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Safeguarding the Reproductive Rights of Single Women in China: Challenges and Reform Directions

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Abstract: This paper comprehensively examines the legal status, contemporary challenges, and necessary reform directions regarding single women's reproductive rights in China. Against the backdrop of significant demographic shifts, including rapid population aging and declining birth rates, the necessity for inclusive reproductive policies has become increasingly urgent. The study finds that current Chinese legal frameworks strictly condition access to assisted reproductive technologies (ART)—such as in vitro fertilization and oocyte cryopreservation—on marital status, thereby leaving the reproductive rights of unmarried women inadequately protected. Furthermore, the paper critically evaluates and deconstructs common societal and legal objections to expanding these rights. These objections include concerns over the best interests of the child, the potential risks of illegal surrogacy markets, and anticipated difficulties in parent-child relationships. By refuting these arguments through a rigorous comparative analysis with international human rights law and established progressive practices in Australia and the United Kingdom, the research highlights viable pathways for legal modernization. Consequently, the paper proposes several key reforms: the explicit constitutional recognition of reproductive rights, the comprehensive revision of existing ART regulations, the adoption of a streamlined filing system for ART implementation, and the promotion of fundamental shifts in societal perceptions. Ultimately, the paper concludes that safeguarding single women's reproductive rights not only advances fundamental gender equality but also serves as a strategic mechanism to help address pressing national demographic challenges.

Keywords: reproductive rights; assisted reproduction; gender equality; comparative law; demographic challenges; family law

1. Introduction

In recent years, as the idea that women should pursue an equal and free way of life has gained deeper acceptance, Chinese women's views on reproduction and marital and childbearing choices have become more diverse. With the development of life sciences, many single women have chosen to access assisted reproductive technologies (ART), such as egg freezing and in vitro fertilization (IVF), to delay childbirth or to plan their lives autonomously. This has given rise to significant controversy, and related disputes concerning torts, such as those involving personal rights, have also been increasing. Therefore, it is necessary to explore whether single women enjoy reproductive rights and how such rights should be protected [1]. It should be clarified that the term single women in this paper refers to women who do not have a marital relationship at the time of exercising their reproductive rights, including both women in non-marital cohabitation and those who have dissolved their marriages. This conceptual definition is also widely recognized in academic circles.

The realization of single women's reproductive rights often requires the assistance of ART. Under current Chinese law, there are no systematic provisions on single women's reproductive rights, and single women are strictly prohibited from using ART [2, 3]. Judicial practice also does not recognize single women's right to access ART, though there are a few exceptional cases for widowed women. The main concerns that obstruct the

Received: 06 March 2026

Revised: 28 April 2026

Accepted: 09 May 2026

Published: 12 May 2026



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protection of single women's reproductive rights include their perceived inconsistency with the best interests of the child, the potential increase in surrogacy risks, and the difficulty of determining parent-child relationships. However, these issues need to be clarified and should not become obstacles.

The reproductive rights of single women are legitimate [4]. The United Nations Convention on the Elimination of All Forms of Discrimination against Women explicitly opposes any form of discrimination against women. Therefore, single women should enjoy reproductive rights on an equal basis with married women. In addition, a comparison with the laws of other countries shows that China's policies on single women's access to ART are overly conservative. Therefore, it is necessary to safeguard single women's reproductive rights through legislative amendments, policy adjustments, and changes in reproductive perceptions.

2. The Legislative and Judicial Status in China

The right to reproduction is a right held by natural persons, grounded in their reproductive interests in procreation [5]. The right to reproduction is a personal right, which implies that natural persons enjoy this right regardless of their personal status, and therefore it does not need to be premised on a marital relationship. However, under the current laws and judicial practice in China, the exercise of reproductive rights often needs to be based on family and marital relationships, and the protection remains inadequate.

2.1. Legislation: Reproductive Rights Based on Marital Relationships

Regarding the issue of single women's reproductive rights, current Chinese law does not provide systematic legal provisions. Regulations concerning reproductive rights are scattered across various laws, regulations, and policies. Article 49 of the Constitution of the People's Republic of China stipulates the reproductive obligations of both spouses, with the obligors being the husband and wife, which implicitly underscores that reproductive rights are premised on the existence of a marital relationship. The Constitution does not expressly stipulate the right to reproduction, and it does not clearly emphasize the rights-based nature of reproduction [6, 7]. The Civil Code of the People's Republic of China also does not explicitly provide for the right to reproduction. However, Article 990 of the Civil Code adopts a non-exhaustive legislative technique in enumerating personal rights. Therefore, the right to reproduction should be considered included therein, as part of personal rights. This view is appropriate, as the right to reproduction arises from natural persons' full development of personal freedom and their entitlement to respect and protection as independent individuals, and thus should fall within the scope of protection for personal rights.

The realization of single women's reproductive rights often requires the assistance of ART. Therefore, attention must be paid to the regulations concerning ART. According to the Specifications on Human Assisted Reproductive Technologies issued by the Ministry of Health, it is explicitly prohibited for single women to undergo assisted reproductive procedures. Therefore, although the law appears to recognize that single women enjoy the right to reproduction, the current system does not provide sufficient guarantees for its realization, and it can be said that this right has not been substantively recognized. The exercise of reproductive rights still relies on the foundation of a marital relationship. In addition, some provinces have issued relevant policies regarding single women's reproductive rights. For example, as early as 2002, Jilin Province provided that women of suitable childbearing age who choose to remain unmarried and have no children are permitted to use lawful assisted reproductive technologies to conceive one child. In 2022, Sichuan Province also decided to remove the spousal requirement for birth registration. However, due to the prohibitive regulations of the Ministry of Health, these relaxed provisions on reproductive rights have not yet resulted in applicable cases.

2.2. Judicial Status: Difficult to Realize

In judicial practice, most judgments concerning the reproductive rights of single women are not supportive. This includes the landmark case of *Xu Zaozao v Beijing*

Obstetrics and Gynecology Hospital. The single woman Xu claimed that her personal rights had been violated, specifically that her reproductive rights had been infringed. However, the court held that for an act to constitute an infringement, it must be unlawful. Egg freezing is a form of ART, and under current laws it is explicitly prohibited to provide assisted reproductive medical services to single women. Therefore, the hospital's conduct was not unlawful and did not constitute an infringement. The court's judgment further illustrates that, in current judicial practice, the realization of reproductive rights still relies on the marital relationship as prescribed by existing laws [8]. However, in a few cases concerning widowed women using frozen embryos for reproduction, the courts have recognized the reproductive rights of widowed women, such as in the case concerning the reproductive rights of a widowed woman heard by a Hebei court. The main reason is that although the widowed woman in this case was single, she had a clear spousal agreement and a contractual basis, which should distinguish her from single women in the general sense. Moreover, her actions were consistent with the restrictive provisions of the Ministry of Health, which aim to uphold social order and ethical values.

It can thus be seen that judicial practice has made some breakthroughs in protecting women's reproductive rights, adopting a positive stance in safeguarding the reproductive rights of widowed women. However, regrettably, the reproductive rights of single women in a broader sense still lack sufficient protection [9]. By comparing these two different judgments, it can be seen that under the legal provisions prohibiting the provision of ART to single women, the reason why the courts treat widowed women differently is that, in determining whether the reproductive rights of single women should be protected, they have taken two factors into consideration. First, widowed women have previously been in a marital relationship, and reproduction reflects the joint intention of the spouses. Second, it is considered that the reproduction of widowed women will not negatively affect the child. This reasoning is still based on traditional reproductive concepts, holding that minors require joint parenting by both parents. Although in such cases the father has passed away, his identity is clear, and the child can still receive care and support from the mother and other paternal relatives, thus avoiding any adverse impact on the child's upbringing.

3. Will the Realization of Single Women's Reproductive Rights Truly Give Rise to Social and Legal Issues? -An Analysis of Existing Doubts

Under the current legislative and judicial framework where the exercise of reproductive rights is premised on marital and family relationships, many viewpoints argue that recognizing single women's reproductive rights would give rise to a series of legal and social problems. Among the most prominent concerns are that single women's reproductive rights may be unfavorable to the growth and development of children, may lead to an increase in surrogacy practices, and may create difficulties in the determination of parent-child relationships [7, 10]. These concerns need to be examined in order to dispel doubts and remove the barriers for single women.

3.1. The Reproductive Rights of Single Women Do Not Violate the Best Interests of the Child

The view that single women's exercise of reproductive rights would negatively affect their offspring is unreasonable. In terms of protecting children, the guiding principle for international child rights protection is the principle of the best interests of the child, as stipulated in the United Nations Convention on the Rights of the Child. This principle was also incorporated into the Marriage and Family Part when China's Civil Code was enacted. Whether the single-parent upbringing model arising from single women's reproductive rights satisfies the best interests of the child has long been a subject of debate. Some argue that the growth of minors requires the joint parenting of both a father and a mother, and that the role of the father cannot be replaced by the mother. This view, grounded in the psychological and physical protection of children, was meaningful in times of lower levels of productivity, when an individual alone could not raise a child, and reproduction had to be tied to marriage to ensure the best upbringing of children. However, with the

development of society, such stereotypes should be broken. Parenting by both genders is merely one form of child-rearing and is not necessarily the only or the best approach. What affects the psychological well-being of children is not single parenthood itself, but the social discrimination against single-parent families [2]. Research on children from divorced families in China indicates that the psychological health index of children from single-parent families is higher than that of children in non-divorced families with ongoing parental conflicts. This view has also been accepted in many countries. In other words, if single-parent upbringing were inherently detrimental to the interests of children, modern society would not recognize the institution of divorce and the freedom to divorce. As long as single women can fulfill their guardianship obligations and ensure the protection of children's interests, this aligns with the best interests of the child, and they can exercise their reproductive rights without the prerequisite of a marital relationship.

3.2. The Increased Risk of Illegal Surrogacy Cannot Be Simply Attributed to Single Women's Reproductive Rights

The real reason behind the increase in surrogacy cannot be ignored, which is that the relevant legislation on surrogacy remains underdeveloped. The prohibition of commercial surrogacy should not serve as a decisive reason to forbid single women from accessing assisted reproductive technologies (ART). Surrogacy is illegal in China [5, 11]. According to Article 22 of the Ministry of Health's Administrative Measures on Human Assisted Reproductive Technologies, surrogacy is explicitly prohibited. Some argue that if single women are allowed to independently choose reproduction, it would provide a lawful avenue and conditions for commercial surrogacy. While the original intention of this view is to protect women's health and autonomy, it has significant problems. The issue of commercial surrogacy is not caused by single women's use of ART, and prohibiting single women from exercising their reproductive rights does not necessarily lead to a reduction in commercial surrogacy. Available data indicates that the primary participants in commercial surrogacy are individuals with infertility, whose demand for surrogacy is significantly higher than that of single women seeking assisted reproduction. The legislative framework for China's prohibition on surrogacy is relatively weak. The Ministry of Health's provisions are merely departmental regulations and have not been elevated to statutory law. Furthermore, preventing and punishing commercial surrogacy should involve strengthening penalties for commissioning parties and intermediaries, rather than simply attributing responsibility to the surrogate women.

3.3. Determination of Parent-Child Relationships for Children

Another ground for contesting single women's reproductive rights is the belief that it is difficult to legally determine the parent-child relationship of children born to single mothers. In China, sperm donation and usage follow a double-blind system, which means that when a single woman becomes pregnant and gives birth using donated sperm through ART, the legal identity of the child's father remains unrecognized. To resolve this issue, it must be clarified that the legal determination of parent-child relationships serves to define obligations toward children and to protect their rights. Based on the above analysis, achieving the best interests of the child does not necessarily require the presence of both parents. Therefore, the legal identification of the father is not of such critical importance and must not be taken as justification for restricting the realization of single women's reproductive rights. Instead, legal provisions and social perceptions should be reformed to allow for the recognition of parent-child relationships with the legal absence of a father.

4. The Legitimacy of Single Women's Reproductive Rights---A Comparative Analysis of Legislation and Current Practices in Other Countries

The reproductive rights of single women are legitimate, as demonstrated by international human rights law and comparative analysis of the legal frameworks and current practices of other countries [12, 13].

4.1. Opposing All Forms of Discrimination Against Women

By examining Articles 1, 12, and 16 of the CEDAW, it is clear that women, regardless of marital status, enjoy and may exercise human rights and fundamental freedoms. It is also evident that women are entitled to enjoy the benefits of scientific progress. Therefore, single women should, like married women, enjoy reproductive rights and must not be excluded from accessing ART. As one of the signatories to the Convention, China is obliged to follow its provisions and eliminate prejudice and concerns regarding single women's reproduction. Although China has incorporated anti-discrimination clauses into the Law on the Protection of Women's Rights and Interests, it is evident that, in practice, adequate protection for the reproductive rights of single women has not been provided. Nevertheless, this provides legitimate grounds for further reforms and the development of laws and safeguards.

4.2. Australia's Legal Framework for ART: Restrictive Yet Transitioning Toward Inclusion

The Commonwealth of Australia Constitution Act and federal laws do not explicitly provide for the right to reproduction. However, as a derivative of bodily autonomy, the right to reproduction exists as an implicit right, similar to the approach taken in other jurisdictions. This is also reflected in state legislation and case law, particularly in relation to laws governing ART.

Australia has undergone a series of changes concerning restrictions on access to ART. Taking Victoria as an example, as one of the three Australian states with laws regulating the accessibility of reproductive services, Victoria enacted the Infertility Treatment Act [14, 15]. This Act stipulated that only married or de facto heterosexual couples could access assisted reproductive services, and only if they met the criteria of clinical infertility or a risk of genetic disease. Thus, the use of reproductive technologies was restricted exclusively to those with a traditional family relationship.

The case of *McBain v State of Victoria* created an avenue for single women to access ART. In this case, Dr. John McBain, who provided ART, was unable to perform IVF treatment for an infertile single woman, Ms. Meldrum, due to the restrictions of Victorian law. The central issue was whether Section 8 of the Infertility Treatment Act conflicted with Section 22 of the Commonwealth Sex Discrimination Act. The Federal Court ultimately ruled in favor of McBain, declaring Section 8 of the Infertility Treatment Act invalid. Although the State of Victoria did not formally amend the law immediately after the McBain decision, it allowed single women to access ART provided they met the clinical infertility criteria. Therefore, the McBain case played a positive role in advancing the protection of single women's reproductive rights, though substantive discrimination and restrictions remained.

Subsequently, the Assisted Reproductive Treatment Act 2008 was enacted [16]. Article 10 of this Act provides that unmarried women may access ART with the consent of their domestic partner, but notably uses the qualifier 'if any'. This wording is significant as it effectively allows all adult women, regardless of whether they are single or in a de facto relationship, to lawfully access ART services. In recent years, based on the review recommendations of Michael Gorton AM, including the establishment of public IVF services and the expansion of the range of ART providers to enhance accessibility and equity, the Victorian Government has continuously advanced the development of ART legislation, promoting greater inclusivity and fairness.

4.3. Some Countries Fully Permit ART

Some countries fully recognize the reproductive rights of single women and explicitly incorporate these rights into legislation. In 1990, the United Kingdom enacted the Human Fertilisation and Embryology Act, which allows individuals, including single women, to access assisted reproductive technologies. Similarly, France has implemented comparable legislation [17].

4.4. Comparison with China

4.4.1. Commonalities

As noted above, China's Constitution, similar to those of Australia, the United States, and other countries, does not explicitly enumerate the right to reproduction. This reflects the perspective that reproductive rights are inherent and do not require explicit listing to ensure their protection. At the same time, with the diversification of society and the gradual evolution of traditional views on marriage and childbirth, the laws and judicial practices of various countries have made notable progress regarding single women's reproductive rights. For example, China's judicial recognition of widowed women's reproductive rights and Australia's McBain case highlight these advancements [18].

4.4.2. Differences

Compared with countries such as Australia and the United Kingdom, China remains highly conservative in this regard. After decades of development, several Australian states have enacted clear legislation permitting single women to access assisted reproductive technologies (ART). Although certain restrictions on eligibility still exist, these jurisdictions continue to reform their laws, actively safeguarding the reproductive rights of single women and same-sex couples. In contrast, Chinese departmental regulations explicitly prohibit single women from using ART, maintaining marital status as a prerequisite for access. This fundamentally limits the possibility of judicial reform. While it may be challenging to immediately adopt a fully permissive system like that of the United Kingdom, China must adapt to contemporary developments, and reforms in this area are urgently needed.

5. The Development Directions for Safeguarding Single Women's Reproductive Rights

5.1. Legal Protection

5.1.1. Explicitly Recognizing the Reproductive Rights of Single Women in the Constitution

Reproductive rights should be explicitly defined in the Constitution to emphasize single women's entitlement to such rights and to strengthen legal protection for women. As the fundamental law of China, the Constitution has the highest legal authority. Given the current inadequacy in judicial practice regarding the protection of reproductive rights, it is necessary to start with constitutional reform, which needs to shift from the implicit recognition of reproductive rights to an explicit enumeration [17]. The current approach of treating reproductive rights as implied rights is not suited to China's legal and social context. This means transforming reproductive rights from being framed merely as obligations under family-planning policies into clearly articulated rights within the scope of fundamental human rights. Explicitly defining reproductive rights in the Constitution as basic human rights of citizens would also harmonize the relationship between the Constitution and the Civil Code, ensuring that the recognition of reproductive rights as fundamental human rights in the Civil Code aligns with constitutional requirements.

5.1.2. Revising ART Regulations

It is necessary to amend the provisions in the Specifications on Human Assisted Reproductive Technologies to explicitly allow single women to undergo ART. The Assisted Reproductive Treatment Act of Australia can serve as a reference to clearly define the scope of individuals eligible for ART, explicitly including single women. At the same time, to ensure the best interests of the child, certain restrictions may be placed on the exercise of reproductive rights, such as requiring women to reach the statutory childbearing age and to demonstrate the ability to raise children. However, the assessment of child-rearing ability should be comprehensive, encompassing not only material conditions but also moral standards and the capacity to meet the emotional needs of children. Additionally, the assessment standards should be clear and practical. Vague or overly broad standards could hinder the practical exercise of reproductive rights and create obstacles for women seeking to utilize these rights.

5.1.3. Regulating the Implementation of ART through a Filing System

To prevent the risk of the marketization of reproduction, administrative regulatory authorities should strengthen supervision over institutions and individuals applying ART, ensuring the avoidance of illegal practices such as commercial surrogacy and the infringement of women's rights. A filing system can be adopted to strictly control the number and technical standards of medical institutions that provide ART for single women.

5.2. Changing Perceptions of Reproduction

In addition to changes in laws and policies, society's views on reproduction must also shift, giving greater care and support to women and children. Although China is a populous country, its birth rate has been continuously declining in recent years, leading to an imbalanced population structure and an increasingly evident problem of population aging. Addressing aging requires not only policy support and welfare guarantees but also increased social attention to women and children [8]. Discriminatory attitudes toward children born out of single-parent families should be changed, and greater inclusiveness and care should be given to create an equal and harmonious environment.

6. Conclusion

The consciousness of women in China has been steadily awakening, with increasing efforts to pursue equality. Actively advocating for the realization of equal reproductive rights is a development this paper aims to encourage. The reproductive rights of single women should be safeguarded, as this not only upholds women's rights but also contributes to addressing societal challenges such as population aging. Although current laws, policies, and judicial practices in China do not yet provide adequate protection for the reproductive rights of single women, the overall trajectory appears to be moving in a positive direction. Scholars generally support adopting practices from other countries, such as Australia, to enhance the protection of single women's reproductive rights. Additionally, society should work to provide greater care and support for single women and their children. It is reasonable to anticipate that attitudes toward single women's reproductive rights and their use of assisted reproductive technologies (ART) will become increasingly open and inclusive in the future.

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