

The Governmental Responsibility of Relief Measure in the Process of Implementing Anti-Domestic Violence

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Abstract: The first Anti-Domestic Violence Law of the People's Republic of China came into effect on March 1, 2016, which filled the vacancy of anti-domestic violence law in the legal system of China. The anti-domestic violence law is aimed at preventing and avoiding domestic violence, protecting lawful rights and interests of family members, maintaining a peaceful, harmonious and civilized family relation and promoting family harmony and social stability. The process of implementing the anti-domestic violence law is not accomplished at one stroke; instead, it is a systematic engineering needing to be done with efforts from all directions. The government, as the strongest supporter of citizens, shall take corresponding responsibilities in the process of implementing the anti-domestic violence law, especially the governmental responsibility of relief measure in the process of implementing anti-domestic violence.

Keywords: Anti-Domestic violence law; Governmental responsibility; Remedies

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1. Research Background

The anti-domestic violence law is aimed at preventing and avoiding domestic violence, protecting lawful rights and interests of family members, maintaining a peaceful, harmonious and civilized family relation and promoting family harmony and social stability.

It's stipulated in Article One, Clause Four of the Anti-Domestic Violence Law that, the organs above county-level which are responsible for the works of women and children in people's government shall be responsible for organizing, coordinating, guiding and monitoring relevant departments to do anti-domestic violence works. It's stipulated in Article Three that, governments at all levels

shall provide necessary fund guarantee for the works of anti-domestic violence law.

A household is the smallest unit in the society, as well as the cornerstone of the whole society. Rousseau mentioned in The Social Contract that "I call then government, or supreme administration, the legitimate exercise of the executive power, and prince or magistrate the man or the body entrusted with that administration". Therefore, the government should be the patron saint of all kinds of rights of the citizens. When the infringement of the rights of citizens happens, the public power should protect citizens from illegal infringement. At the same time, the victim of domestic violence should be protected. This is the responsibilities and obligations that the government should undertake for the citizens.

2. Analysis on the Current Situation of Domestic Violence and the Anti-Domestic Violence Law in Our Country and the Existing Problems

2.1 The Current Situation of Anti-Domestic Violence and the Anti-Domestic Violence Law in Our Country

The anti-domestic violence law is a legislation reflecting popular will from bottom to top and the product gained by experts by constant research and fighting in the past 20 years. It reflects the increasing professionalization in the course of perfecting the legal system in our country. Mins-hun Li, a famous scholar, regards the anti-domestic law as the "agglomeration". The introduction of this law solves the awkward situation of deficiency in anti-domestic violence law in our country, also contributes a lot to the connection of anti-domestic violence law between China and the world, filling vacancy of legislation in the field of anti-domestic violence in our country and providing a chance of communication and reference in the field of legislation and judicature between our country and foreign countries.

2.2 Problems Existing in Anti-Domestic Violence and the Anti-Domestic Violence Law in Our Country

According to relevant data, domestic violence is a universal phenomenon in our country. On the one hand, the cognitive problem prevents people from understanding the social phenomenon of domestic violence correctly; on the other hand, the government does not pay enough attention to the propaganda of relevant laws. Domestic violence appears commonly in our country though; our country does not provide any substantial help to the victims of domestic violence. While comparing with other countries under the rule of law and those developed countries, our country falls behind in this aspect. On the basis of advocating equality of men and women, the western countries also provide humane material or psychological help to the victims of domestic violence. This is of great referential value to our country.

3. Legal Rules and Aids on Domestic Violence in the Common Law System

According to probe and analysis upon the laws in countries of common law system, such as Britain, the United States, Canada, Australia, etc., the legislative characteristics of anti-domestic violence laws in countries of the common law system can be classified as below:

3.1 There Are Laws to Abide by When There Are Complete Legal Systems

Countries of common law system have been aware of the harm of domestic violence. To punish and prevent such cases, they enacted relevant laws. As everyone knows, law plays a role of guidance. When there are laws to abide by, people know how to behave themselves. People will adjust their own behaviors according to law. The stability of law also makes people better believe in law. Law not only restrains people's behaviors, but also adjusts the legal relation between man and man.

3.2 Individual Legislation Produces Effective Result

According to the penal code in our country, slight domestic violence is a case of private prosecution. The court pays no attention to such cases if there is no prosecution. However, severe domestic violence may grow into criminal case which needs regulation from the penal code. In countries of the common law system, corresponding regulations upon domestic violence crime are made in the penal codes though, relevant individual legislations about domestic violence are made to better guarantee the rights and interests of victims of domestic violence. This is also a method to assure human rights.

3.3 Form Joint Forces to Prevent and Cure

The implementation of anti-domestic violence law is a systematic project instead of a work which can be completed by a single institution or solely by laws. Relevant legal and governmental departments and special organs in the whole society need to work together to better carry out the anti-domestic violence law. In countries of the common law system, forces from all sectors of society are integrated in every rank and every department, especially the service department, which achieves a good result.

3.4 Get Involved Limitedly and Guard Effectively

As the main body to undertake public duty, the government should play a major role in the field of public law. What the modern government advocates is limited involvement from the government. After all, the aspect of domestic violence is the private relation of rights and obligations among people. Too much interference from the government would be an invasion of personal freedom. Limited involvement does not equal to nonintervention. When the victim of domestic violence needs protection, the government should step forward bravely to show solicitude for the victim and to do prevention and protection work for anti-domestic violence, such as the construction of relevant welfare institutions and relevant asylums.

3.5 Treat Domestic Violence Cases Specially

To better guarantee lawful rights and interests of the victims, countries of common law system set up special family court to deal with domestic violence cases or social welfare institutions to divide the work of the cases, which is a good method to better protect the victims. It strangles the domestic violence case in the cradle before it worsens, to better protect the interests and rights of the victims and to prevent larger losses.

4. Administrative Relief and Governmental Duties in Our Country in the Process of Implementing the Anti-Domestic Violence Law

While comparing with relevant situations in the above-mentioned countries of common law system, the legislation on domestic violence in our country is to be perfected. The legislation of anti-domestic violence law in our country could be improved by examining its own situation on the one hand and by referring to the mature measures and experience on dealing with this matter from other countries on the other hand. "Even a useful and helpful system as a whole is not omnipotent. There is no system with only advantages but disadvantages. No system would not make mistakes on specific issues and even important historical judgments." I would like to make some suggestions about the construction and perfection for our government:

Firstly, construct a propagandizing mechanism of anti-domestic violence law.

Social individuals share different resources, intelligences and education backgrounds and would have different sensitivity on social hot-button issues. According to survey data, the remoter a place is, the higher frequency the domestic violence would happen. Therefore, the government should strengthen the propaganda of anti-domestic violence law, helping victims of domestic violence to know this good news and making them believe that it's unnecessary to forbear domestic violence and whenever there is domestic violence, they could go to law to protect their legal rights and interests.

Secondly, set up relief mechanism for victims suffering domestic violence.

As mentioned above, countries of common law system have been providing corresponding relief to victims of domestic violence, such as providing asylums and temporary residence. However, we don't have such mechanisms in our country. Therefore, the government should establish such welfare institutions to provide victims residence and

free board and lodging, providing convenience to them and warming them. It's a helpless action for victims to expose themselves to domestic violence when they cannot afford their board and lodging and when they are worrying about their children at home. This is exactly the time when the government should set up an asylum for the victims and their families to prevent them from secondary damage.

Thirdly, provide psychological consult to victims of domestic violence.

The victims of domestic violence must be suffering both physically and psychologically. At the same time, domestic violence would cause irreversible harm to children. Children's vulnerable hearts need more protections. Therefore, in domestic violence, both the direct victim and the children of the family need corresponding psychological counseling. It's a wrong act to tell their immature minds what domestic violence is, which is an act to undertake corresponding legal liability. Domestic violence is the cause of all kinds of wickedness. Such case educations could be used to teach children to be responsible for their own behaviors.

Fourthly, set up cooperative and coordinated mechanism among multiple institutions.

Anti-domestic violence is a systematic engineering which cannot be accomplished at one stroke. The society relies on a set of mechanisms restricting and supplementing each other instead of an individual mechanism at any time. The introduction of anti-domestic violence law sets up a working mechanism with multi-sector cooperation in the form of law. It involves alarm, medical treatment, salvage and temporary asylum, etc. At the same time of complying with time and international trend, it is conducive to the implementation of anti-domestic violence law. It's a typical example for our country to set up temporary asylum by using experience of other countries for reference. In the practice of judicature in foreign countries, female asylum has long since existing. It provides psychological counseling and material help on lodging for female who suffers from domestic violence. This movement marks a significant advance in our country. At the same time of improving women's status, it takes the weak position of women after suffering domestic violence into legislation and provides corresponding inclined protection for women on social welfare.

5. Conclusion

In conclusion, the government is the patron saint of people's rights, as well as the strong supporter behind citizens.

The government plays a negative role on the one hand and a positive role on the other hand. In the field of domestic violence, the government should ensure its negative role within the range the citizens' exercise of free rights and play a positive role when the citizens suffer from domestic violence, to protect citizens from the pain brought by domestic violence. To better protect lawful rights and interests of the citizens, the government still needs to strengthen the construction of asylums for victims of domestic violence or ensures some welfare institutions to provide corresponding legal assistance, material assistance and psychological assistance to victims of domestic violence. "A precedent is nothing but a starting point; only when the precedent is followed and must be followed by later generations, can it become a system." The anti-domestic violence law is gradually stipulated and implemented under the circumstance of the development of such a precedent. At the same of the performing its positive role, the government shall also take the responsibility of relief measures in the course of implementing the anti-domestic violence law.

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