

The Role of Women Law Enforcement Officers in Chinese Criminal Procedure and Its Development Post-Legislative Amendment

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I. Law Enforcement Officers in Criminal Procedure

According to the Criminal Procedure Law of the People's Republic of China (CPL), there are five basic criminal procedures: case filing, investigation, indictment, trial, and enforcement. The law has established that criminal procedure has the following characteristics: (1) In addition to judicial procedures, it includes pre-trial procedures, i.e., procedures for filing a case, investigation, and initiation of public prosecution. An analysis of the procedural structure shows that the Chinese criminal procedure by no means uses trials as its core; it divides labor and responsibilities between public security organs, procuratorates, and courts, and espouses the principles of cooperation and checks and balances. (2) In addition to handling procedures for unconvicted criminal defendants, i.e., pre-trial procedures and judicial procedures, it includes handling procedures for convicted offenders, i.e. enforcement procedures. The reason for this lies in legislative style and institutional setup. Criminal enforcement has never been independently legislated and relevant content has been normalized through procedural law. The enforcement organ was not independently established either, and criminal judgment is enforced separately by public security organs, courts, prisons, etc.

The two main bodies that take part in criminal procedure are specialized national organs and the participants in proceedings. National organs include investigative, prosecuting, judicial, and enforcement bodies. Participants in proceedings include the litigants and other participants (e.g., defenders, agents ad litem, etc.).

This paper focuses on introducing the roles of women police officers, women procurators, women judges, women assessors, and women lawyers in criminal procedure.

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1. *Women investigatory personnel*: According to the law, the main organs with the right to conduct investigations and file criminal cases are public security organs and people's procuratorates. The public security organ staff who work on criminal investigations are usually police officers. According to Article 2 of the People's Police Law of the People's Republic of China: "The People's Police includes public security organs, state security organs, prisons, and organs in charge of reeducation through labor, as well as judicial police officers working in people's courts and the people's procuratorates."²

From Internet searches, it can be seen that in 2002, China had 160,000 women police officers, 10% of the 1.6 million total police officers. According to statistics from the Ministry of Public Security, in 2011 there were 2 million total police officers in China and women police officers made up 13.56%. From reports issued by some regional Women's Police Officer Associations, the percentage of women police officers in each region was around the national mean. In Guangzhou in 2007, "1 in 7 police officers were women," i.e., 14.28%. In Shijiazhuang in 2009, women police officers accounted for 10.4% of police. In Guangdong Province in 2012, the number of women police officers represented 11.8% of the total police force.

Two years ago, I conducted a research project on "Women's Participation in Criminal Justice." Through this research, we discovered that out of the small percentage of women police officers, the number of women police officers working on criminal case investigations was even lower. In public security organs, women police officers are mostly assigned to handling alarm responses, Internet surveillance, family registry and identity card management, and other administrative work.

As with the Bangkok Rules, the CPL has always stipulated that when examining women's bodies, the examination shall be conducted by a woman staff member or physician. When searching women's bodies, the search shall be conducted by a woman staff member. These provisions undoubtedly considered providing gender-relevant

² Closing of the 6th Session of the Standing Committee of the 12th National People's Conference on December 28, 2012. The session passed a decision concerning abolishing laws related to reeducation through labor. The reeducation through labor system has already been abolished.

healthcare services to women defendants. However, I believe that our laws still have further room for improvement. For example, Rule 10³ and Rule 11⁴ of the Bangkok Rules, as well as Rules 19⁵ and 20⁶ are meticulous, highly practical, and take into account the use of technology, thus making them worthy of emulation.

2. *Procuratorial personnel:* According to information on the Women Procurator Association's official website, the association had more than 40,000 total members in 2013. In criminal proceedings, the majority of women procurators work on the initiation of public prosecution, the examination and approval of arrests, the inspection of prisons and detention centers, case management, etc. Relatively few handle investigative work.

3. *Judicial personnel, including judges and assessors:* According to a January 2009 article from the Xinhua website, there were 44,502 women judges in China, which represented 23.48% of the total. During a speech on March 10, 2013, Wang Shengjun, former president of the Supreme People's Court, said that in 2012, the number of people's assessors reached 85,000. On May 23, 2013 during a State court teleconference on people's assessors, Shen Deyong, Executive Vice-President of the Supreme People's Court, said that in terms of selecting assessors, he would require that people's courts at every level establish a basic goal that the number of people's assessors double within two years, striving to increase the number of people's assessors nationwide to around 200,000 people. People's courts at every level must continuously improve the representativeness and extensiveness of the people's assessors, taking care to increase the percentages from the grassroots-level masses—particularly workers, farmers, urban migrant workers, veterans, community residents, and similar

³Rule 10 of the Bangkok Rules: If a woman prisoner requests that she be examined or treated by a woman physician or nurse, a woman physician or nurse shall be made available to the extent possible, except for situations requiring urgent medical intervention. If a male medical practitioner undertakes the examination contrary to the wishes of the woman prisoner, a woman staff member shall be present during the examination.

⁴Rule 11 of the Bangkok Rules: If it is necessary for non-medical prison staff to be present during medical examinations, such staff should be women and examinations shall be carried out in a manner that safeguards privacy, dignity and confidentiality.

⁵Rule 19 of the Bangkok Rules: Effective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures.

⁶Rule 20 of the Bangkok Rules: Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.

groups—ensuring that the percentage represented by the grassroots-level masses is not lower than two-thirds of newly added people’s assessors.

Since one of the legal conditions for being an assessor is to have at least a junior college diploma, and since it is required that no fewer than two-thirds of newly added assessors shall come from grassroots-level masses, women now have more opportunities to participate.

4. *Lawyers:* At the end of 2012, there were 232,384 lawyers in China. The average annual growth rate for lawyers was 9.1%. There were 61,717 women lawyers, representing 26.6% of the total.⁷

In Beijing in 2006, there were 11,000 lawyers, of whom 4,400 were women. As of July 15, 2010, there were 19,305 lawyers in Beijing, among whom the number of women lawyers had increased to exceed 6,000. As of November 30, 2011, there were 22,793 lawyers in Beijing, among whom the number of women lawyers had increased to exceed 8,000.⁸

5. *Punishment enforcement personnel:* The legal punishment enforcement organs include prisons, courts, juvenile correctional facilities, and detention centers, of which prisons are the main executing organ. Courts are responsible for the execution of the death penalty and property-related punishment. Detention centers are responsible for the enforcement of deprivation of liberty for sentences of fixed-term imprisonment in which less than three months remain. Women offenders serve their sentences in women’s prisons.

II. The Changes and Impact of CPL Reamendment

Enacted in 1979 and in effect since January 1, 1980, the CPL made a significant impact on women’s participation in criminal justice. The first time it was amended was at the Fourth Session of the Eighth National People’s Congress on March 17, 1996. On March 14, 2012, the National People’s Congress passed and

⁷ From the “Chinese Law Industry Social Responsibility Report (2013),” accessed on the Chinese Lawyer website (中国律师网).

⁸ Data from the Beijing Lawyers’ Association.

announced the “Decision of the National People’s Congress on the Amendment of the ‘The Criminal Procedure Law of the People’s Republic of China’”, effective January 1, 2013. As the first legislative amendment was in 1996, the 2012 changes were called the reamendment.

The reamendment significantly amended the CPL, resulting in five parts, 110 revised articles, and 65 new provisions. The new CPL provided room for the upward mobility of women in criminal procedure activities, consequently increasing the importance of their roles and providing new opportunities for women in criminal procedure. This can mainly be seen in the following areas:

1. The summary procedure was amended and increased women procuratorial and judicial personnel’s level of participation in prosecution and the judicial procedure. In 2012, the scope of the CPL’s summary procedure for trial cases was changed to read, “for cases with a guilty plea that fall within the jurisdiction of basic-level people’s courts, i.e., cases that may be punishable by fixed-term imprisonment or less, or where the defendant confesses to the crimes he committed,” which greatly broadened the summary procedure’s scope of application. Before it was amended, the law provided that where the summary procedure was applied, there was a system of trial by a single judge. The new law provides that when punishment may be fixed-term imprisonment of less than three years, the trial may be conducted by a collegial panel or a single judge; however, when the punishment may be fixed-term imprisonment of more than three years, a collegial panel shall be formed to conduct the trial.

In light of the CPL provision that collegial panels may allow assessors to participate in the procedure of first instance, either the defendant may request that a randomly selected assessor participate, or courts may decide to bring in an assessor based on the requirements of the case. As previously mentioned, the number of assessors is expected to double within two years to 200,000 people. This will provide women assessors more opportunities to participate in criminal trials.

Meanwhile, to consolidate and check procuratorial functions, the new law provides that when applying the summary procedure to a public prosecution case, the

people's procuratorate shall send a member to be present before the court. According to my previous research, in basic-level courts and procuratorates, there is relatively little mobility among women judicial and procuratorial personnel, while the number of people is relatively high. As they make up a fairly high percentage of the personnel who form the backbone of the profession, women judicial and procuratorial personnel have more room to play a role. With the broadening of the summary procedure's scope of application, the cases in which summary procedure is applied, and the provision that people's procurates shall send a member to be present before the court, there is reason to believe that women judicial and procuratorial personnel stand to play a larger role in prosecution and trials where the summary procedure is applied.

2. The increase in technical investigations, as well as the expansion of traditional investigative practices, has provided more room for women to perform investigative duties. A trend has currently emerged where the number of women police officers in the majority of police forces around the world is continuously increasing and the scope of the services they provide is continuously expanding. This is closely related to the increasing attention the international community pays to gender issues in the police apparatus and police work. The new CPL added provisions concerning technical investigations. Technical investigation measures may be adopted after a strict approval process for crimes that endanger state security, crimes of terrorist activity, organized crime, major drug-related crimes, or other crimes that pose a serious threat to society, as well as serious cases involving crimes of corruption and bribery, or serious crimes where the use of power seriously violates the personal rights of a citizen. "Technical investigation measure" means records monitoring, communications monitoring, site monitoring, etc. Furthermore, in terms of traditional investigation measures, the new CPL increased measures to access and freeze stocks, bonds, and shares of funds. Since traditional investigation work is more physically demanding and higher risk, the addition of CPL provisions related to technical investigation establishes a base for women to participate further in the field of traditional criminal investigation, which has been dominated by men. Women investigative personnel will have more room to play a role in the investigation

procedure than in the past.

3. The development of the defense, representation, and legal aid systems has provided more opportunities to women lawyers to participate in criminal procedure. Firstly, the new CPL moved forward the time for appointing a defender to the investigation stage. The criminal suspect or defendant has the right to appoint a defender from the date on which s/he is first interrogated or is subject to compulsory measures. However, at the investigation stage, only a lawyer can be appointed.

Secondly, the new law improved the criminal legal aid system. The new law added provisions for mentally ill persons who may be sentenced to life imprisonment and who have not completely lost their ability to comprehend or control their behavior; if they have not been appointed a defender, the public security organ shall notify a legal aid organization in order to appoint a lawyer to defend them.

Thirdly, the new law supplemented the content for lawyers participating in the death penalty review procedure and provides that the Supreme People's Court shall hear the opinion of defense lawyers.

Lastly, the two special procedures that were added for the "confiscation of illegal earnings" and "compulsory medical treatment" improved criminal representation. In cases involving the confiscation of illegal earnings, the concerned parties may appoint an agent ad litem. In cases involving compulsory medical treatment, the law provides that an agent ad litem must participate in the proceedings; if the concerned parties do not appoint anyone, the court shall notify a legal aid organization in order to appoint a lawyer to provide legal support.

The provisions in the aforementioned legislation undoubtedly provide more opportunities to women lawyers for participating in criminal proceedings.

4. Women will play a larger role in legal proceedings for juvenile criminal cases. The new CPL combines separate criminal procedures for juvenile cases into one special procedure and incorporates particular, relevant provisions into the legislation. The relevant provisions below broadened women's participation:

Firstly, special agencies or specially assigned persons are appointed to handle juvenile criminal cases. The law provides that the courts, procuratorates, and public

security organs handling juvenile criminal cases shall ensure that the juvenile exercises his procedural rights and receives legal support, and that judicial personnel, procuratorial personnel, and investigatory personnel who are familiar with the physical and psychological characteristics of juveniles handle such cases. When interrogating a female juvenile criminal suspect, it shall be done with a female staff member present. Psychology research has indicated that women's empathic ability (the comprehension and sensitivity towards other's emotions) is stronger than men's. Thus, special agencies with women may be better attuned to vulnerable groups. In judicial practice, every level of public security organ, procuratorate, court, and judicial administration organ are actively improving to establish special agencies and teams to handle juvenile criminal cases. In special agencies that handle juvenile cases, women investigatory, procuratorial, and judicial personnel have a rather large advantage due to their female traits. In active public security organs, the personnel that specialize in handling juvenile criminal cases in juvenile courts, etc., is primarily composed of women. Even in organs that have not established special agencies, they have all appointed specially assigned persons to handle such cases. More often, the appointees tend to be women. As we can see, this provision broadened the scope of participation of women investigatory, procuratorial, and judicial personnel in the criminal justice field.

Secondly, the law added a provision for a qualified adult presence, which requires that a juvenile's legal representative or other adult be notified to be present when the juvenile is being interrogated or tried. The CPL provides that for cases involving juvenile crime, the legal representative of the criminal suspect or defendant shall be notified to be present during interrogation or trial. Where notice cannot be served or where the legal representative is unable to be present or is a co-offender, other close adult relatives of the suspect or the defendant or a representative of his school, workplace, village residents committee, neighborhood committee, or a juvenile protection organization may be notified to be present, and such circumstances should be documented. If the legal representative or other party present thinks that the personnel handling the case violate the legal rights of the juvenile during interrogation

or trial, they may provide an opinion. The interrogation or court records shall be given to the legal representative or other party present to read or should be read to them aloud. Similar provisions also apply when questioning juvenile victims or witnesses. Furthermore, it is also provided that when trying criminal cases involving juveniles, after the juvenile defendants' last statement, their legal representative may make an additional statement. In judicial practice, the legal representatives, close relatives, etc. of juvenile criminal suspects, defendants, victims, and witness who participate in interrogations and trials are mostly women, the main reason being that female relatives communicate with juveniles more easily. Besides, in China, there are often more women than men in schools for juveniles, village committees, neighborhood committees, and juvenile protection organizations. The system for a present qualified adult established by the new CPL substantially expands the level of participation for women in cases involving juvenile crime.

In addition, the new law added a provision on social surveys of juveniles. The CPL provides that for the system of social surveys of juvenile defendants, "social survey" means that when staff members of judicial organ are handling cases involving juvenile crime, they shall conduct a thorough, meticulous survey of objective factors and other relevant circumstances surrounding the juvenile's crime, except conducting a survey or investigation of facts and evidence in the case. Social surveys are the responsibility of the judicial administration organ's community correction department in the location where the juvenile criminal suspect or defendant is registered or at his place of residence. The judicial administration organ's community correction department may cooperate with the relevant departments to complete the social survey or appoint a people's organization or other social organization to assist with the survey. Due to their patience, attention to detail, approachability, and their ability to communicate well, women are often for the backbone and the core of community correction departments in judicial administration organs and handle juvenile defendant social surveys more frequently.

5. The improvement of enforcement procedures

The new law added the community as an effective enforcer of valid judicial

decisions. The community thus supplants the basic-level public security organ to be responsible for carrying out surveillance, parole, suspended sentences, or prison sentences being carried out outside of the prison. In the community correction process, offenders need the supervision and help of the community. Compared with public security organs, community correction organizations have more women as workers and the volunteers, implying that in the criminal adjudication procedure, women are playing an increasingly large role.

The legal situations under which punishment should be enforced in the community are more applicable to female than male offenders, e.g., pregnancy and breastfeeding, parole for special circumstances or suspended sentence situations. A new provision in the revised CPL provides that women who have been sentenced to life imprisonment may be allowed to serve their sentence outside of prison if they are currently pregnant or nursing.

Moreover, people who are under criminal punishment and serving their sentences in the community have also provided women with opportunities to use varied positions and means to participate in the criminal procedure. For example, the influence that women in families (including mothers, wives, daughters, and sisters) have contributes to helping reduce offenders' feelings of abandonment and estrangement between them and their families and society, establishing a basis for them to return to their families and society in the future. Another example is women psychologists. Psychological research has indicated that when people want to be understood by others, men and women both tend to confide their feelings in women. In the future, women psychologists will play an important role in the rehabilitation process for offenders. Some people recommend that women psychologists regularly provide psychological treatment to offenders that have serious, latent psychological disorders under monitored conditions.

In conclusion, in Chinese criminal proceedings, the perspective of women law enforcement officers is indispensable. Along with the implementation of the new CPL, they will certainly be able to play increasingly important roles.