

Legal Regulation of Egg Freezing for Single Women: The Game between Reproductive Rights and Ethics

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Abstract: With the development of assisted reproductive technology, the issue of single women freezing eggs has sparked widespread controversy between reproductive rights and ethics. The verdict of China's first "single woman egg freezing case" highlights the current legal restrictions on single women's egg freezing, and also leaves room for future policy adjustments. As a fundamental human right, the right to reproduction should be attributed to personality rights rather than identity rights. The demand of single women for egg freezing conflicts with traditional ethical concepts, mainly revolving around issues such as intergenerational equality, the weakening of traditional family values, and possible illegal transactions. This article discusses ethical controversies and proposes legal regulatory pathways, calling on society to provide space for diversified reproductive choices while respecting traditional ethics.

Keywords: Egg Freezing for Single Women; Reproductive Rights; Personality Rights; Ethical Conflict; Legal Regulation; Assisted Reproductive Technology

Published: Aug 28, 2025

DOI: <https://doi.org/10.62177/apemr.v2i5.572>

1.Proposal of the problem

In August 2024, the second instance verdict was delivered in China's first "single female egg freezing case". The five-year-long dispute over the right to "egg freezing" (egg cryopreservation) ultimately ended with Ms. Xu losing the case. In 2018, Ms. Xu, the party involved, went to the Beijing Obstetrics and Gynecology Hospital affiliated to Capital Medical University to consult about "egg freezing" in order to protect her fertility. However, she was rejected due to her unmarried and single status. Subsequently, Ms. Xu filed a lawsuit against the hospital on the grounds that it had infringed upon her personality rights. This case, as the first "single female egg freezing case" nationwide, attracted widespread social attention. Although the second instance verdict upheld the original judgment, the statement in the judgment that "with the further adjustment of China's fertility policy, relevant medical and health laws, regulations, rules, diagnostic and treatment norms, and medical ethics norms may also undergo corresponding changes. Once conditions are ripe, both parties can resolve corresponding disputes separately" left open the possibility for the future development trend of "egg freezing" for single women.

With the changes in social life, assisted reproductive technologies represented by "egg freezing" have entered the public eye. Currently, China only allows the use of assisted reproductive technologies for medical reasons. In response to this situation, Ruan Xiangyan, Wang Shuming, and other NPC representatives and committee members have put forward suggestions to encourage the opening of oocyte cryopreservation to single women. "Egg freezing" is a way for single women to exercise

their reproductive rights. Discussing whether single women have the right to freeze their eggs is essentially discussing whether single women enjoy reproductive rights and the exercise of reproductive rights. Behind it lies the conflict and game between reproductive rights and traditional ethics(Fang Xing, 2020).

2.Analysis of the attribute of reproductive rights

It has been widely acknowledged in academia that reproductive rights are fundamental human rights. Scholars no longer adhere strictly to the distinction between public and private matters in their research, but rather tend to explore reproductive rights within the realm of private law, specifically focusing on the debate between personality rights and identity rights. This is also the primary reason why the law has been unable to clearly define the nature of reproductive rights. In light of this, this article will examine the attribution of reproductive rights from a private law perspective(Wang Ruonan, 2024).

Personality rights refer to the rights that take the inherent personal interests of the subject as the object, with the goal of maintaining and realizing personality equality, dignity, and personal freedom(Wang Liming, 2012). They possess core characteristics such as inherent nature, specificity, universality, legality, and non-property. Among them, inherent nature serves as a key distinguishing mark of personality rights from other rights, indicating that this right coexists with the subject, exists objectively without relying on the subject's will, and is usually non-transferable, non-inheritable, or non-renounceable. Exploring the attributes of reproductive rights, the inherent nature characteristic provides an important analytical perspective. Tracing back to its origin, "reproduction" as the natural foundation for human life and social continuation, its rights are inherently inseparable from the individual, an inevitable extension of personality dignity and life freedom, and are significantly embodied within the scope of personality rights.

Personal interests refer to various interests necessary for the natural and social survival of civil subjects. Reproductive interests encompass individual physiological needs and reproductive aspirations, which are inseparable from basic human survival needs and social life. Therefore, reproductive interests should be included in the category of personal interests(Wei Zhenying, 2017).

On the other hand, identity rights refer to rights derived from specific identity relationships (such as marriage and kinship), with the core lying in the legal interests enjoyed by the rights holder based on a specific identity. Although there are views advocating that reproductive rights belong to identity rights, meaning that only those in marital relationships can enjoy them, this view ostensibly grants reproductive equality to both sexes, in reality, due to the relativity of rights and obligations, it can easily transform into a compulsory burden on married women in practice. This position clearly violates existing legal provisions, such as Article 51 of the Law of the People's Republic of China on the Protection of Women's Rights and Interests, which clearly states that "women have the right to bear children in accordance with relevant national regulations and also have the freedom not to bear children," and Article 9 of the Supreme People's Court's Interpretation on Several Issues Concerning the Application of the Marriage Law of the People's Republic of China (III), which establishes that "the people's court shall not support a claim for damages by a husband who alleges that his wife's unauthorized termination of pregnancy infringes upon his reproductive rights." These provisions embody the spirit of protecting women's reproductive autonomy. The viewpoint of closely tying reproductive rights to the identity rights of marriage has deep historical and ethical roots, deeply influenced by traditional family structures and Confucian views on chastity. Historically, due to limitations in medical technology, reproduction had to be achieved through sexual activity, thus naturally linking it to the institution of marriage. However, with the spread of feminist thought, the elevation of women's social status, increasingly open and diverse social lifestyles, and breakthrough developments in assisted reproductive technology, reproductive behavior can now be separated from sexual activity, and its identity bond with marriage is no longer inevitable. At the same time, China's legal policies also recognize the legal status of children born out of wedlock (such as Article 1071 of the Civil Code), demonstrating a clear trend of gradually "loosening the ties" between reproduction and marriage.

3.Ethical conflicts surrounding egg freezing for single women

After clarifying the personality right attribute of reproductive rights, the conflicts between it and traditional ethics are mainly manifested in the following aspects. Scholars who oppose egg freezing for single women mainly hold arguments such as it

being inconsistent with intergenerational equality, undermining traditional marriage and family values, and affecting social order.

3.1 A rebuttal to the claim that “egg freezing for single women leads to a weakening of traditional family values”

Traditional family values are closely intertwined with the institution of marriage. In ancient society, traditional familism was founded upon the institution of marriage. Marriage was regarded as the sole legitimate way to form a family, and it was constrained by social ethical and moral norms such as rituals. As a means of expanding the kinship and lineage structure of the family, “carrying on the family lineage” is closely tied to traditional marital relationships and is often seen as the primary significance of entering into marriage (Yu Zhiqiang, 2024). However, profound societal changes, technological and cultural advancements, the influence of Western ideologies, and the diversification of values and lifestyles have collectively driven fundamental changes in traditional family relationships and values in China. Taking intergenerational relationships as an example, the “feedback model” described by Fei Xiaotong (1983), which refers to bidirectional nurturing and support between generations, has shown a significant trend of “gratitude flowing downwards.” The purpose of modern individuals raising children has increasingly shifted from obtaining “old-age security” to pursuing emotional experiences and establishing emotional connections and intimate relationships. This evolution in intergenerational relationships and fertility beliefs means that reproductive behavior has gradually weakened its core function of simply continuing the lineage, and has instead placed greater emphasis on emotional satisfaction among family members, with the core of family formation falling on individual emotional needs and prioritizing autonomous choices. It is this modernization transformation of family values, driven by overall societal changes, that constitutes the social foundation and conceptual background for single women seeking the right to freeze their eggs. Therefore, the behavior of single women freezing their eggs is essentially a product and manifestation of the new family values under the aforementioned profound societal changes, rather than a reason for the indifference of traditional family values. Although single women constructing single-parent families through assisted reproductive technology differs from the traditional two-parent nuclear family model, this is precisely a testament to the diversification and increased inclusiveness of family values as they evolve with the times, reflecting society’s respect for individual reproductive self-determination and the diversity of ways to construct families. Blaming the changes in traditional family values on single women’s demand for egg freezing ignores the fundamental driving force of societal changes, which is actually a reversal of cause and effect.

3.2 Refutation of the claim that “egg freezing for single women is inconsistent with intergenerational equality”

Some opposing views argue that allowing single women to freeze their eggs to realize their reproductive rights sacrifices the rights that the next generation should enjoy (mainly referring to the so-called “two-parent upbringing” rights and the right to know the biological father), in order to meet the needs of the current generation, thus violating the principle of intergenerational equality (Tang Qing, 2015). The main argument is that “egg freezing” gives women control over reproductive rights, which may lead to a large number of women choosing to raise their children alone. The exercise of reproductive rights affects the offspring’s right to enjoy “two-parent upbringing” and deprives them of the right to know the biological father (Fang Xing, 2020).

This accusation has fundamental flaws on a legal basis. The principle of intergenerational equality focuses on the obligations that present generations have towards future generations. However, the discussion about the infringement of “rights” of future generations by egg freezing behavior is based on the premise of treating potential future generations that do not yet exist as current rights holders, which lacks legal basis. Although frozen eggs, as isolated cells, exhibit certain personality attributes, they are not legal subjects. The enjoyment of rights is based on the qualification of rights holders. Chinese law recognizes sperm and egg cells as special objects with personality attributes, but they still belong to the category of objects and are not rights holders themselves. Therefore, claiming that egg freezing behavior infringes the so-called “rights” of future individuals that do not yet exist is actually a misunderstanding of the qualification of rights holders, and the discussion itself lacks legal foundation.

Secondly, even when discussing the welfare of future generations at the hypothetical level, the opposing argument is difficult to sustain. According to the 2023 report of the United Nations Children's Fund, there is no significant difference in the incidence of psychological issues between children from single-parent families and those from two-parent families, which proves that the "two-parent upbringing" model itself is neither a necessary nor a sufficient condition for safeguarding the mental health of future generations. In terms of value measurement in conflicts of rights or interests, women's reproductive self-determination should take precedence. Furthermore, regarding the issue of rights over eggs, discussions can be conducted with reference to the legal status of embryos and fetuses: although Chinese law grants specific interest protection to fetuses in areas such as inheritance, it does not recognize them as full civil subjects; more importantly, laws such as the "Law on the Protection of Women's Rights and Interests" clearly state that when the potential life interests of a fetus conflict with an important component of women's reproductive rights, namely the right to abortion, the latter should be protected first. If it is believed that the vague interests of non-existent potential future generations can override the existing reproductive self-determination rights of women, logically, it would lead to a fundamental denial of the current abortion rights system, which is clearly contrary to legal practice and mainstream values.

Restricting the reproductive rights of single women on the grounds of protecting the well-being of future generations would lead to absurd and unequal consequences. Opponents are concerned that a single-parent family environment may be detrimental to children. However, the realities of divorce, absentee fathers, abandonment, domestic violence, and other phenomena indicate that the "two-parent upbringing" structure itself does not guarantee an ideal nurturing environment. If the restriction of reproductive rights is purely based on optimizing the conditions for children's growth, then logically, all family planners (including couples) should undergo rigorous psychological, economic, personality, and other "qualification" assessments, and only "qualified" individuals should be allowed to reproduce. This is not only impractical in practice, but also fundamentally violates the principle of reproductive freedom and the spirit of equality before the law, constituting discriminatory restrictions against the single women community.

In summary, allowing single women to freeze their eggs does not infringe upon any identifiable or legally protected rights or core interests of future generations. The accusation of "not adhering to intergenerational equality" lacks a solid legal foundation and is difficult to justify from the perspectives of value measurement and practical considerations.

3.3 Refutation of "triggering illegal transactions and disrupting social order"

Opposing views are concerned that liberalizing egg freezing for single women will encourage illegal transactions such as surrogacy and disrupt social order. In response, the following analysis is needed: Firstly, liberalizing egg freezing for single women is not the fundamental cause of illegal transactions such as surrogacy. The existence and spread of illegal transactions stem from loopholes in the regulatory system and deficiencies in law enforcement effectiveness, rather than the means of realizing reproductive rights for specific groups. A powerful counter-evidence is that under the current policy prohibiting egg freezing for single women, the phenomenon of commercialized egg freezing and the black market for surrogacy still exists. This not only forces some single women to seek services abroad, bearing high economic costs and health risks, but also highlights that the ban cannot effectively eliminate the illegal market, but rather exacerbates the governance dilemma. Therefore, the core of the issue lies in constructing a scientific and rigorous regulatory framework to prevent and combat illegal transactions, rather than depriving single women of their legitimate right to preserve their fertility.

Banning single women from freezing their eggs on the grounds that it may lead to illegal transactions constitutes a violation of the principle of equality. Articles 33 and 48 of China's Constitution establish the principle of equality between men and women. Current regulations such as the "Regulations on the Administration of Human Assisted Reproductive Technology" and the "Regulations on the Administration of Human Sperm Banks" allow men to preserve their fertility through frozen sperm, but restrict single women from exercising the same rights, constituting discriminatory treatment based on gender. It is unreasonable to deprive women of equal opportunities for fertility protection as men solely due to their physiological characteristics and society's improper association of egg freezing with pregnancy substitution (surrogacy).

In addition, this prohibition measure seriously violates the principle of proportionality. Egg freezing and surrogacy have essential differences in technical attributes and legal nature, and there is no necessary causal connection between the two.

Forcing the binding of egg freezing rights and surrogacy risks and implementing a ban based on this: firstly, it is not appropriate, as illegal surrogacy still exists under the current ban, proving that it is not an effective preventive measure; secondly, it is not necessary, as there are alternative solutions with less restriction on rights, such as strengthening supervision and accurately cracking down on illegal surrogacy; thirdly, it is not balanced, as the comprehensive ban on egg freezing causes serious damage to the reproductive rights of single women, which is clearly unbalanced compared to its uncertain and weak social order protection goals, and does not meet the basic requirements of administrative rule of law.

4.The practical regulatory path for single women to freeze their eggs

4.1 Legislative guarantee

Currently, the relevant provisions of the personality rights section in China's Civil Code have not yet explicitly included reproductive rights within the scope of specific personality rights. Given the significant controversy in society regarding the nature of reproductive rights, especially whether they belong to personality rights, it is not appropriate for legislation to adopt an evasive attitude towards this issue. Instead, it should clearly affirm the personality rights attribute of reproductive rights, providing a clear basis for claims when civil subjects encounter disputes over infringement of reproductive rights.

The existing regulations on egg freezing in China are scattered throughout various departmental regulations such as the "Administrative Measures for Human Assisted Reproductive Technology," the "Administrative Measures for Human Sperm Banks," and the "Standards for Human Assisted Reproductive Technology," all of which have a relatively low legal effect level. It is necessary to systematically revise and integrate these regulations, and specifically add provisions specifically targeting egg freezing for single women. Specifically, emphasis should be placed on the following: First, defining the scope of applicable subjects to ensure that single women are not treated differently based on their marital and reproductive status; second, clarifying the legal attributes of frozen eggs, such as whether they belong to property rights, personality rights derivative interests, or special objects, and detailing the rights women enjoy in various stages of egg extraction, storage, use, and destruction; third, regulating the rules for the use of frozen eggs, ensuring the informed consent rights of spouses when married women undergo egg retrieval, and obtaining the informed consent of the spouse again when thawing eggs for in vitro fertilization and other procedures.

In judicial practice, when courts hear cases involving egg freezing for single women, they tend to make judgments based on contractual relationships, avoiding direct judgments on the legitimacy of the egg freezing behavior itself. After the introduction of relevant legal norms in the future, judicial judgments should shift to examining such disputes from the perspective of tort liability, interpreting the law through typical cases, and fostering public consensus on the protection of women's reproductive rights.

4.2 Establish and improve supporting systems

Firstly, establish an evaluation and review mechanism before egg freezing. Construct a comprehensive medical evaluation system before egg freezing to ensure that applicants meet health conditions to reduce medical risks. Medical institutions have the obligation to truthfully inform applicants of their physical conditions and recommend appropriate assisted reproductive programs, safeguarding their right to know. At the same time, psychological assessments should be conducted on applicants to ensure that they fully understand the significance, potential risks, and subsequent issues of egg freezing, and provide necessary psychological counseling services to assist them in making rational decisions. For married applicants, their spouses' right to know should be guaranteed during this stage.

Secondly, standardize the technical operations and supervision of the egg freezing process. Establish unified and safe technical operation standards for egg collection, freezing, preservation, and thawing. Strengthen the qualification review and daily supervision of egg freezing institutions to ensure that they possess the corresponding technical capabilities and equipment conditions, and severely crack down on institutions that illegally engage in related businesses. In addition, establish a specialized ethics committee to conduct pre-review of egg freezing applications, and evaluate the legitimacy of the egg freezing behavior, the applicant's health status, and the usage plan after egg freezing based on medical ethics and social moral standards.

Finally, refine the rules for the preservation, use, and disposal of frozen eggs. In terms of preservation management, it is

necessary to clearly stipulate the preservation period, fee standards, and renewal rules to safeguard the right to know and the right to choose of women who freeze their eggs. Referring to the management model of human sperm banks, establish a safe and traceable egg information management system to prevent the risk of inbreeding. In terms of use, women who freeze their eggs must comply with laws, regulations, and ethical norms when using the eggs, and clarify the conditions and procedures for use. When married women use frozen eggs, their spouses' right to know and consent should be guaranteed. Single women, on the other hand, enjoy the autonomy to decide on the use of eggs. In terms of disposal, formulate clear rules for the destruction of eggs, specifying the triggering conditions for destruction, such as the expiration of the preservation period or the active application of the right holder, to ensure the transparency and legality of the destruction process.

5. Conclusion

The issue of egg freezing for single women is not only a legal and ethical dilemma, but also a clash between social perceptions and technological advancements. With the gradual clarification of reproductive rights and the standardization of egg freezing technology, the reproductive autonomy of single women is expected to be more fully safeguarded. In the future, through legislative improvements, institutional development, and ethical guidance, we can open up broader space for diversified reproductive choices while respecting tradition, achieving a balance between reproductive rights and ethics.

Funding

no

Conflict of Interests

The authors declare that there is no conflict of interest regarding the publication of this paper.

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