



## Research Article

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# Seventy Years of Marriage and Family Law in China: Achievements, Challenges and Prospects

<https://doi.org/10.1515/ajle-2023-0166>

Received November 29, 2023; accepted January 26, 2024; published online February 8, 2024

**Abstract:** This article examines marriage and family law in China from a diachronic perspective. It discusses three issues – the principal achievements over the last 70 years; the existing challenges since the 21st century; and its prospects for the future. The *Marriage Law of the People’s Republic of China* passed in 1950 was the first basic law after the founding of the People’s Republic of China and opened a new chapter in the development of Chinese marriage and family law. Significant development has been achieved both in systematic structure and institutional contents after undergoing three major revisions in 1980, 2001 and 2020. Despite the achievements made, great challenges remain since the 21st century, especially the difficulties in family formation and maintenance; population aging with fewer children; application of assisted reproductive technology; and prevalence of divorce, remarriage, and cohabitation. The future improvement of marriage and family law may focus more on maintaining family stability and building family civilization.

**Keywords:** marriage and family law; legislative reform; achievements; challenges; China

## 1 Introduction

The rule of law construction in China has made significant progress since the founding of the People’s Republic of China (PRC) in 1949. It has been developed from the initial stage to the successful establishment of the socialist legal system with

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Chinese characteristics,<sup>1</sup> and then to the continuous improvement of the system of socialist rule of law with Chinese characteristics. Marriage and family law, as an integral part of this legal system, also keeps reforming and refining with the development of society. *Marriage Law of the PRC* passed in 1950 (1950 Marriage Law) was the first basic law after the founding of the PRC (Yang 2009), four years earlier than the *Constitution of the PRC* enacted in 1954. It was hailed by President Mao Zedong as “the fundamental law whose universality is second only to the Constitution” (Wang 2020). Since the passage of the 1950 Marriage Law, marriage and family law underwent three major revisions in 1980, 2001 and 2020 and achieved remarkable development over the last 70 years.

Chinese marriage and family law plays a vital role in adjusting marriage and family relations and maintaining family stability (Wang 2023). In the context of exercising law-based governance on all fronts and advancing the rule of law in China, this article aims to investigate the historical development process of marriage and family law over the past 70 years, analyze its achievements, explore the challenges, and look forward to its future prospects. This study is conducive to revealing the missions of marriage and family law in different historical stages and its characteristics of times and is beneficial for understanding its current challenges and direction for future development.

This article is structured in four parts. The first part offers a retrospective on the legislative reform and analyzes its major achievements over the past 70 years, which mainly relates to the 1950 Marriage Law, the 1980 Marriage Law,<sup>2</sup> the 2001 Marriage Law<sup>3</sup> and the Civil Code.<sup>4</sup> In the second part, it explores four primary challenges of marriage and family law since the 21st century. The third part discusses its future directions. And the final part makes a conclusion.

## 2 Achievements of the Legislative Reform

Throughout the legislative reform over the past 70 years, marriage and family law has, in general, experienced continuous improvement, achieved significant breakthroughs, and explored a development path with Chinese characteristics.

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<sup>1</sup> In October 2011, the White Paper of *Socialist Legal System with Chinese Characteristics* was released by the State Council of PRC and officially announced that the socialist legal system with Chinese characteristics had been formed by the end of 2010.

<sup>2</sup> Marriage Law of the PRC (passed in 1980).

<sup>3</sup> Marriage Law of the PRC (2001 Amendment).

<sup>4</sup> Civil Code of the PRC.

## 2.1 Elimination of Feudal Marriage and Family System and Emancipation of Women

After the founding of the PRC, feudal marriage and family system was still prevalent. The phenomenon of arranged marriages, coerced marriages and interference with the freedom of marriage frequently occurred (Yang 1990). Feudal marriage customs such as adoptive daughter-in-law, concubinage, and feudal family ideas including the superiority of men over women and disregard for children's interests, still existed in varying degrees, which contributed to the continued increase in family cases and a large number of women committed suicide or were killed due to marital problems (Liu 2020). Therefore, there was an urgent need to eliminate this feudal marriage and family system that had lasted for more than two thousand years in history (Yang 1990). It was against this background that the Marriage Law was passed in 1950.

The 1950 Marriage Law provided legal protection for women to liberate from the oppression of the feudal marriage and family system. Sections 1 and 2 stipulated the principles of this law. Section 1 stated that “The feudal marriage system, which is based on arranged and coerced marriage, the superiority of men over women and which ignores the interests of children, shall be abolished. A new democratic marriage system based on freedom of marriage between man and woman, monogamy, equality between man and woman, and protection of the legitimate rights and interests of women and children shall be applied.” And Section 2 provided that “Bigamy and concubinage shall be prohibited. Adoptive daughter-in-law shall be prohibited. Interference with the widows' freedom of marriage shall be prohibited. The exaction of money or gifts for anyone in connection with marriage shall be prohibited.” The four basic principles established in the 1950 Marriage Law, namely freedom of marriage, monogamy, equality between men and women, and protection of the legitimate rights and interests of women and children, are still applied today and have become the fundamental theme of marriage and family legislation in China.

Undeniably, the 1950 Marriage Law was an important milestone in the history of the development of Chinese marriage and family law. To further enforce the 1950 Marriage Law, China launched a national Implementation of the Marriage Law Campaign in March 1953 (Xia 2020a). It was promoted through newspapers, brochures, lectures, and so on, and basically achieved the goal of changing customs (Zhang and Mo 2008). However, influenced by the feudal marriage and family system for thousands of years, the radical change in the ideas and customs of marriage and family needs a long historical process (Liu 2020).

In brief, the 1950 Marriage Law was a legal guarantee for the elimination of the feudal marriage and family system that men were superior to women and established a new democratic marriage and family system that men and women are equal. It confirmed that women are equal subjects with independent legal personalities and finally promoted women's emancipation. This law was therefore known as the "Declaration on the Restoration of Women's Human Rights" (Zhao 2004) and women became the biggest beneficiaries of this great historical change (Zhou 2019).

## 2.2 Institutional Restoration and Contents Enrichment

The reform of marriage and family law wasn't smooth sailing and faced new challenges after the enactment of the 1950 Marriage Law. The "Cultural Revolution" from 1966 to 1976 had a severe impact on family life and seriously damaged the legal system. After the end of the "Cultural Revolution", marriage and family law reform were back on track for healthy development (Yang 2009). Besides, the 1950 Marriage Law was outdated and needed to be revised after 30 years. In September 1980, the 1980 Marriage Law was passed. On the other hand, at the beginning of the Reform and Opening-up, China faced a legal vacuum left by the "Cultural Revolution" period and there were very few legal resources available.<sup>5</sup> Due to having no laws to observe at that time, it was imperative to formulate a series of laws to restore legal order and social order supported by law quickly (Zhang 2018). Besides, China began to comprehensively promote the construction of a socialist market economy in the 1990s, which further laid the economic foundation for the construction of the rule of law and also put forward higher requirements for the construction of the rule of law.<sup>6</sup> Therefore, large-scale legislation was gradually carried out and opened a new chapter in the road of socialist rule of law. In the marriage and family law field, some important laws were enacted within the 20 years after the passing of the 1980 Marriage Law (see Table 1).

In addition, the contents of the marriage and family law were enriched in the 1980 Marriage Law. Firstly, family planning was inserted into the 1980 Marriage Law. According to the data from the National Bureau of Statistics of China (NBSC), at the end of 1980, the total population was 987 million, an increase of 82 % compared

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<sup>5</sup> The National People's Congress of the PRC, "Accelerating the Formation of Complete Legal Norms System and Promoting the Modernization of the Country's Governance System and Capacity for Governance" (24 August 2021) [http://www.npc.gov.cn/npc/c12434/dzlfzgzgl70nlflc/202108/t20210824\\_313153.html](http://www.npc.gov.cn/npc/c12434/dzlfzgzgl70nlflc/202108/t20210824_313153.html) accessed 15 January 2024.

<sup>6</sup> The State Council Information Office of the PRC, *Rule of Law Construction in China* (White Paper), 2008.

Table 1: Marriage and family laws in China 1980–2000.

Note	Name of the law	Issued date	Effective date	Revised date	Effective date	Repealed date <sup>a</sup>
1	Marriage Law	1950-05-01	1950-05-01	–	–	1981-01-01
2	Marriage Law	1980-09-10	1981-01-01	2001-04-28	2001-04-28	2021-01-01
3	Succession law	1985-04-10	1985-10-01	–	–	2021-01-01
4	General Principles of the Civil Law	1986-04-12	1987-01-01	2009-08-27	2009-08-27	2021-01-01
5	Law on the Protection of Disabled Persons	1990-12-28	1991-05-15	2008-04-24	2008-07-01	–
6	Law on the Protection of Minors	1991-09-04	1992-01-01	2018-10-26	2018-10-26	–
				2006-12-29	2007-06-01	–
				2012-10-26	2013-01-01	–
				2020-10-17	2021-06-01	–
7	Adoption Law	1991-12-29	1992-04-01	1998-11-04	1999-04-01	2021-01-01
8	Law on the Protection of Rights and Interests of Women	1992-04-03	1992-10-01	2005-08-28	2005-12-01	–
				2018-10-26	2018-10-26	–
				2022-10-30	2023-01-01	–
9	Law on Maternal and Infant Health Care	1994-10-27	1995-06-01	2009-08-27	2009-08-27	–
				2017-11-04	2017-11-05	–
10	Regulation on Marriage Registration and Management	1994-02-01	1994-02-01	–	–	2003-10-01
11	Law on the Rights and Interests of the Elderly	1996-08-29	1996-10-01	2009-08-27	2009-08-27	–
				2012-12-28	2013-07-01	–
				2015-04-24	2015-04-24	–
				2018-12-29	2018-12-29	–
12	Law on the Prevention of Juvenile Delinquency	1999-06-28	1999-11-01	2012-10-26	2013-01-01	–
				2020-12-26	2021-06-01	–

<sup>a</sup>Marriage Law, Succession Law, General Principles of the Civil Law, and Adoption Law were repealed and incorporated into the Civil Code which went into effect on 1 January 2021.

with 542 million in 1949.<sup>7</sup> The pressure of rapid population growth promoted the introduction of the family planning policy. Considering the needs of the times and the goal of controlling population growth, family planning was added to the 1980 Marriage Law (Xue 2020). For instance, “family planning shall be practiced”, “late marriage and late childbirth shall be encouraged”, “both husband and wife shall have the duty to practise family planning”.<sup>8</sup>

A second is to determine the structure of the marital property system. The 1980 Marriage Law added the provision that the property acquired by husband and wife during their marriage shall be in their joint possession unless they had agreed otherwise.<sup>9</sup> This provision established a marital property system in which “the statutory marital property system was the mainstay and the agreed marital property system was the supplement.” Although this is inconsistent with the applicable rule of civil law that agreement takes precedence over statutory provision, it is in accord with the fact that people generally have no agreement on marital property for a long time (Xue 2019). The modern marital property system respects the wishes of husband and wife regarding their property relationship (Chen 2010, p. 226). The 1980 Marriage Law provided a legal basis for the agreed marital property system and allowed the husband and wife to deal with property through agreement, considering the wishes of the couples to deal with their property by agreement.

Third, the nonexistence of mutual affection as a substantial condition for divorce by litigation was added into family law. 1980 Marriage Law stipulated that the legal ground for granting divorce by the people’s court was that mutual affection no longer existed between husband and wife and mediation failed.<sup>10</sup> Since the Reform and Opening-up in 1978, with the development of society and economy, people’s concept of marriage and family has undergone great changes and many people have begun to pursue marriages based on love rather than on political, economic, or other factors. To meet the needs of the new era and advocate marriage based on love, the 1980 Marriage Law stipulated that “nonexistence of mutual affection” was the legal condition for granting divorce (Chen 2010, pp. 295–296). Additionally, the 1980 Marriage Law also drew on the experience of legislation and judicial practice. The early legislation of the Communist Party of China highlighted the affection factors of the parties. For example, Section 14 of the *Marriage Regulations of the Jin-Cha-Ji Border Region* (1943) stipulated that if a husband and wife were fundamentally inconsistent in their affection and wills, making it difficult for them to live together, either party could apply to the judicial authorities for divorce. Judicial practice

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7 NBSC, *China Statistical Yearbook 2022*.

8 1980 Marriage Law, s 2, s 5, s 12.

9 *Ibid*, s 13.

10 *Ibid*, s 25.

regarded the existence or nonexistence of mutual affection as the criterion for whether to grant a divorce (Li 1999). It could be seen that the 1980 Marriage Law provided legal protection for parties to end marriage without mutual affection.

Fourthly, to better protect the interests of the elderly and minors, the 1980 Marriage Law inserted the mutual obligations between grandparents and grandchildren to support each other and the obligations of the elder brothers and sisters to support their younger brothers and sisters when legal conditions were met.<sup>11</sup> This change took into account the good Chinese tradition of respecting the old and taking care of the young and the good custom of mutual support among family members.

To summarize, the 1980 Marriage Law played an important role in the institutional restoration and contents enrichment of marriage and family law, which was severely damaged in the ten years of the “Cultural Revolution” (Yang 2008). However, its marital property system was established against the background of a socialist planned economy and inevitably contradicted the values of a market economy emphasizing individual rights (Ma 2001).

## 2.3 Legislative Refinement and Justice Reform

With the introduction of the “Reform and Opening-up” policy in 1978, the planned economic system gradually transformed into the system of a socialist market economy, which further stimulated social vitality and emancipated productivity. The transformation of the economy brought radical changes to family and social life. Traditional marriage and family values shifted remarkably, and family stability was subjected to serious challenges. For example, the divorce rate was increasing, violations of the duty of conjugal fidelity and monogamy occurred frequently, and domestic violence became more prominent (Liu 2014). It was generally believed that the 1980 Marriage Law couldn’t adjust modern marriage and family relations, especially the hot issues of public concern (Ding 2001). Consequently, the 1980 Marriage Law was revised in 2001 to respond to these changes.

### 2.3.1 Refinement of Marriage and Family Law

The amendment in 2001 further refined the marriage and family law. Several important improvements are worth highlighting. Firstly, consolidating the monogamy and maintaining family stability. In 1996, the number of divorces exceeded more than one million couples and the divorce caused by extramarital affairs accounted for about one-third (Zhou 2019), seriously damaging the monogamous marriage and family

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<sup>11</sup> *Ibid.*, ss 22–23.

stability. To curb bigamy, adultery, and other behaviours violating monogamy and to stabilize family relations (Chen 2003), the 2001 Marriage Law added that “no one who has a spouse may cohabit with any other person”, “husband and wife shall be truthful to and respect each other”, and “family members shall respect the old, take good care of the underage, and help each other so as to maintain an equal, harmonious and civilized marriage and family relationship.”<sup>12</sup> These new provisions clarified the responsibilities between spouses and family members and highlighted ethical features of family law (Wu 2009). It was the inheritance and development of the fine traditional Chinese culture.

Secondly, prohibiting domestic violence and protecting the personal rights of family members. One main reason was that the increasing number of domestic violence cases attracted social attention and widespread concern. Compared with the 1980s, domestic violence cases increased by 25.4 % in the 1990s (Zhu 2019). Punishing and eliminating domestic violence became an important part of protecting women’s human rights (Li and Feng 1995). Besides, China ratified the *Convention on the Elimination of all Forms of Discrimination Against Women* in 1980. Prohibiting domestic violence by law is an international obligation that China should implement (Yang 2001). Therefore, legal regulation of domestic violence became a much-discussed topic in marriage law revision. Anti-domestic violence provisions were inserted in the 2001 Marriage Law.<sup>13</sup> It was the first time that domestic violence was prohibited in basic law and was of great significance for further protecting the personal rights of family members and creating a social environment against domestic violence (Wu 2011). After that, protecting women, children, the elderly, disabled persons, and patients with mental disorders from domestic violence was inserted into relevant laws.<sup>14</sup> In December 2015, the *Anti-domestic Violence Law of the PRC* was passed. It was the first national anti-domestic violence law in China (Wu and He 2016) and a breakthrough in addressing domestic violence that has long been considered a private matter.

Thirdly, determining the scope of marital property and refining the agreed marital property system. With the implementation of the Reform and Opening-up and the development of the socialist market economy, the amount and type of marital property increased, couples’ concepts of personal property enhanced, and the legal status of marital property became increasingly prominent (Chen 2010, pp. 238–239). However, the marital property system in the 1980 Marriage Law

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<sup>12</sup> 2001 Marriage Law, ss 3–4.

<sup>13</sup> 2001 Marriage Law, s 3.

<sup>14</sup> Law on the Protection of Women’s Rights and Interests (2005 Amendment), s 46; Law on the Protection of Minors (2006 Revision), s 10; Law on the Protection of Disabled Persons (2008 Revision), s 9; Law on the Protection of Rights and Interests of the Elderly (2012 Revision), s 25; Mental Health Law (Passed in 2012), s 9.

couldn't meet the growing requirements of people to protect personal property ownership. This is mainly reflected in the following two aspects. On the one hand, the scope of joint property of husband and wife is too large, which is detrimental to protecting the personal property ownership of husband and wife. According to the 1980 Marriage Law, if the couple didn't reach an agreement on the property acquired after marriage, all the property acquired after marriage was joint property. Due to the subordinate status of the agreed marital property system and the influence of the concept of "unity of husband and wife", it's difficult for the couples to make a written agreement on the property acquired after marriage (Wang 1997). On the other hand, the provision of the agreed marital property in the 1980 Marriage Law is too simple to operate in practice (Li 1992). The 1980 Marriage Law only stipulated that the property acquired by husband and wife during their marriage should be in their joint possession "unless otherwise agreed", without stipulating specific contents of agreed marital property. Therefore, the marital property system was revised mainly from the following two aspects. First, the 2001 Marriage Law newly listed the scope of joint property and personal property of husband and wife respectively and narrowed the scope of joint property of husband and wife.<sup>15</sup> Second, it stipulated more detailed regulations on property agreements between husband and wife, including the scope, content, form, and legal effect of the property agreement.<sup>16</sup> The refinement respected the property agreement between husband and wife and highlighted the protection of their personal property rights. The value orientation of the marital property system has changed from the emphasis on the protection of social interest to the balance between individual interests and social interests (Yang 2002).

Fourthly, improving the divorce system. The divorce rate in China was only 0.35 ‰ in 1980 but raised to 0.96 ‰ by 2000 (Xu and Ye 2002). The number of divorce cases due to bigamy, cohabitation with another person, family violence, maltreatment, and desertion of spouses increased and became the main reasons for divorce in some areas. Due to the lack of relevant provisions in the 1980 Marriage Law, if the divorce causes damages to the non-fault spouse due to the above faults, the spouse at fault can't be held accountable for compensation (Chen 2002). To further protect the rights and interests of parties related to divorce and fill legal loopholes, the 2001 Marriage Law refined the divorce system. The 2001 Marriage Law added legal circumstances that lead to the nonexistence of mutual affection, such as bigamy, cohabiting with another person, family violence, maltreatment, separation for 2 years, and so on.<sup>17</sup> Most importantly, the newly created divorce economic

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15 2001 Marriage Law, ss 17–18.

16 *Ibid*, s 19.

17 *Ibid*, s 32.

compensation<sup>18</sup> recognized the value of housework and was a breakthrough in legislation about gender (Peng and Li 2010). Additionally, divorce damage compensation<sup>19</sup> was inserted into the 2001 Marriage Law and aimed to compensate damages to the innocent party and to prevent and punish illegal acts (Wu 2009). Moreover, the divorced parents who didn't directly raise their children were granted visitation rights.<sup>20</sup>

### 2.3.2 Family Justice Reform

According to the *Gazette of the Supreme People's Court of the PRC (2015)*, the people's courts accepted approximately 1.76 million family and inheritance cases of first instance in 2015, accounting for approximately 17.4 % of civil and commercial cases of first instance (10.1 million) accepted nationwide in 2015. Family cases have the characteristics of rapid growth, large numbers, new types, and difficulty in legal application, causing the court to encounter many new problems when using the general civil dispute resolution mechanism to deal with family cases, which is unfavourable for effectively solving family disputes and stabilizing family relationships (Cao 2016). To change the traditional model and working mechanism of family trial, explore trial paths to properly resolve family disputes, and protect the interests of the parties (Wang 2018), the Supreme People's Court issued the *Opinions on Conducting the Pilot Program of the Reform of the Mode and Working Mechanism of Family Trial* in April 2016, which required to select 100 courts to conduct this Pilot Program for two years from 1 June 2016. Some achievements were made: (i) The concept of family trial has gradually changed. Judges now pay more attention to substantive justice, differential protection of vulnerable groups, and restoration of family relationships.<sup>21</sup> (ii) Diversified dispute resolution mechanisms are rapidly established. In 2017, the Supreme People's Court took the lead in establishing a joint meeting system for the reform of family trial methods and working mechanisms involving 15 departments.<sup>22</sup> More than 80 % of the pilot courts have built joint meeting mechanisms and reached cooperation with local civil affairs departments, women's federations, and other relevant departments (Du 2018a). (iii) The working mechanism of family trials is constantly innovating. The pilot courts established new

<sup>18</sup> *Ibid*, s 40.

<sup>19</sup> *Ibid*, s 46.

<sup>20</sup> *Ibid*, s 38.

<sup>21</sup> The Supreme People's Court, *Report on the Work of Family Trials in Courts Across the Country since the 18th National Congress of the Communist Party of China*, October 2022.

<sup>22</sup> The Supreme People's Court, The Supreme People's Procuratorate, et al., *Opinions on Establishing a Joint Meeting Mechanism for the Reform of the Mode and Working Mechanism of Family Trial*, July 2017.

mechanisms, such as psychological counseling and intervention, family investigations, pre-litigation mediation, and post-case return visits.<sup>23</sup> (iv) The professional level and supporting facilities of family trials are greatly improved. Nearly 60 % of the pilot courts set up professional family mediation teams and about 90 % of the pilot courts built specialized family courts (Du 2018b). In July 2018, the Supreme People's Court issued *Opinions on Further Deepening the Reform of Modes and Working Mechanisms of Family Trials (for Trial Implementation)* for further deepening the reform of family trials. This is not the end of the national family trial reform, but a brand-new beginning (Ding 2020). Family justice reform is an ongoing project and needs to be constantly advanced.

## 2.4 Systematic Regression and Institutional Innovation

In October 2014, the Fourth Plenary Session of the 18th Central Committee of the Communist Party of China (CPC) issued the *Decision on Major Issues Pertaining to Comprehensively Promoting the Rule of Law*, which formally proposed the major legislative task of “compiling the Civil Code”. Since then, the compilation of the Civil Code began to accelerate in an all-round way (Wang 2020). The relationship between family law and civil law, the increasingly high divorce rate,<sup>24</sup> the improvement of the adoption legal system, etc., were generally concerned by society and academia and needed to be responded to by the opportunity of compiling the Civil Code. In May 2020, the Civil Code was passed and came into effect in January 2021. The Civil Code is the first law named after a code since the founding of the PRC and is a milestone.<sup>25</sup> It amended the marriage and family law from systematic structure and institutional contents.

### 2.4.1 Systematic Structure: Regression and Synergy

The systematic structure includes external structure and internal structure (see Table 2). In relation to external structure, the Civil Code incorporates the *General Principles of the Civil Law, Property Law, Contract Law, Guarantee Law, Marriage Law, Adoption Law, Inheritance Law, Tort Law*, and some judicial interpretations. Its Book Five makes the marriage and family law return to the civil law system and becomes an indispensable part of the Civil Code. With regards to the internal

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<sup>23</sup> The Supreme People's Court, *Report on the Work of Family Trials in Courts Across the Country since the 18th National Congress of the Communist Party of China*, October 2022.

<sup>24</sup> The divorce rate has risen to 3.4 ‰ in 2019. NBSC, *China Statistical Yearbook 2022*.

<sup>25</sup> China Law Society, *Annual Report on China's Rule of Law Construction (2020)*.

**Table 2:** Systematic structure.

External structure		Internal structure	
The civil code		Book five: marriage and family	
Previous laws	Current structure	Previous laws	Current structure
General Provisions of the Civil Law	Book one: general provisions	Marriage Law	Chapter I: general rules
Property Law	Book two: real rights		Chapter II: marriage
Contract Law + Guarantee Law	Book three: contracts		Chapter III: family relations
–	Book four: personality rights		Chapter IV: divorce
Marriage Law + Adoption Law	Book five: marriage and family		
Inheritance Law	Book six: inheritance		
Tort Law	Book seven: tort liability	Adoption Law	Chapter V: adoption

structure, the Civil Code merges the Marriage Law and the Adoption Law into Book Five, which systematically realizes the return of the Adoption Law to the marriage and family law system and enriched its framework (Wang 2023). This improvement forms a five-chapter system of marriage and family law – General Rules, Marriage, Family Relations, Divorce, and Adoption. The Civil Code ends the marriage and family legislation model that is learned from the Soviet Union, and marriage and family law reach a new level in terms of the legislative concept and technology (Li 2020).

#### 2.4.2 Institutional Contents: Further Development

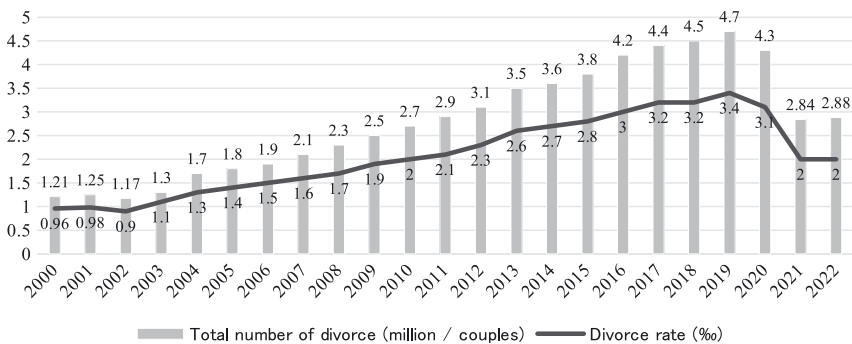
The Civil Code further develops the contents of marriage and family law. The first is to strengthen family protection and family civilization construction. Two important provisions are inserted into the Civil Code: “Marriage and family are protected by the State”<sup>26</sup> and “Families shall establish good family values, promote family virtues, and pay close attention to the construction of family civilization.”<sup>27</sup> These provisions inherit the marriage and family virtues of the Chinese nation. With the weakening of family functions including taking care of the elderly, childcare, and family education (Ding 2016), emphasizing the responsibility of the State to protect family is not only a

<sup>26</sup> The Civil Code, s 1041.

<sup>27</sup> *Ibid*, s 1043.

requirement of the times but also a reflection of China's traditional culture that values family. It is in line with the spirit of the *Universal Declaration of Human Rights*, which states the family is entitled to be protected by the State.<sup>28</sup> To carry forward the Chinese nation's fine tradition of attaching importance to family education, guiding the whole society in emphasizing family education, the *Law on Family Education Promotion* was passed in October 2021. Elevating China's traditional excellent family virtues and family civilization into law embodies the characteristic of the co-governance of morality and law in marriage and family relations (Xia 2020b), which is beneficial for carrying forward the Chinese traditional culture and maintaining family stability.

Besides, the cooling-off period was inserted into divorce by litigation. One main reason is the high divorce rate. China's divorce rate has kept growing from 0.96 ‰ in 2000 to 3.4 ‰ in 2019 (see Figure 1). Another is impulsive divorce. Divorce by registration and divorce by litigation are two ways of divorce in China.<sup>29</sup> Compared with divorce by litigation, divorce by registration is easy and low-cost. The Civil Code adds a cooling-off period in divorce by registration.<sup>30</sup> The main functions are to ensure that the couples have enough time to calmly consider whether to divorce and how to deal with matters after the divorce within the 30-day cooling-off period, so as to prevent impulsive divorce (Ma 2020). After the cooling-off period has been implemented, the divorce rate decreased to 2 ‰ in 2021 and 2022. To fully examine



**Figure 1:** Number of divorce in China 2000–2022. Source: NBSC, *China Statistical Yearbook 2022* and *China Statistical Yearbook 2014*; Ministry of Civil Affairs of PRC, *The Statistical Bulletin on the Development of Civil Affairs in 2022*.

<sup>28</sup> Universal Declaration of Human Rights, s 16.

<sup>29</sup> The Civil Code, s 1076, s 1079.

<sup>30</sup> *Ibid.*, s 1077.

the impact of the cooling-off period, it is essential to observe for a longer period (Song and Li 2022). In addition, from my perspective, there is no need to set up a cooling-off period in divorce by litigation because mediation can serve a similar function. Mediation is a compulsory procedure in divorce by litigation and the process of mediation also gives the parties sufficient time to calmly think about whether to divorce (Guo 2022).

Moreover, the Civil Code refined the adoption system. (i) The Adoption Law stipulated that minors under the age of 14 could be adopted. However, this scope of adoptees was too narrow, causing difficulty in the application of the law and some minors losing the opportunity to reintegrate into families (Xue and Xie 2020, p. 470). So the scope of adoptees is extended from those under the age of 14 to all minors meeting legal conditions in the Civil Code.<sup>31</sup> It improves the scope and intensity of protecting the interests of minors by adopting more eligible minors (Xia 2020a, 2020b). (ii) The Civil Code adds two restrictive conditions for adopters to protect the best interest of the adoptees. First, the adopter should have no “criminal records that are not conducive to the healthy growth of the adopted person”.<sup>32</sup> Second, if a single adopter adopts a child of the opposite sex, the adopter shall be not less than 40 years older than the adopted child unless otherwise specified.<sup>33</sup> In general, regardless of men and women, the age gap between the adoptees and adopters without a spouse need to reach 40 years of age or more to avoid using the adoption to achieve illegal purposes. Strict requirements on the age gap between adoptees without spouses and adoptees of the opposite sex are based on the legislative considerations to protect adoptees (Xue and Xie 2020, p. 529). (iii) Regarding the procedural conditions, the Civil Code adds the adoption assessments. The civil affairs department of the people’s government shall evaluate the adoption.<sup>34</sup> This is a mechanism that has been implemented by the civil affairs department for several years, and the purpose is to avoid or reduce the occurrence of negative adoption relationships as much as possible and achieve the best interests of the adoptees (Xue and Xie 2020, p. 549).

The Civil Code also amends other contents of family law, such as deleting provisions relating to family planning, expanding the scope of application of divorce economic compensation<sup>35</sup> and adding the confirmation and denial of parent-child relationship.<sup>36</sup>

In conclusion, remarkable achievements have been made over the past 70 years. These include significant progress in equality between men and women, greater

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31 *Ibid*, s 1093.

32 *Ibid*, s 1098.

33 *Ibid*, s 1102.

34 *Ibid*, s 1105.

35 *Ibid*, s 1088.

36 *Ibid*, s 1073.

freedom of marriage and divorce, fairer and clearer distribution of rights and responsibilities between family members, increased attention to the rights and interests of children, women, the elderly, and persons with disabilities, and increasing concern on family stability and family civilization. However, compared with some Western countries, the reform of marriage and family law in China is relatively conservative and cautious. It fails to respond to some needs for social changes. Chinese marriage and family law is also facing some challenges.

### 3 Existing Challenges Since the 21st Century

This article mainly discusses four challenges that are particularly prominent and of great concern to people since the 21st century. These challenges are still existing in the current development of marriage and family law and require further responses.<sup>37</sup>

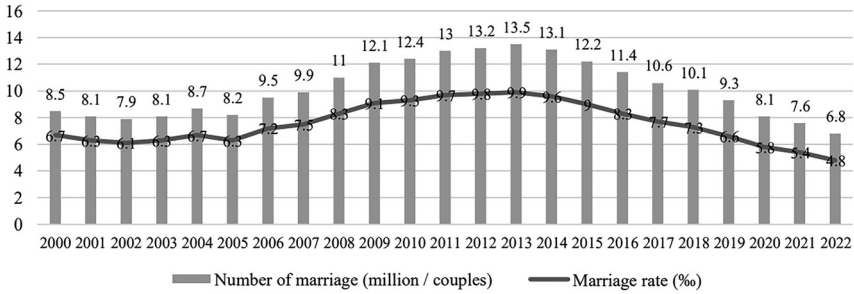
#### 3.1 Difficulty in Family Formation and Maintenance

Family is the warm harbor of an individual, the basic cell of society, and the solid foundation of a nation. But the formation and maintenance of a family in China become more difficult today. One reason is that some family functions are weakened and replaced by society. For example, the function of caring for elderly parents and kids was strong in the past. Now, society can provide services to look after elderly parents and children in ways that only families could provide in the past, which makes family formation and child rearing become unnecessary for some people. A study indicated that with the expansion of urbanization and intensification of population mobility, family functions were declining and traditional family functions such as childcare, education, and elderly care were largely replaced by social services in China (Ding 2016).

A second reason is that getting married becomes increasingly harder. Chinese family law has a marriage-centered legislative tradition (Xu 2019) and attaches great importance to the construction of a marriage-based system. However, the number of marriages has already fallen by half (49.6 %) within only nine years from 2013 to 2022 (see Figure 2), which has aroused heightened concerns about the difficulty of getting married. Major reasons may include the unbalanced gender ratio with more males

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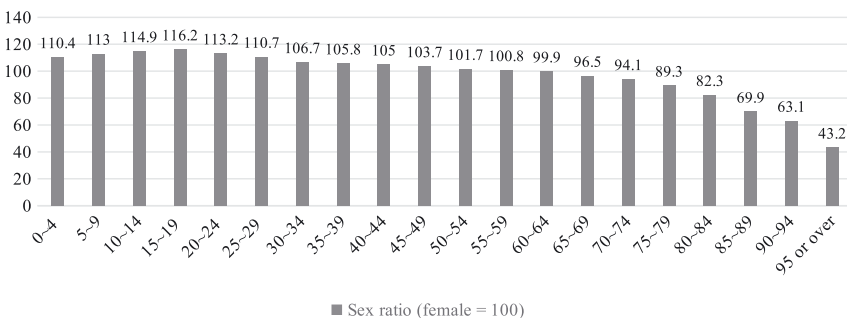
<sup>37</sup> The national statistics involved in this section do not include the Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan Province of China.



**Figure 2:** Number of marriage and marriage rate in China 2000–2022. Source: NBSC, *China Statistical Yearbook 2022* and *China Statistical Yearbook 2014*; Ministry of Civil Affairs of PRC, *Statistical Report on the Development of Civil Affairs 2007–2022*.

than females, high requirements for mate selection and the high cost of getting married.

On the one hand, traditional China was an agricultural society, and due to many realistic factors including carrying on family lineage, raising children to fight against aging, and increasing household labor force, son preference was deeply rooted in Chinese culture and still has an important impact on many people today. Son preference is the root cause of the imbalance of sex ratio at birth in China (Chen and Zhang 2019; Yang 2012). In 2021, China had 33.62 million more males than females and the sex ratio of the total population was 104.61. However, the sex ratio of the total population was an average number, which diluted the abnormally high sex ratio of the birth population, the high sex ratio of the marriageable population, and the low sex ratio of the elderly population. The sex ratio of the marriageable population aged 20–29 was more than 110 in 2021 (see Figure 3), which made it more difficult for males



**Figure 3:** Sex ratio in China 2021 (female = 100). Source: NBSC, *China Statistical Yearbook 2022*.

to find partners, especially in China where same-sex marriage is not legally recognized.

On the other hand, people have high criteria for mate selection and are disinclined to settle in a relationship, making it hard to find the right partner. Besides, apart from paying relatively high betrothal gifts, a large expenditure is required for preparing a wedding banquet, wedding room, gold and silver jewellery and so on. A survey shows that the cost of getting married requires some families to save up for nearly ten years in rural areas, and many families are burdened with heavy debts for adult children's marriage.<sup>38</sup>

A third reason is late marriage and non-marriage. The direct consequence of late marriage is late childbearing, which greatly reduces the possibility of having more children and is unfavourable for boosting birth rates. What's more, one study demonstrates that as the age of first marriage is delayed, there is a possibility that late marriage will turn into lifelong non-marriage (Feng 2019). Since the 21st century, the average age at first marriage for men and women has increased by more than 4 years old within 20 years, from 24.21 years old in 2000 to 28.67 years old in 2020.<sup>39</sup> In addition, in some East Asian societies including China, marriage and childbearing are inseparable to a certain extent, and most people don't give birth out of wedlock (Wang et al. 2018). The risk factors that may lead people to choose not to marry are also accumulating (Chen and Li 2020). Consequently, the growing unmarried population is likely to exacerbate the current low fertility rate risk in China.

Maintaining family stability is the legislative concept of marriage and family law in China. The difficulty in family formation and maintenance unquestionably poses great challenges to it.

## 3.2 Population Aging with Fewer Children

### 3.2.1 The Deepening of Population Aging

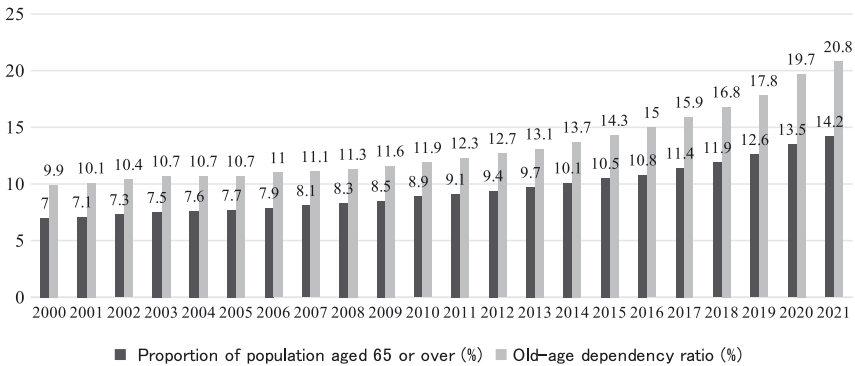
Population aging is the most basic national condition of China in the 21st century. Driven by rising life expectancy and declining fertility rates, the population aging is becoming more and more serious. The proportion of the population aged 65 or over increased from 6.96 % in 2000 to 14.9 % in 2022,<sup>40</sup> which means China has entered an

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<sup>38</sup> Qingdao Bureau of Statistics of Shandong Province, *Investigation Report on Marriage Relationship of Rural Youth in Qingdao*, 13 July 2021.

<sup>39</sup> NBSC, *China Population Census Yearbook 2020*.

<sup>40</sup> NBSC, *Statistical Communiqué of the PRC on the 2022 National Economic and Social Development; China Statistical Yearbook 2022*.



**Figure 4:** Old-age dependency ratio in China 2000–2021. Source: NBSC, *China Statistical Yearbook 2022*.

aged society.<sup>41</sup> And the pace of population aging has become much faster since the 21st century. Furthermore, the old-age dependency ratio has risen from 9.9 % in 2000 to 20.8 % in 2021 (see Figure 4). This suggests that per 100 working-age population was only responsible for supporting 9.9 elderly people in 2000 but was responsible for supporting 20.8 elderly people in 2021, that is, one elderly person needed to be supported by five working-age population in 2021. The increase in the old-age dependency ratio indicates that the working-age population and the overall economy face a greater burden in supporting elderly people. One core issue of population aging is the reduction in the number of labor force population. Data from the Seventh National Census in 2020 shows that compared with the Sixth National Census in 2010, the working-age population aged 15–59 decreased by more than 45 million people within 10 years.<sup>42</sup>

The deepening of population aging brings challenges to family law. For instance, how to protect the rights and interests of the elderly in remarriage and cohabitation relationships, how to implement the duty of spiritual support to the elderly parents which was inserted into the *Law on the Rights and Interests of the Elderly* in 2012,<sup>43</sup>

<sup>41</sup> According to the World Health Organization, a country is considered as an ‘ageing society’ if the share of people aged 65 years or more is 7 % or higher of the total population, as an ‘aged society’ if this share is 14 % or higher and as a ‘super-aged society’ if this share is 20 % or higher. Lin and Huang 2016. “Aging in Taiwan: Building a Society for Active Aging and Aging in Place.” *The Gerontologist* 56 (2): 176–83.

<sup>42</sup> See NBSC, *Tabulation on the 2010 Population Census of PRC, China Population Census Yearbook 2020*.

<sup>43</sup> Section 18 of the *Law on the Rights and Interests of the Elderly* stipulates that “Family members shall care for the mental needs of the elderly, and shall not ignore or cold-shoulder the elderly. Family members living apart from the elderly shall frequently visit or greet the elderly ...”.

how to improve the adult guardianship system to better protect the rights and interests of the increasing elderly people, how to improve family law to protect the elderly from abuse and neglect, and how to reduce or remove barriers for the elderly to participation in social activities. For instance, the age limitation is prevalent in society, including age limitation on employment and participation in other social activities (Guo 2023a). The solution to the issues related to population aging requires further research and the improvement of family law and other related laws.

### 3.2.2 Fewer Children

In China, the total fertility rate dropped to 1.3 in 2020 (Zhai et al. 2022), far below the replacement population level of 2.1. It failed to achieve the expected development goal that the total fertility rate in 2020 was 1.8, which was proposed by the State Council of PRC in the *National Population Development Plan (2016–2030)*. What's more, entering the 21st century, the birth rate and natural growth rate of mainland China have shown a clear downward trend in general. By 2022, the birth rate and rate of natural increase dropped to the lowest values, at 6.77 ‰ and –0.6 ‰ respectively.<sup>44</sup> This is the first negative population growth since the founding of the PRC except in 1960 and 1961.<sup>45</sup> In other words, it is the first negative growth in population over the last 61 years. China has a risk of stepping into the “low fertility trap” (He and Zhang 2022). In addition, the family size in China has become smaller. Since the 21st century, the average household size decreased from 3.4 persons per household in 2000 to 2.8 persons per household in 2021.<sup>46</sup> The proportion of one-person (25.3 %) and two-person (29.8 %) households was more than 50 % in 2020.<sup>47</sup> In consequence, the function of traditional intergenerational care is weakened as family size shrinks and childcare issues become a key factor in improving birth rates. What's more, the empirical investigation that I conducted in 2022 found that less than 7 per cent of respondents wanted to have three children under the three-child policy, and the four most important reasons why respondents didn't want to have three children are: limited economic conditions, shortage of childcare, high costs of raising children, and concerns about career development (Guo 2023b).

Chinese family law is facing the dual challenges of population aging and low birth rates in the 21st century. How to respond to these challenges is an important topic worthy of in-depth study. In terms of low birth rate, issues worthy of attention

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<sup>44</sup> NBSC, *Statistical Communiqué of the PRC on the 2022 National Economic and Social Development*.

<sup>45</sup> NBSC, “Moderate Growth of Total Population and Obvious Improvement in Population Structure” (11 September 2009) [http://www.stats.gov.cn/zt\\_18555/ztfx/qzxxgcl60zn/202303/t20230301\\_1920384.html](http://www.stats.gov.cn/zt_18555/ztfx/qzxxgcl60zn/202303/t20230301_1920384.html) accessed 3 October 2023.

<sup>46</sup> NBSC, *China Statistical Yearbook* from 2001 to 2022.

<sup>47</sup> NBSC, *China Population Census Yearbook 2020*.

may include but not limited to: Should the legal age of marriage in the Civil Code be adjusted to allow women aged 18–20 and men aged 18–22 to register for marriage, should the limitation on the number of children that people want to have be deleted from the *Population and Family Planning Law (2021 Amendment)* (the New PFPL), and how to legally regulate and promote the development of childcare services?

### 3.3 Application of Assisted Reproductive Technology

The advancement of science and technology has not only driven economic development and dramatic changes in family life but also brought challenges to marriage and family law. The application of assisted reproductive technology (ART), especially surrogacy, brings complex issues around human rights (Flores 2023), inequality (Jacobson and Rozée 2022), exploitation (Wilkinson 2016), and so on. Besides, it overthrows the traditional determination of parentage based on blood relationships and raises legal issues. For example, how to determine the parentage of the children born via ART? What is the nationality of the children born via cross-border surrogacy? Children born through cross-border surrogacy may be denied nationality of the country of their intended parents (Saxena et al. 2012).

In China, ART is only allowed under certain circumstances. The *Measures on the Administration of Human Assisted Reproductive Technology* (the MAHART), adopted by the Ministry of Health of PRC in 2001, states that the application of ART should be carried out in medical institutions for medical purposes and in compliance with national family planning policies, ethical principles, and provisions of relevant laws.<sup>48</sup> By contrast, surrogacy is prohibited no matter it is paid or unpaid. The MAHART provides that it is forbidden to buy and sell gametes, zygotes and embryos in any form, and medical institutions and medical personnel are not allowed to implement any form of surrogacy technology.<sup>49</sup> Regarding the determination of parentage, the Civil Code hasn't responded to it, but Section 40 of judicial *Interpretation (I) on the Application of the "Marriage and Family" Book of the Civil Code* provides that "where both husband and wife agree to artificial insemination during the marriage, the child born to the spouses shall be deemed to be a child born in wedlock ..." What if one party regrets agreeing to carry out artificial insemination? A Guiding Case of the Supreme People's Court held that:<sup>50</sup>

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48 The MAHART, s 3.

49 *Ibid.*

50 Guiding Case No. 50 of the Supreme People's Court issued on 15 April 2015.

During the marital relationship, both parties agree to use other people's sperm for artificial insemination and impregnate the woman, if the man repents but the woman insists on giving birth to the child, regardless of whether the child was born during the marital relationship or not, it should be regarded as a child born in wedlock of both parties.

Many controversial issues about surrogacy have entered judicial proceedings and become a hotspot of family law, including but not limited to the validity of surrogacy contracts; bearing of surrogacy costs; refund on failure to conceive; visitation right of biological mother; and determination of parentage and child custody (see Table 3).

However, China lacks special laws to regulate the issues caused by ART, which easily leads to problems such as different verdicts on the same case. For example, the judgments of the court of first instance and the court of second instance were completely different in the first national custody dispute about the surrogate child (see *Chen Mou and Luo Moujia* in Table 3). The MAHART is a departmental regulation binding on all types of medical institutions that carry out ART.<sup>51</sup> It cannot prevent organizations and individuals outside medical institutions from carrying out surrogacy, nor can it prevent citizens from entering surrogacy contracts. The current regulations with relatively low legal rank and incomplete contents are not adequate to address the challenges of ART.

## 3.4 Prevalence of Divorce, Remarriage, and Cohabitation

### 3.4.1 Divorce

Divorce is the determination of marriage relationship, which may pose substantial challenges to family stability. With the changes in people's marriage and family concepts, improvement of women's economic independence, wide acceptance of divorce, and so forth, divorce has become prevalent. The emotional harm caused by divorce to the parties, children, and families should not be underestimated. Property division disputes, child custody disputes, and debt settlement disputes often occur during divorce. But it should be acknowledged that divorce is also a dissolution of a "dead marriage" and so is a blessing for some parties involved (Guo 2022). After the enforcement of the cooling-off period, the divorce rate decreased in 2021 and 2022. However, the total number of divorces is still very large, exceeding 2.9 million couples in 2022.<sup>52</sup>

The prevalence of divorce is a challenge for family law to avoid rash divorce and maintain family stability. The large number of judicial divorce cases also leads to

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<sup>51</sup> The MAHART, s 2.

<sup>52</sup> Ministry of Civil Affairs of PRC, *The Statistical Bulletin on the Development of Civil Affairs 2022*.

Table 3: Typical cases about surrogacy in China.

Case number	Issues	Judgments
<i>Zhao Mou and Han Mou</i> (2021) Jing 01 Minzhong No. 1433	Validity of surrogacy contracts	The court held that Zhao's behaviour of arranging XXX for Han's wife and surrogacy and agreeing that the sex of the embryo should be a boy, violated public order and good morals, social ethics, and the MAHART. <sup>5</sup> So the surrogacy contract was invalid. Both parties had equal faults for the invalidation and bore equal responsibilities. The failure of embryo cultivation has incurred costs, so Zhao should return 380,000 RMB to Han (Han previously paid 460,000 RMB to Zhao).
<i>Zhao Mourmou and Chen Mou</i> (2019) Jing 02 Minzhong No. 13918	Bearing of surrogacy costs	The court of first instance held that Zhao and Chen's behaviour of doing surrogacy abroad circumvented domestic laws and regulations and violated the MAHART, so it wasn't recognized by domestic law. The expenses paid by Zhao should be borne by himself. The court of second instance held that the cross-border surrogacy agreement was invalid. Both Zhao and Chen had equal faults, therefore, each party should bear half of the incurred surrogacy expenses. (Chen was Zhao's boyfriend)
<i>Zheng Mou and Xu Mou, Yan Mou</i> (2018) Gan 1121 Minchu No. 3180	Refund on failure to conceive	The court held that the surrogacy agreement was invalid because it violated the MAHART, public order and good morals. The payments obtained by Yan (surrogate mother) were illegal payments. Based on the degree of fault between Zheng (intended father) and Yan and the facts, Yan and her husband Xu should return the remaining surrogacy costs paid by Zheng after deducting the actual expenses and personal losses for surrogacy. (Yan miscarried during the surrogacy process)
<i>Xie Mou and Gao Mou 1</i> (2018) Yu 05 Minzhong No. 3328	Visitation rights of biological mother	The court held that Xie and Gao 1's agreement was invalid because it violated public order and good morals. Gao 1 impregnated Xie through natural conception and gave birth to Gao 2. Xie received the agreed remuneration. Gao 2 was raised by Gao 1 and his wife Tao. Tao had intention and fact of raising and educating Gao 2 and formed a step-parent-child relationship. The court decided Xie had visitation rights but didn't support her claim to visit Gao 2 for it wasn't conducive to Gao 2's healthy growth.

Table 3: (continued)

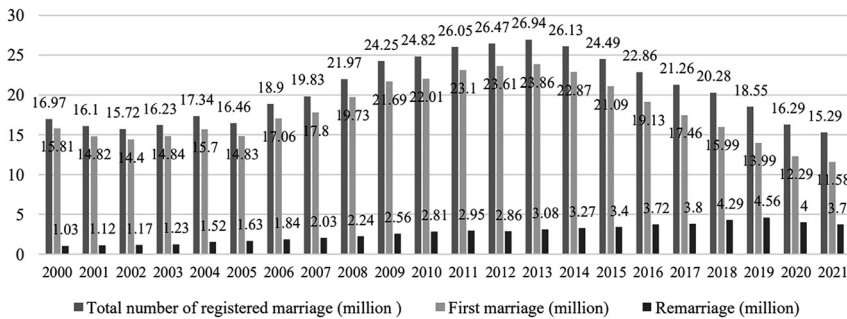
Case number	Issues	Judgments
<i>Chen Mou and Luo Moujia</i> (2015) Hu Yizhongshao Minzhong No. 56	Determination of parentage and child custody	The court of first instance held that Chen neither provided eggs nor gave birth to the two children (born by buying eggs and surrogacy), she also didn't register for adoption, so there was no parentage between Chen and the children. The court of second instance held that Chen regarded the children as her children, fulfilled a mother's duties and formed a step-parent-child relationship, which couldn't be terminated by the death of their biological father (Chen's husband). The court decided Chen rather than the children's biological grandparents had custody of the children.

<sup>a</sup>Section 17 of the MAHART provides that medical institutions that perform ART are not allowed to conduct gender selection. Except as otherwise provided by laws and regulations.

high trial pressure and challenges for the court. According to the *Gazette of the Supreme People's Court of the PRC (2022)*, divorce cases accepted by courts of first instance (1.42 million) accounted for 79 % of all family and inheritance cases accepted by courts of first instance (1.79 million) in 2022. Furthermore, divorce cases become more complicated. For example, the types of property involved in divorce are becoming increasingly diverse, mainly from the previous pots, pans, appliances and furniture to today's houses, cars, stocks, wealth management products, shares of the company, intellectual property, insurance, and so on, and the value of the properties is shifting, making it difficult to divide the properties (Chen 2020).

### 3.4.2 Remarriage

A large number of divorces lead to increase in remarriage. Compared with first-married families, remarried families may face more complicated family relationships, may be more sensitive to property, and may be prone to disputes due to child rearing and property disposal, especially for remarried couples who have minor children in their previous relationships. Elderly people generally may have some property and have their own adult children, so their remarriage is more likely to have disputes over property issues. Such disputes include property division when divorce<sup>53</sup> and inheritance disputes after the death of one or both parties.<sup>54</sup> Both the number and proportion of remarriages have increased significantly since the 21st



**Figure 5:** Number of marriages in China 2000–2021. Source: NBSC, *China Statistical Yearbook 2022* and *China Statistical Yearbook 2014*.

<sup>53</sup> *Zhou Mou and Zhao Mou* (2017) Lu 14 Minzhong No. 673, Civil Judgment of Second Instance issued by Dezhou Intermediate People's Court of Shandong Province.

<sup>54</sup> *Cui Mou 1, Cui Mou 2, et al. and Shen Mou 1, Shen Mou 2* (2021) Yu 08 Minzhong No. 1413, Civil Judgment of Second Instance issued by Jiaozuo Intermediate People's Court of Henan Province.

century (see Figure 5). The number of remarriages only accounted for 6.5 % of the number of first marriages in 2000, but it increased to 32 % by 2021.

Remarriage is beneficial to mutual care and support between the remarried parties. But more detailed regulations should be made to solve possible disputes existing in the remarried family to protect the legitimate rights and interests of both parties and their children. The possible issues of remarriage are a challenge to family law, particularly for disputes arising from the remarriage of elderly people under the background of the deepening of population aging and prevalence of divorce in China. A study suggests that the separate property system, rather than common property system, is an effective way to improve the legal protection of property rights for remarriage of elderly people (Wu 2018.).

### 3.4.3 Cohabitation

Cohabitation<sup>55</sup> becomes increasingly common in China. According to the stratified and equal-probability random sampling survey in 25 provinces conducted by the Institute of Sexuality and Gender of Renmin University of China, the proportion of unmarried people aged 18 to 61 cohabiting in China was 21.4 % in 2000, 24.6 % in 2010, and 31.4 % in 2015 (Zhang and Pan 2016). Although women, children and other vulnerable parties in the cohabitation may suffer harm (Li 2020), the Civil Code and other laws still have no special provisions to protect the rights and interests of the cohabitants. One party, who performs more duties in raising children, taking care of the elderly or assisting the other party in his or her work, doesn't have the right to claim compensation from the other party in the case of separation (Yang and Lin 2020). If one party has difficulty in supporting himself or herself, the other party who can afford it can refuse to provide appropriate assistance when they break up. Both parties also don't have succession rights to each other.<sup>56</sup> But if they are married couples, they are entitled to the above-mentioned reliefs and succession rights.<sup>57</sup>

In addition, the law tends to protect reproductive rights of married couples, while the reproductive rights of cohabitants are not equally protected. The New PFPL stipulates that "citizens" have the reproductive rights,<sup>58</sup> however, it also provides that "one couple may bear three children",<sup>59</sup> and "the couples who bear children ... may receive the rewards of extended maternity leaves or other welfare

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<sup>55</sup> In this paper, cohabitation refers to unmarried cohabitation and doesn't include *de facto* marriage.

<sup>56</sup> The Civil Code, s 1127.

<sup>57</sup> *Ibid*, s 1061, s 1088, s 1090.

<sup>58</sup> The New PFPL, s 17.

<sup>59</sup> *Ibid*, s 18.

treatments.”<sup>60</sup> Apparently, the law vests in married couples the right to receive rewards for extended maternity leave or other welfare benefits, but these are not available to cohabitants in law.

The prevalence of cohabitation is a great challenge for family law to protect the rights and interests of people who are unwilling to marry but want to live together, especially for the weaker party. With the deepening of the population aging, many elderly people also choose to live in cohabitation. Some researchers suggest making the cohabitation law to address the challenge of cohabitation (Chen and Wang 2008; He 2021).

## 4 Prospects for the Future

As one of the ancient civilizations of the world, China has emphasized the importance of family from old times. As one famous saying, from the classical Chinese work *Mencius · Li Lou I* states, “The root of the kingdom is in the State. The root of the State is in the family.” The report of the 20th National Congress of the CPC, issued in October 2022, highlighted to exercise law-based governance on all fronts and advance the rule of law in China. Undoubtedly, the construction of the rule of law in marriage and family is also an inseparable part of it.

Looking back to the evolution and achievements of marriage and family law over the last 70 years, it can be found that marriage and family law continue to develop on a path of pursuing gender equality, freedom of marriage, protecting the rights and interests of women, children, the elderly, and disabled persons. The marriage and family law reform reflects the characteristics of inheritance and development, valuing problem orientation and problem solving, and keeping pace with societal changes. Its legislative concept is to maintain family stability and build family civilization. The future development of marriage and family law will absorb these beneficial legislative experiences.

Taking the inheritance and development of Chinese culture as an example, the further advancement of marriage and family law will rely on the cultural soil in which it grows and seek answers from the wisdom of the ancients as well. The report of the 20th National Congress of the CPC stated, “We must stay confident in our history and culture, make the past serve the present, and develop the new from the old ... carry forward fine traditional Chinese legal culture ... ” Family law is one of the legal systems that can best inherit and carry forward Chinese culture to develop itself. As mentioned above, the newly added legal clauses relating to spiritual support for elderly parents, maintaining an equal, harmonious, and civilized marriage and

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<sup>60</sup> *Ibid*, s 25.

family relationship, and family civilization construction, are all inheritance and development of China's excellent traditional culture. Chinese marriage and family law is produced and developed under its unique historical conditions and is deeply rooted in fine traditional Chinese culture. Its future development will continue to take the advantage of this culture.

Regarding the specific fields of marriage and family law, the future development will focus on the formulation of new laws and the revision, supplementation, and implementation of existing laws to address its existing challenges and other family law issues. On the one hand, some new areas should be paid great attention to fill in the gap in the family law system. For example, facing the challenge of population aging with fewer children, new laws may be made to support the childrearing, such as law on the childcare services. *Outline of Women's Development in China (2021–2030)* and *Outline of Children's Development in China (2021–2030)*, released by the State Council of PRC in September 2021, state to improve support measures, including legal measures, to boost birth rates. Besides, to respond to the challenge of prevalent cohabitation, cohabitation law is another gap that needs to be filled. It's not only conducive to guiding the public to recognize and respect cohabitants and their children more but also helpful to balance family stability and individual freedom and to provide a special legal basis for judicial proceedings. In addition, exploring the family procedure rules is one goal of the reform of the mode and working mechanism of the family trial.<sup>61</sup> This reform has currently entered the further deepening reform stage, and the family procedure law is expected to be made in the future.

On the other hand, it's necessary to revise, supplement, and implement the existing marriage and family law. For instance, the current legal age of marriage is 22 for men and 20 for women.<sup>62</sup> It has the orientation of guiding late marriage and a sense of gender inequality. To create a more equal environment and promote marriage at appropriate ages, the legal age of marriage should be lowered and unified to 18 for both men and women, which is consistent with the age a person becomes an adult and the age at which civil juristic acts can be independently performed,<sup>63</sup> and can improve the coordination of the internal system of the Civil Code. Another example is the implementation of the Anti-Domestic Violence Law. The *Outline of the 14th Five-Year Plan (2021–2025) for National Economic and Social Development and Vision 2035 of the PRC*, issued by the National People's Congress in

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61 Supreme People's Court, *Opinions on Conducting the Pilot Program of the Reform of the Mode and Working Mechanism of Family Trial* (2016).

62 The Civil Code, s 1047.

63 Ibid, ss 17–18.

March 2021, provided that “a legal and policy system to support family development will be built to ... strengthen the implementation of the Anti-Domestic Violence Law ...” The enforcement of the Anti-domestic Violence Law can be improved by making judicial interpretations, guidance opinions or implementing rules to protect women and children from domestic violence. Furthermore, the implementation of spiritual support for elderly parents should not be ignored. Spiritual support from the family is the best way to meet the spiritual care and needs of elderly parents.

Besides, constantly keeping an open mind and staying humble to learn from the beneficial experiences of other countries. *Decision on Major Issues Pertaining to Comprehensively Promoting the Rule of Law* stipulated that we need to learn from the beneficial experience of foreign rule of law. It is necessary to absorb the beneficial experiences of legislation and practices of other countries in the field of adult guardianship, regulation of ART, regulation of cohabitation, and so on.

## 5 Conclusions

Chinese family has changed dramatically over the past 70 years. In response to these changes, marriage and family law also changed significantly and made substantial achievements both in systematic structure and institutional contents. It has achieved the abolition of the feudal marriage and family system and emancipation of women, the institutional restoration and contents enrichment, the legislative refinement and family justice reform, and the systematic regression and institutional innovation. Despite the great achievements made so far, four grand challenges have existed since the 21st century – family formation and maintenance become more difficult; the population aging is deepening and the birth rate is declining; the application of ART lacks necessary and special legal regulation; and the divorce, remarriage, and cohabitation is prevailing. The future development of Chinese marriage and family law will absorb the beneficial legislative experience from the last 70 years and the excellent Chinese traditional culture, formulate new laws for the empty fields and refine existing laws to respond to the existing challenges and other marriage and family issues, and humbly learn from beneficial foreign experiences, to maintain family stability and construct family civilization.

**Research funding:** This research was supported by the Postdoctoral Program of China Scholarship Council (CSC No. 202208510080), the Social Science Research Program in Sichuan Province 2023 (Project No. SCJJ23ND413), and the Social Science Research Program in Sichuan Province 2022 (Project No. SC22C010).

**Competing interests:** No potential competing interests was reported by the author.

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