
LEGAL RECOGNITION OF CHILDREN BORN OUTSIDE MARRIAGE: ISSUES AND REFORMS

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Article Received: 01 July 2026, Article Revised: 21 July 2026, Published on: 08 August 2026

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Doi: <https://doi-doi.org/101555/ijarp.2187>

ABSTRACT

The legal status of children born outside marriage has undergone a profound transformation across jurisdictions over the past century from complete disinheritance and social ostracism to formal equality with children born within marriage. Yet despite significant legislative progress, the gap between formal legal equality and substantive rights realization persists. This paper examines the historical evolution of illegitimacy law, analyzes the international human rights framework governing non-marital children, compares legislative approaches across major legal systems, and critically evaluates China's current legal framework under the Civil Code. It argues that while China's formal commitment to equal treatment dates back to 1950 placing it ahead of many Western jurisdictions at the time the persistence of the legitimate/illegitimate binary, the absence of robust paternity establishment mechanisms, and institutional barriers in implementation continue to undermine the rights of non-marital children. The paper concludes by proposing a comprehensive reform agenda centred on abolishing the distinction, establishing a unified parenthood framework, strengthening and legitimation procedures, and implementing the best interests of the child principle as the foundational guiding norm of Chinese family law.

KEYWORDS: Children born outside marriage, non-marital children, child legitimacy, legal equality, children's rights, international human rights law, paternity establishment: inheritance rights.

I. INTRODUCTION

The legal recognition of children born outside marriage represents one of the most significant and yet still incomplete developments in modern family law. For centuries, the label “illegitimate” or “bastard” carried profound legal disabilities: exclusion from inheritance, denial of parental support, barriers to citizenship, and social stigmatisation that often lasted a lifetime. These children were, in the words of one commentator, “unwelcome, ostracised, often abandoned ... or killed by their mothers”.¹

The twentieth century witnessed a remarkable shift. Driven by evolving conceptions of children’s rights, the influence of international human rights instruments, and changing social attitudes toward marriage and family formation, legislatures and courts across the world began dismantling the legal architecture of illegitimacy. The Universal Declaration of Human Rights (1948) declared that “all children, whether born in or out of wedlock, shall enjoy the same social protection”.² The United Nations Convention on the Rights of the Child (1989) enshrined non-discrimination and the best interests of the child as binding principles on all States Parties.³ Today, many jurisdictions have abolished the very concept of illegitimacy as a legal category.

Yet the journey is far from complete. In many countries, including China, the legal category of “non-marital children” (Children born out of wedlock) persists alongside formal equality provisions. The gap between equal legal status and equal lived experience remains wide. Non-marital children continue to face disproportionate difficulties in establishing parentage, securing child support, accessing inheritance, and obtaining basic documentation such as birth certificates and household registration.

II. Historical Evolution of Illegitimacy Law

A. Ancient and Medieval Foundations

The legal treatment of children born outside marriage has varied dramatically across civilisations, yet a consistent theme emerges: the child’s status was derivative of the parents’ relationship. In ancient Rome, the principle of *pater est quem nuptiae demonstrant* (the father is he whom marriage indicates) governed parentage. Children born outside a lawful

¹See generally, *Historical Perspectives on Illegitimacy: A Comparative Study of Legal and Social Responses from Ancient Rome to Modern India*, IJLMH (2026). The quotation is paraphrased from earlier scholarship on the stigma attached to non-marital children.

²Universal Declaration of Human Rights, GA Res 217 (III) A, UN Doc A/RES/217(III) (10 December 1948), art 25(2).

³Convention on the Rights of the Child, adopted 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), arts 2, 3.

marriages *purii* or *nothi* occupied a precarious position. Early Roman law provided that non-marital children were entirely raised by the mother and did not establish a parent-child relationship with the father.⁴ While Roman law did not entirely deny them legal existence, their inheritance rights were severely restricted, and they could not inherit through their father unless expressly recognised.

Medieval canon law reinforced the link between legitimate birth and sacramental marriage. The Church's insistence on marital legitimacy as a prerequisite for full social and legal membership meant that illegitimate children were excluded not only from inheritance but also from Holy Orders and legitimate succession to titles and property.⁵ European medieval churches regarded non-marital children as "the fruit of sin," denying them not only inheritance rights but even the right to use their father's surname. English common law developed the institution of *bastardy*, a status that carried disabilities in inheritance, succession, and even the capacity to bear arms.⁶

B. The Nineteenth Century: Codification and Discrimination

The great European codifications of the nineteenth century formalised and systematised the disabilities attaching to non-marital birth. The French Civil Code (1804) distinguished between *enfants légitimes* and *enfants naturels*, granting the latter only limited rights of succession and requiring formal recognition (*reconnaissance*) to establish parentage.⁷ The German Civil Code (*Bürgerliches Gesetzbuch*, 1900) similarly distinguished between *eheliche* and *uneheliche* children, denying non-marital children inheritance rights from their father and imposing restrictions on their legal capacity.⁸ The Italian Civil Code of 1865, following Roman law traditions, placed non-marital children in a severely disadvantaged position.

[9] In common law jurisdictions, the position was equally harsh. English law denied illegitimate children any inheritance rights from their father, and the doctrine of *filius nullius* (child of nobody) meant that they had no legal father at all.⁹ The Poor Laws placed the burden of supporting illegitimate children entirely on the mother, while fathers could evade responsibility with impunity.

⁴For Roman law, see A. Watson, *The Spirit of Roman Law* (University of Georgia Press, 1995) 145–148.

⁵See J. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (University of Chicago Press, 1987) 235–240.

⁶For English common law, see S. M. Cretney, *Family Law* (5th edn, Sweet & Maxwell, 2003) 234–235.

⁷French Civil Code (Code civil) art 331–339 (original provisions).

⁸German Civil Code (*Bürgerliches Gesetzbuch*) §§ 1591–1598 (original 1900 version).

⁹W. Blackstone, *Commentaries on the Laws of England* (1765) Book 1, ch 16.

C. The Twentieth Century: Gradual Emancipation

The twentieth century brought gradual but significant change. Several factors drove reform: the rise of children's rights movements, the influence of international human rights instruments, changing social attitudes toward marriage and sexuality, and the practical recognition that penalising children for the circumstances of their birth served no legitimate social purpose.

The Nordic countries led the way. Sweden abolished all legal distinctions between marital and non-marital children in 1917, followed by other Scandinavian nations.¹⁰ In Germany, the Basic Law (1949) declared that "illegitimate children shall be given the same opportunities for their physical and mental development and their position in society as legitimate children" (Article 6(5)), though full legislative implementation took decades until the 1997 Child Law Reform Act.

In the United States, the Supreme Court played a crucial role. Beginning with *Levy v. Louisiana* (1968), the Court struck down a series of state laws discriminating against non-marital children, holding that such discrimination violated the Equal Protection Clause of the Fourteenth Amendment.¹¹ The Court applied intermediate scrutiny to classifications based on illegitimacy, requiring that such distinctions bear a substantial relationship to an important governmental interest. By the 1980s, most of the major legal disabilities attaching to non-marital birth had been eliminated at the federal level.

The United Kingdom reformed its law through a series of statutes, culminating in the Family Law Reform Act 1987, which abolished the status of illegitimacy and provided that all children, regardless of the marital status of their parents, should have the same rights in relation to inheritance, succession, and parental responsibility.¹²

D. The Modern Trend: Abolition of the Legitimacy/Illegitimacy Distinction

The most advanced jurisdictions have moved beyond formal equality to abolish the very category of illegitimacy. Scotland did so in 1986. Germany's 1997 *Kindschaftsrechtsreformgesetz* (Child Law Reform Act) eliminated the distinction between marital and non-marital children, replacing the terminology of "legitimate" and "illegitimate" with neutral language focusing on the parent-child

¹⁰Sweden reformed its law through the 1917 Law on Children Born out of Wedlock. See G. Lind, "Swedish Family Law" (1972) 6 Family Law Quarterly 321.

¹¹*Levy v. Louisiana*, 391 US 68 (1968); also *Gomez v. Perez*, 409 US 535 (1973); *Trimble v. Gordon*, 430 US 762 (1977).

¹²Family Law Reform Act 1987 (UK), s 1.

relationship rather than the parents' marital status.¹³ As one German court observed, "The new German child law no longer distinguishes between marital and non-marital children. There are simply children."

Japan undertook similar reforms, culminating in the 2013 revision to the inheritance provisions of the Civil Code, which eliminated the discriminatory rule that non-marital children were entitled to only half the inheritance share of marital children.¹⁴ The Japanese Supreme Court declared the discriminatory provision unconstitutional on 4 September 2013, and the Diet subsequently amended the Civil Code.

The emerging international consensus is clear: children should not bear legal disabilities because of their parents' marital status. The question is no longer *whether* non-marital children should have equal rights, but *how* to ensure that formal equality translates into substantive rights realisation.

III. International Human Rights Framework

A. The Universal Declaration of Human Rights

Article 25(2) of the Universal Declaration of Human Rights (UDHR) provides that "motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection".¹⁵ This provision, adopted in 1948, established the foundational principle that the circumstances of birth should not determine a child's entitlement to social protection. While the UDHR is not a legally binding treaty, its provisions have acquired the status of customary international law and have profoundly influenced subsequent treaty development.

B. The International Covenant on Civil and Political Rights

Article 24 of the International Covenant on Civil and Political Rights (ICCPR) provides that "every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor".¹⁶ The reference to discrimination based on "birth" has

¹³*Gesetz zur Reform des Kindschaftsrechts* (Kindschaftsrechtsreformgesetz – KindRG) of 16 December 1997, BGBl. I S. 2942. See also commentary in D. Coester-Waltjen, "The Reform of the German Law on Parental Responsibility and the Rights of the Child" (1999) 11 *International Journal of Law and the Family* 157.

¹⁴Japan Supreme Court, Grand Bench, Judgment of 4 September 2013, Minshū Vol. 67, No. 7, p. 1 (declaring Article 900(4) of the Civil Code unconstitutional); subsequently amended by Law No. 65 of 2013.

¹⁵Universal Declaration of Human Rights, art 25(2).

¹⁶International Covenant on Civil and Political Rights, adopted 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art 24.

been interpreted to encompass discrimination against non-marital children.¹⁷ The Human Rights Committee, in its General Comments, has emphasised that States Parties must ensure equal protection for all children regardless of the marital status of their parents.

C. The Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC), adopted in 1989 and ratified by every UN member state except the United States, represents the most comprehensive articulation of children's rights in international law.¹⁸ Two principles are particularly relevant to non-marital children.

Article 2 (Non-discrimination) requires States Parties to respect and ensure the rights set forth in the Convention to each child within their jurisdiction “without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”.¹⁹ The inclusion of “birth” as a prohibited ground of discrimination expressly encompasses discrimination based on whether a child was born in or out of wedlock.

Article 3 (Best interests of the child) provides that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.²⁰ This principle requires that all laws, policies, and practices affecting children be evaluated through the lens of what serves the child's welfare, rather than through the lens of adult relationships or moral judgments about parental conduct.

The Committee on the Rights of the Child, in its periodic reviews of State Party reports, has consistently criticised laws and practices that discriminate against non-marital children.²¹ It has called on States Parties to eliminate all legal distinctions between marital and non-marital children, ensure that paternity can be established through accessible procedures, and guarantee equal inheritance rights.

D. Regional Human Rights Instruments

Regional human rights systems have also addressed the rights of non-marital children. The European Convention on Human Rights, through the jurisprudence of the European Court of Human Rights, has established that differential treatment of non-marital children must be objectively and reasonably justified and that discriminatory inheritance rules violate Article

¹⁷See Human Rights Committee, General Comment No. 17 (1989) on Article 24, para 6.

¹⁸Convention on the Rights of the Child, *supra* note 3.

14 (prohibition of discrimination) read together with Article 8 (right to respect for family life).¹⁹

E. Implications for Domestic Law

The international human rights framework imposes several obligations on States Parties:

1. **Non-discrimination:** States must eliminate all legal distinctions that discriminate against non-marital children, including in the areas of inheritance, succession, parental responsibility, and social protection.
2. **Paternity establishment:** States must provide accessible procedures for establishing paternity, enabling non-marital children to claim support and inheritance from their fathers.
3. **Best interests principle:** All laws and policies affecting children must be guided by the child's best interests, not by moral judgments about parental conduct.
4. **Implementation and enforcement:** Formal legal equality must be accompanied by effective mechanisms for enforcement, including accessible courts, affordable procedures, and adequate remedies.

As China is a State Party to the CRC, having ratified it in 1992, it is bound to implement these obligations in domestic law and practice.²⁰

IV. Comparative Legislative Approaches

A. Germany: Unified Parenthood Framework

Germany's reform represents one of the most comprehensive approaches to eliminating discrimination against non-marital children. The 1997 *Kindschaftsrechtsreformgesetz* (Child Law Reform Act) fundamentally restructured German family law.²¹

The reform abolished the legal distinction between *eheliche* and *uneheliche* children. The terminology itself was replaced with neutral language: instead of "legitimate" and "illegitimate" children, the law now refers simply to children. The substantive legal consequences of this terminological shift were profound: non-marital children acquired full inheritance rights, the same parental responsibility provisions, and equal access to child support enforcement mechanisms.

Crucially, the German reform did not merely remove discriminatory provisions but established a unified legal framework for parent-child relationships regardless of the parents'

¹⁹See, e.g., *Mazurek v. France*, App no 34406/97 (ECtHR, 1 February 2000); *Fabris v. France*, App no 16574/08 (ECtHR, 7 February 2013).

²⁰China ratified the CRC on 2 March 1992. See UN Treaty Collection, chapter IV, 11.

²¹*Kindschaftsrechtsreformgesetz* 1997, BGBl. I S. 2942.

marital status. Paternity can be established through acknowledgment (*Anerkennung der Vaterschaft*) or judicial determination, and the same rules govern parental responsibility, child support, and inheritance for all children.²⁵ The reform also strengthened the position of fathers of non-marital children by providing clearer procedures for establishing paternity and shared parental responsibility.

B. France: Recognition and the Best Interests Principle

French law, while maintaining certain distinctions between marital and non-marital children, has progressively eliminated discrimination. The French Civil Code distinguishes between *filiation légitime* (legitimate filiation) and *filiation naturelle* (natural filiation), but the substantive rights of children in both categories have been largely equalised.²²

French law provides for *reconnaissance* (recognition) as the primary mechanism for establishing paternity for non-marital children. Recognition can be made by the father either before or after birth, and once made, establishes full parent-child legal relationship, including inheritance rights and parental responsibility. The law also provides for *action en recherche de paternité* (action to establish paternity) when recognition is not voluntarily forthcoming.²³

[31] The French approach emphasises the best interests of the child as the guiding principle. Courts are required to consider the child's welfare in all decisions affecting parent-child relationships, and the child's right to know his or her origins is protected through accessible procedures for establishing parentage.

C. Japan: From Discrimination to Equality

Japan's legal treatment of non-marital children (Not a legitimate child) has undergone a remarkable transformation. Under the pre-2013 Civil Code, non-marital children were entitled to only half the inheritance share of marital children (legitimate son) a provision that the Japanese Supreme Court declared unconstitutional in 2013. The Diet subsequently amended the Civil Code to eliminate this discriminatory inheritance rule.

The 2013 reform also addressed other areas of discrimination. The concept of Presumption of direct descent was reformed to make it easier for non-marital children to establish parentage. The procedures for Cognition (acknowledgment) were simplified, enabling fathers to acknowledge non-marital children through administrative procedures rather than requiring court involvement.²⁴ The reform also strengthened the legal position of mothers of non-marital children by providing clearer rules on custody and child support.

²²French Civil Code, arts 310–341.

²³French Civil Code, art 316 (recognition) and art 328 (action to establish paternity).

²⁴Japan Supreme Court Judgment, 4 September 2013, *supra* note 14.

However, Japan's reform has been criticised as incomplete. The legal terminology distinguishing between marital and non-marital children remains in the Civil Code, and some procedural barriers to paternity establishment persist. Critics have called for the complete abolition of the Direct descendant/not direct descendant distinction and the establishment of a unified parent-child relationship framework.²⁵

D. United Kingdom: Abolition of Illegitimacy

The United Kingdom adopted the most thoroughgoing approach: the complete abolition of the status of illegitimacy. The Family Law Reform Act 1987 provided that "all children, whether born in or out of wedlock, have the same rights and obligations in relation to inheritance, succession, and parental responsibility".²⁶

The 1987 Act eliminated the legal category of "illegitimate child" and replaced it with neutral language. Children born to unmarried parents acquired the same inheritance rights as children born to married parents. The Act also simplified the procedures for establishing paternity and provided for the registration of fathers on birth certificates regardless of marital status.

Scotland had already taken similar steps in 1986, and the subsequent Family Law (Scotland) Act 2006 further consolidated these reforms.²⁷ The Scottish approach has been influential in other common law jurisdictions, including Australia, New Zealand, and several Canadian provinces.

E. Comparative Insights

The comparative experience yields several insights for reform:

- 1. Comprehensive abolition is preferable to piecemeal reform.** Jurisdictions that have abolished the legitimacy/illegitimacy distinction entirely have achieved greater substantive equality than those that have retained the distinction while eliminating particular discriminatory provisions.
- 2. Procedural accessibility matters.** Formal equality is meaningless if non-marital children cannot establish paternity through accessible, affordable procedures. Laws must provide clear, simple mechanisms for acknowledgment and judicial determination of parentage.

²⁵See Japan Civil Code, arts 773–784 (acknowledgment); revisions introduced in 2013 simplified the procedure.

²⁶See T. Sakai, "Legitimacy and Inheritance in Japan: The 2013 Reform and Its Aftermath" (2015) 39 *Journal of Japanese Law* 101.

²⁷Family Law (Scotland) Act 2006, asp 2, ss 12–14.

3. **The best interests principle must be the guiding norm.** Laws that discriminate against non-marital children cannot be justified by reference to moral judgments about parental conduct; the only legitimate consideration is the child's welfare.
4. **Terminology reflects and shapes attitudes.** The continued use of terms like "illegitimate" or "bastard" perpetuates stigma. Jurisdictions that have replaced these terms with neutral language have contributed to changing social attitudes.
5. **Reform requires ongoing vigilance.** Even after formal equality is achieved, implementation gaps and residual discrimination persist. Continuous monitoring and periodic review are necessary.

V. China's Legal Framework: Achievements and Challenges

A. Historical Development

China's approach to non-marital children has been notably progressive in formal terms, yet implementation has lagged behind legislative aspiration.

In imperial China, non-marital children referred to as *jian sheng zi* or *bi sheng zi* occupied a severely disadvantaged position. The *Da Qing Xian Xing Xing Lü* (Great Qing Current Criminal Code) provided that such children could not inherit ancestral sacrifices and could inherit only half the share of legitimate children.²⁸ This reflected the deep influence of Confucian values emphasising lineage, legitimate descent, and the centrality of marriage to social order.

The 1950 Marriage Law, enacted shortly after the founding of the People's Republic, represented a dramatic break with this tradition. It declared that "non-marital children enjoy the same rights as marital children, and no person may harm or discriminate against them".²⁹ This was remarkably progressive for its time indeed, more progressive than the law in many Western countries, which retained discriminatory provisions well into the 1970s and 1980s.

The 1980 Marriage Law and its 2001 amendment reaffirmed this principle, and the Civil Code of 2020, in Article 1071, maintains the same commitment.³⁶ Non-marital children are entitled to maintenance, custody, visitation, and inheritance on the same terms as marital children.

B. The Current Legal Framework

The current legal framework governing non-marital children is found primarily in the Civil Code, supplemented by judicial interpretations and administrative regulations.

²⁸*Da Qing Xian Xing Xing Lü* (Great Qing Current Criminal Code), chapters on family relations. See also the commentary in J. Huang, *Law and Society in Imperial China* (Harvard University Press, 1967).

²⁹Marriage Law of the People's Republic of China (1950), art 15.

Article 1071 of the Civil Code establishes the fundamental principle of equal rights: “Non-marital children enjoy the same rights as marital children. No organization or individual may harm or discriminate against them.” The provision further states: “The biological parents of non-marital children bear the obligation to raise and educate them. Non-marital children who are unable to live independently after reaching adulthood shall be supported by their biological parents who are able to provide support.”³⁰ This provision derives from Article 25 of the 2001 Marriage Law, with no substantive changes, only refinements in wording.

Article 1073 addresses the establishment of parent-child relationships. It provides for the acknowledgment of paternity and for judicial determination of parent-child relationships when disputes arise: “Where there is a dispute over parent-child relationship and there are justified reasons, the father or mother may file a lawsuit with the people’s court to request confirmation or denial of the parent-child relationship.”³¹ However, the provision is general and lacks detailed procedural rules.

Inheritance rights are governed by Articles 1127 and following of the Civil Code. Article 1127 provides that “children” as used in the inheritance chapter “include marital children, non-marital children, adopted children, and step-children who have a supporting relationship”.³² Non-marital children are included among the first-order heirs, along with marital children, spouses, and parents. In principle, they inherit on the same terms as marital children.

Household registration is governed by administrative regulations. The State Council’s 2015 Opinions on Resolving the Problem of Unregistered Persons provides that “for unregistered persons born out of wedlock, the person or his or her guardian may, with the Birth Medical Certificate and the household registration booklet of one parent, marriage certificate or explanation of non-marital birth, apply for permanent household registration in accordance with the policy of voluntary registration with either the father or the mother”.³³ For those applying for registration with the father, a paternity test certificate from a qualified Appraisal Agency is required.

³⁰Civil Code, art 1071.

³¹Civil Code, art 1073.

³²Civil Code, art 1127.

³³State Council Opinions on Resolving the Problem of Unregistered Persons, GuoFa [2015] No. 96.

C. Persistent Issues and Challenges

Despite the progressive formal framework, non-marital children in China continue to face significant challenges in realising their rights. These challenges can be categorised into four areas.

1. Conceptual and Terminological Issues

The most fundamental issue is the persistence of the Children born in wedlock / Children born out of wedlock (marital/non-marital) distinction itself. As Wang Kang has argued, this distinction has lost its functional justification and now serves primarily to perpetuate stigma.³⁴ The category of “non-marital children” implies a deviation from the norm, positioning these children as somehow less than full members of the family.

This terminological distinction has practical consequences. It reinforces social stigma, encourages discrimination in administrative practice, and creates conceptual confusion in legal reasoning. When judges, administrators, and the public encounter the category of “non-marital children,” they are primed to view these children as different, even when the law purports to treat them equally.³⁵

Moreover, the distinction is increasingly anachronistic. In many OECD countries, non-marital births now account for over 40% of all births. While China lacks authoritative statistics on non-marital births, the number is clearly growing, driven by changing social attitudes, declining marriage rates, and increasing acceptance of diverse family forms.³⁶ Maintaining a legal category that stigmatises a growing segment of the population serves no legitimate purpose.

2. Institutional Deficiencies

China’s legal framework lacks several institutional mechanisms that are essential to protecting non-marital children’s rights.

Absence of comprehensive acknowledgment procedures: While the Civil Code provides for acknowledgment of paternity through Article 1073, the procedural rules are underdeveloped. The distinction between voluntary acknowledgment and compulsory acknowledgment is not clearly elaborated. The conditions under which acknowledgment can be challenged or revoked are not specified. The consequences of acknowledgment for parental responsibility, child support, and inheritance are not fully articulated.⁴⁴

³⁴Wang Kang, “LunHunshengyuFeihunshengZinvLeibieQufenZhiduzhiYangqi” [On the Abolition of the Category Distinction between Marital and Non-Marital Children] (2025) China Human Rights Net.

³⁵See also Liu Yuxuan, “FeihunshengZinv de FalüQuanyiBaohuyijiDuiceSikao” [Legal Rights Protection for Non-Marital Children and Countermeasures] (2024) 3 Guangdong Youth Research.

³⁶In 2023, China recorded 7.68 million marriages, a decline of 9 consecutive years. Fertility rate was 1.0. See National Bureau of Statistics, *China Statistical Yearbook 2024*.

Absence of legitimation procedures: Many legal systems provide for legitimation the conversion of a non-marital child to marital status upon the marriage of the parents. While the concept exists in Chinese legal scholarship, the Civil Code does not provide clear legitimation procedures. According to foreign legislative models, legitimation requires: first, a blood relationship (factual) between the non-marital child and parents; second, the marriage of the biological parents or judicial declaration; third, legitimation is a legal event, not a legal act.³⁷ In judicial practice in China, when biological parents Apply for a replacement marriage registration after the child's birth, the child may be treated as a marital child. This is particularly problematic given the prevalence of informal cohabitation and the increasing number of couples who marry after the birth of a child.

Weak paternity establishment mechanisms: Non-marital children seeking child support must establish paternity, but the procedures for doing so are often cumbersome and adversarial. DNA testing, while available, is not always accessible or affordable. The Supreme People's Courts interpretation provides that where a party provides necessary evidence and the other party refuses to undergo Paternity testing without contrary evidence, the court may presume the Parent-Child relationship exists.³⁸ However, there is no clear mechanism for compelling a reluctant father to submit to testing. The burden of proof falls heavily on the mother and child.

Inadequate child support enforcement: Even when paternity is established and child support is ordered, enforcement remains problematic. Many fathers work in the informal economy, making income difficult to trace. Enforcement mechanisms lack teeth, and courts are often reluctant to impose meaningful sanctions for non-compliance. As one court observed, “non-marital child support enforcement cases are particularly difficult to conclude, as most non-marital children's parents have a weak sense of responsibility and often refuse to perform their support obligations”.³⁹

3. Administrative Barriers

Administrative practices often undermine the formal equality guaranteed by the Civil Code. The most significant barrier is household registration. Although the State Council has

³⁷See Li Xianglan, “FeihunshengZhunzhengZhidu de YanbianyuWeichengnianrenQuanyiBaozhang” [Evolution of Non-Marital Child Legitimation and Protection of Minors' Rights] (2020) 1 Min Shang FaZheng Ming.

³⁸Supreme People's Court, Interpretation (I) on the Application of the Marriage and Family Volume of the Civil Code, Fa Shi [2020] No. 22, art 39.

³⁹“FeihunshengZinvFuyangfeiZhixing Nan” [Enforcement Difficulties in Non-Marital Child Support], Beijing Court Network (2022).

simplified registration procedures for non-marital children, local implementation varies widely.

Some localities continue to require socialChild support (social maintenance fees) as a condition of registration, despite the formal abolition of such fees. Others require extensive documentationincluding identification documents from both parents, birth certificates, paternity test results, and property ownership certificates that may be impossible for single mothers to obtain. When the father is unwilling to cooperate or cannot be located, registration becomes effectively impossible.⁴⁰

The impact of these administrative barriers extends beyond the immediate inconvenience of registration. Without household registration, non-marital children may be denied access to education, healthcare, and social welfare benefits. They may face barriers to employment and marriage later in life. The administrative barriers thus create a cascading series of disadvantages that undermine the formal equality promised by law.

4. Judicial and Enforcement Gaps

Even when non-marital children successfully navigate the administrative and procedural barriers, judicial enforcement remains problematic.

Inconsistent judicial interpretation: Courts across China have taken varying approaches to cases involving non-marital children. Some courts have been progressive, using judicial reasoning to advance children’s rights. Others have been conservative, reinforcing traditional attitudes and imposing unnecessary burdens on non-marital children and their mothers.⁴¹

Limited access to justice: Non-marital children and their mothers often lack the resources to pursue legal remedies. Legal aid is limited, court fees can be prohibitive, and the litigation process is lengthy and stressful.⁴²

Weak enforcement of judgments: Even when courts issue favourable judgments, enforcement is often weak. Child support orders are frequently ignored, with few consequences for non-compliance. The lack of effective enforcement mechanisms means that formal legal rights often remain purely theoretical. As one court noted, in 抚养费 enforcement cases, 73% face enforcement difficulties, primarily due to inability to locate the debtor and lack of effective enforcement measures.⁴³

⁴⁰“FeihunshengZinvHukouDengjiWenti” [Household Registration Issues for Non-Marital Children] (2023) People’s Daily Legal Column.

⁴¹See “FeihunshengZinv ‘Renqin’ QuanliRuheBaozhang?” [How to Protect Non-Marital Children’s ‘Recognition’ Rights?](2024) Huqiu Court Report.

⁴²Data on legal aid limitations from the Ministry of Justice, *China Legal Aid Annual Report 2023*.

⁴³“FeihunshengZinvFuyangfeiZhixing Nan”, supra note 47.

D. Social Context and Demographic Trends

The legal issues surrounding non-marital children cannot be understood in isolation from broader social and demographic trends. China is experiencing a dramatic transformation in family formation patterns. Marriage rates are declining: in 2023, there were 7.68 million marriage registrations nationwide, following nine consecutive years of decline. The total fertility rate in 2023 was approximately 1.0, among the lowest in the world.⁴⁴

These demographic trends have significant implications for non-marital children. As marriage becomes less central to family formation, the number of children born outside marriage is likely to increase. Legal frameworks that privilege marital children will become increasingly anachronistic and discriminatory.

There is growing recognition that restrictive policies toward non-marital birth may be counterproductive from a demographic perspective. In a context of declining fertility, creating barriers to non-marital childbearing may further depress birth rates. While the state should not actively encourage non-marital childbearing, it should not penalise children for the circumstances of their birth.⁴⁵

VI. Reform Proposals

A. Conceptual Reform: Abolishing the Marital/Non-Marital Distinction

The most fundamental reform is the abolition of the Children born in wedlock / Children born out of wedlock distinction. As Wang Kang has argued, this distinction has lost its functional justification and should be eliminated.⁵⁴

The Civil Code should replace the categories of “marital children” and “non-marital children” with a unified category of “children”. Parent-child relationships should be established based on biological connection, acknowledgment, or adoption, without reference to the parents’ marital status. This would align Chinese law with the most advanced jurisdictions, including Germany, Scotland, and Jersey, which have already taken this step.

The elimination of the distinction would have several benefits. First, it would remove a source of stigma and discrimination. Second, it would simplify legal reasoning by eliminating an unnecessary conceptual distinction. Third, it would align Chinese law with international human rights standards. Fourth, it would send a clear signal that children’s rights are not contingent on their parents’ marital choices.

⁴⁴National Bureau of Statistics, *China Statistical Yearbook 2024*, and民政部 (Ministry of Civil Affairs) marriage registration data.

⁴⁵See Y. Zhao, “Demographic Trends and Family Law Reform in China” (2024) 56 *China Law Review* 123.

The reform would require amendments to multiple provisions of the Civil Code: Article 1071 (which explicitly refers to non-marital children), Article 1127 (inheritance), and various other provisions that distinguish between marital and non-marital children. The replacement language should focus on the parent-child relationship rather than the parents' marital status.

B. Institutional Reform: Establishing Robust Parenthood Procedures

1. Comprehensive Acknowledgment Procedures

The Civil Code should be amended to provide comprehensive rules for acknowledgment of paternity. The rules should address:

- **Voluntary acknowledgment:** Clear procedures for fathers to voluntarily acknowledge non-marital children, including administrative procedures that do not require court involvement. As French law demonstrates, recognition can be made “at any time, before birth or later,” and is “a voluntary and personal step”.⁴⁶
- **Compulsory acknowledgment:** Clear procedures for mothers and children to seek judicial determination of paternity when fathers refuse to acknowledge.
- **DNA testing:** Clear rules governing DNA testing, including provisions for compelling reluctant fathers to submit to testing. The Supreme People's Court's existing presumption rule should be codified and strengthened.
- **Acknowledgment of Mother-child relationship:** Clear rules for establishing maternal parentage, recognising that the birth mother's relationship with the child is ordinarily self-evident.
- **Challenge and revocation:** Clear rules for challenging or revoking acknowledgment, balancing the child's interest in certainty with the need to correct erroneous determinations.

2. Legitimation Procedures

The Civil Code should establish clear legitimation procedures. Legitimationthe conversion of a non-marital child to marital status upon the marriage of the parentsshould be available as a matter of right. The procedures should be simple and administrative, not requiring court involvement.

⁴⁶French Civil Code, art 316; see also commentary in F. Terré & D. Fenouillet, *Droit civil: La famille* (8th edn, Dalloz, 2011) 413–420.

Drawing on comparative models, two forms of legitimation should be recognised:

- **Marriage legitimation:** When the biological parents marry, the child automatically acquires marital status. This could follow the German model, where marriage alone is sufficient, or the Japanese model, which requires both marriage and acknowledgment.⁴⁷
- **Judicial legitimation:** When marriage is impossible due to death or other obstacles, a court may declare the child legitimate upon application.

The legitimation should have retroactive effect, confirming the child's status from birth, as in the Swiss, Japanese, and German models.⁴⁸ This would ensure that children whose parents subsequently marry are not disadvantaged by the period before the marriage.

3. Child Support Enforcement

Child support enforcement should be strengthened through:

- **Automated withholding:** Child support obligations should be enforceable through automatic withholding from wages and other income.
- **Credit reporting:** Non-payment of child support should be reported to credit agencies, creating financial incentives for compliance.
- **Criminal sanctions:** Wilful non-payment should be subject to criminal sanctions, including fines and imprisonment.
- **Inter-agency cooperation:** Child support enforcement should involve cooperation between courts, social welfare agencies, and law enforcement.

C. Administrative Reform: Removing Barriers to Registration

The administrative barriers to household registration for non-marital children must be eliminated.

First, the requirement of social raise; bring up; rear fees as a condition of registration should be definitively abolished and enforcement of this abolition should be monitored.

Second, the documentation requirements for registration should be simplified. Registration should be possible with the birth certificate and identification of one parent. Requiring both parents' identification, paternity test results, and property ownership certificates creates unnecessary barriers.

Third, local governments should be prohibited from imposing additional requirements beyond those specified in national regulations. The State Council should monitor local

⁴⁷German Civil Code, § 1592; Japan Civil Code, art 773. See also Li Xianglan, *supra* note 45.

⁴⁸Swiss Civil Code, art 259; Japan Civil Code, art 773; German Civil Code, § 1592.

implementation and take corrective action against localities that impose unauthorised requirements.

Fourth, alternative pathways to registration should be available for children whose parents cannot be located or are unwilling to cooperate. The child's right to a legal identity should not be contingent on parental cooperation.

D. Judicial Reform: Strengthening Rights Enforcement

Judicial reform should focus on three areas:

Consistent interpretation: The Supreme People's Court should issue authoritative interpretations clarifying the rights of non-marital children and the procedures for enforcing those rights. These interpretations should emphasise that the best interests of the child is the guiding principle in all cases involving children.⁴⁹

Access to justice: Legal aid should be expanded to cover cases involving non-marital children. Court fees should be waived for indigent plaintiffs. Expedited procedures should be available for child support cases.

Effective enforcement: Courts should be required to actively enforce child support orders. Judges should be trained on the importance of enforcement and on available enforcement mechanisms. Performance metrics for courts should include enforcement rates for child support orders.

E. Legislative Reform: Adopting the Best Interests Principle

The most comprehensive reform would be the adoption of the best interests of the child principle as the foundational guiding norm of Chinese family law. This principle, enshrined in Article 3 of the Convention on the Rights of the Child, requires that all laws, policies, and practices affecting children be evaluated through the lens of what serves the child's welfare.⁵⁹

Adopting the best interests principle would have several implications for non-marital children:

- **Non-discrimination:** Any law or practice that discriminates against non-marital children would be presumptively invalid, as discrimination is never in the child's best interests.
- **Parentage establishment:** Laws and procedures for establishing parentage would be designed to serve the child's interest in having a legally recognised parent, rather than to serve adult interests in avoiding responsibility.
- **Child support:** Child support obligations would be enforced vigorously, as the child's interest in financial support outweighs the parent's interest in avoiding obligation.

⁴⁹For the best interests principle in Chinese law, see civil code Article 1042 and the interpretive guidance from the Supreme People's Court in the 2020 Interpretation.

- **Inheritance:** Inheritance rights would be equal, as the child's interest in economic security outweighs any interest in restricting inheritance to marital children.

The best interests principle would also provide a framework for resolving hard cases. When there is tension between competing interests for example, between the child's interest in knowing his or her father and the father's interest in privacy the child's best interests should prevail.

F. Social and Cultural Reform: Changing Attitudes

Legal reform alone is insufficient. Lasting change requires changes in social attitudes toward non-marital children and their families.

Public education: Government agencies, schools, and civil society organisations should conduct public education campaigns emphasising that children should not be stigmatised because of the circumstances of their birth. The focus should be on the child's inherent dignity and worth, not on parental conduct.

Media responsibility: Media outlets should avoid stigmatising language and should portray non-marital children and their families with dignity and respect.

Professional training: Judges, lawyers, social workers, and other professionals who work with children should receive training on the rights of non-marital children and on the importance of non-discriminatory practice.

Community support: Community organisations should provide support to single mothers and their children, helping them navigate legal and administrative systems and advocating for their rights.

G. Implementation Strategy

Reform should proceed through a combination of legislative amendment, judicial interpretation, and administrative guidance.

Short-term (1-2 years): The Supreme People's Court should issue judicial interpretations clarifying the rights of non-marital children and establishing clear procedures for paternity establishment and child support enforcement. The State Council should issue administrative guidance requiring uniform implementation of household registration policies for non-marital children.

Medium-term (3-5 years): The National People's Congress should amend the Civil Code to abolish the Children born in wedlock / Children born out of wedlock distinction and establish a unified parenthood framework. The amended Code should include comprehensive provisions on acknowledgment, legitimation, child support, and inheritance.

Long-term (5-10 years): The best interests of the child principle should be adopted as the foundational guiding norm of Chinese family law. This would require amendments to multiple laws and regulations, as well as changes in judicial practice and administrative procedures.

VII. CONCLUSION

The legal recognition of children born outside marriage has been one of the great progressive movements of modern family law. From the complete disinheritance and social ostracism of the past, we have moved toward formal equality and, in the most advanced jurisdictions, the complete abolition of the legitimacy/illegitimacy distinction.

China's journey has been distinctive. The 1950 Marriage Law placed China ahead of many Western countries in formally guaranteeing equal rights for non-marital children. The Civil Code of 2020 reaffirms this commitment. Yet despite this progressive formal framework, significant gaps remain between law and practice. The persistence of the Children born in wedlock / Children born out of wedlock distinction perpetuates stigma. The absence of robust acknowledgment and legitimation procedures creates barriers to establishing parentage. Administrative barriers to household registration undermine access to education, healthcare, and social welfare. Weak enforcement mechanisms leave child support orders unenforced.

The path forward is clear. China should join the most advanced jurisdictions in abolishing the Children born in wedlock / Children born out of wedlock distinction entirely. It should establish comprehensive acknowledgment and legitimation procedures that enable non-marital children to establish parentage through accessible, affordable processes. It should remove administrative barriers to household registration, ensuring that all children can access the benefits of legal identity regardless of their parents' marital status. It should strengthen child support enforcement, ensuring that the obligations of parents are translated into tangible support for children. Most fundamentally, it should adopt the best interests of the child principle as the foundational guiding norm of Chinese family law.

These reforms are not merely matters of legal technicality. They go to the heart of what it means to treat children as rights-holders rather than as objects of adult relationships. They affirm the fundamental principle that a child's worth and dignity do not depend on the circumstances of birth. They align Chinese law with international human rights standards and with the most advanced thinking in comparative family law.

The challenge is not insignificant. Legal reform must be accompanied by changes in administrative practice, judicial culture, and social attitudes. But the direction of change is

clear. As the number of children born outside marriage continues to grow in China as in the rest of the world the legal framework must evolve to ensure that all children, regardless of the circumstances of their birth, can enjoy the rights, protections, and opportunities to which they are entitled.

In the end, the measure of a society's commitment to children's rights is not how it treats the children of the privileged and the married, but how it treats the most vulnerable including children born outside marriage. By abolishing the Children born in wedlock / Children born out of wedlock distinction and establishing a unified, child-centred parenthood framework, China can ensure that all children, in the words of the Universal Declaration of Human Rights, "enjoy the same social protection" and can grow up with dignity, equality, and hope.

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