

An Initial Exploration of the Restrictive Role of Criminalizing the Collection of Illegal Debts: A Proactive Preventive Criminal Law Viewpoint

Hui Liu^{1,a,*}

¹People's Public Security University of China, Beijing, China

^a2625199155@qq.com

*Corresponding author

Abstract: Article 34 of the Criminal Law Amendment (XI) adds the offense of collecting unlawful debts following Article 293 of the Criminal Law as a legislative practice of positive preventative criminal laws. It is necessary to define and limit the protection of legal interests, aggravating circumstances and the relationship among associated crimes because, as a new crime, its protection of legal interests is unclear, the provision of "aggravating circumstances" is unclear, and the relationship among crimes is controversial, which will increase the risk of judicial generalization. Public order is a primary concern, along with citizens' individual rights and interests as a supplement to the composite legal interests; the gravity of the situation must be reflected in the collection behavior of the substantive harm and publicity; the judgment substance should guide the relationship among pertinent crime, and it should be appropriate to fully highlight the principle of criminal responsibilities and punishment. Limiting the severity of penalties for the offense of collecting illegal debts keeps the Criminal Code from turning into a tool of social control under the positive preventive criminal law perspective, brings the Criminal Code back to its focus on freedom and human rights, as well as keeps the positive preventive criminal law perspective from turning into a radical one.

Keywords: Criminal Law Amendment (XI); crime of collecting illegal debts; positive preventive view of the Criminal Law; restrictive application substantive judgment

1. Legislative Practice of Positive Preventive Criminal Law

Since Beck put forward the concept of "risk society", crisis awareness and prevention as well as control tasks in a risk society have gradually come into people's view, and security order has also become an important issue for the public. In this context, the active prevention of general risks has gradually become a primary task of the criminal law system, and the main goal of the *Criminal Law* is to cope with uncertain risks in society and maintain the social security order. The instrumental attributes of the *Criminal Law* in social governance have become more prominent, and the traditional *Criminal Law* theoretical system, which is characterized by the principle of harm, the *Liberal Criminal Law* as well as the *Criminal Law of Criminal Responsibilities*, is gradually failing and falling away, which is a major challenge for the traditional *Criminal Law*'s value orientation, social roots as well as functional settings. This has profoundly touched the doctrinal basis of traditional *Criminal Law*, such as social root and function setting, which has also clarified the new thinking that the essence of *Risk Criminal Law* is a kind of preventive criminal law. In order to realize the preventive function of the *Criminal Law* and respond to social concerns, in recent years, China has amended its *Criminal Law* more frequently, with a wider range of amendments and a broader scope of amendments, highlighting the legislative intent of proactive and preventive *Criminal Law*. There are two indicators of whether a piece of legislation reflects a positive and preventive view of the *Criminal Law*, one being criminalization in the area of criminal entities and the other being heavy-handedness in the area of criminal sanctions.^[1] If the criminalization in the field of criminal entities and enolizations in the field of criminal sanctions accounts for more than 50 percent of the total number of regulations in a law, it means that the law embodies a positive and preventive view of the *Criminal Law*. The criminalization of criminal entities is reflected in the *Criminal Law Amendment (XI) Act*.

The crimes of sexual abuse of protected minors has been added to those against citizens' personal and democratic rights: the crimes of stealing, spying, bribing and illegally providing commercial secrets to institutions, organizations and persons outside the country; the crime of assaulting a police officer; the

crime of stealing or fraudulently using the identities of other people to substitute for enrollment in schools or others; the crime of throwing objects from a height; the crime of illegally collecting debts; the crime of insulting or slandering the honor or reputation of martyrs, and the crime of organizing or soliciting the export of goods and services; gambling, illegal collection, transportation, mailing and carrying human genetic materials out of the country, illegal human gene editing, the cloning of embryos, illegal hunting, acquisition, the transportation and sale of terrestrial wildlife, the illegal reclamation and development of national parks and nature reserves, the illegal disposal of invasive alien species, as well as inducing, abetting and deceiving athletes to use doping substances or illegally supplying doping substances. On the other hand, it expands the scope of penalties of the old laws and changes a total of 15 original provisions, which lowers the age of responsibilities for underage criminal offenses in the *General Provisions*, such as Article 1 of *Amendment (11) to the Criminal Law*, which stipulates that "A person who has reached the age of twelve or less than fourteen, who commits the crimes of intentional homicide, intentional injuries, causing deaths or serious bodily injuries with disability by especially cruel means, shall be punished by the Supreme People's Procuratorate after having approved the punishment of the crimes".

The circumstances are aggravated, and if the Supreme People's Procuratorate approves the pursuit of prosecution, he or she shall be held criminally liable. This reduction in criminal liabilities for minors has undoubtedly expanded the scope of punishment under the *Criminal Law*. In the sub-article, the constitutive elements of 14 existing crimes have been amended, and the scope of penalties under the *Criminal Law* has been expanded. For example, in Article 3, the crime of forcing a person to work in violation of regulations is added to the list of crimes: "Knowing that there exists a hidden danger of major accidents but not eliminating it, still organizing operations at risk". In Article 5, the crime of producing or selling counterfeit medicines is added to the list of crimes: "The personnel of the unit using counterfeit medicines know that they are counterfeit medicines". If a person who uses a drug unit provides it to another person for use, knowing that it is a counterfeit drug, he shall be punished in accordance with the provisions of the preceding paragraph".

In summary, the 18 new offenses and 15 amendments to the *Criminal Law Amendment (XI) Act*, totaling 33 articles, reflect the criminalization of legislation in the substantive area, demonstrating a positive and preventive view of the *Criminal Law*. The preventive view of the *Criminal Law* is reflected in the area of criminal sanctions, which has had an impact on the theory of the purpose of punishment and other areas of the *Criminal Law*, and has also pushed the penal system as well as its reform into deep waters. These include: first of all, occupational prohibition; secondly, restraining orders; thirdly, life imprisonment; fourthly, the progressive heaviness of the system of birth penalties; fifthly, restraints on the reduction of penalties; and sixthly, the expansion of fine penalties." [2] In the field of criminal sanctions, there are 13 articles in the *Criminal Law Amendment (XI)* that modify the statutory penalties for crimes, which are mainly manifested in the form of having a tendency towards heavy penalties and increasing the penalties for property penalties. For example, Article 40 of the *Criminal Law on Pollution of the Environment* changes the conditions of punishment from "particularly serious consequences" to "serious circumstances" and adds the penalty of "fixed-term imprisonment of not less than seven years and a fine" to the sentence level, thereby increasing the penalty for this crime to a higher level than that for other crimes. The maximum penalty for such crimes was increased from 7 years to 15 years of imprisonment, which is fully in line with the legislative direction and performance of the positive and preventive view of the *Criminal Law*. At a time when the governance of today's society faces many challenges, the severity and punitive nature of the *Criminal Law* is gradually coming to the fore, as reflected in the *Criminal Law Amendment (XI) Act*, which reflects the uncontrolled and ever-expanding power of the state to impose penalties.

2. Expansion of the Meaning of "Positive Prevention" in the Crime of Collecting Illegal Debts in the Positive Preventive View of the *Criminal Law*

The positive preventive *Criminal Law* view is reflected in the criminalization of criminal entities and the heavy punishment of criminal sanctions, which, in a comprehensive manner, "mainly focuses on the crimes that exceed the individual or collective legal interests" and "the legislative strategy mainly manifests itself in the aspects of criminalization, dangerous configuration and early interventions". The legislative strategy is characterized by criminalization, risk allocation and early interventions". First of all, the positive preventive view of the *Criminal Law* is reflected in the following:

First of all, the criminalization legislation embodied in the positive preventive *Criminal Law* view mainly focuses on crimes of collective or supra-individual legal interests. German scholar Prof. Herfindahl pointed out that collective legal interests (Collective Rochester), also called universal legal

interests (Universa iurechtsgut), were for the public or society and the service of legal interests, which had non-targeting, non-exclusivity and indivisibility of these 3 characteristics. ^{[3]p19} Therefore, he believes that collective legal interests refer to a kind of legal interests that can be utilized by all potential members of the public rather than serving specific members of society. ^{[3]p111} In Article 34 of the *Criminal Law Amendment (XI)*, the new crime of collecting illegal debts was added to Article 293 of the *Criminal Law*, after which the crimes of picking quarrels and provoking troubles, together with one of the new Article 293, was added: "Whoever in one of the following circumstances collects illegal debts arising from loans at usurious interests, etc., and where the circumstances are serious, shall be sentenced to the fixed-term imprisonment of not more than 3 years, criminal detention or control, and shall be punished by an additional or single fine (a) using violence or coercion; (b) restricting another person's personal freedom or intruding into another person's home; (c) intimidating, stalking or harassing another person". Illegal debts in a crime include both loan sharks, including gambling debts, debts generated by being forced to sign false debt notes, gambling debts and underage debts, etc., for these debts are not protected by the law. If you take illegal means to collect the debts, it constitutes a crime, so the crime protects collective legal interests rather than the interests of creditors, the object of the financial order rather than individual legal interests. ^[4], and "illegal debt collection may cause intentional injuries, illegal intrusion into the home, illegal detention and other crimes; often also involves co-crime issues to the judicial practice to deal with the difficulties." ^[5]. In illegal debt collection using violence, coercion and other means, it may constitute the crimes of intentional injuries and illegal intrusion into the home, illegal detention as well as other crimes. If the illegal debt collection using violence, coercion and other means is not enough to constitute a crime, it can be completely carried out through the *Public Security Administration Punishment Law* to carry out the regulation. Therefore, the crime is not based on intentional injuries to violate the personal rights and interests of others or property rights and interests of debt collection behavior but illegal means of debt collection, reflecting the *Criminal Law* field of the result of worthlessness to behavioral worthlessness. "Intercepting risks through criminal legislation to prevent them from occurring in the first place is a matter of prevention rather than punishment for the harmful consequences caused by the infringement of legal interests", ^[6] which is a vivid manifestation of the positive preventive view of the *Criminal Law*, which has shifted from ex post facto punishment to ex ante prevention.

Secondly, the positive preventive view of the *Criminal Law* in the crime of collecting illegal debts is reflected in the expansion of the scope of *Criminal Law* penalties through the addition of this new crime and the gradual shift of the benchmark of illegality from the worthlessness of the result to the worthlessness of the *Act* and the early intervention of the *Criminal Law*. As a new crime added to the *Criminal Law Amendment (XI)*, the expansion of the scope of *Criminal Law* penalties is mainly manifested in the type of illegal collection behavior and the scope of application of illegal debts. With regard to the behavior of illegal debt collection, *Amendment (XI) to the Criminal Law* explicitly lists 3 types of illegal debt collection behavior: violence and coercion; restricting another person's personal freedom or intruding into another person's home; and intimidating, stalking or harassing another person. The above behavior covers not only traditional violence but also "soft violence", such as intimidation and harassment, demonstrating the *Criminal Law's* comprehensive crackdown on illegal debt collection. With regard to illegal debts, this includes not only illegal debts arising from loans at exorbitant interest rates but also debts arising from illegal acts, such as loansharking and gambling debts. This scope of application is not limited to traditional debt disputes but also includes debts arising from illegal acts, reflecting the response of the *Criminal Law* to new types of social problems. As for the early involvement of the *Criminal Law*, the establishment of crimes is aimed at preventing the occurrence of illegal collection behavior through criminal means rather than just punishing the serious consequences caused by such behavior, as well as reducing the negative impacts of illegal collection behavior on society through the early involvement of the *Criminal Law* in social governance. In the protection of legal interests, crimes not only focus on the actual damage caused by such behavior but also pay attention to the potential threat of such behavior to the tranquility of citizens' personal life and social public order. By intervening early in illegal collection behavior, the *Criminal Law* attempts to regulate the damage before it occurs to protect the legitimate rights and interests of citizens as well as the social order.

3. Practical Extension of the Judicial Application of the Crime of Collecting Illegal Debts

The new crime of collecting illegal debts in the *Amendment (XI) to the Criminal Law* is based on the background of the *Special Struggle against Blacks and Evil*, also responding to the practical needs of dealing with the serious social problems caused by the collection of loan sharks, gambling debts, drug debts and other illegal debts in recent years, which is vulnerable to the impulsive application of the new

crime and the legitimacy of legislative oaths, thus leading to the crackdown on the surface of the overly-broad and inappropriate penalties, thus requiring more vigilance and attention. Formal and substantive *Criminal Law* are important schools of thought on how to understand the principle of legality of crimes and punishment as well as the theory of criminal composition. "[7] Formal *Criminal Law* is a literal understanding of the legal provisions based on the text of the law, requiring that the crimes be incriminated formally and then substantively; while substantive *Criminal Law* is close to the understanding of the nature of the act, requiring that the crimes be incriminated substantively. The crime of collecting illegal debts, due to the unclear legal interests protected, the unclear boundaries of "aggravating circumstances" and the uncertainty of the application of the crime, will lead to an expansion of the formal *Criminal Law*, while the substantive non-criminal behavior is regulated by the crime, which leads a continuous expansion to the crime of collecting illegal debts in the application of the practice.

Firstly, the protection of legal interests of the offense of collecting illegal debts is unclear. The protection of the crime of collecting illegal debts is controversial, both to the personal legal benefits for the protection of the object of a single legal benefit but also to protect 2 or more than 2 kinds of composite legal benefits, such as financial order, public order, property order, lending order, personal rights and interests of the combination of different legal benefits. Article 34 of the *Criminal Law Amendment (XI)* adds one of the following to Article 293 of the *Criminal Law*: "Anyone who, under one of the following circumstances, collects illegal debts arising from loans at usurious interest, etc., and the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or control, and shall be sentenced to a fine or a single fine: (a) using violence or coercion; (b) restricting another person's personal liberty or trespassing on his or her home; (iii) intimidating, stalking or harassing another person". This article has a clear tendency to protect personal legal interests, which will lead to the implementation of the above behavior to collect illegal debts. A violation of the rights and interests of individuals may constitute a crime, and then neglect to protect the legal interests of public order. Meanwhile, the position of the article in the *Criminal Law* is in the crime of disturbing public order; from the position of the article and can judge, the main protection of the legal interests of the crime should be the social public order, so only the one-sided form of the crime without combining the substance of judgment will lead to the crime of the referees' results being inappropriate.

Secondly, the expression "aggravating circumstances" is unclear. The legislative model of China's *Criminal Law* is mainly qualitative and then quantitative, and only when these 2 conditions are met will a crime be constituted. Although some crimes do not provide for "aggravating circumstances" or quantitative requirements such as a "larger amount" or "huge amount" in the sub-principles of the *Criminal Law*, out of consideration of the modesty of the *Criminal Law*, when judging whether an act constitutes a crime, the general provisions of the *Criminal Law* will also be adopted through the *General Provisions of the Criminal Law* to determine whether the act constitutes a crime. When judging whether an act constitutes a crime, the *General Provisions of the Criminal Law* will also be regulated through the "proviso" clause for incrimination, and acts that do not possess considerable danger or infringement of legal interests will be excluded from the *Criminal Law* system and regulated through the *Administrative Law* or *Civil and Commercial Law*. Although Article 34 of the *Criminal Law Amendment (XI)* aiming at the new crime of collecting illegal debts stipulates the means of behavior constituting the crime and the requirement of "aggravating circumstances" to constitute the crime, what is "aggravating circumstances" does not have a corresponding interpretation. However, what constitutes "aggravating circumstances" is not explained accordingly. Due to the unclear expression of "aggravating circumstances" in judicial practice, a considerable degree of discretionary power is given to the judge, but there is also a certain degree of judicial application of confusion, such as what degree of coercive means of violence can be incriminated, resulting in minor bodily injuries to the persons of the violence constituting the crime; what are the circumstances of the restriction of the personal freedom of others, and the threat of verbal threats to others not to leave a certain place to constitute the crime; as well as what are the circumstances of the restrictions on the personal freedom of others. Verbally threatening others that they are not allowed to leave a certain place is a restriction on their personal freedom, a restriction on the personal freedom of whether the regional scope of the requirements, to what extent to be restricted and regulated by the crime, a means of collection of tracking, intimidation and to what extent the harassment of others needs, on the tracking of the distance requirements and the intimidation of the content of the act, as well as how to define the manner and extent of the harassment of specific behavioral requirements, etc. All of these require accurate substantive judgment by judicial practitioners rather than a hasty conviction based on formal compliance, which leads to an improper expansion of judicial application.

Finally, there is uncertainty in the application of the relationship between the offense and crimes. According to the crime of collecting illegal debts, the use of violence and coercion methods to collect illegal debts may constitute intentional injuries, robberies and extortion, etc.; the restriction of personal

freedom of others to collect illegal debts may constitute the crime of unlawful detention, the unlawful intrusion into the residence of others to collect illegal debts may constitute the crime of unlawful intrusion into residences; the black and evil forces through intimidation, tracking, harassment of others and other soft violence to collect illegal debts may constitute the crimes of picking quarrels and provoking trouble. The crime of illegal debt collection may constitute the crime of provoking trouble, etc. Collection of illegal debts and the above crimes exist among the inclusion, overlap, cross and part of the cross relationships. If you cannot correctly distinguish between the collection of illegal debts and the relationship among these crimes, only to pursue or formally meet the composition of the crime of collection of illegal debts and then uniformly recognize it as a crime is it easy to cause the form of imputation and the collection of illegal debts in terms of an undue expansion of the application of judiciary. Under the standard of judging this crime and other crimes, firstly, we should judge what is "illegal debts". According to an analysis of many judicial cases, illegal debts mainly include loan-sharking and gambling debts, and according to Article 238, Paragraph 3 of the *Commercial Law*, in order to obtain debts, illegal seizure and detention, according to the crime of illegal detention conviction and punishment, if there is solicitation of legitimate debts and illegal detention, the seizure of others will not be recognized as a crime of collecting illegal debts but shall be recognized as a crime of illegal detention. Secondly, we need to collect means of analyses and judgments. According to the provisions of Article 1 of the *Criminal Law* 293, collection means mainly 7 kinds of behavior, including violence, coercion, restriction of personal freedom, illegal invasion of home, intimidation, stalking and harassment, etc., all of which can constitute a different crime, so the circumstances and nature of their behavior need to be accurately clarified. Finally, "aggravating circumstances" need to be accurately determined so as to correctly distinguish the relationship between this crime and others.

4. Restrictive Thinking and Path of Judicial Application of the Offense of Collecting Illegal Debts under the View of Positive Preventive Criminal Law

4.1. The Protection of Legal Interests should Adhere to the Composite Legal Interests that Public Order is the Main Focus as well as Personal Rights and Interests of Citizens are Supplementary

Regarding the protection of legal interests of the crime of collecting illegal debts, there has been a great controversy in the *Commercial Law* academic circles about whether the legal interests protected are a single or compound legal interest, and which legal interests in the composite legal interest, as a combination of the arrangement of the legal interests, will affect the characterization of the act, if the protection of legal interests of an improper understanding of the protection of those legal interests will lead to the risk of an expansion of the application of such a crime under the view of the positive preventive *Commercial Law*. During the first public consultation on the *Criminal Law Amendment (XI)*, the offense of collecting illegal debts was within the scope of the opinion draft. The crime of collecting illegal debts is in line with the background of the three-year special struggle against blackmail and evil to correct the trend of demonization caused by the use of the "pocket crime" of sexual nuisances and a misdemeanor to regulate the collection of illegal debts, so as to embody the principle of the compatibility of crimes and responsibilities with punishment. From this, we can see that the crime of collecting illegal debts is one of the 293 articles of the *Commercial Law*; and that there must be a similar "gene" with the crime of sexual nuisances, so the protection of the crime of collecting illegal debts is not a single legal interest as a personal interest. From the legislative purpose of analyses, the Standing Committee of the National People's Congress clearly points out the addition of the *Commercial Law* provisions in terms of the crime of collection of illegal debts is to further prevent and defuse financial risks, safeguard the financial order, as well as protect the legitimate rights and interests of people.^[8] Therefore, the diversity of purposes for the creation of this crime determines that the legal interests it protects are not single legal interests, but mainly personal rights and interests.

On the collection of illegal debt crimes to protect composite legal interests, which are legal interests of the arrangement of the combination, also exists a big controversy. Some scholars believe that the crime of protection of legal interests, including the normal financial order, debt collection order, public order and citizens' rights and interests^[9], are crimes of protection of legal interests of the public order as well as citizens' rights and interests of properties. Although these views reflect the purpose of legislation and the structure of provisions of the balance, there is a form of one-sidedness. In the author's view, the protection of the crime of collecting illegal debts should be the protection of public order as well as citizens' personal rights and interests. First of all, the collection of illegal debts at the location of the chapter can be derived from the crime of protection of legal interests of the social public order. Secondly, through an analysis of the collection means of the crime of collecting illegal debts, the use of violence

and coercion to collect illegal debts is an infringement of citizens' right to pursue health; though the restriction of personal freedom of the collection behavior is an infringement of citizens' right to pursue personal freedom, the illegal invasion of the collection behavior is an infringement of the citizens' right to pursue peace and quietness of the home, and the tracking, intimidation, harassment as well as other soft violence collection behavior may cause infringement to citizens' right to pursue reputation and personality, the infringement of these citizens' rights and interests essentially belongs to the category of their personal rights and interests. Comprehensively speaking, the protection of legal interests of the crime of collecting illegal debts is a compound legal interest, with the public order rights and interests as the primary and personal rights and interests of citizens as the secondary.

4.2. "Aggravating Circumstances" should be Reflected in the Flagrancy of the Collection Behavior and the Substantial Harm of the Collection Situation

"The Criminal Law is not all an infringement of important legal interests as the object of criminal punishment; to judge what is the object of the *Commercial Law*, it must be carefully examined for a certain kind of behavior is necessary to use the penalty."^[10] In order to follow the principle of modesty of the *Commercial Law*, Article 34 of the *Criminal Law Amendment (XI)* regulates the crime of collecting illegal debts through "serious circumstances", but what "serious circumstances" is not explained accordingly, which gives judicial practitioners some degree of discretion. The "aggravating circumstances" need to be judged substantively to combat crimes on the basis of safeguarding human rights and prevent emergency as well as formal justice.

First of all, as mentioned above, the protection of legal interests of the crime of collecting illegal debts is based on the public order, supplemented by the personal rights and interests of citizens. "The public order refers to a stable and continuous social state involving the public interests of the unspecified majority of people under the system of legal norms of national security."^[11] The public order and interests of unspecified people, and the collection of illegal debts to reflect the protection of public order, need to have criminal behavior on the publicity; publicity does not refer to public places, nor does it have public attributes of the private sphere, which may also be unrelated to the unspecified third party perception and the publicity, for example, in a victim's house, using violence to collect illegal debts because of the violent behavior may be public because the noise generated by the violence is perceived by neighbors or strangers passing by.

Secondly, "aggravating circumstances" are a criterion for the incrimination in a sub-legal provision, while the general provision uses the "proviso" clause to regulate, and the act that is significantly less serious and harmful is a criterion for the crime. The collection of illegal debt crimes does not require a "serious" explanation; one needs to think of the "seriousness" that needs to be based on the collection of the situation for a substantive judgment. The author believes that for the use of violence, coercion, restriction of personal freedom or an unlawful intrusion into the residences of these types of violence to collect illegal debts, the definition of "serious" needs to be combined with sexual harassment, unlawful intrusion into a residence, unlawful detention and other crimes for a comprehensive definition, such as the crime of illegal debt collection of violence, which needs to have the presence of sex and produce a mental coercion to the persons concerned. While for the use of soft violence such as tracking, intimidation and harassment of others to collect illegal debts, a summary needs to be typed. Soft violence mainly refers to nuisances, pestering, coaxing, mobbing and so on—enough to make other people fear or enough to influence or restrict their personal freedom^[12]. In the crime of collecting illegal debts, "soft violence" mainly refers to the intimidation, stalking and harassment of these 3 kinds of behavior. First of all, the essence of intimidation is to form a kind of coercive force on the psychology of the persons concerned, such as sending threatening text messages or mailing horrible things. Secondly, the essence of stalking is to create a horrible and tense atmosphere for the persons concerned, causing pressure on his/her psyche.^[13] Stalking requires multiple or continuous stalking of a person in close proximity to the persons concerned, which also needs to be detected by them. Finally, harassment, as a sociological concept, the light of the feelings of the persons concerned needs to be judged, and its targets include the persons concerned and their relatives and friends, which will inevitably have a negative impact on the spirit and normal life of the targets.

4.3. Clarifying the Boundaries between the Crime of Collecting Illegal Debts and Other Crimes

Under the perspective of positive preventive *Commercial Law* view, the crime of collecting illegal debts, as a new light crime in the *Criminal Law Amendment (XI)*, has a maximum penalty of 3 years of imprisonment, and its means of collection determines that there is an inclusive or intersecting, semi-

crossing relationship between it and the other crimes, meanwhile clarifying the relationship between the crime of collecting illegal debts and other crimes is conducive to preventing the undue expansion of judicial application. First of all, the crimes of collecting illegal debts and an unlawful intrusion into the home has a competing relationship with the law, and the crime of collecting illegal debts is applicable to deal with. Secondly, for the crimes of collecting illegal debts and seeking sexual nuisances, the crime of collecting illegal debts is introduced and included in Article 293 of the *Criminal Law*, one of which is to correct the behavioral characterization of the use of "soft violence" to collect illegal debts, which need only to be convicted and punished in accordance with their respective criminal constitutions due to the lack of competing relationships. Again, for the crimes of collecting illegal debts and unlawful detention, if the perpetrators use unlawful detention to collect illegal debts, the act of unlawful detention conforms to the constitutive elements of the crime of unlawful detention, then the imagined competition is to choose a felony to be dealt with, and if the act of unlawful detention fails to conform to the constitutive elements of the crime of unlawful detention, then the crime of collecting illegal debts is to be dealt with. Again, for the collection of illegal debts and robberies, extortion and blackmail in the relationship among the crimes, some scholars have pointed out that the use of violence, threats and other means of collection of "illegal debts" within a reasonable range may constitute the crime of collection of illegal debts if the demand for "illegal debts" completely exceeds its principal amount. If the demand for "illegal debts" completely exceeds the interest on the principal, it may establish the crimes of robberies, extortion and blackmail.^[14] The "illegal debts" and "reasonable ranges" need to be defined in conjunction with the relevant provisions of the *Civil Law*. Finally, on the boundary between the crimes of collection of illegal debts and intentional injuries, the upper limit of collection of illegal debt crimes through violence should be minor injuries,^[15] because with the consequences of causing more than minor injuries to others or more being applicable to the crimes will violate the principle of criminal responsibilities and suitability, the collection of illegal debt crimes, as a misdemeanor, and the protection of interests of the public order is based on the main, it will not necessarily have to cause a significant impact on the health of citizens, but is bound to jeopardize the public order, so its degree of violence should be limited to a lesser extent.

5. Conclusion

Just as water has no definite shape, neither do laws. The *Criminal Law Amendment (XI) Act* added Article 34, which is the crime of collecting illegal debts, as a legislative practice under the positive preventive *Criminal Law* perspective. This reflects the legislators' precise, well-reasoned, and persistent crackdown on the collection of illegal debts, which is in line with the pressing need for social governance. However, from the standpoint of positive preventive *Criminal Law*, the crime of collecting illegal debts will expand its application if left unchecked, which is detrimental to the protection of human rights. The ambiguous definition of crimes and non-crimes, the unclear protection of legal benefits of the crime of collecting illegal debts and the risk of judicial generalization might result from the disputes between one offense and the other. Determining the "aggravating circumstances", defining the legal interests protected by crimes from a substantive perspective, and distinguishing between crimes and offenses to prevent formal imputation and an excessive expansion of the judicial application of the crimes are all necessary to accurately combat crimes, protect human rights and reflect the principles of proportionality between crimes and punishments as well as modesty in the *Criminal Law*.

References

- [1] Liu Yanhong, "The Chinese Practical Development of the Positive Preventive Criminal Law View—An Analysis from the Perspective of the Criminal Law Amendment (XI)," in *Comparative Law Studies*, Issue 1, 2021
- [2] Gao Mingxuan and Sun Daozui, "Preventive Criminal Law View and Its Doctrinal Reflections," in *China Law Studies*, Vol. 1, No. 1, 2018, p. 168.
- [3] Roland Hefendehl, *Kollektive Rechtsgüter im Strafrecht*, 2002, p.19,p.111. (C)1994-2021 China Academic Journal Electronic Publishing House.All rights reserved. <http://www.cnki.net>
- [4] Luo Sha et al., "Seven Major Points of View Analyzing the Draft Amendment (XI) to the Criminal Law," in *Xinhua Daily Telegraph*, June 29, 2020, p. 3.
- [5] Liu Yanhong, "The Damage of Symbolic Legislation to the Function of Criminal Law," in *Politics and Law*, No. 3, 2017, p. 36.
- [6] Chu Samuel Shik, "Twenty Years of Tirelessness, Three Parts to Cast a Label: Commenting on Professor Liu Yanhong's 'Theory of Substantive Outlawry'", in *Rule of Law Daily*, November 10, 2020, p. 9.

- [7] Li Ning, "Explanation on the Amendment to the Criminal Law of the People's Republic of China (XI) (Draft)—At the Twentieth Meeting of the Standing Committee of the Thirteenth National People's Congress on June 28, 2020," in *Bulletin of the Standing Committee of the National People's Congress of the People's Republic of China*, 2021, no. 1.
- [8] Wang Anyi and Gao Renfei, "Exploration of the Legal Benefits of the Crime of Collecting Illegal Debts under the Criminal Law Amendment (XI)", in *Social Science Dynamics*, No. 2, 2023, p. 95.
- [9] Wang Hongju, "The Criminal Law System of Illegal Loan Collection Behavior," in *Journal of Law*, No. 3, 2019, p. 65.
- [10] [Japanese] Nishida Noriyuki, *A General Introduction to Japanese Criminal Law*, translated by Wang Zhaowu and Liu Mingxiang, Law Press, 2013 edition, p. 25.
- [11] Zhao Lili and Li Depeng, "Study on the Regulation of Acts of Disturbing Public Order in Suicide Incidents," in *Beijing Union University Journal (Humanities and Social Sciences Edition)*, No. 3, 2020, p. 65,170.
- [12] *Opinions of the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice on Several Issues Concerning the Handling of Criminal Cases Involving "Soft Violence"*.
- [13] Liu Yanhong, "The Expansion of the Legal Doctrine of the Act of "Collection" in the Crime of Collecting Illegal Debts," in *Comparative Law Studies*, No. 2, 2023, p. 119.
- [14] Zhou Guangquan, "Progress of Criminal Legislation and Judicial Prospects—General Comments on the Criminal Law Amendments (XI)," in *Jurisprudence*, No. 1, 2021.
- [15] Hong Hang, "The Normative Construction and Judicial Application of the Crime of Collecting Illegal Debts," in *Journal of Guangzhou Radio and Television University* 2022, Issue 3.