

Obstacles to Exercising Reproductive Rights for Single Women in China and Legal Recommendations

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Purpose: Reproductive rights represent an intrinsic and pivotal human entitlement, encompassing legal protection for procreation. Essential to this framework is the recognition that single women equally deserve reproductive rights. Although Chinese legislation refrains from overtly disallowing reproductive rights for single women, the interplay of conventional marriage norms and family planning policies has inadvertently tied these rights to marital status, consequently constraining single women's ability to assert them. The establishment of a robust legal structure to ensure reproductive rights for single women would profoundly contribute to advancing a harmonious evolution of China's population dynamics.

Patients and Methods: We employ meticulous textual scrutiny to analyze comprehensively the stipulations concerning women's reproductive liberties within the framework of Chinese jurisprudence. Furthermore, we engage in empirical inquiry to enumerate and elucidate the multifarious constraints placed upon the reproductive freedoms of unmarried women in the Chinese context. This endeavor entails a detailed exposition and incisive examination of China's limitations imposed upon the reproductive rights of single women, encompassing both legal strictures and policy dimensions.

Results: The absence of legal endorsement and safeguarding has given rise to substantial impediments to the exercise of reproductive rights among single women in China. Not only do endeavors to assert reproductive rights on behalf of single women encounter intricate challenges in judicial implementation, but they also encounter manifold barriers within national policies. This predicament not only subjects single women to considerable psychological strain but also contradicts the overarching objective of achieving a harmonized population development trajectory in China.

Conclusion: China should expedite the development of a legal framework for protecting reproductive rights that includes provisions for supporting single women to have children. This legal apparatus should efficaciously enshrine and shield the reproductive rights of single women, thus playing a pivotal role in advancing a more equitable and well-balanced trajectory of population development.

Keywords: single women, reproductive rights, reproductive limitations, psychological, reproductive justice, Chinese law

Introduction

In ancient China, women were extensively viewed as subordinate to men, with a prevailing belief that a woman's most significant accomplishment rested in marrying and bearing children within the confines of marriage. It was deemed immoral for unmarried women to give birth, perpetuating the notion that childbearing necessitated marital status.¹ In contemporary times, the status of Chinese women has considerably advanced, achieving gender parity. However, the traditional Chinese perspective on fertility, intricately intertwining marriage and childbearing, persists and notably shapes current Chinese legal and policy frameworks pertaining to reproductive rights. Consequently, this paradigm engenders certain limitations on the exercise of reproductive rights for single women in China.

In December 2018, 30-year-old Ms. Xu sought oocyte cryopreservation services at a hospital in China. Unfortunately, the hospital denied her request, citing her unmarried status and non-medical rationale. Subsequently, Ms. Xu took legal action against the hospital, asserting a "general personality right dispute", and appealed for court-ordered access to oocyte cryopreservation services. However, on July 22nd, 2022, the court ruled against all of Ms. Xu's claims, resulting

in the dismissal of the “single woman oocyte cryopreservation case” in its initial hearing.² This case sparked significant societal attention and ignited extensive discussions on single women’s reproductive rights, involving various groups, including scholars.

In March 2022, the “Two Sessions”, a pivotal annual political event in Beijing, convened, bringing together representatives from the National People’s Congress (NPC), China’s paramount legislative body, and the Chinese People’s Political Consultative Conference (CPPCC), the foremost political advisory body. During this gathering, delegates from the NPC and CPPCC convened for a series of deliberations to present and debate their proposals and motions concerning governmental matters. Among these, certain representatives raised concerns regarding social constraints affecting the reproductive rights of single women. Proposals emerged advocating for a more tolerant societal stance towards unmarried childbirth, catering to the reproductive aspirations of older single women, and ensuring equitable treatment of their offspring in terms of residency, education, and healthcare access.³ Some delegates even expressed forthrightly, “Men are legally permitted to preserve their sperm, whereas women are denied the right to freeze their oocytes. This discrepancy underscores deep-seated bias and an exclusion from the normative spectrum”.⁴

The right to reproduction stands as a fundamental human entitlement⁵ and serves as a determinant of a woman’s standing as a citizen.⁶ Reproductive right means that a woman is able to decide if and when to have children.⁷ International Human Rights Law unequivocally mandates that governments bear the responsibility to ensure and advance the essential liberties and human rights of individuals and collectives.⁸ Article 14 of the World Population Plan of Action, an outcome of the United Nations International Conference on Population and Development in Bucharest in 1974, expounds: “Every couple and individual holds an inherent right to freely and responsibly determine the number and spacing of their offspring, equipped with the knowledge, education, and means to do so; their exercise of this right takes into consideration the welfare of existing and future progeny, as well as their obligations to the community”. This provision serves a dual purpose: not only does it clarify the essence of reproductive rights, but it also broadens the scope of subjects entitled to these rights beyond just couples.⁹ Similarly, Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly in late 1979, asserts: “States Parties shall enact appropriate measures to eradicate gender bias against women across all aspects pertaining to marital and familial relations. In particular, they shall ensure that, on the basis of gender parity, both men and women enjoy identical rights to autonomously and responsibly decide on the number and temporal spacing of their progeny and possess access to the information, education, and resources required to exercise these rights”.¹⁰ In Australia, the nation’s directives extend beyond just providing paid leave for single mothers; they encompass financial grants that embrace those embarking on the solitary journey of childbirth.¹¹ As a signatory to both the World Population Action Plan and the Convention on the Elimination of All Forms of Discrimination against Women, China’s domestic laws and policies should be consistent with international conventions and documents.

Legislative Restrictions on Reproductive Rights for Single Womens

The intricacies of women’s reproductive choices, interwoven with the tapestry of their lived experiences, are choreographed by legal frameworks and public policies. These, in turn, are both molded by and shape the broader socio-cultural and political discourses, beliefs, and attitudes.¹²

China’s legislative engagement with matters of fertility began as family planning assumed the mantle of a cardinal national policy. Article 25 of the Constitution of the People’s Republic of China (CPRC), echoing the imperative for aligning population growth with economic and social trajectories. Article 47(2) of the CPRC “the obligation of both spouses to practise family planning”, mandating conjugal commitment to family planning. However, while the CPRC expanded its provisions in 2004 to affirm the safeguarding of human rights, the parchment still lacks a direct provision for reproductive rights. The inclusion of such provisions, particularly for single women, within the Constitutional framework remains an aspiration yet to be realized.

Article 47 of the Law of the People’s Republic of China concerning the Safeguarding of Women’s Rights and Interests (PWRI), ratified in 1992, broached the topic of reproductive rights, articulating: “Women possess the prerogative to conceive offspring in accordance with prevailing state regulations, and correspondingly the liberty to abstain from such action”. This marked a watershed moment, signifying the inaugural instance wherein China’s legal corpus

unequivocally enunciated the gamut of women's reproductive liberties. Notably, while this provision does not overtly constrain its purview to wedded women, it does append the caveat of "in conformity with the stipulations of the state". It is this addendum that, in essence, circumscribes the precinct of reproductive entitlement to conjugal pairs.

The revisions wrought upon the PWRI in 2022 effaced the qualifier "in accordance with the provisions of the State", Article 32 of the PWRI: "Women possess the entitlement to embrace parenthood consonant with the letter of the law, alongside the autonomy to forgo maternity". However, Article 18 of the Population and Family Planning Law (PFPL) propounds a divergent ethos, with the State extolling the aspiration of three progeny per couple. Those adhering to the parameters delineated by statutes and edicts may solicit considerations for the advent of an additional offspring. It is stipulated that couples of childbearing age partaking in family planning shall reap gratis technical services appertaining to rudimentary initiatives sanctioned by the State. This articulation, ineluctably, underscores the preeminence of conjugal pairs in the realm of procreation. Moreover, the ambit of social safeguards encompassing family planning is equally emblematic of this prioritization, as evidenced by tenets such as "the State confers accolades upon couples embracing family planning in harmony with the statutes" and "couples adhering to legal and regulatory childbirth protocols stand to garner rewards or supplementary welfare provisions, particularly in the extension of maternity leave", among others. This means that within the contours of China's existing family planning paradigm, the presence of a conjugal union stands as a prerequisite for the invocation of reproductive entitlements. Furthermore, Article 3 of the Guidelines for the Oversight of Human Assisted Reproductive Technology, disseminated by the Ministry of Health of the People's Republic of China in the year 2001, expounds: "The application of human assisted reproductive technology shall be confined to medical institutions, solely for medical imperatives". Echoing this dictum, the Code of Practice for Human Assisted Reproductive Technology, espoused by the Ministry of Health in 2003, forthrightly proclaims: "The application of assisted reproductive technology is proscribed for couples and unpartnered women who do not adhere to the contours of national population and family planning statutes". By corollary, within this landscape, the domains of sperm and oocyte preservation within China are circumscribed solely to the precincts of authorized medical establishments, an avenue beyond reach for healthy solitary women seeking to embark upon fertility preservation. Moreover, wedded women are tethered to stipulated requisites for fertility preservation, with two distinct cohorts being eligible. Firstly, women afflicted by malignancy, who choose to harvest and cryopreserve their oocytes prior to embarking upon chemotherapy or radiation, thus safeguarding the prospect of biological progeny. Secondly, women grappling with infertility may also partake, yet even here, conditions apply. In such instances, the aspiration for fertility preservation necessitates the possession of an identification document, a matrimonial certificate, and a nativity permit, with the latter two being contingent upon the existence of a marital bond. These prerequisites, unequivocally enunciated, serve as unassailable evidence of the impediments thwarting the exercise of fertility prerogatives for unpartnered women.

Judicial Restrictions on Reproductive Rights for Single Women

China Judgements Online serves as the official repository for disseminating court records within China. Employing a meticulous cross-referencing technique, the author scrutinized the entire corpus of text, factual underpinnings, and rationales pervading the legal cases. A comprehensive search was conducted employing keywords such as "single", "unmarried", "embryo transfer", "artificial insemination", "artificial reproduction", "reproductive rights", and "child-bearing insurance". The fruits of this endeavor yielded a total of 206 adjudicatory documents (as of December 22nd, 2022). Among these, a range of issues spanning labor contract disputes, the apportionment of compensation costs related to contracted lands, infractions against the rights and interests of members within collective economic entities, child-bearing insurance disputes concerning single women, and controversies surrounding the artificial reproduction of widowed women were unveiled. Distinct from the arena of labor contract disputes, compensation cost distribution disputes on contracted land, and violations against the rights and interests of members within collective economic associations—domains that scarcely intersect with the realm of single women's reproductive rights—there emerged a corpus of 19 adjudicatory documents (as illustrated in Table 1) germane to the contours of single women's reproductive prerogatives. Resplendent across these legal chronicles are narratives spanning 11 provinces across China.

Of this assemblage of 19 judgements, five stood in opposition to the aspirations of single women seeking to assert their reproductive rights. Amongst these, one ruling disallowed the claim of childbearing insurance benefits for single

Table 1 Decisions on Single Women's Reproductive Rights Cases on China Judicial Documents

| Order | Reference Number | Province | Time | Subject | Results | Reason |
|-------|------------------|----------|------|--|---------------|---|
| 1 | [13] | Shandong | 2017 | Wife asks to transfer embryos frozen during husband's life to conceive after his death | Not supported | Wife is a single woman after the death of her husband and is unable to undergo transplantation |
| 2 | [14] | Shanghai | 2018 | Claiming maternity insurance benefits after an unmarried birth | Not supported | Unmarried births are not part of the planned births |
| 3 | [15] | Yunnan | 2019 | Wife asks to transfer embryos frozen during husband's life to conceive after his death | Not supported | The contract was terminated after the first transplant, although it was unsuccessful and the husband no longer had the legal requirements for a transplant after his death |
| 4 | [16] | Fujian | 2021 | Wife asks to transfer embryos frozen during husband's life to conceive after his death | Not supported | Violation of the rule against providing assisted reproductive technology to single women |
| 5 | [17] | Shandong | 2022 | Wife asks to transfer embryos frozen during husband's life to conceive after his death | Not supported | Violation of the rule against providing assisted reproductive technology to single women |
| 6 | [18] | Sichuan | 2018 | Wife asks to transfer embryos frozen during husband's life to conceive after his death | Support | In line with husband's last wishes |
| 7 | [19] | Yunnan | 2019 | Wife asks to transfer embryos frozen during husband's life to conceive after his death | Support | Widowed women are different from single women |
| 8 | [20] | Jiangsu | 2019 | Wife asks to transfer embryos frozen during husband's life to conceive after his death | Support | In line with husband's last wishes |
| 9 | [21] | Zhejiang | 2019 | Wife asks to transfer embryos frozen during husband's life to conceive after his death | Support | Widowed women are different from single women |
| 10 | [22] | Fujian | 2020 | Wife asks to transfer embryos frozen during husband's life to conceive after his death | Support | Women have the right to have children and the freedom not to have children in accordance with the relevant state regulations, and single women who are widowed are different from single women in general |
| 11 | [23] | Henan | 2020 | Wife asks to transfer embryos frozen during husband's life to conceive after his death | Support | A contract established in accordance with the law is legally binding on the parties. The parties shall perform as agreed |

(Continued)

Table 1 (Continued).

| Order | Reference Number | Province | Time | Subject | Results | Reason |
|-------|------------------|----------|------|--|---------|--|
| 12 | [24] | Jiangsu | 2020 | Wife asks to transfer embryos frozen during husband's life to conceive after his death | Support | In line with husband's last wishes |
| 13 | [25] | Yunnan | 2020 | Wife asks to transfer embryos frozen during husband's life to conceive after his death | Support | Widowed women are different from single women |
| 14 | [26] | Yunnan | 2020 | Wife asks to transfer embryos frozen during husband's life to conceive after his death | Support | A contract established in accordance with the law is legally binding on the parties. The parties shall perform as agreed |
| 15 | [27] | Guangxi | 2021 | Wife asks to transfer embryos frozen during husband's life to conceive after his death | Support | Widowed women are different from single women |
| 16 | [28] | Guizhou | 2021 | Wife asks to transfer embryos frozen during husband's life to conceive after his death | Support | Widowed women are different from single women |
| 17 | [29] | Shandong | 2021 | Wife asks to transfer embryos frozen during husband's life to conceive after his death | Support | A single woman who is a widow, not a single woman in the usual sense, and who also has the family responsibilities due to both spouses |
| 18 | [30] | Yunnan | 2021 | Wife asks to transfer embryos frozen during husband's life to conceive after his death | Support | A contract established by law is legally binding on the parties. The parties shall perform in accordance with the agreement |
| 19 | [31] | Hunan | 2022 | Wife asks to transfer embryos frozen during husband's life to conceive after his death | Support | Widowed women are different from single women |

Abbreviations: NPC, National People's Congress; CPPCC, Chinese People's Political Consultative Conference; CPRC, Constitution of People's Republic of China; PWRI, People's Republic of China on the Protection of Women's Rights and Interests; PFPL, Population and Family Planning Law.

women, while four divergent judgments refrained from sanctioning medical institutions to undertake embryo transfer for widowed women. The rationale articulated within these rulings pivoted upon a contention that such transfers would infringe upon the principle of refraining from dispensing assisted reproductive technology to single women or contravene established legal provisions. In contrast, the remaining 14 judgements extended their aegis of support, affirming hospitals' prerogative to effectuate embryo transfers for widowed women. This imprimatur was grounded in the premise that such transfers constituted a logical continuum of preceding agreements, aligned with the volition of the departed spouse. Furthermore, it was posited that widowed women inherently diverged from their single counterparts, thereby sidestepping the strictures governing assisted reproductive technology for single women.

Amidst these 19 instances, while the majority of verdicts lent their endorsement to the quest of widowed women pursuing the continuation of embryo transfer procedures, it is paramount to note that such outcomes do not necessarily

herald a triumphant stride for single women's cause. A subset of five judgments, dissenting from the supplication of widowed women, undeniably signaled the presiding judges' stance in opposition to the broader spectrum of reproductive rights for single women. In the realm of the 14 judgments that sided with the plea of widowed women for embryo transfer, a discernible pattern emerged, underscored by four stipulations: 1. Antecedent existence of a conjugal bond, substantiating a normative marital relationship. 2. Implicit presumption of the husband's consent to engage in the embryo transfer procedure, inferred from his actions during his lifetime. 3. The husband and wife jointly signed a contract with a medical institution for embryo transfer for conception during husband's lifetime. 4. Mandate that the embryo slated for transfer emanate from the fusion of the husband's sperm and the wife's oocyte. This judicial landscape manifests a compelling narrative—within the precincts of Chinese jurisprudence, the prop of support for single women's reproductive rights appears contingent upon the bedrock of matrimonial union. Moreover, a conspicuous divergence surfaces in the judicial tenor pertaining to widowed women, as discerned from the disposition of these verdicts. This nuanced contrast, encapsulated within the judicial documents, betrays a distinctive emphasis upon widowed women, juxtaposed against the backdrop of single women. An unmistakable undercurrent of skepticism directed at the reproductive rights of single women resonates, conspicuously evident in these adjudicatory pronouncements. This can be discerned from the judges' reticence toward supporting single women's claims, evidenced in their emphasis on marital status and their conspicuous silence on the broader context of single women's reproductive entitlements.

Such a stance is corroborated by the implicit clause within these judgments, crystallized in the observation that should a widowed woman seek to avail herself of assisted reproductive technology for fertility, yet the embryos in question fail to bear any nexus to her erstwhile spouse—lacking his genetic imprimatur, his bloodline, or his explicit concurrence—these pronouncements provide no bedrock of endorsement to underpin her aspirations.³²

Policy Restrictions on Single Women's Reproductive Rights

In addition to legislative and judicial constraints, unmarried women encounter policy-related hurdles when seeking to exercise their maternity rights. These obstacles include limited access to pregnancy-related insurance and maternity benefits, as well as challenges in the process of registering their children's births.

Childbearing insurance entails a societal insurance framework wherein the government extends essential financial recompense and medical support to employees who undergo childbirth. Notably, extramarital childbirth does not qualify for state-provided childbearing insurance in China. The year 2017 witnessed widespread consternation when Ms. Zhang, an unmarried mother from Shanghai, was denied childbearing insurance benefits following a birth out of wedlock.³³ Within China, expectant mothers are mandated to furnish comprehensive personal particulars to the hospital, which subsequently reports this data to the local authorities. Following an evaluation, the government communicates information about expectant mothers who adhere to family planning regulations back to the hospital. Upon her discharge after childbirth, an eligible mother can offset medical expenses by utilizing the childbearing insurance compensation, thereby concluding the reimbursement process. However, for expectant mothers who do not conform to family planning stipulations, such as unmarried women, their information is not relayed to the hospital by the health commission. Consequently, these individuals' details are absent from the hospital's system, rendering them ineligible to apply for childbearing insurance reimbursement upon discharge.

The childbearing allowance serves as a sustenance grant intended for employed women who have made contributions to their childbearing insurance and are on maternity leave. This allowance is granted under the condition of fulfilling the prerequisites of the childbearing insurance policy. To avail this benefit, a woman is required to submit her claims for childbearing insurance along with the relevant documentation to her place of employment following the childbirth. Subsequently, her workplace will forward these documents, along with her employment verification, to the government for assessment. Once the government's review is complete, the childbearing allowance will be directly disbursed to the birthing mothers. Unmarried women who do not adhere to the family planning policy and are ineligible for childbearing insurance will regrettably be unable to access maternity benefits due to the absence of childbearing insurance reimbursement and supporting documentation (Figure 1).

Household registration holds immense significance within China, serving as a pivotal document for validating one's citizenship identity. In numerous regions across the nation, regulations mandate that for a newborn to be registered, the birth

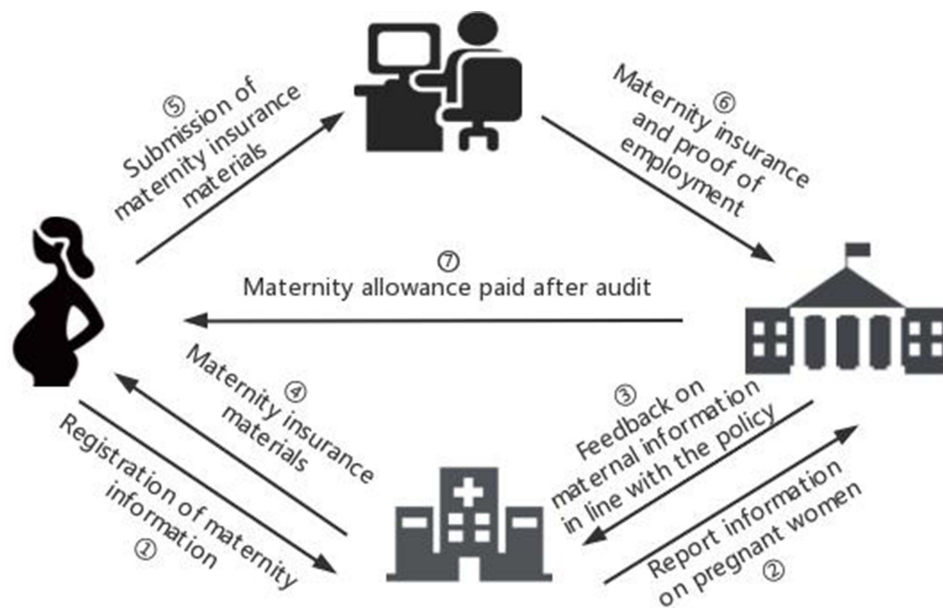


Figure 1 Flow chart of maternity insurance and maternity allowance payment in China.

certificate and the marriage certificate of the parents must be submitted to the public security department. However, in the case of newborns from unmarried mothers, an additional prerequisite entails presenting a declaration of non-marital birth. This declaration is typically processed through the local family planning department and should encompass the following particulars: 1. The parents' names, ID numbers, residential address, and contact details; 2. Specifics of the hospital or location, along with the date and time of the child's birth; 3. The child's gender and given name; 4. Explanation for the absence of a marital relationship between the child's parents or the non-registration of their marriage; 5. Comprehensive information, including ID numbers, names, residential addresses, and contact numbers of individuals able to corroborate the aforementioned details; 6. A sworn affirmation of the accuracy of the provided information, accompanied by a willingness to undergo scrutiny.³⁴ In contrast to the relatively straightforward process of household registration for children born to married couples, the procedure is notably more intricate for children born out of wedlock.

The Fertility Dilemma of Single Women in China: And the Enormous Psychological Pressure

In China, the absence of legal safeguards protecting the reproductive rights of single women has given rise to considerable obstacles for them. These challenges encompass both legal and policy limitations, along with substantial psychological strain to initiate childbearing. This pressure is, in part, instigated by concerns surrounding the decline in fertility linked to advancing age. Research has demonstrated that a decline in fertility sets in for women after they reach 30 years of age.³⁵ This decline is attributed to diminishing quantities and quality of the resting follicular pool from this juncture onward.³⁶ Consequently, older single women or those temporarily unable to find a suitable marital partner and aspiring to conceive confront apprehension about their age and fertility prospects.

If national legislation were to allow women the means to preserve their fertility, it could expand the spectrum of life choices available to them. This would alleviate the time-sensitive pressure and circumvent the necessity to resort to drastic measures, thereby effectively mitigating fertility-related concerns.³⁷ Furthermore, unmarried women who decide to become mothers might encounter ethical and moral censure. Reproductive interventions and technologies often trigger societal unease and provoke adverse reactions, particularly when coupled with moral considerations pertaining to women's reproductive autonomy and health.³⁸ The state perpetuates prevailing feminine stereotypes, idealizes motherhood and maternal roles, and reinforces conventional gender norms, thereby upholding the established order.³⁹ Confining the legal entitlement to parenthood solely to couples implies a negative viewpoint towards single women who opt to

become mothers. This predisposes single mothers to potential stigmatization and unwarranted moral condemnation. As an illustration, a single woman made an attempt to introduce a bill to the National People's Congress advocating for single women's right to parenthood. However, her proposal was dismissed by a representative who asserted that "births out of wedlock are illegal and, to put it mildly, illegitimate".⁴⁰

Reproductive Justice and the Realization of Reproductive Rights for Single Women

The concept of reproductive justice was introduced by feminists of color in 1994. Reproductive justice extends beyond the mere right to abstain from reproduction, encompassing the rights of individuals to both reproduce and nurture their children. The analytical framework of reproductive justice posits that the right to reproduce and raise children carries equal significance to the right to refrain from reproduction.⁴¹ This framework of reproductive justice serves as the underpinning theory driving the advocacy for reproductive rights among single women in China.

In line with the principles of reproductive justice, it is emphasized that women possess reproductive rights, a category that undeniably encompasses single women. Enhanced women's health is contingent upon affording women the agency to autonomously navigate decisions pertaining to reproduction, encompassing aspects such as sexual choices, contraception, abortion, and the utilization of reproductive technologies.⁴² A poignant example comes from Ms. Xu, the central figure in China's inaugural "oocyte cryopreservation" case, who expressed, "My aspiration is for a heightened awareness regarding women's bodily autonomy. Even in the event of an unfavorable case outcome, I deem the pursuit worthwhile".⁴³ Broader fertility choices operate within a policy context wherein ideologies advocating fertility inform policies fostering and impacting women's reproductive autonomy.⁴⁴

Furthermore, the dynamics within China have undergone profound transformation, warranting a contemporaneous adjustment of the family planning policy.⁴⁵ Easing constraints on single women's reproductive rights stands to elevate China's birth rate and enhance demographic composition.⁴⁶ Significantly, the proliferation of medical institutions specialized in assisted human reproductive technology, coupled with the maturation of these techniques, has effectively paved the way for single women to assert their reproductive rights.

Firstly, China's birth population is on a continuing decline, prompting the state's efforts to bolster the fertility rate through modifications to family planning policies. As indicated by official data from China's National Bureau of Statistics (NBS), the country's births and birth rate exhibit a nearly linear descent (Figure 2).^{47–53} In 2015, China introduced a shift in its family planning policy, transitioning from the previous allowance of one child per couple to permitting two children. This alteration resulted in a temporary upswing in births and birth rate during 2016. However,

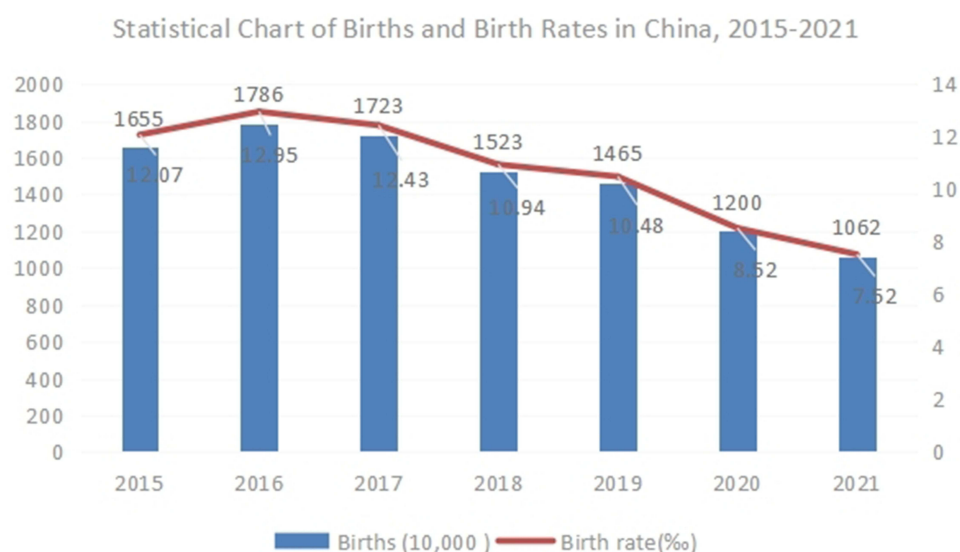


Figure 2 National births and birth rate statistics, 2015–2021.

Notes: Data from these studies.^{55–57}

the stimulative impact of this policy amendment proved short-lived. By 2017, China's births and birth rate resumed their decline, persisting for five consecutive years. Even if China announces another change in the family planning policy in 2021 to allow a couple to have three children, it seems unlikely that it will have the same effect as the 2015 change in family planning policy.⁵⁴ Within this framework, numerous regions across China have initiated diverse policies aimed at incentivizing childbirth, including provisions such as education subsidies, housing support, and medical coverage. Nonetheless, constraints on the reproductive rights of single women persist. Evidently, removing these restrictions on single women's reproductive autonomy holds the potential to contribute to an augmentation in China's birth count.

Secondly, the proliferation of medical facilities specializing in assisted human reproductive technologies, coupled with the advancement and refinement of these techniques, has opened avenues for single women to conceive and nurture children. To illustrate, official records from China's National Health Commission reveal that by December 31st, 2020, a total of 536 approved medical establishments and 27 human sperm banks were operating across the country, conducting assisted reproductive technologies.⁵⁸ Furthermore, in a press conference held in 2022, the National Health Commission declared that

China has emerged as a global leader in the scale and sophistication of assisted reproductive technology implementation, offering a comprehensive spectrum of technical services characterized by a robust safety record and an approximately 40% clinical pregnancy rate. China has also assumed a pioneering role on the international stage in certain research domains, notably pre-implantation genetic testing technology.⁵⁹

Lastly, an escalating number of women are embracing the single lifestyle, accompanied by a growing aspiration among single women to embrace motherhood. The conventional Chinese perception of marriage has historically depicted women as subordinate to their spouses, thus framing marriage as an obligatory path for women. This paradigm, rooted in the roles of wife and mother, has engendered specific stereotypes and entrenched ideals surrounding family life,⁶⁰ while women should have more choices. However, changing societal dynamics have prompted shifts in Chinese attitudes towards marriage and family, embracing diverse paths including remaining single or pursuing divorce. As depicted in Figure 3, China's marriage rate has experienced a steady decline since 2013, with 2021 marking an all-time low. In contrast, divorce rates have seen an upward trajectory, although experiencing a downturn in 2020 and 2021, implying a potential stabilization rather than a consistent decline in the country's divorce rates.

While traditional norms once dictated marriage for all, a surging number of individuals are opting for singlehood, thereby heralding an unprecedented societal transformation.⁶¹ Yet, the choice to lead a single life should not be misconstrued as relinquishing one's reproductive rights. Rather, it signals a departure from the conventional parent-

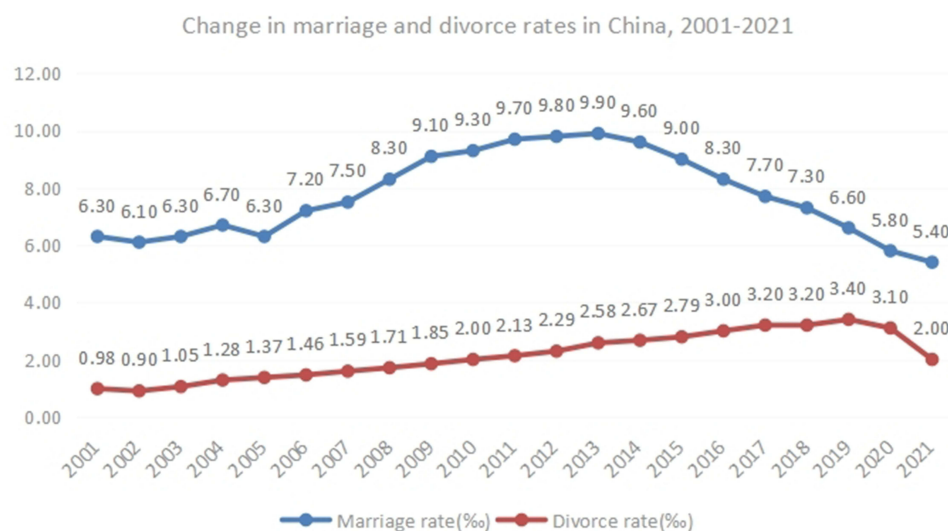


Figure 3 Change in marriage and divorce rates in China, 2001–2021.

Notes: Data from these studies.^{62–64}

child family structure. Thus, a shift in mindset is warranted to navigate the emerging mother-child family configuration, adapting to this evolving social reality.

Discussion

Putting Reproductive Rights in the Constitutional Texts

Margaret Sanger, the visionary behind Planned Parenthood, once emphasized, “A woman who lacks control over her own body cannot genuinely lay claim to freedom”.⁶⁵ Both the World Population Plan of Action and the Convention on the Elimination of All Forms of Discrimination against Women mandate that states parties undertake requisite measures to safeguard women’s reproductive rights. Nonetheless, the absence of explicit stipulations pertaining to reproductive rights within China’s legislative framework has fostered an adverse stance among the judiciary towards the exercise of these rights by single women.

The Constitution of the People’s Republic of China stands as the bedrock of the nation’s legal system, holding the utmost legal authority. It dictates that all segments of Chinese society—ranging from citizens and governmental entities to armed forces, political parties, social organizations, enterprises, and institutions—must uphold the Constitution as the cardinal guiding principle in their pursuits. Furthermore, these entities bear the responsibility of upholding the Constitution’s dignity and ensuring its implementation. Effectively delineating the attributes of reproductive rights within the Constitution bears profound significance for the safeguarding of reproductive rights for single women.

Article 33 of the CPRC asserts that “the State respects and safeguards human rights”, yet it omits explicit inclusion of reproductive rights. While reproductive rights indeed constitute a fundamental human entitlement, a constitutional perspective is necessary to definitively ascertain the state’s assurance of these rights to its citizens. Should such a theoretical interpretation lack substantiation from a formal constitutional directive, it remains devoid of constitutional validity.

Article 49(2) of the CPRC articulates that “both husband and wife are under the obligation to practice family planning”. While this provision unequivocally designates reproduction as a responsibility of citizens, deducing whether reproduction is concurrently a right hinges on a precise, authoritative elucidation. Furthermore, this article of the CPRC confines the realm of childbirth to married couples, omitting explicit delineation or elucidation of whether single women bear the duty and right to conceive and bear children. The ambiguous nature of these legal clauses engenders challenges in ensuring the reproductive rights of single women.

Hence, while the Constitution outlines the framework for the family planning policy, it does not overtly encompass reproductive rights within the ambit of legal safeguarding. To enhance the legal protection and governance of reproductive rights, China should elucidate the definition and constituents of reproductive rights within the Constitution. More precisely, a potential revision could involve amending the second segment of Article 49 of the CPRC to read as “Citizens possess the right to reproduction and hold the responsibility for family planning”, followed by the addition of the clause “The state upholds and safeguards the reproductive rights of women”. This modification would contribute to a more comprehensive and explicit recognition of reproductive rights within the constitutional framework.

Explicit Protection of Single Women’s Reproductive Rights in Sectoral Laws

China’s family planning policy is rooted in the Constitution and is manifested across various specialized laws. As an illustration, the Population and Family Planning Law outlines overarching regulations concerning the reproductive conduct and rights of Chinese citizens. Additionally, the Social Insurance Law and the Regulations on Household Registration delineate aspects such as childbearing insurance, maternity benefits, and the acquisition of Chinese citizenship subsequent to childbirth. These provisions collectively underpin the framework for exercising reproductive rights. However, it’s worth noting that all these specialized laws hinge on the prerequisite of a marital relationship for the exercise of reproductive rights. Therefore, it becomes imperative to expound upon the safeguarding of reproductive rights for single women within these specialized laws.

Although the restriction of “in accordance with state regulations” was eliminated from the Law of the People’s Republic of China on the Protection of Rights and Interests of Women in 2022, thus potentially enabling single women to

assert their reproductive rights, there remains a necessity to further define and articulate the protection of reproductive rights for single women within other pertinent legislations. This step is crucial in establishing a comprehensive framework that ensures the protection of reproductive rights for single women.

In Article 17 of the PFPL, “The State guarantees the right of single women to give birth to children” is added, so that the marital relationship is no longer a precondition of reproductive rights. In Article 18 of the PFPL, “The State allows single women to give birth to three children” is added, providing a clear legal basis for single women to give birth, and in Article 36 of the PFPL, “it is illegal to refuse to perform medically assisted reproductive surgery for a single woman who meets the legal requirements” is added, providing protection for single women through medically assisted reproduction.

In the context of safeguarding reproductive rights, it is recommended that into Article 54 of the Social Insurance Law incorporate the phrase “Single women who give birth are entitled to childbearing insurance and maternity allowance”, thereby reflecting the state’s endorsement of fertility support for single women. Within the Regulations on Household Registration Management, specifications can be outlined to facilitate newborns’ household registration through the provision of birth certificates, obviating the need for marriage certificates or certificates of unmarried status. Moreover, amendments or eliminations to the stipulations within the Code on Human Assisted Reproductive Technology that prohibit the provision of assisted reproductive technology services to single women are proposed. Such changes will effectively dismantle the barriers obstructing single women’s fertility aspirations.

Conclusion

The reproductive right of single women does not stem from legal provision alone; it’s an inherent and essential human right. Yet, in China, single women are currently barred from fully exercising this right. The interplay of legislation, justice, and policy has erected certain hindrances that impede the realization of reproductive rights for single women. To address this, a shift in perspective regarding single women’s reproductive rights is imperative. It entails disentangling these rights from marital status, embedding the recognition of single women’s reproductive rights within legislation, and further fortifying their protection. This course of action would contribute to the establishment of a robust legal framework centered around reproductive rights, ensuring that single women’s reproductive rights are upheld as a paramount principle. Ultimately, this endeavor would culminate in the effective guarantee of single women’s ability to actualize their reproductive rights.

Limitations of the Study

This study offers a comprehensive grasp of the shifts in China’s fertility policies and women’s encounters with fertility choices. Nevertheless, a constraint within this study lies in the absence of details concerning demographic aspects like economic standing and educational background, variables that potentially exert influence on the fertility experiences of single women in China. Consequently, it remains unclear whether these factors impact the fertility requirements of single women within the country. Encompassing a diverse array of women spanning different cultures, regions, disabilities, homelessness, and socioeconomic strata would yield a more intricate insight into the fertility needs of single women. Although this study advocates for the inclusion of single women’s reproductive rights within Chinese legislation, it is crucial to acknowledge the need for subsequent research. Such research should delve into the enduring repercussions of policies on single women’s reproductive rights, encompassing a thorough exploration of the degree to which policies either constrain or facilitate the realization of these rights.

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Disclosure

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