the information about conflicts with the police station and would jointly mediate them. The "110" hotline information that occurred in the community every day would be transferred to the local residential (village) committee on time, and the mediation director of the residential (village) committee would organize mediation through telephone or door-to-door visits regarding as the wishes of the parties.

After receiving the information, the mediation director will call the parties to pay a visit and ask if mediation service is needed. In most cases, the parties do not want the neighborhood committee to come to the door and do not want this matter to be publicized. But in one successful case, there was a mediation director who was patient enough to persuade the abuser several times. And he also invited the abuser to join in the volunteer activities. Once the director got to know the family and made friends with the abuser, the problem was solved easily. China is a human relations society; it is generally difficult to refuse acquaintances. And the neighborhood committee is an autonomous organization of the masses, which has no power and can only rely on a deep mass base. (A4)

Some police officers interviewed believed that the interdepartmental collaboration platform hoped for in the law had not been fully established. The police can't get enough professional support in handling DV cases. For example, Article 15 of the Anti-Domestic Violence Law stipulates the setting of shelters, but a few police officers do not know the address of the shelter in their jurisdiction. Therefore, the customary practice is to let one party go to a hotel to temporarily live to allow both sides to have a calm time.

I know we can take our victims to a shelter, but I don't know where that shelter is. It is more difficult for me to coordinate other departments as a grass-roots officer. (A4)

Some officers also realized that while dealing with DV cases, they should also actively repair the family relations, which requires the support of professional teams such as psychological counseling and dispute resolution. At present, there is a lack of specialized training and professional teams to assist the work of police.

My busy schedule does not guarantee my participation in the long-term training. Usually, I learn the relevant knowledge from the news and the Internet. When I encounter a dispute, I will look for the policy for reference by myself. (A1)

After the occurrence of DV, we often punish the abuser, and ignore the treatment of the victim. The victim was hurt emotionally, and needed someone to calm him down. That's a service we don't have time for when we're responding. But there is no professional team to follow up. (C3)

Conclusion and suggestions

From this interview, it can be seen police officers in the police station have become more familiar with the regulations on DV and the warning system than before. However, due to the traditional concepts, ambiguity of related terms, weak deterrent of a warning paper, and inadequate understanding of the related guide, mediation is still the main way of handling such cases. At the same time, the support from other government departments and social organizations is insufficient, and the cooperation mechanism to intervene in DV has not been established. Therefore, this study puts forward suggestions to improve the current situation of police intervention in DV from three aspects.

1. Suggestions on clear definition of the term "DV" and improvement of the law enforcement concept.

The police should correct the attitude of law enforcement and realize that DV is a violation of social norms. The police should be able to accurately define what is "DV" according to the law, rather than being free to judge by their own experience. Given this, it is urgent to make a unified interpretation of the application of the law. Through the combination of general descriptions and specific examples, DV and family disputes should be clearly distinguished. We believe that minor physical violence should also be

recognized as DV. Because without intervention, victims are trapped in a cycle of violence, with high rates of repeat violence by perpetrators; Appropriate punishment and DV in the parental education scene should also be clearly distinguished to help the police quickly identify DV in practice. In addition, for non-traditional forms of violence such as mental violence, sexual violence and economic control, the forms of expression and standards of proof should be further explained, so that they don't just stop at the legislative stage; As for the concept of "cold violence" in the non-legal sense, it should be regarded as an advocacy norm. Following the provisions of Article 1043 of the Chinese Civil Code, we advocate "non-violent communication" in marriage and family life, and create an equal, harmonious and civilized atmosphere.

2. Suggestions on further detailed warning system workflow and strengthening guidance on law enforcement.

Home is not a place beyond the law. The implementation of the warning system reflects the policy attitude of combining education, correction and punishment in anti-domestic violence. To prevent law enforcement differences and effect gaps, a unified national standardized implementation procedure should be formulated. The legal nature of the warning paper, scope of application, evidence standard, reconsideration provisions, enforcement and supervision procedures, and penalties for repeat offenses rules should be unified; It is necessary to build a multi-subject collaborative DV handling mechanism in light of regional realities, and establish a closed-loop process of "collection of evidences-mediation-issuance of a warning paper-paying a return visit"; Law enforcement guidance should be strengthened through portable working manuals and online micro-course training. The ambiguous concepts should be explained in the learning resources to help the police to make the right choice among various means of intervention. For example, a warning paper cannot replace administrative punishment or criminal responsibility; In cases where a warning paper should be issued, verbal mediation should not be rushed through. Only in this way can we thoroughly stop the recurrence of DV.

3. Suggestions on the establishment of a multi-departmental mechanism for coordinated intervention in DV.

Combating DV is along-term process. We cannot rely on the police alone to intervene in DV cases. Relying on the cooperation of the whole society, we will establish a long-term linkage mechanism integrating prevention, intervention and assistance. It is suggested to try to expand the scope of participants in the "Multiple Disputes and Conflicts Resolution Platform", and unite relevant units such as police stations, residential (village) committees, and women's federations to realize information exchange and resource sharing; Considering the high professional requirements for handling DV cases, it is suggested to establish a special anti-domestic violence working group at the community level. For example, due to the

intergenerational transmission of DV, it is also necessary to consider the psychological comfort of children in the intervention process; Develop the Fengqiao Experience in the new era (The Fengqiao experience refers to mobilizing and relying on the masses, so that contradictions are solved in the community), and encourage social organizations, community workers, public interest lawyers, psychological counselors, etc., to join the anti-domestic violence working groups. With the joint participation of the community police, they provide legal services, medical treatment, psychological counseling and other humanistic care and services for victims and even abusers, and work together

to repair family relations and fundamentally prevent the recurrence of DV.

Due to time and regulations constraints, our research is insufficient. Our survey is only the tip of the iceberg and does not cover all the districts of the city. The number of police officers who participated in the interview was small, and it was regrettable that there were no female police officers among them. We have not spent too much time on the specific case, and have not analyzed the reasons for failure or success from the details of disposal. We also did not look at the views of other responsible departments on the handling of DV. These are what we should pay attention to in the next step.

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All authors made an equal contribution to the development of the research, the processing of its results and the writing an article.

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