

The Rescue Obligation in Criminal Law: A Comparative Analysis of China and Germany

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Abstract: There are many debates about whether the rescue obligation should be codified in Chinese criminal law. This paper analyzes why rescue duties are enshrined in German criminal law but not in Chinese criminal law, using case studies and comparative analysis. The key legislative differences between the two countries are explored, focusing on the moral, legal, and societal implications of these obligations. The paper also examines the potential impact of introducing rescue obligations into Chinese criminal law, considering the cultural, legal, and practical challenges involved. Ultimately, the study concludes that while criminalizing the failure to rescue could improve social ethics and public safety, China's unique legal and social context requires careful consideration before adopting such a provision. The paper suggests that encouraging positive behavior through incentives, rather than punitive measures, may provide a more feasible approach within the current Chinese legal framework. The main research methods used in this paper are comparative research, case analysis, and normative analysis.

Keywords: Criminal law, Rescue obligation, Legal principle

1. Introduction

On October 13th, 2011, in Foshan, Guangdong Province, China, a young girl named Xiaoyueyue was playing on the street when she was suddenly struck by a car. Eighteen people passed by, but none of them helped her for seven minutes, until she was hit by another car. Although a sanitation worker eventually took her to the hospital, she unfortunately passed away at midnight. Once the case was made public, it sparked widespread outrage and discussion. People were infuriated by the indifference of the eighteen passersby and called on the judicial authorities to hold them criminally responsible. However, there are no provisions in Chinese criminal law regarding punishment for failing to assist someone (unless the emergency was caused by the individual), making it difficult to convict them. Following this incident, many Chinese scholars published articles advocating for the inclusion of a rescue obligation in criminal law.

Another incident occurred at a bank in Essen, Germany, where an 83-year-old man collapsed in the lobby. The defendants, who were withdrawing money from the automated teller machine in the lobby, ignored the man's fall. It was not until 20 minutes later that a bank customer called the emergency number for the elderly man. The judge found that the indifference of the passersby, who saw the man lying on the ground and failed to help, was unacceptable under the law. As a result, the District Court decided that all three defendants would be fined to varying degrees.

Article 323c of the Strafgesetzbuch states: “Where assistance is required in the event of an accident, public danger, or distress, and it is possible to provide such assistance given the circumstances, especially if there is no material danger to the person and no other important obligation is violated, the offender shall be punished with imprisonment for no more than one year or a fine.” Article 138 further stipulates: “In times of emergency, it is necessary to provide assistance if possible under the circumstances, especially when there is no obvious danger to oneself and no other important obligations are violated. Those who provide assistance shall be sentenced to no more than one year’s imprisonment or a fine.”

Should such provisions be introduced into Chinese criminal law? Why, ten years after the Foshan incident, did the legislature incorporate the failure to rescue into Chinese criminal law? A preliminary analysis will be provided in the following discussion.

2. The Normal Rescue Obligation and the Special Rescue Obligation

The normal rescue obligation refers to a situation where there is no special relationship between two individuals, but one person must assist another who is in an emergency. Failure to do so may result in guilt, as in the case of witnessing a blind person stepping into a well without intervening [1].

The special rescue obligation applies when a person has a special identity or specific duty to assist another in an emergency [2].

There are five sources of the rescue obligation in criminal law, which are as follows:

Positive acts expressly provided for by law; Obligations required by occupation or profession; Obligations to act positively arising from legal acts; Obligations of positive conduct arising from prior acts (e.g., you have the obligation to take someone to the hospital if you were responsible for causing the accident); Obligations based on morality.

Clearly, the last source is not acknowledged by Chinese law, but it is recognized by German law. This distinction is the fundamental reason why the rules regarding the failure to rescue differ between the two countries.

3. The Objective Reasons

3.1. The Circumstances Between the Two Countries Are Different

In Germany, it does not seem to be a significant issue if a person has a criminal record. However, in China, a criminal record follows a person for life, often seen as a permanent stain. Individuals with criminal records may face discrimination in various aspects of life, such as when seeking employment, getting married, or participating in other social events. Furthermore, individuals with criminal records are barred from becoming civil servants or soldiers, and their children may be restricted from engaging in certain professions due to their parent’s criminal history. As can be seen, being declared guilty has a profound impact not only on the individual but also on their family. For this reason, criminal law in China must be cautious in classifying behaviors as crimes. Compared to Germany, China’s criminal law appears to have a lower moral standard, with certain behaviors that may violate ethics but are not severe enough to warrant criminal charges. Chinese law strives to avoid criminalizing such behaviors because criminal punishment in China tends to be more severe than in Germany.

3.2. The Emphasis on Rescue Obligation Is Different

In China, the research and provisions on the rescue obligation are based on the first four sources mentioned previously. For example, The Police Law of the People’s Republic of China, promulgated on October 26, 2012, and effective from January 1, 2013, contains articles 19 and 21, which stipulate

that police officers are required to fulfill their duties at all times, including during non-working hours and in emergencies. Article 21 specifically mandates that when police officers encounter citizens whose personal safety or property is at risk, or those in other distressing situations, they must provide immediate assistance. Additionally, they are obligated to assist citizens in resolving disputes and to promptly investigate cases reported by citizens. Many such provisions exist, where rescue obligations are based on occupational duties. However, there is no clause in Chinese law concerning a person's obligation to rescue based on moral grounds. In contrast, Germany has even more detailed rules regarding the moral obligation to rescue. Articles 323c and 138 of the Strafgesetzbuch (German Criminal Code) support this. There are three key details about the clause: First, there must be no special relationship between the two individuals. A is not B's parent, nor a police officer, and B's injury was not caused by A, and so on. They are complete strangers. It is necessary that the public is not endangered, because when only a single person is at risk, it is still possible to seek help from others or public authorities unless the public assistance mechanism fails [3]. Secondly, there must be serious consequences if the person refuses to help. However, the German court and scholars believe that if the person is not cautious about the dangers, misjudges the situation, if the injured person could save themselves, if the injured person is saved by others, refuses help, or if the injured person has already died, the person is not required to help the injured person in an emergency. Thirdly, the person must have the ability to help the injured person. This should be considered based on the person's experience and the situation. Fourthly, if the person helps the injured person in good faith, they will not be guilty, regardless of the outcome (for example, if the injured person eventually dies) [4].

The sources of the rescue obligation in German legal theory are divided into three parts: the close social relations theory, the trust relationship theory, and the domination theory.

3.3. The Details Are Different

While the details of the rescue obligation are nearly flawless in Germany, China still faces some challenges. For example, the German Civil Code states that only intentional acts or gross negligence can be held responsible, ensuring that rescuers are not penalized for good faith efforts. While it is illegal to "ignore the duty to provide assistance," citizens are obligated to provide first aid, and if any harm results from their good faith assistance, the rescuer is exempt from liability. This provision aligns perfectly with Article 323c. Therefore, those who fulfill the rescue obligation are protected from punishment. However, in China, there are few legal provisions that would allow a person to avoid punishment in similar circumstances. Only civil law stipulates that if someone helps another person and harm results, they may be excused from liability if there was no severe fault on their part. There have been numerous cases where individuals were involved in liability for compensation. Therefore, if failing to rescue were incorporated into Chinese criminal law, it would raise the issue of how to protect the rights of benevolent individuals.

4. The Subjective Reasons

4.1. China

There are two main subjective reasons why Chinese criminal law does not regard failing to rescue as a criminal offense.

4.1.1. It Is Incongruent with the Theory of Limitation on Applying Criminal Law

In China, most scholars view criminal law as a supplement to other laws. If an issue is severe enough that other laws cannot address it, criminal law is invoked to regulate it. Therefore, criminal law sets the minimum standard for people's behavior. Rescuing a stranger, however, is generally seen as an

act of kindness rather than an obligation. Although criticism may be directed at individuals who ignore an injured person, with claims of a lack of ethics, incorporating such actions into criminal law—when compared to more serious crimes like killing or robbery—appears to raise ethical expectations for the public. This approach contradicts the principle of limiting the application of criminal law.

4.1.2. It Is Difficult to Judge the Situation

Another argument against adding failing to rescue to criminal law is that it is difficult for judicial authorities to assess. One element of this crime is that the person must recognize the emergency. However, whether a person realizes it or not is largely based on subjective perception. It is difficult to determine if someone truly turns a blind eye to the injured person or simply doesn't realize the emergency. This could create many problems for judicial authorities and complicate the case resolution process.

4.2. Germany

4.2.1. Failing to Rescue Is an Obstacle to the Improvement of Social Ethics

The Strafgesetzbuch includes “public danger” in the protection of legal interests related to this crime and categorizes the crime of “failure to rescue in danger” under the crime of endangering public safety. In contrast, countries like France and Italy, which also define the crime of “failure to rescue in danger,” have placed it under the crime of endangering personal rights and interests [2]. According to this, it can be understood that German criminal law views failing to rescue as damage to public rights, rather than to just one individual. The legislation places more emphasis on the impact on society than on personal rights. If failing to rescue were not considered a criminal offense, more people would ignore those in emergency situations, which would ultimately hinder the improvement of social ethics.

German criminal law scholars argue that the obligation of mutual assistance between strangers is part of the unity between people (mitmenschlichen Solidarität) or social solidarity (Humanitären Solidarität). “Solidarity” (Solidarität) is also translated as “consortium,” derived from the Latin word solidum, meaning “whole, indivisible, or closely linked.”[5]

4.2.2. Only an Emergency Arouses the Obligation

According to the law, the person who has the rescue obligation must witness the emergency. This means the situation must be severe enough. In such situations, most rational people would choose to stop and help others. Therefore, if most people would act in this way, it is justifiable to punish those who turn a blind eye. Criminal law cannot require people to help others in every situation, but it should at least require them to help those in emergencies.

5. Conclusion

It is beneficial to regard failing to rescue as a criminal offense, as it can help improve societal ethics and lead to better social order. With stricter laws, the societal environment would improve, and helping others could become a habitual behavior. However, the differing circumstances in China prevent it from incorporating this into criminal law, as seen in Germany. There are still many factors to consider, and many aspects remain imperfect, such as certain laws and political systems that could support the rescue obligation. While it is not possible to punish those who are indifferent, political measures can be implemented to encourage those who positively help others. Above all, rewarding individuals could be a more effective approach than punishment. With encouraging policies, it is believed that society can become more peaceful over time.

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