

# 防治家庭暴力研究

**RESEARCH ON PREVENTION AND  
CONTROL OF DOMESTIC VIOLENCE**

中国法学会 英国文化委员会

中国法学会婚姻法学研究会

中国人民大学婚姻家庭研究所

 The  
British  
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# **Research on Prevention and Control of Domestic Violence**

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# 前 言

“中英维护妇女合法权益，防治家庭暴力研讨会”共收到中英双方专家、学者的会议论文28篇，现将论文结集而成本书。

“中英维护妇女合法权益，防治家庭暴力研讨会”由中国法学会和英国文化委员会主办，由中国法学会婚姻法学研究会和中国人民大学婚姻家庭研究所协办，于2000年2月28日至3月3日在北京召开。研讨会的宗旨是加强公众和法律工作者对于维护妇女权益的法律意识，关注保护妇女免受暴力伤害的社会问题，同时增加中英双方在维护妇女权益和家庭暴力研究方面的交流。中英双方举行此次会议的目的是巩固和加强两国法律以及相关学科的专家在维护妇女权益方面的联系和交流，为双方利益而共同努力，推动更深层次、更长久的法律合作。中方参会者由中国著名法律专家、妇女工作者、社会工作者、学者、执法人员及其他对于该问题关心的各界人士组成，共150多人；英方参会者由社会学家、社会活动家、慈善基金会的组建者、妇女救助会的筹资人、警官组成，共20余人。开会期间，中英双方人士就“中英家庭暴力研究现状”、“法律援助”、“女性支持”、“预防措施”等问题进行了广泛深入的学术交流和讨论。随后，英国专家参观了“北京大学妇女援助中心”、“红枫妇女热线”，并旁听了法院开庭活动。

新中国成立以来，中国共产党和人民政府十分重视保障妇女合法权益的立法。宪法和法律均明确规定实行男女平等，而且还制定了《中华人民共和国妇女权益保障法》。英国也十分重视防治家庭暴力的立法。在大量判例法的基础上，又制定了多部成文法，如《1978年家庭暴力与治安法院法》、《1996年家庭法》、《1997年保护

免受骚扰法》等。

新中国的执法机构和司法机构一贯重视落实保护妇女儿童权益的法律，妇联组织、妇女援助和服务组织作为社会团体为保护妇女儿童权益也做出了杰出贡献。北京大学法学院妇女法律研究与服务中心、陕西省妇女理论婚姻家庭研究会、河北省迁西县妇女法律服务中心等是近年涌现出来的模范组织。英国社会成立了大量的反对家庭暴力的组织，如全国妇女援助同盟英格兰、家庭暴力研究组、零忍耐信托基金、为妇女寻求公正、家庭暴力介入项目、苏格兰妇女援助、威尔士妇女援助等。司法机构和社会机构逐渐意识到在遇到家庭暴力时应互相配合开展工作。

“中英维护妇女合法权益，防治家庭暴力研讨会”上，中方学者在理论与实践相结合、中国国情与英方有益的经验相结合的基础上，提出了防治家庭暴力的对策：其一，在制定全国性的反对家庭暴力立法的条件还不成熟，而且各地情形有很大差别的情况下，首先应加强地方性和针对性立法；其次应修改婚姻法，使其充实、完善有关反对家庭暴力的立法内容。其二，增强公安、司法机关介入、干预家庭暴力的执法操作力度。目前在家庭暴力领域内执法不严、违法不究的问题相当突出，应使执法部门、司法部门改变家庭暴力是“家务事”、“个人私生活”、“妇联的工作”等错误的观念，以积极主动的工作态度和高度负责的精神进行反家庭暴力的执法和司法工作。其三，将防治家庭暴力的宣传教育辐射到全社会。无论是中小学素质教育和大学法制教育及法官、检察官、公安民警、国家机关干部和公务员的考核、培训，还是企事业单位和社会性普法宣传及婚前教育中，都应增设反家庭暴力课程。其四，进行综合治理。按综合治理模式，多机构配合协作，使全社会形成反家庭暴力合力。应逐步建立起由基层政府或其派出机构、派出所、法院、律师事务所、群众团体、居（村）委会、各专业机构（如医院、社会工作站、心理咨询所、婚姻辅导站等）、普通社

会成员组成的相互联系、相互配合的社会支持、援助网络。其五，借鉴外国经验，为家庭暴力的受害人建立庇护机构，并为该机构提供完备的法律援助和筹集资金体系。

“中英维护妇女合法权益，防治家庭暴力研讨会”和本书出版的经费，全部由英国文化委员会慷慨提供。对此，编委会表示衷心的感谢。

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2000年6月于北京



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## Preface

“Sino — British Conference on the Protection of Women’s Rights and Interests and the Prevention of Domestic Violence” received 28 papers from Chinese and British experts and scholars. These papers are put into this book.

China Law Society and the British Council jointly organized the Conference. The Academy of Marriage Law of China Law Society and the Marriage & Family Institute of Renmin University of China were undertakers of Conference preparations. It was held from 28<sup>th</sup> February, 2000 to 3rd March, 2000. The shared aim of both sides is to strengthen the relations that have been forged between Chinese and British legal experts and experts in relevant departments and field. They also hope to initiate a deeper level co—operation, create comprehensive and long—term exchange programs between the two sides. Chinese participants include more than 150 famous law experts, women affairs workers, scholars, law enforcement officials and those who are concerned with issues of women; British participants include more than 20 sociologists, founders of charities, women’s relief funds officials and policemen. Full discussions were held on such subjects as present research on domestic violence, legal aid, women support and preventive strategies etc. After the conperence, British participants visited “the center for Women’s Law Studies and legal Services of Peking Univercity”, “red maple women hotline” and

audited a court trial.

Since the foundation of the People's Republic of China, the Communist party of China and Chinese government have always paid close attention to protection of rights and interests of women. The Constitution and laws precisely stipulate for the equality between men and women. Specifically, China has also promulgated the 《Law of the People's Republic of China on the Protection of Rights and Interests of women》. Britain also highly values legislation on prevention and control of domestic violence. On the foundation of case law, many statutes have been formulated, including, for example, the Domestic Violence and Matrimonial Proceedings Act 1976, the Family Law Act 1996, the Protection from Harassment Act 1997.

Chinese law enforcement agencies and judiciary have always attached great importance to implementation of laws concerning women's rights. The Women's Federations, women support and women aid organizations also do a lot of effective work. Center for Women's Law Studies and Legal Services of Peking University, ShaanXi Research Association for Women and Family, Women's Legal Service Center of QianXi County, HeBei province are excellent examples. The U. K. also has a lot of organizations and programs committed to combating domestic violence, for example, the National Women's Aid Federation of England, The Domestic Violence Research Group, Zero Tolerance Charitable Trust, Justice for Women, Domestic Violence Intervention Project, Scottish Women's Aid and Welsh Women's Aid etc. The judiciary and different organizations have gradually come to understand that they should cooperate with each other in the struggle

against domestic violence.

At the Conference, Chinese experts and scholars, on the basis of incorporation of theory with practice, of Chinese situations with British experiences, put forward some anti-domestic violence suggestions. First, in light of the fact that it is yet to have a national anti-domestic violence law and there exist great differences among Chinese regions, local and specialized regulations should be worked out at first. Chinese When marriage law is amended, provisions should be included governing anti-domestic violence. Second, the police and the court should strengthen intervention in and prevention of domestic violence. At present relevant laws are not strictly enforced and it is often difficult to determine whom to be liable. The law enforcement agency and the court should change the minds which tend to believe that domestic violence is of "domestic matter", of "private life", "and thus should be managed only by women's Federations." They should work with more active an attitude and higher responsibility. Third, education program against domestic violence should be included in national education network. Whether in primary schools or universities, in training of judges, policemen, public procurator, officials, in legal awareness projects for enterprises and the whole society, or in education of young couples before marriage, anti-domestic violence course should be incorporated. Fourth, different agencies should cooperate in partnership. A women support and aid system which composes of basic-level governments, local police stations, lawyer's offices, the mass groups, residents committees and professional institutions (such as hospitals, social organizations, psychological counseling centers, marriage guid-

ance stations) should be founded. Fifth, we should draw on foreign experience over establishment of women shelters for the victims, legal assistant agencies and fund-raising network.

The British Council has provided all fees for the “Sino-British Conference on protection of Women’s Rights and Interests and the Prevention of Domestic Violence” and publication of this book. The Editorial committee is sincerely grateful for it.

Editorial Committee

June, 2000, Beijing

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