

The Rule of Law for the Exercise of Marriage and Reproductive Rights for Women with Intellectual Disabilities in China

Zhengzong Huang^{1,*}, Baoxin Chen^{2,*}, Zehua Feng³

¹Law School, Hainan University, Haikou, People's Republic of China; ²Faculty of Humanities and Social Sciences, Macao Polytechnic University, Macao, People's Republic of China; ³School of Law, Guangdong University of Finance & Economics, Guangzhou, People's Republic of China

*These authors contributed equally to this work

Correspondence: Zehua Feng, School of Law, Guangdong University of Finance & Economics, 21 Luntou Road, Haizhu District, Guangzhou City, Guangdong Province, People's Republic of China, Email Ze-hua.Feng@outlook.com

Abstract: Women with intellectual disabilities (WIDs) are entitled to the rights to marriage and reproduction under Chinese law. However, Chinese marriage and reproduction regimes have imposed restrictions on their right to marry that limit the exercise of their reproductive rights. Marrying WIDs has become a popular choice for men in rural areas. Although in China's Civil Code, the legislature has repealed the prior requirement of a medical examination for marriage registration, the exercise of rights to marriage and reproduction by WIDs is still restricted. China has not fully implemented equal rights for persons with disabilities under the United Nations Convention on the Rights of Persons with Disabilities. China needs to set legal procedural requirements for the exercise of these rights for different types of WIDs, systematically constructing them at three levels: legal basis, legislative implementation, and institutional support.

Keywords: people with intellectual disabilities, marriage, reproductive rights, marriage and family law, Chinese law

Introduction

On January 28, 2022, a video caused outrage among Chinese netizens. It showed a woman with intellectual disabilities (WID), who had given birth to eight children, in chains in a dilapidated house in Feng County, Xuzhou City, Jiangsu Province. In the dead of winter, she was only wearing a single garment.^{1,2} Netizens believe that she was subjected to domestic violence and may have been trafficked.³ The Xuzhou chained woman incident took over almost all the Chinese social media platforms. On January 30, 2022, the Feng County government claimed that the woman's husband chained her because she had an intellectual disability and could hurt someone else.⁴ However, the official notifications did not stop the social controversy.⁵ Chinese social media platforms such as WeChat, Weibo, and Tik Tok are spreading the word about this appalling event, which has forced the Chinese public to think about the marriage and reproductive rights of WIDs.

As a signatory nation to the United Nations Convention on the Rights of Persons with Disabilities (CRPD), China should assume its obligations. Article 12 of the CRPD stipulates that persons with disabilities (PWDs) shall have equal rights to recognition as persons before the law. Chinese law has generally followed Article 12 of the CRPD regarding the legal personhood of PWDs. Article 33 of the Constitution of the People's Republic of China (China's Constitution) provides that all citizens are equal before the law. Furthermore, Article 3 of China's Law on the Protection of Persons with Disabilities (LPPD) stipulates that disabled persons shall enjoy equal rights with other citizens in political, economic, cultural, social, family life, and other aspects. Although Article 3 of the LPPD refines the formulation of Article 33 of China's Constitution, the LPPD is entirely silent on PWD's rights to marriage and reproduction. China's legal provisions on marriage and childbirth are mainly concentrated in the Marriage and Family Book (MFB) of the Civil

Code and the Population and Family Planning Law (PFPL). However, the MFB and the PFPL do not provide supported decision-making for the right to marriage and reproduction for PWDs, nor do they guarantee their legal capacity. Chinese legislators have neglected the marriage and reproductive rights of PWDs, and the CRPD is not fully reflected in domestic laws.

Fertility in women is usually unaffected by intellectual disabilities.⁶ For rural men with poor economic standing in China, marrying a WID is a popular option.⁷ This is because WIDs are regarded as a cheap commodity to meet desires for sex or reproduction. According to a survey, 53.3% of rural residents perceive that people with intellectual disabilities (PIDs) can marry and bear children, and 73.3% consider this type of marriage acceptable.⁸ Another survey shows that the marriage rate for PIDs is only 12.68%. However, the unmarried rate for WIDs is 80%, and the unmarried rate for men with intellectual disabilities is 96.8%.⁹ There is a high acceptance of marriage to WIDs. However, the official marriage rate for these women is very low. Behind this paradox is the existence of a large number of de facto marriage relationships and illegal childbirths.

A de facto marriage is a marital relationship that exists when a man and a woman subjectively share the purpose of living together permanently and objectively act as husband and wife without registering for marriage or receiving a marriage certificate. Prior to February 1, 1994, when China's Ministry of Civil Affairs (MCA) issued the Regulations on the Administration of Marriage Registration, the Chinese government recognized de facto marital relationships. Although Chinese law no longer recognizes these marriages, many couples still live together as husband and wife without obtaining a marriage certificate. The judicial interpretation issued by the Chinese Supreme People's Court, the Notice on the Application of the New Regulation on Marriage Registration, defines such arrangements as illegal cohabitation relationships. This definition leads to difficulties for WIDs in obtaining legal protection of their rights.

China's current laws do not specify how WIDs should exercise their rights to marriage and reproduction. The rights and interests of Chinese WIDs may not be realized or protected, even though these types of marriages are common in rural communities.¹⁰ The marriages of WIDs are usually arranged by their parents. Their marriage partners generally belong to vulnerable groups, such as older adults, people with physical disabilities, and those with poor economic standing.¹¹ This implies that WIDs' families may be struggling and may have limited access to care.⁶ Compared to people of sound intellect, WIDs are more vulnerable in aspects of family, marriage, and reproduction.¹² The advantage of choosing these women as marriage partners is their fertility. When their rights to marriage and reproduction are not recognized by the law, WIDs are highly vulnerable, and some have been subjected to illegal marriage relationships or childbearing, making their lives more difficult. Although the Chinese legislature has implemented new reforms to the Civil Code, unreasonable restrictions on the exercise of their right to marriage and reproduction still exist. Therefore, this survey of the legal hurdles faced by WIDs offers analysis and insight into their situation and hopes to draw national and international attention to their lack of equal rights in marriage and reproduction.

Classification of People with Intellectual Disabilities in China

According to China's 6th National Census in 2010, there are 5.68 million PIDs in China.¹³ We do not accurately know the current number of PIDs in China because the primary data of the 7th National Census in 2020 did not include the number of PIDs. However, it is conservatively estimated that there are still millions of PIDs in China, a group we should not ignore.

In China, intellectual disability means that a person's intelligence is significantly below the general population, and the person shows impaired adaptive behavior. As Table 1 shows, China classifies intellectual disabilities into four levels based on their developmental quotient (DQ), intelligence quotient (IQ), social adaptive behavior (AB), and World Health Organization Disability Assessment Schedule 2.0 (WHO-DAS II) Score: mild, moderate, severe, and extremely severe.¹⁴

In terms of social adaptability, people with extremely severe intellectual disabilities (Level 1) are not able to communicate with others, take care of themselves, participate in any activities, and have impaired physical mobility. They require comprehensive support from their environment and are cared for by others throughout their lives.

People with severe intellectual disabilities (Level 2) have poor social skills, difficulty taking care of themselves, and poor motor development. They require extensive support from their environment and are cared for by others for most of their lives.

Table 1 The Practical Assessment Criteria for Persons with Disabilities in China Classifies Them into the Following Levels

Classification	DQ: 0–6 Years Old	IQ: Seven Years Old and Above	AB	WHO-DAS II Score: 18 Years Old and Above
Level 1	≤ 25	< 20	Extremely Severe	≥ 116
Level 2	26–39	20–34	Severe	106–115
Level 3	40–54	35–49	Moderate	96–105
Level 4	55–75	50–69	Mild	52–95

People with moderate intellectual disabilities (Level 3) can communicate in a simple way, live partially on their own, perform simple household tasks, and participate in some simple social activities. They need limited support from their environment and are partially cared for by others.

People with mild intellectual disabilities (Level 4) can live on their own, perform general household chores or work, have a good understanding of their surroundings, communicate and interact with others, and participate in social activities in a relatively normal manner. They need intermittent support from their environment and generally live without needing the care of others.¹⁵

Chinese education authorities classify PIDs into three categories based on their educational possibilities: those that are educatable, those that are trainable, and those that require guardianship.

With proper education, educatable PIDs can learn basic skills. Trainable PIDs can learn simple habits and perform basic mechanical tasks with proper guidance. PIDs who need guardianship have difficulty acquiring any ability to care for themselves and require lifelong care from others.⁹ Educational possibilities are correlated with intelligence levels in general. PIDs who need guardianship are mainly those with severe or extremely severe intellectual disabilities. Those who can be trained primarily have moderate intellectual disabilities, and those who can be educated mainly have mild intellectual disabilities.

Socioeconomic Status of Women with Intellectual Disabilities in China

Article 23 of the CRPD provides that States Parties shall take effective and appropriate measures to guarantee the rights to marriage, reproduction, and fertility for PIDs on an equal basis with others. According to the principle of “equality before the law” in China’s Constitution, WIDs who are Chinese citizens should enjoy the same rights as non-disabled people, including the right to marriage and reproduction. China has partially translated the relevant provisions of the CRPD into domestic law (see Table 2).¹⁶ However, in practice, WIDs’ rights to marriage and reproduction are subject to various restrictions.

Table 2 Legal Foundations for Women with Intellectual Disabilities to Enjoy Marriage and Reproductive Rights in China

Laws	Provisions	Articles
Constitution of the People’s Republic of China	The state and society help arrange the work, life, and education of the blind, deaf, dumb, and other citizens with disabilities.	Article 45 (3)
	The state protects marriage, family, motherhood, and childhood.	Article 49 (1)
Population and Family Planning Law of the People’s Republic of China (2021 Amendment)	Citizens have the right to reproduction and the obligation to practice family planning by the law, and both spouses have a joint responsibility in practicing family planning.	Article 17
Civil Code of the People’s Republic of China	The state protects marriage and family. The legitimate rights and interests of women, minors, the elderly, and the disabled are protected.	Article 1141 (1) (3)
Law on the Protection of Persons with Disabilities	PIDs have equal rights to other citizens regarding family life. The law protects the civil rights and human dignity of PIDs.	Article 3

Economic Hardship in the Family

Although WIDs enjoy the right to marriage and reproduction from an ethical and legal perspective, family hardship makes their situation challenging in practice. According to the Research Report on the Status Quo and Demands of Protection for People with Intellectual Disabilities in China (Research Report), 83.93% of families with children with intellectual disabilities consider their children to be lacking adequate care and social support.¹⁷ The Research Report also finds that 84.68% of PIDs do not receive medical treatment, and more than 99% of their parents acknowledge that they have mental stress concerning caregiving for their children. Only 28% of these children have self-care abilities, indicating that the majority require constant care. Because of this, 52.6% of parents state that they are unable to work. In terms of rehabilitation costs, more than half of these parents report that monthly rehabilitation treatment costs account for more than 50% of the family's income, and 24.39% of these reported costs exceed the total family income. The Research Report argues that a lack of social support is the core factor causing persistent hardship for families of children with intellectual disabilities. Although the economic challenges are not explicitly related to WIDs to exercise the right to marry or the right to procreate, they are an indirect implication that these women are likely to face financial difficulties when they try to marry.

Most WIDs in China are entitled to social insurance. However, their parents indicate that social insurance does not sufficiently cover rehabilitation costs.¹⁷ WIDs also face potential discrimination when purchasing commercial insurance. They have lower purchasing power and higher claim risk. As a result, insurance companies, in general, are reluctant to allow WIDs to purchase commercial insurance. Even if a few commercial insurance policies are available to WIDs, these policies often require WIDs to pay increased costs or include liability exclusion clauses in the contract. Because of this limited social and commercial insurance coverage, the parents of WIDs may force them to participate in arranged or mercenary marriages to provide them with a new caregiver, thereby undermining WIDs' right to marry.

Insufficient Social Support

WIDs need social support to realize their own development.¹⁸ Chinese social support for WIDs is insufficient, despite some psychological and physiological forms of public assistance.¹⁹ As Figure 1 shows, many state authorities and social organizations aim to protect the marriage and reproductive rights of WIDs in China. These currently include at least eight specific institutions, large specific state agencies, and social organizations dedicated to protecting WIDs' marriage and reproductive rights. However, WIDs have lower self-defense abilities and awareness, making them easy targets for rape or illegal marriage. The concerned state authorities and social organizations usually fail to prevent such abuse and can only try to remedy it afterward.

On October 26, 2019, the Si County police department reported that a 15-year-old girl with an intellectual disability was sexually assaulted by multiple men who were her neighbors.²⁰ The victim, Chen, had been abandoned by her birth mother because she was born with an intellectual disability. Her adoptive father did not take proper daily care of her, leading to this tragedy. The police hoped that a social services agency would take the girl in, but they did not receive a timely response, and the girl had to stay overnight at the police station. On the grounds of Chen's mental incompetence, the police sent her to the Children's Welfare Office of Si County, a branch of the Social Welfare Office led by the local Civil Affairs Bureau (CAB), indicating that Chen became an orphan again. On November 29, 2019, a 12-year-old girl with an intellectual disability in Mao Ming City in Guangdong Province was reported to have been sexually assaulted by multiple people and became pregnant twice within a year, a case similar to Chen's case.^{21,22} In both cases, the local welfare office passively waited for instructions from the local government instead of actively providing social support for the girls. Only after tragedy and social outcry do public authorities take action to protect fundamental human rights, such as the sexual and reproductive rights of WIDs.

In the Xuzhou chained woman incident, the husband, Mouming Dong, as the guardian of his intellectually disabled "wife," did not protect her fundamental rights. This incident is the first public case of alleged human trafficking since the Chinese government launched the China Action Plan Against Human Trafficking (2021–2030) on April 9, 2021. As Table 3 shows, the eight institutions mentioned above did not assist the woman, leading to outrage and questions from the public. After many Chinese netizens pursued the case, the government of Feng County provided proper medical

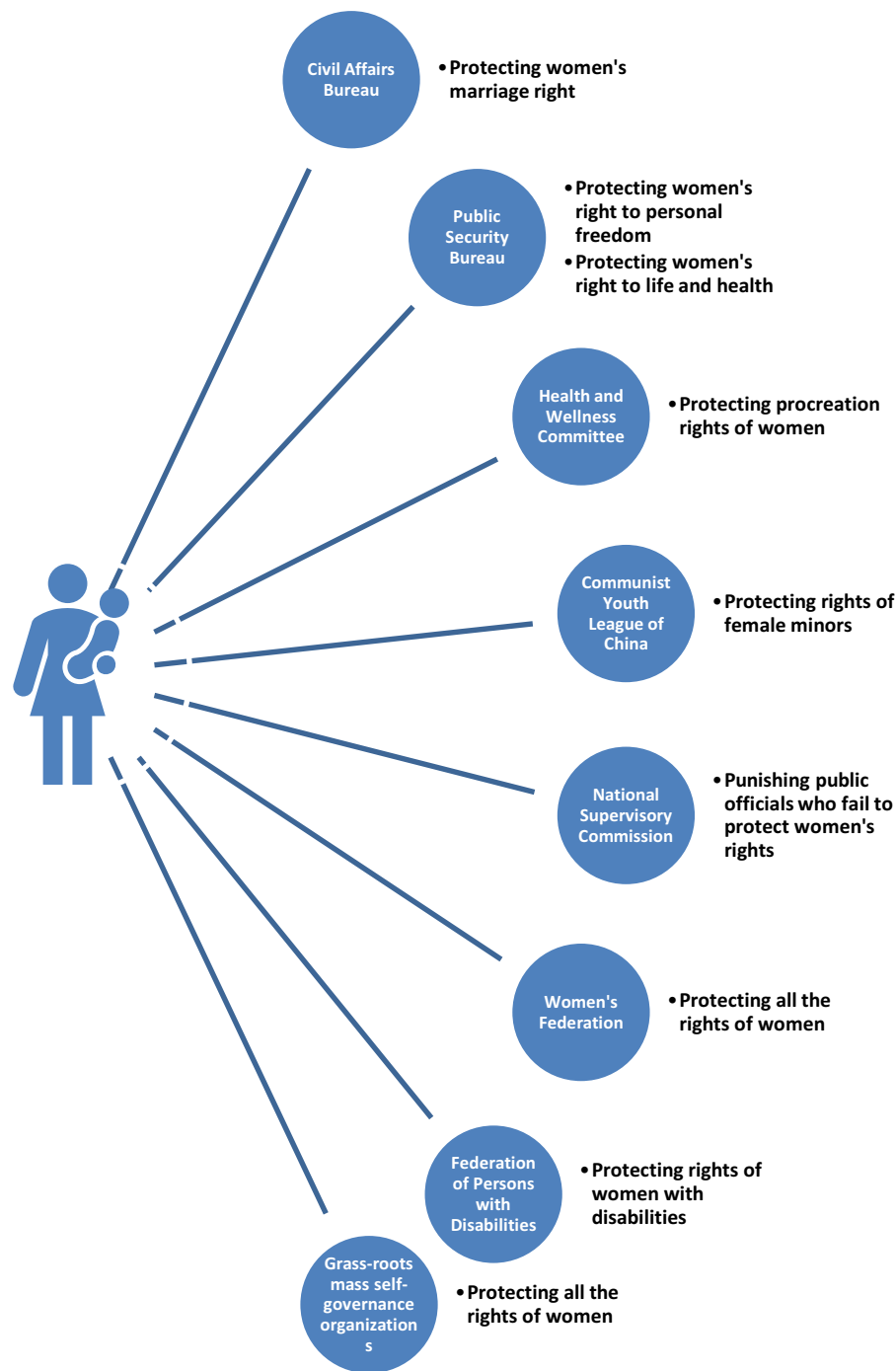


Figure 1 China's institutions responsible for protecting the marriage and reproductive rights of WIDs.

treatment for this woman with diminished intellectual capabilities. Her husband was arrested on suspicion of buying trafficked women and of illegal detention. However, these temporary protections do little to provide ongoing protection for other WIDs. Therefore, there should be a comprehensive mechanism for the protection of the marriage and reproductive rights of WIDs.

Local welfare offices have tended to have a negative attitude toward the rights and interests of WIDs since the Interim Measures for the Administration of Social Welfare Institutions were abolished by the MCA, the supreme institution of the CAB, on May 31, 2019.²³ No substitute regulations were available for the administration of social welfare institutions.

Table 3 Official Notification of “Xuzhou Chained Woman Incident”

Order	Time	Department	Contents	Questions from Netizens
1	January 28, 2022	Propaganda Department of the Communist Party of China (CPC) Feng County Committee	1. There was no abduction or trafficking. 2. The couple involved is in a legal marriage.	1. No description of the original family background of the woman. 2. No explanation of why the local regulatory authorities had not intervened for so long. 3. The couple involved seriously violated the Family Planning Policy without punishment.
2	January 30, 2022	Joint Investigation Team of Feng County	1. There was no abduction and trafficking. 2. The person concerned, Moumin Dong, has repeatedly evaded the management of family planning in different ways. 3. The staff in charge of the marriage registration did not strictly verify the identity information of the woman, who has intellectual challenges. 4. The staff who neglected their duties and were found guilty of malfeasance were dealt with according to the law and regulations.	1. No description of the original family background of the woman. 2. The conclusion that there is no trafficking is not credible. 3. Failure to account for the long-term negligence of the local supervisory authorities.
3	February 7, 2022	Xuzhou Municipal CPC Committee and Municipal Government Joint Investigation Team	1. The staff who neglected their duties and were found guilty of malfeasance were investigated. 2. The woman went missing during travel from Yunnan Province to Jiangsu more than 20 years ago. She married Dong in Feng County. 3. The intellectual condition of the woman tends to be stable, and other health indicators are as usual. 4. Using DNA identification, eight children were identified as being born to the woman. 5. The public security authorities have launched an investigation into whether the husband involved is suspected of committing a crime.	1. The original family background of the woman remains unclear. 2. There must have been an abduction because the reason for seeing a doctor does not stand up to scrutiny due to the long distance from Yunnan Province to Jiangsu Province. 3. No explanation of why the local regulatory authorities have not intervened over a long period.
4	February 10, 2022	Xuzhou Municipal CPC Committee and Municipal Government Joint Investigation Team	1. Compulsory criminal measures taken against persons suspected of illegal detention and trafficking in women. 2. Social support provided for the woman.	1. The officials who wrongly registered the illegal marriage have not been held accountable. 2. The government has been too slow to respond and is suspected of shirking its responsibility.
5	February 17, 2022	Jiangsu Provincial CPC Committee and Provincial Government Joint Investigation Team	Investigation team set up.	No answer to the netizens' questions.

The abolition was part of the “Fan-Guan-Fu” reform, meaning that the administrative authority dwindled, making the market to forces to play a decisive role in the allocation of resources. The “Fan-Guan-Fu” reform of the traditional administrative system was first proposed by Chinese Premier Li Keqiang on May 12, 2015. Under this reform, there was a shift from direct administration to indirect regulation by the Chinese government, and social welfare institutions became private entities. This reform was intended to promote the effectiveness of social welfare institutions through

market competition. However, given the lack of national investments and financial incentives for private organizations, institutions managed by private organizations are unlikely to protect the rights and interests of WIDs deliberately.

China's Legal Barriers for Women with Intellectual Disabilities to Exercise their Rights to Marriage and Reproduction

With the growing awareness of pursuing individual rights in China, the reproductive rights of WIDs, under which they would have the option to choose to have children, have received considerable attention from academics and society.²⁴ Under Chinese law, WIDs are the subject of stringent birth control because of their mental situation. They have to face legal and regulatory barriers, even if they have been able to avoid financial struggles. The exercise of reproductive rights is premised by the need to have a pregnancy permission certificate that is also preconditioned by an individual's marriage certificate. There are two main limitations of their reproductive rights: first, marriage registration is subject to a prior medical examination; second, the detailed requirements of complete willingness to enter into a marriage when WIDs apply for marriage registration have yet to be specified.

Medical Examination as a Mandatory Requirement Before Marriage Registration

The Chinese legislature had imposed restrictions on the right to marriage to limit the exercise of reproductive rights by WIDs.²⁴ Personal marriage status is a precondition for the exercise of reproductive rights. Before the implementation of the Civil Code, because the right to marriage of WIDs was limited by a medical examination, their reproductive rights could not be exercised. Article 7 (b) of the Marriage Law of the People's Republic of China, promulgated on September 10, 1980, and amended on April 28, 2001, provides that [marriage] shall be prohibited in any of the following circumstances: ... if either the man or the woman is suffering from any disease that is regarded by medical science as rendering a person unfit for marriage. Although this provision does not directly limit the exercise of the reproductive rights of WIDs, it denies them the opportunity to use these rights because they are legally unable to marry. This is a practical hurdle that WIDs cannot overcome when they attempt to marry and seek to give birth.

There is a report suggesting that the Chinese government requires WIDs to be sterilized before they can exercise their right to marry.²⁵ However, this is not the case. For example, two girls, Lanlan (13 years old) and Linlin (14 years old), are abandoned orphans who grew up in an orphanage in Nantong, Jiangsu Province of China. The two girls are severely intellectually disabled and unable to cope with monthly menstrual cramps. The leadership of the orphanage collectively decided to have a hospital perform a hysterectomy, calling the procedure an appendectomy. The People's Procuratorate in the Nantong Chongchuan District prosecuted the leaders of the orphanage and the doctor who performed the surgery. After the court hearing, the defendants were found guilty of intentional injury. This shows that in China, it is illegal to perform sterilization surgery on WIDs.²⁶

Although sterilization of WIDs is illegal, China has restricted the WIDs' rights to marriage and reproduction through legal and administrative procedures. WIDs face considerable legal difficulties in exercising their rights to marriage and reproduction. They may not be physically sterilized, but, in a sense, they are "sterilized" by the law.

Reforms and Deficiencies of the Marriage Law

WIDs are entitled to marry and give birth, fundamental rights in Chinese law. Article 3 of the LPPD provides that PWDs are entitled to equal rights with other citizens regarding family life. However, the restrictive stipulation provided by Article 7 (b) of the Marriage Law had limited the exercise of rights to marriage and reproduction by WIDs, causing widespread criticism.^{10,27,28} The Marriage Law was invalidated by the Civil Code of January 1, 2021. Although the Chinese legislature has repealed the article relating to the prior proceedings of medical examination, the exercise of rights to marriage and reproduction by WIDs is still subject to serious limitations. Article 1046 of the Civil Code sets out that complete willingness is an essential qualification for entering into marriage. This so-called complete willingness is based on the ability of each party to express their true intentions. In reality, China's CAB regards WIDs who are unable to explicitly express their own desires as persons with incapacitated or limited capacity for civil conduct and prohibits them from being married.²⁴ This is an unreasonable barrier to WIDs' right to marriage.

Marriage has physiological and social aspects. First, marriage of its nature is a legal contract based on sexual maturity and physiological demands. The legislature has laid down qualifications for marriage that are based on factors such as age and physiological conditions. With physiological maturity, WIDs need sex and love.^{29,30} The legislature should protect these sexual and physiological needs as fundamental rights. Second, marriage is a form of social behavior involving rights, duties, and accountabilities. Both parties need to have a certain cognition of marriage, meaning that each person should be able to express their own will. According to Articles 21 and 22 of the Civil Code, WIDs who are unable to express their own will explicitly should be regarded as persons without, or with limited, capacity for civil conduct and should be represented by a statutory agent in performing juridical acts. Although marriage to a WID is a popular choice in China's rural areas, these women are not qualified to make decisions about marriage because of their lack of full capacity for civil conduct. In practice, many WIDs are rejected for marriage registration because of their intellectual disabilities. However, they are welcomed in the rural marriage market. Consequently, their "marriage" is usually based on illegal or irrational grounds, as in the case of arranged or mercenary marriages. As a result of this situation, there are many de facto marriage relationships and illegal childbirths, although they are prohibited under China's Civil Code.

Lack of Supported Decision-Making Mechanisms

Article 12 of the CRPD states that PWDs have the right to recognition on an equal basis before the law. This article means that WIDs have the right to autonomy through supported decision-making. The state is obliged to provide support for the exercise of legal capacity by WIDs.³¹ Supported decision-making can provide access to decision-making assistance for WIDs to exercise their legal capacity to enter into contracts, marriage, childbirth, and other legal relationships on an equal basis.

The focus on self-determination for PIDs in the 1970s benefited women with mild or moderate intellectual disabilities. They are supposed to be able to exercise the rights and responsibilities of marriage through the mechanism of supported decision-making and with appropriate training.³² However, the opportunity for self-determination has been restricted for women with severe or extremely severe intellectual disabilities.³³ Women with severe or extremely severe intellectual disabilities lack the fundamental ability to care for themselves and express their own will. They are unlikely to be able to assume the responsibilities of marriage or consent to be married. They may also be unable to comprehend sex, marriage, and family or understand how to make their own decisions regarding marriage or childbearing, let alone protect their fundamental rights.²⁷

Chinese law provides citizens with the right to marriage and reproduction while setting conditions for exercising these rights. For example, Article 1046 of the Chinese Civil Code states that both parties shall enter into marriage freely and voluntarily. In practice, it is difficult to prove that a WID is freely and voluntarily willing to marry. Conditions for exercising the right to marriage create barriers to the exercise of rights by WIDs. It is the responsibility of the WID to demonstrate that she can participate independently in decision-making and express a clear willingness to marry. However, in the absence of supported decision-making, WIDs lack sufficient capacity to express their willingness to marry. This is especially true for women with severe or extremely severe intellectual disabilities. China's legal system does not provide the necessary supported decision-making for WIDs, exacerbating the suffering of WIDs caught in illegal marriages and illegal childbearing. The Chinese legislature should adopt a social inclusion model and make appropriate adjustments to the law to ensure that social and other supports are in place to allow WIDs to participate in decision-making either independently or with the help of others.³¹

Discussion

Enshrining Reproductive Rights in the Chinese Constitutional Text

Article 15 (2) of the CRPD stipulates that:

States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities from being subjected to torture or cruel, inhuman or degrading treatment or punishment on an equal basis with others.

International conventions have strict legal guarantees for the reproductive rights of WIDs. The lack of similar legislation in China has left the judiciary at a loss in protecting the rights of WIDs to marriage and reproduction. China's Constitution is the country's fundamental law and has the highest legal force. All people of all nationalities, all state organs and armed forces, all political parties and social organizations, and all enterprises and institutions must take the Constitution as the fundamental guideline for their activities. It is the duty of all to safeguard the dignity of the Constitution and ensure its implementation. On March 11, 2018, the first session of the 13th National People's Congress (NPC) adopted the Amendment to the Constitution of the People's Republic of China, changing the "Legal Committee of the NPC" to the "Constitution and Law Committee of the NPC." Since then, the role of China's Constitution in protecting citizens has become more robust, and some legal documents that violate China's Constitution have been declared invalid by the NPC Constitution and Law Committee.

Article 49 (1) of China's Constitution stipulates only that marriage and motherhood are protected by the state. It does not specify whether the state protects the right to reproduction. In terms of legal logic, the right to reproduction is a consequence of the right to marriage. At the same time, however, it requires a constitutional approach to reach such a conclusion. This reasonable inference has no constitutional validity when this doctrinal interpretation has not yet resulted in an official document of constitutional interpretation.

Article 49 (2) of China's Constitution states that both spouses have an obligation to practice family planning. Chinese citizens' reproduction is an explicit constitutional obligation, but whether it is a constitutional right still requires official interpretation. These ambiguous and vague legal provisions make it clear that the reproductive rights of Chinese citizens are difficult to safeguard effectively. In legislative practice, China's various locally enacted legal documents on fertility also revolve mainly around implementing the constitutional obligation of family planning (see Table 4). China now allows citizens to have three children. However, this provision has a specific orientation to the family planning obligation rather than to a constitutional stipulation around reproductive rights. In other words, even though WIDs have constitutional protection of their right to marriage, they do not have full constitutional protection of their reproductive rights.

Fertility policies should be based on reproduction as a fundamental right. At present, China has not formulated legal norms specifically for the reproductive rights of WIDs. There are no laws that protect the eligibility of WIDs as subjects of reproductive rights. Legislation lags behind practice. China's Constitution addresses the family planning system but does not provide for the legal elements of reproductive rights. To improve the effectiveness of the legal regulation of reproductive rights, China should explicitly incorporate the concept and elements of reproductive rights into the Constitution. Specifically, Article 42 (2) of China's Constitution could be amended to read, "Citizens have the right to

Table 4 Overview of Legal Documents Promulgated by Various Localities in China to Implement Family Planning

Laws and Regulations	Provisions	Articles
Guangdong Population and Family Planning Regulations	Both spouses have an obligation to practice family planning according to the law, and the legitimate rights and interests of practicing family planning are protected by law.	Article 4
Hainan Population and Family Planning Regulations	Family planning is the primary national policy of the country, and both spouses have an obligation to practice family planning. The state advocates better conditions for childbirth and reproductive health.	Article 3
Beijing Population and Family Planning Regulations	Citizens have the right to reproduction and the obligation to practice family planning by law. Both spouses have joint responsibility in practicing family planning. The legitimate rights and interests of citizens in practicing family planning are protected by the law.	Article 15
Fujian Population and Family Planning Regulations	Both spouses have an obligation to practice family planning. The legitimate rights and interests of citizens in practicing family planning are protected by the law.	Article 2
Shanghai Population and Family Planning Regulations	Citizens have the right to reproduction and the obligation to practice family planning in accordance with the law. Both spouses share the responsibility to practice family planning and should be consulted equally and respect each other when making reproductive decisions. The legitimate rights and interests of citizens in practicing family planning are protected by the law.	Article 22

reproduction and the obligation to carry out family planning under the law.” At the same time, the following should be added to Article 45 (3): “Persons with disabilities shall enjoy equal rights with other citizens in political, economic, cultural, social, and family life.”

Improving the Protection of the Rights to Marriage and Reproduction in Sectoral Laws

In China, the family planning system is based on the Constitution. It consists of a combination of laws such as the MFB in the Civil Code, and the PFPL. The core purpose of the PFPL is to regulate citizens’ reproductive behavior and protect their reproductive rights. However, the PFPL only provides general and principled provisions on reproductive rights and does not provide for specific issues such as the guidance, regulation, restriction, and social security of citizens’ reproductive behavior.

The PFPL should be improved in two ways. First, the PFPL should strengthen the protection of reproductive rights in terms of social welfare. In particular, adequate social support and supported decision-making should be provided for the reproductive rights of WIDs.³⁴ If circumstances make them unfit for childbearing, the PFPL should support scientific and reasonable contraceptive and birth control measures rather than prohibiting WIDs from marrying. Second, the PFPL should explicitly include WIDs as part of the subject of reproductive rights. Third, necessary rights restrictions should be imposed on WIDs who are not clinically suitable for childbirth. For example, restrictions on the reproductive rights of WIDs may be justified when the pregnancy seriously endangers the life of the mother and child.³⁵

The provisions of the MFB in the Civil Code are closely related to the right to procreate. The protection of reproductive rights cannot be achieved without the support of the MFB. The MFB should be harmonized with the PFPL to include the enjoyment of reproductive rights, the manner in which they can be exercised, and their tort liability. In China’s existing marriage system, the subject of reproductive rights is limited to rights between married couples, thereby limiting the scope of the subject of reproductive rights. The MFB should include special reproductive rights, in particular those of WIDs.

Establishing Strict Operational and Procedural Specifications

Because of the absence of explicit legal provisions, officials in the CAB often directly reject marriage applications from WIDs, regardless of the level of intellectual disability of the WID. China should fill this type of legislative gap as soon as possible to effectively protect the rights and interests of WIDs. It seems unreasonable for the CAB to deny a WID the right to marriage based on her inability to express her self-will clearly, or her inability to assume the responsibilities of a family.⁷

First, not all WIDs are unable to express their own will. Level 3 or 4 WIDs can express their will with supported decision-making. The CAB should carefully discern a WID’s genuine willingness. It should allow her application for marriage if it can be confirmed that the Level 3 or 4 WID is willing to live with the spouse.

Second, for Level 1 or 2 WIDs, before granting their application for marriage, the CAB should examine the male spouse’s ability to assume family responsibilities, his willingness to marry the WID, and the willingness of both parents. The CAB should respect the needs of WIDs to have sex and be loved in the context of safeguarding their legitimate interests. If the CAB treats all WIDs as civilly incompetent and deprives them of their ability to marry, WIDs will be unable to establish normal marital and family relationships. The consequence will be an increase in unfortunate incidents arising from illegal cohabitation.

Third, civil capacity is not the same as marital capacity. Persons with no or limited civil capacity can have marital capacity under certain circumstances. Civil incapacity does not mean incompetence to marry. However, persons with no civil capacity may acquire civil capacity by marriage. This is also true for persons with limited civil capacity. Marital capacity is based primarily on a person’s sexual and reproductive capacity, not on their intellectual level.

Marriage would change the guardianship of a WID. Before marriage, the guardian of a WID is usually her parents or other relatives. After marriage, her husband becomes her guardian. The guardian of a WID has a close relationship with her and possesses the most accurate information about her living conditions and her health. However, guardians should not be the sole decision-makers in matters regarding the significant rights and interests of WIDs. In situations such as marriage and childbirth, which are of immediate interest, the guardian may have the right to file a petition. Any decision

on the petition is subject to an examination by a medical institution and a ruling by a judicial body after a case review to ensure the patient's best interests and strict procedural safeguards. The medical institution issues a report based on professional medical opinion and relevant evidence on the WID's condition. When the report is examined and reviewed by the court, a final decision is made.

The Chinese legislature should provide WIDs with the support to make their decisions and communicate their choices. The mechanism of supported decision-making can guarantee equal access to marriage and reproductive rights for WIDs. Also, legislators should aim to establish a strict operational legal procedure to safeguard the marriage and childbearing of WIDs. This legal procedure should stipulate the following aspects: the concern of the guardian, the state department that has the authority to accept the case, the submission and examination of evidence, the determination of authoritative medical institutions, the making of administrative decisions and judicial rulings, the establishment of review bodies, and the intervention of public defense lawyers. A strict legal procedure can prevent the abuse of discretionary power or guardianship.

Conclusion

Article 23 of the CRPD guarantees the equal rights of PWDs in all matters relating to marriage, family, parenthood, and relationships. However, WIDs in China have not sufficiently enjoyed these equal rights. Their parents are eager to arrange their marriages in an effort to find new caregivers for them, regardless of the legality of the purpose and procedure of their marriage. Because WIDs' rights to marriage and reproduction are neglected by the Chinese legislature, these arrangements only increase their distress. Although in the MFB of China's Civil Code, the legislature repealed the prior requirements of medical examination, WIDs are still regarded as persons with incapacity or limited capacity for civil conduct. The lack of supported decision-making mechanisms results in WIDs becoming legally incapable of marriage and reproduction. These legal barriers prevent them from searching for suitable marriage partners. The Chinese government should attend to social support for WIDs and should re-enact more comprehensive regulations on the administration of social welfare offices. The Chinese legislature should set out clearly the legal procedures and the supported decision-making mechanisms for the exercise of WIDs' rights to marriage and reproduction. Finally, further research would require collaboration between scientists and legal scholars to construct supported decision-making mechanisms for WIDs to face many medical and legal challenges.

Acknowledgments

This research was supported by the Research Project Fund of Macao Polytechnic University (RP/ESCHS-03/2020), Guangdong Major University Project (2019GZDXM017), Shenzhen Science and Technology Innovation Commission Project (JCYJ20180306140801775, JCYJ20210324135411031).

Disclosure

The authors report no conflicts of interest in this work.

References

1. Fong Tak H, Qiao L, Xiaoshan H, Chingman. Woman found chained in China's Feng county becomes symbol of demand for equal rights. Available from: <https://www.rfa.org/english/news/china/trafficking-symbol-03082022141810.html>. Accessed April 25, 2022.
2. Kou SHL. A woman with intellectual disabilities in Xuzhou city gave birth to eight children and was chained, local authorities intervened to investigate; 2022. Available from: <https://3g.163.com/v/video/VQTSOJDMB.html#clickfrom=newrelatedoc>. Accessed April 25, 2022.
3. Mei Ri Jing Ji Xin Wen. Blogger's video says woman chained, locked in broken house, wearing thin clothes at 0 degrees after giving birth to 8 children, latest local response. Available from: <http://news.hexun.com/2022-01-29/205228938.html>. Accessed April 25, 2022.
4. Feng Xian Fa Bu. Investigation on the situation of netizens discussing the "woman who gave birth to eight children". Available from: <https://mp.weixin.qq.com/s/AfIDhmjNCr0-O51dgELDqA>. Accessed April 25, 2022.
5. Wikipedia. Xuzhou chained woman incident. Available from: https://en.wikipedia.org/wiki/Xuzhou_chained_woman_incident. Accessed May 19, 2022.
6. D'Angelo A, Ceccanti M, Fiore M, et al. Pregnancy in women with physical and intellectual disability: psychiatric implications. *Riv Psichiatr*. 2020;55(6):331–336. doi:10.1708/3503.34890
7. Pan L, Ye JZ. Love or loveless? Married life can be hard for mentally challenged women in rural China. *Women China*. 2009;30(9):12–13.

8. Pan L. Marriage acquirement and rights risk for mentally handicapped female in rural area: field observation from two villages in Hebei Province. *China Agric Univ J Soc Sci Ed*. 2010;27(1):107–112.
9. Zhang Y. Characteristics of the mentally disabled population and its survival and development: a survey of 216 mentally disabled people in Nanjing. *J Nanjing Coll Popul Program Manage*. 2006;22(1):41–45.
10. Qian JY, Ren L. Research on the protection and restraint of the reproductive right of persons with mental disabilities in China. *Disabil Rights Stud China*. 2014;1:141–156.
11. Wang J. Social influence and governance of rural bachelors' uncusomary marriage and childbearing behavior. *J Hunan Agric Univ*. 2020;21(2):35–40.
12. Pan L, Ye JZ. Family care of people with intellectual disability in rural China: a magnified responsibility. *J Appl Res Intellect Disabil*. 2015;28(4):352–366. doi:10.1111/jar.12167
13. China Disabled Persons' Federation. Total number of people with disabilities and the number of people with different types and levels of disabilities in the country at the end of 2010. Available from: <https://www.cdpf.org.cn/zwgk/zccx/cjrgk/15e9ac67d7124f3fb4a23b7e2ac739aa.htm>. Accessed April 25, 2022.
14. The Central People's Government of the People's Republic of China. Practical evaluation standards for people with disabilities in China. Available from: http://www.gov.cn/tztz/gacjr/content_459939.htm. Accessed April 25, 2022.
15. Powell RM, Parish SL, Mitra M, Rosenthal E. Role of family caregivers regarding sexual and reproductive health for women and girls with intellectual disability: a scoping review. *J Intellect Disabil Res*. 2020;64(2):131–157. doi:10.1111/jir.12706
16. Qi F, Wang Q. Guaranteeing the health rights of people with disabilities in the COVID-19 pandemic: perspectives from China. *Risk Manag Healthc Policy*. 2020;13:2357. doi:10.2147/RMHP.S273685
17. Zhang LJ. Research report on the status quo and demands of protection for people with mental disabilities in China released in Beijing: 83.93% of families which have children with intellectual disabilities rated themselves as having insufficient protection for their children. Available from: <http://www.gongyishibao.com/html/gongyizixun/15792.html>. Accessed April 25, 2022.
18. Kwok HWM, Cui Y, Li J. Perspectives of intellectual disability in the People's Republic of China: epidemiology, policy, services for children and adults. *Curr Opin Psychiatry*. 2011;24(5):408–412. doi:10.1097/YCO.0b013e328348810c
19. Lim F, Downs J, Li JH, Bao XH, Leonard H. Caring for a child with severe intellectual disability in China: the example of Rett syndrome. *Disabil Rehabil*. 2013;35(4):343–351. doi:10.3109/09638288.2012.715720
20. THE PAPER. 15-year-old girl with intellectual disabilities was sexually assaulted and sent to an orphanage, Si County police: 3 suspects were detained. Available from: https://www.thepaper.cn/newsDetail_forward_4783225. Accessed April 25, 2022.
21. Chen XH 12-year-old girl sexually assaulted and twice pregnant: family of four intellectually disabled, suspects have not locked in. Available from: https://www.thepaper.cn/newsDetail_forward_4983635. Accessed April 25, 2022.
22. Ma DM. Sexual assault of girls with disabilities: severe punishment according to the law but also timely remediation. *China Youth Daily*; 2019.
23. Ministry of Civil Affairs of the People's Republic of China. Decision of the Ministry of Civil Affairs on the abolition of some departmental regulations, normative documents and other documents. Available from: <http://www.mca.gov.cn/article/gk/wj/201906/20190600017780.shtml>. Accessed April 25, 2022.
24. Li YQ. On the marriage and family rights of intellectually disabled persons. *Human Rights*. 2018;102(6). doi:10.16696/j.cnki.11-4090/d.2018.06.006
25. Kristof N. Some Chinese Provinces forcing sterilization of retarded couples. *New York Times*; 1991.
26. Zhu B, Zhang C-L. The contemplation of the hysterectomy of young mentally retarded girl in Nantong: how the mentally retarded children exerting their informed consent right. *J Law Med*. 2007;14(2):140–144.
27. Zhang Y, Guo Q, Wan S, Preliminary A. Study on the ethical protection of the reproductive rights of the mentally handicapped. *Chinese Med Ethics*. 2020;33(6):667–671.
28. Roy A, Roy A, Roy M. The human rights of women with intellectual disability. *J R Soc Med*. 2012;105(9):384–389. doi:10.1258/jrsm.2012.110303
29. Lin LP, Lin PY, Hsu SW, et al. Caregiver awareness of reproductive health issues for women with intellectual disabilities. *BMC Public Health*. 2011;11(1):1–8. doi:10.1186/1471-2458-11-59
30. Agaronnik N, Pendo E, Lagu T, DeJong C, Perez-Caraballo A, Lezzoni LI. Ensuring the reproductive rights of women with intellectual disability. *J Intellect Dev Dis*. 2020;45(4):365–376. doi:10.3109/13668250.2020.1762383
31. Arstein-Kerslake A, Watson J, Browning M, Martinis J, Blanck P. Future directions in supported decision-making. *Disabil Stud Q*. 2017;37(1):1–23. doi:10.18061/dsq.v37i1.5070
32. Ward MJ. Coming of age in the age of self-determination. *Self-Determination Across Life Span*. 1996;4:3–16.
33. Watson J, Anderson J, Wilson E, Anderson KL. The impact of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) on Victorian guardianship practice. *Disabil Rehabil*. 2020;1–9. doi:10.1080/09638288.2020.1836680
34. Potvin LA, Barnett BM, Brown HK, Cobigo V. "I didn't need people's negative thoughts": women with intellectual and developmental disabilities reporting attitudes toward their pregnancy. *Can J Nurs Res*. 2019;51(3):154–167. doi:10.1177/0844562118819924
35. Gallagher J. Mother of six 'can be sterilised' - court ruling. Available from: <https://www.bbc.com/news/health-31128969>. Accessed April 25, 2022.

Risk Management and Healthcare Policy

Dovepress

Publish your work in this journal

Risk Management and Healthcare Policy is an international, peer-reviewed, open access journal focusing on all aspects of public health, policy, and preventative measures to promote good health and improve morbidity and mortality in the population. The journal welcomes submitted papers covering original research, basic science, clinical & epidemiological studies, reviews and evaluations, guidelines, expert opinion and commentary, case reports and extended reports. The manuscript management system is completely online and includes a very quick and fair peer-review system, which is all easy to use. Visit <http://www.dovepress.com/testimonials.php> to read real quotes from published authors.

Submit your manuscript here: <https://www.dovepress.com/risk-management-and-healthcare-policy-journal>