

Legal Issues Regarding the Reproductive Rights of Single Women in China

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Abstract. As a basic human right, the right to reproduce is a fundamental right for citizens to freely decide on their reproductive behavior. However, under the influence of traditional family ethics and the logic of social governance, the reproductive rights of single women have long been in an ambiguous zone of legal protection. With changes in social attitudes, demographic restructuring, and the growing awareness of women's independence, the legitimacy and reality of single women's reproductive rights have gradually become the focus of social attention. This paper will combine legal theory, judicial practice and social reality, and adopt the methods of comparative analysis, case analysis and literature analysis to explore the path of legal protection of single women's reproductive rights and the challenges they face. Through a comparative analysis of the legal provisions and legal safeguards for the reproductive rights of single women in China and the United States, to gain a clearer understanding of the attitudes and practices of this right under different legal systems. It is also proposed that reasonable boundaries should be set, the rights and autonomy of single women should be respected, and that overseas experience in the rule of law should be drawn upon, so as to provide a reference for the improvement of the relevant legal system in China.

Keywords: Reproductive rights; Single women; Assisted reproductive technology; Legality.

1. Introduction

At the end of 2019, the case of China's first single woman refused to freeze her eggs received a lot of attention. The first-instance judgment held that the Beijing Maternity Hospital's refusal to provide egg freezing services to the plaintiff was not illegal. Medical institutions have a legal obligation to provide assisted human reproductive technology services only if the demand side of assisted reproductive technology is for medical purposes and is in line with national family planning policy, ethical principles and relevant legal provisions. By 2023, a single woman, Xu Zaozao, lost her case against a Beijing hospital for egg freezing infringement in the second instance, with the court finding that “single women do not enjoy the right to freeze their eggs” [1].

Data show that the number of children born out of wedlock in China has been increasing in recent years, but the protection of the rights and interests of single mothers under the law is seriously lagging behind. This contradiction highlights the clash between the traditional family system and the modern concept of rights. While *the Constitution* proclaims that “the State respects and safeguards human rights”, single women's reproductive choices are substantially denied by regulations such as *the Measures for the Administration of Assisted Human Reproductive Technology*.

2. Legal Basis and Dilemma of Single Women's Reproductive Rights

2.1. Legal Provisions

Currently, China applies *the Measures for the Administration of Human Assisted Reproductive Technology* and *the Code of Practice for Human Assisted Reproductive Technology* to prohibit egg freezing for single women, but both pieces of legislation are low-ranking and old. The former restricts the use of assisted reproductive technology to “performed in a medical institution” and “for medical purposes”. The latter, on the other hand, explicitly prohibits the implementation of assisted reproductive technology for single women, and explicitly prohibits medical institutions from



providing egg freezing, in vitro fertilization and other technologies for single women. This creating a core institutional barrier. This has led to legal obstacles for single women seeking assisted reproductive technologies to realize their reproductive rights.

However, there are different explorations at the local level. The Regulations on Population and Family Planning of Jilin Province stipulate that women who have reached the legal age for marriage and have decided not to marry again for life and are childless may have a child by means of legal medically assisted procreation techniques. The Administrative Measures on Maternity Registration Services in Sichuan Province remove the restriction that marriage is required to register for maternity services, allowing unmarried women to register for maternity services, reflecting the gradual liberalization of local maternity policies for single women. However, these regulations do not address women's substantive rights such as maternity leave and maternity insurance, and assisted reproductive technology is still restricted by centralized regulations [2].

2.2. Juridical Basis

2.2.1. The Right to Equality

China's *Constitution* stipulates that women enjoy equal rights with men in all aspects of political, economic, cultural, social and family life, which provides the basis for equal rights at the constitutional level for the reproductive rights of single women. Article 22 of the Law on the *Protection of Women's Rights and Interests* stipulates that women have equal rights with men to social security. Equality is both a fundamental principle and a right.

The right to procreation, which is based on personal freedom and human dignity, is naturally independent and autonomous. Just like other personality rights, it is enjoyed by natural persons regardless of their status, but its realization is subject to objective reasons, such as physical condition and national policy restrictions. Therefore, the right to procreate does not have the attribute of identity right, and the right to procreate enjoyed by natural persons has nothing to do with the relationship between various identities, and everyone enjoys the right to procreate [3]. Single women should not be discriminated against on the basis of their marital status. There is no necessary link between marital status and fertility and the desire to procreate. Giving equal reproductive rights to single women is a manifestation of respect for the right to equality.

2.2.2. Fertility Rights

As stated in the 1974 *World Population Plan of Action*, "Individuals and couples have the basic human right to decide freely and responsibly the number and spacing of their children and to choose appropriate methods of contraception" [4]. Reproductive rights are an important part of the personality rights of single women. The act of procreation involves the individual's basic personality rights such as the right to physical integrity and the right to privacy. Single women have the right to decide on their own whether and when to have children, which is the domination and realization of their own personality interests. The Law on *the Protection of Rights and Interests of Women* clearly states that women have the right to bear children in accordance with the relevant State regulations, as well as the freedom not to bear children. The development of assisted reproductive technology has also made the relationship between procreation and marriage less close than it used to be, expanding the content of the right to procreate and providing another way for single women to have children. As a personality right that begins at birth and ends at death, the right to procreate is certainly enjoyed by single women. Therefore, the reproductive rights of single women should be respected and guaranteed.

3. Comparison of laws on the reproductive rights of single women in China and the United States

3.1. Comparison of the Current Status of Assisted Reproductive Technology Use among Single Women

3.1.1. China

China's public hospitals severely restrict the use of assisted reproductive technology for single women, and private institutions face risks to legality despite gray operations. For example, in 2021, a private institution in Shenzhen was investigated for providing IVF services to single women. Assisted reproductive technologies such as egg freezing are restricted to married women applying for medical reasons and are subject to approval by an ethics committee. In practice, the situation is one of “prohibition in principle and ambiguity in exception”.

Currently, there is a lack of remedies for single women who are faced with the application of assisted reproduction technology. When single women are prevented from using the technology, the courts often dismiss the lawsuits on the grounds of “social public interest” or “policy reasonableness”. For example, in the case of Xu Zaozao, the court failed to conduct a substantive review of the standard of “medical necessity,” which, to a certain extent, failed to guarantee the realization of single women's reproductive rights. The pressure of public opinion and discrimination in the workplace also further exacerbate the difficulty of realizing the rights of single women, for example, single mothers face implicit exclusion in areas such as employment and housing.

3.1.2. California, United States

California allows single women to choose sperm donation, egg freezing and surrogacy services on their own, without having to prove medical necessity. Surrogacy agreements require pre-approval by the courts, but rights and obligations are defined by contract, and the judicial system provides efficient remedies. For example, patients may bring civil lawsuits against health care providers for refusing to treat them, and the courts apply a strict standard of scrutiny to “reproductive autonomy.”

California law recognizes reproductive rights as fundamental individual freedoms. Its legislative logic is based on the “best interests of the child” principle, which emphasizes that children's rights and interests are not affected by the marital status of their parents. For example, only the mother's information is registered on the birth certificate, and surrogate children can establish their legal identity directly through a “paternity order”, avoiding disputes over blood relations. This “de-maritalization” of legislation reflects full respect for the individual's right to choose. In California, medical institutions may face licensure penalties for refusing services, and patients may claim moral damages. United States federal law provides that single women who give birth to a child are entitled to health insurance and some government benefits, and the federal government also provides financial assistance to single women. After the child is born, there are corresponding welfare guarantees in health care and education, and society is more inclusive of single mothers and children from single-parent families. In terms of assisted reproductive technology, many states allow single women to use it with fewer restrictions, and single women receive more comprehensive legal protection and social support in all aspects of childbearing.

3.2. Differences in Legal Provisions

3.2.1. China

In China's restrictive legal system, statutory laws such as *the Population and Family Planning Law* strictly limit assisted reproductive technologies. Although *the Population and Family Planning Law* 2021 deleted direct prohibitions on single women, the former Ministry of Health's 2003 Code of Assisted Human Reproductive Technology is still followed by the practical sector, which explicitly prohibits the provision of services such as egg freezing and in vitro fertilization (IVF) for single women.

China's legal system is centered on maintaining family stability and embedding reproductive rights within the framework of the marital relationship. The institution of marriage is indirectly strengthened through technical restrictions and differential treatment of children born out of wedlock. Although Article 1071 of the Civil Code provides for equal rights for children born out of wedlock, structural barriers remain in practice. For example, information on the biological father or a paternity test report is required for household registration (Article 7 of the Regulations on Household Registration), resulting in single mothers needing to provide additional evidence in administrative procedures and even facing social labeling discrimination as “single-parent families”. In addition, China's maternity insurance claims are often conditional on marital status, and the requirement in some regions to provide information on spouses also weakens the substantive equality provided for in the law.

3.2.2. California, United States

In 2022, the U.S. Supreme Court decided *Dobbs v. Jackson Women's Health Organization* that “the U.S. Constitution does not protect the right to abortion, and that it would overrule *Roe v. Weldy*, a case decided in 1973 that gave women the right to abortion, and return the power to regulate abortion to the states [5].” California has a relatively open legal system, with state legislation and case law fully recognizing the reproductive autonomy of single women. The California Family Code explicitly guarantees the reproductive rights of single women. For example, section 7613 provides that a single woman who gives birth to a child through sperm donation can become a legal parent on her own, without the involvement of the biological father. Section 7962 recognizes the legality of surrogacy agreements and allows a single woman to establish paternity through a judicial process. The legal guarantee of a single woman's reproductive rights is clearly established.

California is also not constrained by federal law. Its Uniform Parentage Act comprehensively covers all types of family structures and ensures that there is no differentiation in the status of children acquired by single women through assisted reproductive technology. Industry organizations such as the American Society for Reproductive Medicine have also adopted ethical guidelines that prohibit medical institutions from discriminating on the basis of marital status, forming a dual protection mechanism of “law and industry self-regulation”.

4. Existing Obstacles to Guaranteeing the Reproductive Rights of Single Women

4.1. Incomplete Legal System

Currently, there are conflicts between legal provisions. The reproductive rights granted to women under the Constitution and the Basic Law are restricted in the specific implementing regulations, making it difficult to effectively implement the reproductive rights of single women in legal practice. Article 33 of the Chinese Constitution, “The State respects and safeguards human rights”, implies the protection of reproductive rights. But Article 49 emphasizes that “both husband and wife shall jointly implement family planning”, limiting the subject of childbearing to the marital relationship. This contradiction in terms makes it difficult to invoke the Constitution directly to support the reproductive rights of single women in judicial practice. At the same time, although Article 51 of the Law on the Protection of Rights and Interests of Women stipulates that “women have the right to procreate,” it is not clear whether the term “women” includes unmarried women, and in practice this is often interpreted to mean only married women. After the Population and Family Planning Law deleted the provision on social maintenance fees, it still denies the legality of out-of-wedlock births in disguise by “advocating marriage and childbearing at the appropriate age”. At the same time, the relevant laws are not sufficiently comprehensive in terms of safeguarding the rights and interests of children born to single women, or in terms of supporting systems such as household registration.

4.2. Conflict between Laws and Social Values

The use of assisted reproductive technology by single women as a legal right has been subject to many obstacles and restrictions. The fundamental reason being that it is a breakthrough in the

traditional concept of reproductive ethics, changing the previous way of giving birth to a child, which could only be accomplished by the husband and wife through joint sexual intercourse. It has been condemned and impacted by the law, morality and ethics in various aspects [6]. According to scholars who support the family order theory, the traditional theory of “bilineal parenting” holds that the growth of children requires the participation of both parents, and that single parenthood may lead to difficulties in recognizing the parent-child relationship as well as psychological problems for the children. The traditional view is that childbearing should take place within the framework of marriage, and single women giving birth are often seen as violating public order and morals.

4.3. Inadequate Safeguards in Legal Provisions Compared to Provisions in Other Countries

In terms of legal provisions, although China's laws at the national level recognize to a certain extent the reproductive rights of single women, there are strict restrictions on the use of assisted reproductive technology, which is only conditionally liberalized in some places. On the other hand, the United States, from the federal level to the state level, has clearer and more open regulations on the reproductive rights of single women. It also gives single women more opportunities in the use of assisted reproductive technology. In terms of legal protection, China focuses mainly on the rights and interests of children born out of wedlock and on household registration, and does not provide sufficient protection for single women in terms of financial support during the process of childbearing. The United States, on the other hand, not only provides better protection of children's rights and interests, but also provides single women with economic assistance and medical insurance. It is also more tolerant in terms of social attitudes, forming a relatively complete protection system.

5. Suggestions for Improvement

5.1. Improvement of Relevant Laws and Regulations to Set Reasonable Boundaries for the Exercise of Reproductive Rights

At present, although there are laws in China that recognize the reproductive rights of citizens, the regulations on the reproductive rights of single women are vague and lack clear and detailed provisions. The Population and Family Planning Law, the Law on the Protection of Women's Rights and Interests and other relevant laws should be further clarified in terms of the specific content and implementation rules of single women's reproductive rights. It should also be adapted to the realities of the situation. On the premise of complying with ethical and legal requirements, single women are permitted to make reasonable use of assisted reproductive technology under specific conditions, such as clarifying the medical indications, age limitations, health conditions and other conditions under which assisted reproductive technology is applicable to single women. By setting out the conditions, procedures, and related rights and obligations for single women to give birth, there is a clear legal basis for the exercise of their reproductive rights, and uncertainty in the application of the law is reduced.

5.2. Respect for the Autonomy of Single Women's Rights

Hegel's theory of free will reveals that respect for the free development of the individual is a manifestation of the preservation of his or her dignity. As the standard of living in society rises, the public gradually asserts more self-space in the exercise of individual rights. The right to self-determination emphasizes the right of the public to refrain from interfering in matters of free decision that have nothing to do with others, are harmful only to oneself, and for which one is responsible [7]. It is the right to decide on one's own matters in which the public power cannot interfere [8]. The Constitution provides for the respect and guarantee of human rights, including the guarantee of the right to assisted reproduction for single women. It is a fundamental provision of the Chinese Constitution that the State respects and guarantees human rights. The guarantee of the right of single women to assisted reproduction should be an important element of this provision [9].

5.3. Drawing on Extraterritorial Experience in the Rule of Law

Protecting the reproductive rights of single women is an inevitable requirement of social development. The inclusion of single women as a specific social group in the country's legal protection framework is not only a legal advancement, but also an important manifestation of the development of social civilization [10]. In improving the legal system for the reproductive rights of single women, China can draw on the experience of other countries, taking into account its own national conditions, social ethics and morals, and public policies. It should gradually liberalize the restrictions on assisted reproductive technology and build a more comprehensive system to safeguard reproductive rights. This will not only help to protect the legal reproductive rights of single women, but also meet the needs of diversified social development. At the same time, China's legal system also has its own unique characteristics. Therefore, when drawing on the experience of the extraterritorial legal system, it is necessary to ensure that the relevant contents are harmonized with the existing legal system of China. To harmonize with the provisions of the Civil Code on marriage and family, guardianship, to avoid conflict of laws.

6. Conclusion

The legal protection of the reproductive rights of single women is characterized by “vague recognition and substantive denial”. Although there have been some breakthroughs in local policies, central legislation and judicial practice are still bound by traditional family ethics and the logic of social governance. In the future, it is necessary to improve the legal system to clarify the attributes of reproductive rights, so that women's reproductive rights can be based on the law, and to ensure the realization of this right. It is only through concerted changes in law and social policy that substantive equality in reproductive rights for single women can be realized, in order to meet the evolving needs of society and the new challenges it faces.

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