

# Analytical Examination of the Activation Process of the Juridical Mechanism for Legitimate Self-Defense in Cases of Domestic Violence

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**Abstract:** The legal system needs to be activated, and the practical operation of the self-defense system faces many challenges: the ambiguity of legal provisions, inconsistencies in judicial practice, and limitations of social awareness. These issues make it difficult for the self-defense system to function as it should. The lack of legal awareness is one thing, but having existing provisions become zombie clauses while countless individuals are waiting for such protection is another. The existence and activation of the system are urgent because beneath each seemingly insignificant legal provision lies a person's life. The necessity of the law is intertwined with ethics and humanity.

**Keywords:** Domestic Violence; Activation of the Self-defense System; Retaliatory Behavior Caused by Domestic Violence; Necessary Theories for Social Ethics Approval.

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## 1. Introduction

Laws are not created but rather codified by the state. From the intricate mechanisms of the state apparatus to the resolution of disputes among ordinary citizens, seeking a peaceful resolution without resorting to litigation represents a core value. The law itself embodies the highest authority and the fundamental sense of justice of the public. However, the inherent lagging nature of legal characteristics requires a lengthy and essential process for a legal system to transition from theoretical design to practical judicial application. Moreover, regional and cultural disparities contribute to the common phenomenon of differing judgments for similar cases. Taking China's justifiable defense system as a case study, the journey from theoretical formulation to practical implementation has evolved from the societal attention sparked by notable cases to a proliferation of scholarly discourses, culminating in a consensus on establishing clear criteria for criminal conviction and sentencing in practical cases. This evolution includes the issuance of judicial interpretations, the enactment of relevant legal provisions such as the Anti-Domestic Violence Law, gradually activating the system through various stages until it is widely incorporated into court proceedings. The distinct nature of domestic violence and the interplay with the justifiable defense system have not yet been fully actualized. Instances of disparate judgments and significant variability in sentencing still persist, indicating an ongoing stage from frequent occurrences of social cases to theoretical discussions by scholars and the gradual consensus-building process.

## 2. Activation of Legal System

### 2.1. Definition and Significance of Activation of Legal System

The activation of a legal system, typically with the self-defense system as an example: The "zombie system" label attached to the self-defense system is mainly due to a series of challenges it faces in practice, limiting its function and effectiveness. These challenges include vague legal

definitions, inconsistent judicial interpretations, and inadequate law enforcement. Due to the lack of clarity in legal texts regarding the specific definition of self-defense, significant differences exist in judicial interpretations of the self-defense standards in practice. Moreover, law enforcement agencies often lack a uniform standard and discretion in applying self-defense in specific cases. These factors collectively lead to the self-defense system becoming "zombified", where it exists within the legal system but performs poorly in practice.

The activation of a legal system signifies its transition from a normative state to an actual state. However, the inherent ambiguity and abstract nature of legal language, juxtaposed with the complexity of real-life situations, often result in difficulties in the correct application of corresponding legal provisions in judicial practice in order to render just judgments. Taking the self-defense system as an example, Article 20 of the Criminal Law, which stipulates the principles of self-defense, is relatively general compared to precise legal rules. Legal principles, being more generic and broadly applicable, do not operate on a binary all-or-nothing basis in individual cases but require judges to balance competing principles based on the specific circumstances and relevant context. However, in judicial practice, the interpretation and judgment of the self-defense system by judicial officers may be influenced by personal experiences, professional knowledge, and other factors. Variances in the levels of expertise, legal awareness among legal professionals, as well as disparities in the construction of the legal team, can hinder the activation of the self-defense system. Merely enacting laws is insufficient to ensure effectiveness; the activation of a legal system not only depends on the strict adherence to scientific, democratic, constitutional, and rule of law principles during legislation but also requires efficiency, proportionality, adherence to due process, and unity of rights and responsibilities in law enforcement. In the application of the law, the implementation of judicial responsibility ensures that the general public perceives fairness and justice in every case.

**Table 1. Activation of Legal System**

Case number	case title	Main facts	Judgement	Triggering point/ controversial issue
(2018)JI 032XINGCHU239	WANGTIANYOU	causing minor injuries while defending against an illegal invasion of a residence.	Legitimate self-defense	The term "illegal infringement" encompasses both acts that infringe upon the right to life and health, as well as acts that violate personal freedom and property rights, such as tranquility rights.
X	SHENGCHUNPING	causing the death of one person while defending against a pyramid scheme organization.	Decision of non-arrest	Whether the defense exceeds the necessary limits must be assessed based on the specific situation and taking into account public perception and common understanding.
X	WANGMOUMING	causing the death of a person while defending against the violent assault of one's daughter by one's son-in-law.	Decision of non-arrest	Acts of illegal infringement that have already created an imminent danger are considered to have begun, while acts that have been temporarily halted but still have the potential to be carried out are considered as ongoing illegal infringement.
(2016) LU1302XINGCHU347	YUHUAN	causing the death of one person, two severe injuries, and one minor injury while defending against the abusive behavior of a debt collector towards one's mother.	excessive self-defense constituting the crime of intentional injury, sentenced to 5 years of fixed-term imprisonment.	To prevent narrowing down illegal infringement to violent or criminal acts and thereby disregarding human dignity or minor acts of violence.
(2016) QIONG02XINGZHONG28	CHENTIANJIE	defending against insults to one's wife resulting in the death of one person and two people sustaining minor injuries.	Justifiable self-defense unlimited self-defense.	Illegal infringement exists objectively, regardless of whether the perpetrator recognizes the illegality of their actions; distinguishing between mutual fighting and self-defense.
(2017) E01XINGZHONG331	YANGJIANPING/YANGJIANWEI	a verbal dispute escalating into a fight, where attempting to stop the aggression resulted in the death of one person and severe injury to another person.	Yang Jianwei committing intentional injury; Yang Jianping exercising justifiable self-defense.	Accurately distinguishing between mutual fighting and self-defense in cases where a fight is triggered by a trivial matter is crucial. It is important to consider whether the means used for self-defense clearly exceed reasonable limits and cause significant harm.
X	GENGMOUHUA	defending against illegal violent forced demolition resulting in severe injuries to a person.	Decision of non-arrest	The distinction between general defense and special defense applies to defensive acts that objectively result in significant harm, but it is necessary to consider the actual power disparity.

## 2.2. Process and Challenges Encountered in Activation Pathway

"The Yu Huan case and the Kunshan case have made important contributions to the activation of the legal defense system in the development of criminal law theory and practice. Discussion in academia and society is helpful to further clarify the rules for the use of legal defense system. "Tianyi" (natural justice), "Guofa" (national laws) and "human emotions" are a set of interrelated concepts. Human emotions transcend the laws of the state, and the laws of the state cannot suppress natural justice, which is ultimately linked to human emotions.

The activation of the legal system is a gradual process, where scholars contribute through various publications and judicial interpretations to transform abstract principles into specific legal rules or precedents. However, in judicial practice, there may be external pressures and psychological concerns influenced by the notion of "preserving life" when handling cases involving self-defense causing death. In some cases, this may lead to the wrongful identification of legitimate self-defense actions as excessive defense, or even refusing to acknowledge the self-defense factors. Such practices are extremely erroneous. As a judicial authority, it is

the duty to strictly adhere to the law and not sacrifice legal principles for the sake of "settling matters peacefully." Otherwise, it is detrimental to upholding the dignity of the law and establishing the correct guidance for society, and particularly unjust for those individuals who have engaged in acts of legitimate self-defense.

## 3. Doctrine of Self-defense for Domestic Violence

The system of justifiable defense should be activated in the context of domestic violence. The "abusers" who are in long-term cyclic patterns of family violence typically exhibit very low subjective malignancy, minimal likelihood of reoffending, and essentially zero social harm. The specific harmful behaviors they carry out are essentially incidental in nature. However, due to the multifaceted nature of the causes of domestic violence, and the causal relationship between the continuity and incidental nature of harmful behaviors targeted at specific individuals, as well as the lack of public relief, lag, and passivity, the system of justifiable defense in the context of domestic violence has not been activated. This section will based on 368 typical cases of domestic violence retrieved from the Chinese judicial judgment website using "domestic

violence" as a keyword, discuss the legitimacy of activating the system based on four aspects: the subjectivity of the actors, the objects of their actions, the specificity of the harmful behaviors, and the lack of public relief in cases where the victim bears some fault and the abuser's actions are incidental.

### **3.1. Legitimacy**

This section will delve into the legitimacy of activating the system of justifiable defense in the context of domestic violence, based on five aspects: the fault of the victim, the targeted and incidental nature of the abuser's harmful behaviors, the causal relationship between harmful behaviors and long-term cyclical domestic violence, the lag and passivity of public relief, and the specific circumstances in which the defense under the system of justifiable defense is deemed inappropriate in cases of continued violence.

#### **3.1.1. Victim Culpability**

The perpetrator, as the executor of domestic violence, exhibits unilateral control desires and a propensity for violent and perverse behavior, which leads to various forms of violence against the victim including physical abuse, verbal threats and intimidation, economic control, and isolation. These actions are aimed at controlling and oppressing the victim, causing them to feel helpless and fearful, thereby complying with the perpetrator's wishes. The acts of domestic violence perpetrated by the abuser are serious criminal offenses that not only result in physical harm to the victim but also have long-lasting negative effects on their psychological and emotional well-being. While it is common in domestic violence cases for the victim's act of self-defense when pushed to the limit to result in the perpetrator becoming the plaintiff, it should not be based on the principle of "the one who inflicts greater harm is right." Ignoring the ongoing nature of long-term domestic violence abuse and focusing solely on the most severe act of self-defense can lead to judicial misinterpretation and injustice.

#### **3.1.2. Victim-targeted Incidental Acts of Sexual Assault**

One of the Victims resorting to counter-killing as a response to domestic violence is a defensive act arising from the need to protect their personal rights and physical safety under the long-term cyclic experiences of both psychological and physical abuse within the family. The perpetration of domestic violence often involves one-sided psychological control and physical torment, leading the victim to live in constant fear. Influenced by factors such as gender disparities in strength, economic and educational levels, as well as traditional family values, the act of counter-killing typically occurs only when the victim reaches their breaking point. Victims often hold the subjective defensive belief that not fighting back would leave them unable to escape or break free from the abusive situation. In contrast to general violent behavior, the act of counter-killing by domestic violence victims is usually directed solely at the abuser who has subjected them to abuse, thereby possessing a distinct nature with very low societal harm and limited personal danger targeted only at the perpetrator. Additionally, as the plaintiff is typically female and holds strong family values, enduring long-term abuse is often motivated by concerns for their children, leading to the belief that the likelihood of them reoffending is close to zero. Moreover, compared to other general violent crimes, the vast majority of abused individuals are first-time offenders. After engaging in a defensive act, they typically exhibit a willingness to surrender, voluntarily turn themselves in, truthfully confess, cooperate with the

public security organs for case investigations, provide a full account of the facts without concealment, and demonstrate a good attitude of admitting guilt.

### **3.2. Necessity**

In Failure to activate the self-defense system in cases of domestic violence can lead to unjust judgments, similar to the 18 cases before the activation of the self-defense system where there were disparities in sentencing for similar cases, overlooking the causal relationship between ongoing domestic violence and retaliatory actions, and blindly magnifying the societal harm of retaliatory actions. All these issues can undermine the authority, respect, and credibility of the rule of law in the eyes of the public.

#### **3.2.1. High Prevalence and Extensive Societal Attention in Public Discourse**

The World Health Organization's estimates of violence against women, published in 2018, indicate that around 30% of women globally have experienced violence, sexual abuse and abuse in their lifetime. On October 21, 2011, the All-China Women's Federation (ACWF) and the National Bureau of Statistics (NBS) released the main data report of the third Chinese Women's Social Status Survey. According to the report, 24.7 percent of women have been subjected to different forms of domestic violence such as abusive abuse, beating, restriction of personal freedom, economic control, and forced life by their spouses during their marriage. As can be seen from the above data, domestic violence is very common, resulting in more anti-murder behaviors and arousing a very wide range of public opinion. However, the corresponding legal system is "dead" and does not play its role. In traceable cases, most of the cases in which women resist domestic violence and cause death are convicted of intentional homicide. Some have been found to be intentional assault, and none have been found to be self-defense.

#### **3.2.2. Excessive Discretionary Power in Handing down Different Sentences for Same Offense**

According to Article 20, paragraph 2 of the Criminal Law of China, "excessive self-defense" behaviors "shall be mitigated or exempted from punishment." The specific scale of mitigation or exemption from punishment is to be determined by judges based on factors such as criminal motives, criminal objectives, and means used. However, in actual judicial practice, the characterization of similar acts of resisting domestic violence tends to be more conservative. Certain courts may have overly strict criteria for determining serious fault on the part of the perpetrators of domestic violence, seriously overlooking the long-term psychological and physical trauma inflicted on the victims, which goes against the principle of governing the country by law in China and can easily lead to judicial injustice. Additionally, the rate of probation application in such cases is low, and the rate of self-surrender being classified as confession is high. While these may seem like minor differences in the judicial process, they hold significant meaning for the lives of the parties involved.

## **4. Conclusion**

The article analyzes the activation pathway of legitimate defense system in the context of domestic violence, examines the necessity and legitimacy of legitimate defense system in such circumstances, and proposes corresponding activation pathways. However, to truly realize the effective operation of

the legitimate defense system in the context of domestic violence, it requires the joint efforts and continuous push from all sectors of society. In the future, it is necessary to further strengthen relevant research and practical exploration, continuously improve legal systems and social assistance mechanisms, and provide more comprehensive and effective legal protection for domestic violence victims. The focus of this article lies in exploring the activation pathways of the legitimate defense system in the context of domestic violence under different legal systems, particularly through studying the delineation of temporality and means restrictions. It looks forward to the significant implications of activating the legitimate defense system on judicial fairness from the perspective of citizens' basic views in the future.

## References

- [1] Chalos, B.G. (1995). Intangible identity theft and Intimidate Partner Violence. *The Accounting Review*, 64(8), 614-691.
- [2] Chiara, D. (2004). *The problems of gap to the protection of women against massive violence in Ethiopia*. Cambridge: Cambridge University Press.
- [3] Maslow, A. H. (1943). A theory of human . *Psychological Review*, 59(2), 264–494.
- [4] Kapoor, M. A. (2014). *Comparative analyst four laws against domestic violence*. New York, NY: Harper far away, & Row Publishers.
- [5] Rossabi, M., & Kemiao, S. (2017). Media response to domestic violence: Discussing; *Volodia*,69(3),127-129.
- [6] Rubinstein, A. (1982). Perfect equilibrium in a bargaining model. *Econometrica*, 50(1), 97-109.
- [7] Eastal Patricia Redondo, F. (2013). *Object and reasons of domestic violence act*. Cambridge: Cambridge University Press.