

# Research on obstacles and countermeasures to the realization of the reproductive rights of single women

Duan Huihua, Xiang Xin\*, Qian Qin, Zhao Xinru

Law School of Southwest Medical University, Luzhou, 646600, China

\*Corresponding author

**Abstract:** *With the continuous progress of the society and the rising education level of women, the issue of single women's reproductive rights will receive more and more attention and attention. This paper firstly analyzes the obstacles in three aspects, namely, social culture, legal policy and economic foundation by combing the relevant theoretical foundations and puts forward the countermeasures such as clarifying the legislative guarantee, perfecting the maternity protection system, promoting the change of the social concepts, strengthening the supervision and the mechanism for protecting the rights, and borrowing from the international experience. The study finds that only by eliminating these obstacles can the realization of single women's reproductive rights be truly guaranteed, thus ultimately promoting social harmony and progress.*

**Keywords:** *single women; reproductive rights; obstacles to realization; countermeasures*

## 1. Introduction

With the rapid development of society and the change in people's concept of reproduction, the issue of the reproductive rights of single women is increasingly receiving widespread attention from society. From the perspective of civil rights, in recent years, at the two sessions of the National People's Congress and the Chinese People's Political Consultative Conference, there have been repeated proposals by delegates and members of the National People's Congress and the Chinese People's Political Consultative Conference that the right to procreate is a basic human right, and that respecting and protecting the reproductive rights of single women and guaranteeing the rights of children born out of wedlock are urgent.

From the point of view of China's demographic structure, China entered an aging society in 1999, and it is predicted that it will enter a severely aging society in 2035, and in 2022, China's population will enter negative growth for the first time, when more than 30% of the population of the country will become elderly [1]. Over the past half century, China has continuously adjusted its fertility policy, and each adjustment was made according to the demographic situation at the time. It is not difficult to see that the current attitude of our country towards fertility is one of encouragement. Today, when the fertility rate of the population is declining, allowing women to actively seek fertility protection is a choice that is more in line with the population policy of encouraging fertility.

Whether it is to safeguard basic human rights, to cope with the pressure of a deeply aging population or to protect the legal rights and interests of single women to give birth, it is important to identify the obstacles to the realization of single women's right to procreate, which originate from a variety of sources, including deep-rooted traditional attitudes, legal and policy limitations, and the constraints of the economic base. These factors are intertwined, making the path of single women's reproductive rights a bumpy one. In response to these problems, this paper will dig deeper into the various challenges in realizing single women's reproductive rights, and put forward concrete and feasible countermeasures, as well as provide useful ideas for improving policies related to reproductive rights.

## 2. The Theoretical Basis of Single Women's Reproductive Rights

This paper focuses on the reproductive rights of single women, and it is important to define the concepts and nature of the terms "single women" and "reproductive rights". Single women are women who have not entered into marriage at the legal age of marriage, including unmarried, divorced and widowed [2].

The term "procreation" includes the existence of both broad and narrow meanings, broadly refers to the entire process of reproductive and nurturing behavior. Fertility in the narrow sense refers to the natural act of reproduction in the medical sense. In this paper, the concept of fertility in the context of the right to procreate is used in a narrow sense, i.e., it refers to the act of procreation in the medical sense only. Scholars in China have different views on the determination of the nature of the right to procreate, and there are two main mainstream views, namely, the right to procreate is a basic human right, the right to procreate is the right to identity and the right to procreate is the right to personality. Most scholars agree that the right to procreate originates from the natural behavior of human beings, is closely related to human beings, and is a basic human right of citizens. Some scholars believe that the right to procreate is a right of identity and that procreation is closely related to the marriage relationship [3].

Most scholars believe that the right to procreate is a right of personality, which does not need to be attached to the marriage relationship or other status, and it is the right of a natural person throughout his life. To summarize, the author believes that the right to procreate is both a basic human right and a personality right, because the right to procreate is the right of all natural persons, and it is the right of the born human being [4]. The subject of reproductive rights is also controversial, the scholars who believe that reproductive rights are identity rights believe that the subject of reproductive rights is the husband and wife, only the husband and wife have the right to reproduce, the husband and wife jointly enjoy the right to reproduce, the two can not be separated from the independent existence. However, most scholars believe that the subject of reproductive rights is a natural person, and that both men and women certainly enjoy reproductive rights. In conclusion, all citizens have the right to procreate, and single women also have the right to procreate [5].

### 3. Analysis of Obstacles to the Realization of Single Women's Reproductive Rights

- Social and cultural barriers

The promulgation of the policy of delinking birth registration and marriage in Sichuan Province at the beginning of 2023 triggered a large social controversy, and some citizens misinterpreted the policy as the protection of extramarital affairs, because in traditional concepts, marriage and childbirth are regarded as women's inevitable life path, and single childbirth is regarded by the public as an improper behavior, and many people regard the policy as the legalization of extramarital affairs [6].

If single women are given the legitimacy, legality and reasonableness of childbearing from the perspective of legislation, it will have a great impact on the traditional concept of family ethics, because the traditional concept in China believes that the act of childbearing is inextricably linked to the legal marriage relationship, and granting the right to give birth to a single woman will break the original and stable social structure of the society. Some people believe that allowing single women to give birth will, to a certain extent, encourage the spread of such a bad trend as mistress [7], affecting the normal marital relations of others. And single women giving birth will make their children's identity is not clear, the children in the process of growing up suffered a lot of criticism, is not conducive to the healthy development of children's physical and mental health.

- Legal Policy Obstacles

China's legal provisions on reproductive rights are ambiguous. At present, China's Constitution only provides for reproductive rights in terms of the obligation to bear children, and there are no provisions on reproductive rights for the time being.

China's legal provisions on reproductive rights are conflicting, resulting in very confusing provisions on reproductive rights, such as the Regulations on Assisted Human Reproductive Technology and the Measures for the Administration of Assisted Human Reproductive Technology, which explicitly stipulate that single women may not carry out assisted human reproductive technology, and that this law is a prohibitive provision on the right to reproduce. Moreover, in the first case of egg freezing by a single woman in China, the plaintiff lost her case, and the court of first instance based its decision on the Regulations on Assisted Human Reproductive Technology, according to which single women are not allowed to carry out assisted human reproductive technology.

In contrast, the Regulations on Population and Family Planning of Jilin Province, promulgated in 2002, provide that "[w]omen who have reached the legal age of marriage and have decided not to marry again and who are childless may have a child by means of lawful medically assisted procreation techniques". The Standing Committee of the Jilin Provincial People's Congress amended this regulation four times, in 2004, 2011, 2014 and 2016, but has always retained this provision [8], which gives single

women the right to give birth. However, according to the survey, one or two single women gave birth to their children with the help of this regulation when it was first enacted, and there has not been a single case of single women successfully applying for assisted human reproduction in Jilin in the following ten years. There is a conflict between different laws regarding the reproductive rights of single women, and the Jilin Provincial Regulation, as a local regulation, contradicts the national law on assisted reproduction, so according to the principle of using the higher law in case of conflict between the higher and the lower law, it is difficult to realize the provisions of the Jilin Provincial Population and Family Planning Regulation regarding the reproduction of single women in practice.

China's current laws do not explicitly provide that single women have the right to procreate, and article 51 of China's Law on the Protection of Rights and Interests of Women provides that women have the right to procreate and the right not to procreate. This law grants women the freedom to procreate on the basis of the Constitution, but it can be inferred from the context in which it was enacted that the term "women" in the law refers to married women, so the law grants married women the right to procreate or not to procreate, and does not include single women in its provisions. China's Population Family Planning Law stipulates that citizens have the right to procreate and the obligation to practise family planning in accordance with the law, and in this law, the subject of the right to procreate is stipulated as a citizen, and single women are covered [9].

- Economic obstacles

Single women who give birth will also face great economic pressure, in many places single women who give birth are not able to receive maternity insurance, local policies link maternity insurance with marital relationship, even if a single woman applies for maternity registration, she will be refused to upload the maternity registration information to the social security department because of non-compliance with the state's maternity policy, which leads to the inability to receive maternity insurance. The part of the cost that cannot be reimbursed by the maternity insurance has to be borne by the single woman alone, which increases the financial cost of the single woman.

In addition, if a single woman wants to have a child, she usually has to use assisted human reproduction technology, which will cost a lot of money, and after the birth of a child, she will have to face the financial pressure of raising the child on her own.

The financial pressure on a single woman to bear and raise a child on her own is much greater than the financial pressure on a couple to raise a child together.

#### 4. Countermeasures for the realization of single women's reproductive rights

- Explicit Legislative Guarantees

In order to realize the reproductive rights of single women, it is necessary to give clear guarantees at the legal level. First of all, the Constitution is the mother law of China's laws and has the highest legal effect, and all laws and regulations should be formulated on the basis of the Constitution, so we need to make it clear through the Constitution that the right to procreate is a basic human right of citizens. Secondly, our legal provisions on the reproductive rights of single women are not clear, and on the basis of the Constitution's clarification that the right to procreate is a basic human right, the relevant provisions are refined at the legal level. The Regulations on Population Planning and Procreation recognize that all citizens have the right to procreate, but also stipulate that only the husband and wife are the subjects of procreation; this provision is contradictory, and the status of single women as subjects of procreation can be clarified by way of interpretation in this law.

Finally, China's "human assisted reproduction technology norms" "human assisted reproduction technology management measures" also clearly stipulates that single women are prohibited from implementing human assisted reproduction technology, the provision is too absolute, even if it is not yet possible to completely allow single women to implement human assisted reproduction technology from the legislative level, but also can not be set up obstacles to the implementation of human assisted reproduction technology by single women at the legal level [10].

- Improving the maternity protection system

In order to protect the reproductive rights of single women, it is necessary to establish a perfect fertility protection system. There are many reasons for the decreasing fertility rate in China, one of which is the imperfect fertility protection mechanism in China, where there is no professional fertility counseling before pregnancy and no reliable childcare center after childbirth, resulting in mothers having

to choose between work and childcare.

In order to build a birth-friendly society, the forty-third meeting of the Standing Committee of the Beijing Municipal People's Congress of the fifteenth year listened to the Report on the Construction of a Childcare Service System in the City (hereinafter referred to as "the Report"), which proposed that it would study and introduce policies related to the opening of childcare classes by kindergartens with the conditions to expand the scale of kindergarten childcare classes and adapt to the needs of infants and toddlers between the ages of 2-3 years old to go to childcare, and that the establishment of childcare centers is one of the basic measures for perfecting the birth protection system. The establishment of childcare centers is one of the basic measures for improving the birth protection system.

- Promoting changes in social attitudes

The realization of single women's reproductive rights cannot be achieved without a change in social attitudes and the creation of a friendly and tolerant social atmosphere. At present, there are still some prejudices in society against single women giving birth, which is not conducive to the realization of single women's reproductive rights.

The formation of a social culture does not happen overnight, nor can it be changed overnight. In a society with rapid economic and cultural development, it is important to respect and support single women in realizing their reproductive rights, and to advocate a tolerant social atmosphere, so as to eliminate discrimination and prejudice against single women's reproduction.

- Drawing on international experience

Many foreign countries allow single women to implement assisted human reproduction technology, for example, although civil law countries maintain a prudent attitude towards reproduction, they also recognize that single women have the right to reproduce; common law countries adopt an open attitude towards reproduction, and most of them, such as the United States, the United Kingdom and Australia, allow single women to implement assisted human reproduction technology. We should learn from successful international experiences on the basis of our basic national conditions. Different countries have their own characteristics and advantages in terms of legal protection, policy support and social concepts. By strengthening international exchanges and cooperation, we can learn from the advanced practices and concepts of other countries in safeguarding the reproductive rights of single women, and formulate more perfect policies and measures in combination with our national conditions.

## 5. Conclusion

With the continuous development of society, more and more single women begin to pay attention to their reproductive rights. This study firstly elaborates the theoretical foundation of single women's reproductive rights, explaining in detail the concept, nature and subject of reproductive rights. Subsequently, it analyzes in depth the obstacles to the realization of single women's reproductive rights from three aspects, namely, social culture, legal policy, and economic foundation, and finally proposes practical countermeasures, clarifying legislative guarantees, perfecting the maternity protection system, promoting the change of social concepts, strengthening the supervision and rights protection mechanism, and drawing on international experience. In the future, we need to continue to strengthen relevant research and practical exploration to create more favorable conditions and environment for the realization of single women's reproductive rights.

## References

- [1] Qiao Xiaochun. *The Past, Present, and Future of Population Aging in China* [J]. *Journal of Social Policy Research*, 2024, (01): 47-63+133. DOI: 10.19506/j.cnki.cn10-1428/d.2024.01.001.
- [2] Li Qian, Zhang Jianwen. *Justification of the Status of Reproductive Rights as Personality Rights in the Post-Civil Code Era* [J]. *Journal of Chongqing University (Social Science Edition)*, 2023, 29(3): 212-223.
- [3] Zhang Zhen. *From Fertility Policy to Fertility Rights: Theoretical Interpretation, Normative Reconstruction, and Functional Positioning* [J]. *Contemporary Law Review*, 2023, 37(2): 28-39.
- [4] Li Jingyi, Jiao Xuemei. *The Nature of Reproductive Rights and Legal Regulation* [J]. *Gansu Social Sciences*, 2014(3): 105-108.
- [5] Yu Xue, Wei Yuhong. *Rethinking the Decoupling of Fertility Registration and Marriage* [J]. *Outlook Weekly*, 2023(13): 52-54.

- [6] Yan Yibing. *Investigation and Reflection on the Reproductive Rights of Single Women: A Case Study of Mudanjiang City* [J]. *Journal of Mudanjiang University*, 2023, 32(2): 24-30.
- [7] Liu Xi. *Research on the Legal Protection of the Reproductive Rights of Single Women in China* [D]. Sichuan: Southwestern University of Finance and Economics, 2021.
- [8] Gao Yuling. *On the Subject of Reproductive Rights -- Commenting on Article 30, Paragraph 2 of the Regulations on Population and Family Planning of Jilin Province* [J]. *Journal of Law and Medicine*, 2005, 12(4): 286-288.
- [9] Zhang Jingchen. *On the Right of Single Women to Assisted Reproduction and Its Regulatory Structure* [J]. *Western Law Review*, 2023(4): 29-42.
- [10] Shi Jiayou, Zeng Jia. *The Justification and Realization Path of Single Women's Use of Human Assisted Reproductive Technology* [J]. *Law Application*, 2022(09): 3-12.