

Improvement of the Legal System for Addressing the Issue of Elderly Care in China in the Context of Population Aging

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Abstract: *Rapid population aging is a social reality facing China at present, and the issue of elderly care has become a hot topic of social concern. Legislation to address the issue of elderly care in the context of population aging should follow systematic concepts to achieve “vertical and horizontal integration.” In terms of content, it is necessary to formulate specific legal approaches around “the elderly and children,” with a focus on guaranteeing the livelihood and protection of the rights of the elderly while taking into account childbirth, employment and other issues. The laws should not only safeguard the social participation and labor rights of the elderly, but also effectively respond to the social challenges brought about by the aging of the population. It is also necessary to optimize the family planning policy to ease the burden of child-raising, improve the population structure and promote the long-term balanced development of the population, thus fundamentally solving the problem of population aging. The effort to improve the legal system to deal with the issue of elderly care in the context of population aging will better advance Chinese modernization.*

Keywords: population aging ♦ legal response ♦ the elderly and children ♦ old-age care ♦ family planning policy

Introduction: The issue of elderly care has become increasingly prominent in the context of population aging

In 2022, China’s population experienced negative growth for the first time in nearly 60 years. Population aging is an important social reality facing China. The rapid aging of the population directly leads to the increasing pressure on elderly care in China, which brings about many challenges such as the more prominent conflicts between supply and demand of medical and healthcare services, insufficient labor supply in the market, adjustment of the social consumption structure, an increased

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elderly care burden on families, increased pressure on social security expenditure, and prominent problems in the protection of the rights and interests of the elderly.

Xi Jinping, General Secretary of the Communist Party of China (CPC) Central Committee has emphasized that “Properly addressing the social problems brought about by population aging is related to the overall development of the country and the well-being of the people. It requires us to make great efforts to cope with it.”¹ China has the largest and fastest-growing elderly population, and the situation of population aging is extremely complex. “The more complex the development environment is, the more emphasis must be placed on the rule of law.”² To actively respond to the aging of the population, the country must give greater importance to the role of the law in consolidating the foundation, stabilizing expectations, and benefiting the long-term goals of elderly care.

The legal response to the issue of elderly care in the context of population aging is a systematic and sophisticated work arrangement, involving legislation, implementation, guarantee, supervision and intra-party regulations. This paper mainly discusses it from the legislative perspective. By strengthening legislation in key areas in response to the aging of the population, China aims to build a legal system guided by laws on the protection of the rights and interests of the elderly, population and family planning, and dominated by administrative regulations, departmental rules and normative documents, so as to achieve the goal of having laws that must be followed when dealing with the aging population. We should incorporate the implementation of the national strategy of “actively addressing population aging” into the rule of law, use the rule of law to solve the problem of elderly care, constantly improve the mechanism for safeguarding the rights and interests of the elderly, the regulation on the three-child family planning policy and supporting measures, and systematically play the important role of legislation in safeguarding the rights and interests of the elderly, promoting social participation, reducing the burden of childbirth, and improving the long-term balanced population development.

I. The “Vertical and Horizontal Integration” Legal System for Addressing the Issue of Elderly Care in the Context of Population Aging

Population aging is not simply an increase in the elderly population, but a dynamic change in the overall population structure related to newborns and the labor force. Therefore, to solve the problem of elderly care comprehensively, it is necessary to consider both the elderly population and the newborn population. General Secretary Xi Jinping says that “We need to improve the supporting policies and regulations for safeguarding the rights and interests of the elderly, and coordinate policies on child-

1. “The Political Bureau of the CPC Central Committee held the 32nd group study session on the situation and countermeasures of China’s population aging,” website of the Chinese government, accessed August 21, 2023, http://www.gov.cn/xinwen/2016-05/28/content_5077706.htm.

2. “Xi Jinping presides over the second session of the Commission for overall Law-based Governance of the CPC Central Committee and delivered an important speech”, website of the Chinese government, accessed August 21, 2023, http://www.gov.cn/xinwen/2019-02/25/content_5368422.htm?cid=303.

birth, employment, retirement, and elderly care.”³ Legislation to address population aging should not only focus on the elderly population, but also take into account child-birth, employment, and other related aspects, forming a legal system featuring “vertical and horizontal integration”.

A. The key points of the legal system for addressing elderly care in the context of population aging

To establish a legal system for addressing the issue of elderly care in the context of population aging, it is necessary to start with the decisive factors leading to population aging, grasp the key points of addressing population aging, and formulate targeted supporting laws and regulations. From the dynamic change of the overall population structure, two factors closely related to population aging can be found: life expectancy and fertility rate, that is, “the elderly and children.”⁴ In the *14th Five-Year Plan (2021-2025)*, the “implementation of the national strategy of actively addressing population aging” proposes that “We should formulate a long-term population development strategy, optimize family planning policies, focus on ‘the elderly and children’ to improve the population service system, and promote long-term balanced population development.” It can be seen that the fundamental basis for actively addressing population aging lies in improving the population structure. To promote the long-term balanced development of China’s population, it is necessary to improve the population service system, with a focus on the work related to “the elderly and children.” Therefore, although “the elderly and children” expresses the development direction of the population service system in the 14th Five-Year Plan, it is the working foundation of the entire legal strategy for actively addressing population aging.

On the one hand, the extension of life expectancy in China has become a major trend and an important indicator of social progress. In the early days of the founding of the People’s Republic of China, the average life expectancy of the population was only about 35 years. By 1980, it had already increased to 67.77 years, and by 2015, it had further improved to 76.34 years.⁵ In 2022, the average life expectancy in China reached 77.93 years, close to 80 years.⁶ The continuous increase in life expectancy reflects the substantial development of China’s social economy. At the same time, as the largest developing country, China is experiencing the largest and fastest population aging process. The changes in population structure will have a profound impact on various aspects of China’s society, economy, politics, culture, etc. On the other hand, China’s fertility rate continues to decline, and the total fertility rate is far below the

3. “The Political Bureau of the CPC Central Committee held the 32nd group study session on the situation and countermeasures of China’s population aging”, website of the Chinese government, accessed August 22, 2023, http://www.gov.cn/xinwen/2016-05/28/content_5077706.htm.

4. Qing Lianbin, “Strategic Choices and Policy Suggestions for Actively Addressing Population Aging with a ‘Two-Pronged Approach’,” *Journal of Northwest University (Philosophy and Social Sciences Edition)* 5 (2021): 42.

5. *China Statistical Yearbook 2021*, website of the National Bureau of Statistics, accessed August 22, 2023, <http://www.stats.gov.cn/tjsj/ndsj/2021/indexch.htm>.

6. “Average Life Expectancy Reaches 77.93 Years: China’s Major Health Indicators Take the Lead in Middle and High-Income Countries,” website of the Chinese government, accessed August 22, 2023, https://www.gov.cn/xinwen/2022-07/06/content_5699422.htm.

level of normal population generation replacement, showing obvious characteristics of “sub-replacement fertility.” In 2020, the total fertility rate in China was only 1.3, which means an average of 1.3 children per woman in her lifetime.⁷ According to research by the China Population and Development Research Center, preliminary calculations show that China’s total fertility rate had dropped to 1.09 in 2022, which is the lowest fertility level among countries with a population of over 100 million in the world. That is lower than Japan’s 1.29 in the same year, but slightly higher than the Republic of Korea’s 0.8.⁸ Internationally, a total fertility rate of 2.1 is generally considered the replacement level for a normal generation.⁹ Once the total fertility rate drops below 1.5, a low fertility rate will generate a “self-reinforcing mechanism” that leads to a continuous decline in fertility rate and makes it difficult to rebound, entering a “low fertility rate trap.”¹⁰ China’s total fertility rate has fallen below the “highly sensitive warning line” of 1.5, which is a serious warning signal. At present, the main contradiction in China’s population problem has changed from pressure from the total number to structural challenges. Life expectancy and fertility rate are key factors determining the process of population aging. Therefore, improving the elderly care system and optimizing the family planning policy have become key measures for building a legal system to cope with population aging.

In terms of legislation for “the elderly,” in 1996, China promulgated the *Law on the Protection of the Rights and Interests of the Elderly*, and it has been amended four times, in 2009, 2012, 2015, and 2018, to continuously improve the legal protection of the rights and interests of the elderly. In terms of legislation for “children,” China revised the *Population and Family Planning Law* in 2015 and 2021, changing the promotion of “one couple, one child” to “one couple, two children” and then to “one couple can have three children” respectively, in order to increase the birth rate. At the same time, in 2010, China promulgated the *Social Insurance Law*, establishing a social insurance system including basic pension insurance, with the aim of ensuring and improving people’s livelihood and promoting the rule of law in the social security system. The State Council, ministries, and local governments have also issued a large number of relevant administrative regulations, departmental rules, and local laws.¹¹

7. *China Statistical Yearbook 2021*, website of the National Bureau of Statistics, accessed August 22, 2023, <http://www.stats.gov.cn/tjsj/ndsj/2021/indexch.htm>.

8. Li Yue, Wang Qian and Zhang Xuying, “Where Is the Fertility Level Heading: Back Projection Estimation and Trend Prediction,” paper presented at the 2023 Annual Conference of the China Population Association.

9. Mou Xinyu and Guo Shanwen, *Dynamic Population Dividend: Theory and Practice* (Beijing: Hualing Publishing House, 2015), 52.

10. Shi Zhilei, *Ultra-low Fertility Rate and Orientation of Family Planning Policy in the Future* (Wuhan: Wuhan University Press, 2016), 24.

11. For example, in 2020, the State Council issued the *Opinions of the General Office of the State Council on Promoting the Healthy Development of Elderly Care and Childcare Services* and the *Opinions of the General Office of the State Council on Establishing and Improving the Comprehensive Supervision System for Elderly Care Services to Promote High-Quality Development of Elderly Care Services*; in 2020, the Ministry of Civil Affairs issued the *Management Measures for Elderly Care Institutions* (2020); in 2020, the National Bureau of Statistics released the *Classification of Pension Industry Statistics* (2020); in 2020, the National Health Commission issued the *Notice on Strengthening Home Medical Services for the Elderly by the General Office of the National Health Commission and the Office of the State Administration of Traditional Chinese Medicine*; in 2021, local regulations such as the *Elderly Care Services Regulations of Inner Mongolia Autonomous Region*, the *Social Elderly Care Services Promotion Regulations of Zhejiang Province* (2021 Amendment), the *Elderly Care Services Regulations of Guizhou Province*, and the *Elderly Care Services Regulations of Hebei Province* were issued.

Generally, although there are many laws and regulations to address population aging formulated by the National People's Congress, the State Council, ministries, and local governments, they are scattered in different fields and address only the symptoms, without forming a legal system of organic coordination. The legal system to address population aging should adhere to a systematic concept, ensuring both the supply of laws and the coordination of their relationships, in order to achieve a resonating overall effect.

B. The “vertical and horizontal integration” legal system for addressing the issue of elderly care in the context of population aging

Under the background of population aging, various aspects of the issue of elderly care are interrelated, and relevant legislation should systematically consider the interaction between the process of population aging and socio-economic factors.¹² Legislation addressing the issue of elderly care in the context of population aging involves multiple aspects such as safeguarding the rights and interests of the elderly, population and family planning, labor employment, and elderly care services. It is necessary to adhere to a systematic concept and build a legal system featuring “vertical and horizontal integration.”¹³

1. “Horizontal integration”: the legal system for addressing the issue of elderly care in the context of population aging

“Horizontal integration” refers to a legal system for addressing the issue of elderly care in the context of population aging that not only focuses on the elderly, but also expands the perspective to the entire population and all individuals. Through legislation, it promotes the overall optimization of the population structure and emphasizes the relevance and inclusiveness of the legislative targets. Increasing the birth rate and adding newborns is the fundamental solution to address population aging. In 2001, China promulgated the *Population and Family Planning Law*, emphasizing that China has a large population and that family planning is a basic national policy. The implementation plan for population and family planning should regulate control of the size of the population. Although China already entered an aging society in 2000, this law did not timely notice the issue of population aging and lacked scientific predictions for the trend of China's population. This shows that the legislative mechanism at that time had not achieved scientific legislation.¹⁴ Instead of achieving the goal of “governing by good laws,” this law has caused China to miss the opportunity to alleviate the aging population through a fourth “baby boom.”¹⁵ In 2015 and 2021, the *Population*

12. *Vienna International Action Plan on Aging 1982*, United Nations website, accessed September 22, 2023, https://www.un.org/chinese/esa/ageing/vienna3_3.htm.

13. Hu Zhan and Peng Xizhe, “Governance Choices to Deal with China's Aging Population,” *Social Sciences in China* 12 (2018): 134.

14. Cui Yingnan, “From the Scientificization of Legislation to Scientific Legislation,” *Expanding Horizons* 2 (2010): 61.

15. After the founding of the People's Republic of China, China experienced three “baby booms” in 1949-1958, 1962-1965, and 1981-1990. If calculated based on the legal marriage age (22 for men and 20 for women), the fourth “baby boom” should have occurred around 2004. Even if calculated based on the legally late marriage age (25 for men and 23 for women), the fourth wave “baby boom” should have occurred around 2009. However, the fourth “baby boom” has not yet arrived. See Zhao Hongren, “How to Deal with the Delay of the Fourth Wave of ‘Baby Boom’ in China,” *Modern Economic Information* 16 (2019).

and *Family Planning Law* was revised twice, first advocating for couples to have two children, and later legally establishing the status of the three-child policy.

However, according to statistical data, the revised law has not achieved the expected goals. This is due to various reasons: first, the effects of policies encouraging childbirth usually take 5 to 10 years to manifest. Singapore, Japan, the Republic of Korea, and China's Taiwan province all face this problem.¹⁶ Second, the transformation of China's childbirth policy is not proactive enough, which is a more important reason. The transition from restriction to relaxation of the policy is only the first step of the transformation and is not enough to completely reverse the declining birth rate. The transformation should be more proactive, upgrading from relaxation to support, and encouraging childbirth with practical measures. Currently, the efforts of China's laws to promote childbirth are still insufficient, and the policies and supporting measures to encourage childbirth have not been fully implemented. The government can issue legislation to provide child allowances, family allowances and tax reductions for families, stipulate paid maternity leave, paternity leave, and childcare leave, improve inclusive childcare measures, reduce the costs of family reproduction, upbringing, and education, and protect women's employment rights, thereby creating a social atmosphere that encourages childbirth, enhancing the overall willingness of the society to give birth to children, and increasing the overall birth rate.¹⁷

2. "Vertical integration": the legal system for addressing the issue of elderly care in the context of population aging

"Vertical integration" refers to the need for a top-down multi-level and detailed legal system to address the issue of elderly care in the context of population aging, emphasizing the connection between the upper and lower legislative levels and the content adapting to local conditions. Relevant legislation needs to achieve the integration and effectiveness coordination of laws and regulations, and build a "vertical integration" framework that integrates laws, administrative regulations, departmental rules, and local laws.

Currently, several laws in China have stipulated provisions for the rights and interests of the elderly. These include but are not limited to Article 45 of the *Constitution*, Article 260 of the *Criminal Law*, Article 1041 of the *Civil Code*, Article 3 of the *Law on the Protection of the Rights and Interests of the Elderly*, Article 32 of the *Population and Family Planning Law*, Article 38 of the *Law on the Protection of Women's Rights and Interests*, Article 2 of the *Social Insurance Law*, Article 70 of the *Labor Law*, Article 25 of the *Law on Basic Medical and Health Care and the Promotion of Health*, Article 45 of the *Legal Aid Law*, Article 15 of the *Data Security Law*, Article 34 of the *Public Library Law*, Article 11 of the *Tourism Law*, Article 9 of the *Law on the Guarantee of Public Cultural Services*, Article 16 of the *Sports Law*, Article 5 of the *Anti-Domestic Violence Law*, etc. The needs of the elderly for a better life and

16. China Population and Development Research Center, *International Population Policies Reference* (Beijing: Huawen Publishing House, 2018), 38.

17. Chen Mei, Zhang Mengxi and Shi Zhilei, "Research Progress on the World's Fertility Support Theory and Practice," *Population Journal* 6 (2021): 65-67.

the rights-based thinking of the elderly are highly consistent.¹⁸ These laws cover both public and private domains, including the rights to life security, health security, participation in society, spiritual comfort and other rights protection content for the elderly. And from various aspects such as physical, psychological, material, and spiritual, they have stipulated various legitimate rights and interests of the elderly. At the same time, local governments have also formulated relevant local regulations based on local conditions. In 2005, Beijing was the first to issue the *Home-based Elderly Care Service Regulations of Beijing*, followed by many other places that successively formulated local regulations such as elderly care service regulations, home-based elderly care service regulations, and elderly rights protection regulations. These local regulations mostly aim to actively respond to population aging, safeguard the rights and interests of the elderly, and develop the elderly care industry. They are based on laws and administrative regulations, such as the *Law on the Protection of the Rights and Interests of the Elderly*, and mainly regulate from the perspectives of family and society. Currently, the trend of formulating local regulations to address population aging is strengthening in various places. However, it is necessary to avoid simply repeating the content of superior laws and lacking detailed provisions that are tailored to local conditions.¹⁹

II. “Enjoying the Golden Years”: Improving Legislation on Elderly Care and Stimulating the Vitality of an Aging Society

In legislation addressing the issue of elderly care in the context of population aging, efforts should be made to tap into the vitality inherent in an aging society and ensure that the elderly can enjoy their golden years. General Secretary Xi Jinping emphasizes that “Efforts should be made to tap into the vitality and opportunities brought by population aging to national development.”²⁰ Population aging brings challenges to society, but at the same time, it contains opportunities. The impact of population aging should be viewed dialectically. On the one hand, improving the elderly care system is the foundation for actively addressing population aging. To stimulate the vitality of an aging society, it should be based on meeting the survival needs and ensuring the basic living of the elderly. On the other hand, promoting the elderly to contribute is the key to stimulating the vitality of an aging society. The *Law on the Protection of the Rights and Interests of the Elderly* stipulates that the main purpose of promoting the elderly to contribute is to meet their social needs.²¹ Allowing the elderly to actively participate in social activities and continue their efforts is an effective way to guarantee their dignity, which can enhance their confidence in life and improve their quality of life.

18. Zhang Wenxian, “Changes in the Principal Contradictions of Society in the New Era and the Modernization of Rule of Law in China,” *Law and Modernization* 4 (2018): 4.

19. Wang Yang, “Research on Strategies to Support the Development of the Aging Industry: Findings from Surveys in Shanghai, and Suzhou and Changzhou of Jiangsu Province,” *Shanghai Urban Management* 6 (2021): 11.

20. “The Political Bureau of the CPC Central Committee held the 32nd group study session on the situation and countermeasures of China’s population aging,” website of the Chinese government, accessed August 23, 2023, http://www.gov.cn/xinwen/2016-05/28/content_5077706.htm.

21. Li Mingxian, “Reviewing the Universality of Elderly Education from the Organic Connection of the Five Aspects of Policies for the Elderly,” *Education for the Senior* 3 (2016): 18-19.

A. Improve the elderly care system and establish laws to ensure a happy life for the elderly

To address the issue of elderly care in the context of an aging population, it is necessary to first improve the legal system for elderly care. This can be done by consolidating the fundamental status of family-based elderly care and improving the social elderly care service system, thereby forming a standardized force.

1. Strengthening legislation to protect family-based elderly care

The fundamental entity in China is not the individual, but the family.²² China has a fine tradition of respecting and caring for the elderly, and has always emphasized the fundamental role of family in elderly care. Although China has experienced rapid modernization, it does not mean that China will abandon traditional family-based elderly care. During the Fifth Plenary Session of the 19th Central Committee of the CPC, it was proposed to “support families in assuming the responsibility of elderly care.” The social elderly care system cannot completely replace the role of family in elderly care, and the fundamental position of family-based elderly care should still be focused on and strengthened.²³

First, legislation should respond to the objective reality of the weakened family-based elderly care, and consolidate the basic status of family-based elderly care. The family structure in China is getting smaller, leading to the constantly weakened family function of elderly care.²⁴ The elderly care model in China has undergone several changes. In the early days of the founding of the PRC, family-based elderly care was the main model. After the launch of the reform and opening-up policy, the socialization of welfare promoted the development of elderly care services outside the family. After 2000, the social service system for elderly care gradually clarified the three models of home-based, community-based, and institution-based elderly care. After 2013, the development of the elderly care industry further promoted the diversification of elderly care models.²⁵ On the one hand, the diversified development of elderly care models in China has become a major trend. On the other hand, influenced by the traditional culture of filial piety, the large population, complex social structure, and significant urban-rural differences in China, other elderly care models can be beneficial supplements but cannot replace the fundamental role of family-based elderly care. Traditionally, the moral nature of elderly care issues has led to a lack of awareness of the legal attributes of family-based elderly care among children and even relevant institutions, weakening the effectiveness of legal protection for elderly care.²⁶ In the

22. Zhang Yan, “What Is the Meaning of Life We Value: Family as a Basic Category of Law,” *Tsinghua University Law Journal* 1 (2016): 5.

23. Wang Yueheng, “Research on the Maintenance of Family’s Elderly Care Function in History: Focused on Law and Policy,” *Journal of Shandong Social Sciences* 5 (2015): 5.

24. Long Yuqi and Liu Ying, “On the Construction of a Three-dimensional Family-based Elderly Care Service Support System,” *Huxiang Forum* 1 (2020): 110.

25. Li Lu, “Changes in China’s Elderly Care Model in 70 Years,” *China Economic & Trade Herald* 18 (2019): 44-46.

26. Zheng Hua and Li Long, “On China’s Elderly Care Issues and the Governance Path of Nationalization and Legalization,” *Journal of Guangdong Institute of Public Administration* 5 (2016): 59-60.

continuous advancement of the modernization of the national governance system and capacity, the law has become an important carrier for maintaining the functionality of family-based elderly care. Legislation that strengthens the legal protection of the functionality of family-based elderly care is conducive to clarifying the responsibility of family members for elderly care, regulating the behaviors of family members, and constraining the supportive actions of relevant parties.

Second, legislation should strengthen the legal guarantee for family-based elderly care and support families in assuming the responsibility of elderly care. The *Constitution* explicitly stipulates in the chapter on “Citizens’ Basic Rights and Obligations” that “adult children have the obligation to support and help their parents,” which not only elevates this obligation to the constitutional level, but also implies that the state should assume appropriate legislative responsibility for safeguarding the rights and interests of the elderly. The *Civil Code* also stipulates in many places that adult children have the obligation to support their parents, and strengthens the responsibility of family members for elderly care, extending the obligation of support to grandchildren who have the ability to bear the obligations. The *Law on the Protection of the Rights and Interests of the Elderly* has a dedicated chapter on “Family Support and Care,” which stipulates the obligation of family members for elderly care and emphasizes the fundamental position of family-based elderly care. At the same time, this law not only focuses on the material life guarantee of the elderly, but also pays attention to their spiritual needs, stipulating that family members should care about the spiritual life of the elderly and enjoy the right to take home leave. It can be seen that the protection of the family’s elderly care function in China’s legislation is increasingly upgrading from being simple to detailed.

However, overall, these provisions are still relatively principle-based and abstract, with poor operability. Specifically, there are problems such as the relatively narrow scope of statutory support and elderly care obligations, the lack of a clear stance on the priority of support and elderly care obligations in the law, and insufficient attention to the spiritual needs of the elderly. At the same time, social security measures such as allowances, leave, taxation, employment, and housing for the elderly in families still need further implementation and strengthening.²⁷ Legislation needs to enhance the legal protection of family elderly care by refining specific provisions to make it more operable. Legislation can start by clarifying the responsibility system for family-based elderly care and implementing legal support for family-based elderly care, integrating the ethical goodness of family-based elderly care with the institutional foundation of good governance.²⁸

2. Improving the legislative network for elderly care services

When developed countries such as the United States and Japan built their di-

27. Bai Weijun and Wang Zouhengrui, “Research on Policy Support for Family-based Elderly Care in the Perspective of Active Aging,” *Journal of Beijing University of Aeronautics and Astronautics (Social Sciences Edition)* 1 (2021): 66-68.

28. Qin Lihui, “Legal Protection and Improvement Path of Family-based Elderly Care under the Background of Population Aging,” *Journal of Huazhong University of Science and Technology (Social Science Edition)* 2 (2021): 115.

versified elderly care service systems, they adopted a method of focusing on leading legislation and supplementing it with relevant legislation. They have formed a strict legal protection system through all-round and multi-perspective legal regulations. For example, the United States enacted the *Older Americans Act* in 1965, which is responsible for national elderly-related legal affairs. Subsequently, the United States has introduced laws specifically aimed at guaranteeing the lives of the elderly, such as the *Retired Senior Volunteer Program*, *Senior Community Service Employment Program*, *Employee Retirement Income Security Act*, *Age Discrimination in Employment Act*, and *Equal Cost-of-living-adjustment (COLA) Act*. In addition to specialized laws, the *Social Security Act*, *Health Insurance Portability and Accountability Act*, and *Family and Medical Leave Act* also involve the life security of the elderly.²⁹ These laws coordinate and form a multi-level, three-dimensional, and all-round legal system for elderly care services. As one of the countries with the highest degree of aging in the world, Japan enacted the *Basic Law on Measures for the Aging Society* in 1995 as the leading law. At the same time, laws such as the *National Pension Law*, *Act on Social Welfare for the Elderly*, *Elderly Health Care Law*, *Long-term Care Insurance Law*, and *Social Welfare Act* supplement the legislation and protection of the elderly in various aspects such as income, medical care, and long-term care. The successive introduction and updating of relevant legislation have made Japan's social elderly care service system complete and effective.³⁰

Article 5 of China's *Law on the Protection of the Rights and Interests of the Elderly* stipulates that "The state shall establish and improve a social elderly care service system based on home care, and supported by community and institutions." The three types of elderly care models complement each other and constitute the basic system of social elderly care services in China. Currently, China's legal system for social elderly care services, apart from the comprehensive *Law on the Protection of the Rights and Interests of the Elderly*, lacks specialized legislation in many areas, such as living care for the elderly, medical care, long-term care, spiritual comfort, and social participation. Improving the legal system for social elderly care services is a systematic project. Relying solely on the *Law on the Protection of the Rights and Interests of the Elderly* is far from sufficient. It is necessary to weave a dense and systematic legal network for elderly care services. For example, there is a lack of clear legal provisions on how to determine the nature of government purchasing of elderly care services, which leads to certain risks for the government in the conclusion, performance, and response to breaches of contracts for purchasing elderly care services. This is not conducive to mobilizing the government's enthusiasm to promote the expansion of basic elderly care services.³¹ At the same time, although the departmental regulations of the Ministry of Civil Affairs and other relevant departments have made some provisions

29. Li Tao, *Research on the Legal Response to the Aging Population in China* (Wuhan: Wuhan University Press, 2017), 6.

30. Li Tao, "Path to Build a Diversified Social Elderly Care Service System in the New Era: Taking the Practice of Hubei Province as an Example," *Social Science Dynamics* 12 (2018): 32.

31. Yang Fuwei, "Contractual Risks of Government Purchasing of Elderly Care Services and Legal Governance," *Contemporary Law Review* 6 (2021): 109.

on specific issues, these provisions are relatively scattered and have lower-level effectiveness, making it difficult to form a cluster effect and play a synergistic role. It is an important guarantee to improve the social elderly care service system to carry out detailed and specific special legislation for elderly care services and form a complete and coordinated legal network for elderly care services.

B. Building an active aging society and legislating to ensure that the elderly accomplish something in their old age

General Secretary Xi Jinping has emphasized the need to “strengthen the view of the whole society to actively respond to population aging. We should take a positive view of an aging society and of the elderly and their lives.”³² This points out the specific direction for the improvement of the legal system to address the issue of elderly care under the background of population aging.

1. Repositioning the social role of the elderly, and ensuring their right to social participation

In the document *Active Ageing: A Policy Framework*, the World Health Organization defines “active aging” as “the process of optimizing opportunities for health, participation and security in order to enhance the quality of life as people age.”³³ Active aging not only meets the needs of the elderly’s lives, but also emphasizes respect for their rights and promotes their social participation. With the accelerated process of population aging in China, the elderly have become an important subject of social governance.³⁴ Legislation needs to reposition the social role of the elderly and guarantee their right to participate in social development.

Internationally, ensuring the right of elderly people to participate in society has become a universal consensus. The *Vienna International Plan of Action on Ageing in 1982* proposed that social participation is an important component of aging issues, and governments should facilitate the participation of elderly people in social and economic life.³⁵ In 1991, the *United Nations Principles for Older Persons* proposed five basic principles: independence, participation, care, self-fulfillment, and dignity.³⁶ In 2002, the Second World Assembly on Ageing adopted the *Madrid Political Declaration*. Article 12 of the *Declaration* emphasizes “The expectations of older persons and the economic needs of society demand that older persons be able to participate in the economic, political, social and cultural life of their societies. The empowerment of older persons and the promotion of their full participation are essential elements for active

32. “The Political Bureau of the CPC Central Committee held the 32nd group study session on the situation and countermeasures of China’s population aging,” website of the Chinese government, accessed August 23, 2023, http://www.gov.cn/xinwen/2016-05/28/content_5077706.htm.

33. World Health Organization, *Active Ageing: A Policy Framework*, China National Committee on Ageing trans. (Beijing: Hualing Publishing House, 2003), 10.

34. Gao Chengyun, “Let the Aging Society be Full of Youthful Vigor and Vitality,” *China Social Work* 32 (2018): 29.

35. *Vienna International Action Plan on Ageing 1982*, United Nations website, accessed September 24, 2023, https://un.org/chinese/esa/age-ing/vienna3_1.htm.

36. *The United Nations Principles for Older Persons* (Resolution 46/91), United Nations website, accessed September 24, 2023, <https://www.un.org/chinese/esa/age-ing/principle.htm>.

aging.”³⁷ The *Madrid International Plan of Action on Ageing 2002* states that “older persons must be fully involved in the development process. We should ensure that the elderly continuously integrate into society and empower them with rights.”³⁸ The self-reliance and independence, dignity and self-realization of the elderly are guaranteed and maintained through social participation, so as to ensure the positivity of the elderly. Therefore, legislating to protect the social participation rights of the elderly is the legal basis for building an active aging society.³⁹

In China, the social participation of the elderly is often associated with “accomplishing something in old age” and “making use of their remaining energy”. Participating in social life is not only an important right of the elderly, but also an inevitable choice for their development. The *Law on the Protection of the Rights and Interests of the Elderly* specifically stipulates the social participation rights of the elderly. Articles 3 and 4 clearly state that the elderly have the right to participate in social development and share the achievements of development. The state and society should take measures to guarantee the conditions for the elderly to participate in social development and “accomplish something in old age”. In China, the social participation of the elderly should not only focus on the participation itself, but also pay attention to the attributes and requirements of the right to participate. At present, there are still some problems in the legal protection of the social participation of the elderly in China, mainly manifested as follows: first, the legislative concept is relatively backward, lacking an active guiding ideology. The social participation rights of the elderly are closely related to active aging, which requires understanding the positive value of aging, respecting the rights of the elderly, and gradually transforming the “needs-based” policy positioning into a “rights-based” rule of law system.⁴⁰ However, the current legislation in China does not reflect the guiding ideology of “active aging,” and the legislative thinking still remains in the traditional concept of meeting the needs of the elderly. For example, the provisions of the *Constitution* on the protection of the rights and interests of the elderly mainly focus on the rights to obtain material assistance such as social insurance, social relief, and medical and health care, and lack attention to the social participation and all-round development of the elderly. Second, the laws are not systematic and the supply of supporting systems is insufficient. The *Law on the Protection of the Rights and Interests of the Elderly* is the leading and core legislation in China’s legal protection of the social participation of the elderly. However, there is no clear and systematic supporting regulation in specific areas such as employment, social services, adult education, and cultural learning.⁴¹ This has resulted in a lack of

37. *Madrid Political Declaration*, United Nations website, accessed September 24, 2023, <https://www.un.org/Chinese/esa/ageing/declaration.htm>.

38. *Madrid International Plan Action on Ageing 2002*, United Nations website, accessed March 24, 2023, <https://www.un.org/chinese/esa/ageing/ac-tionplanl.htm>.

39. Liu Wei, “Active Aging of Individuals: The Logical Basis and Policy Orientation of Active Aging,” *Social Sciences in Yunnan* 3 (2021): 141.

40. Wang Diche, “Legal Protection of the Social Participation of the Elderly from the Perspective of Rights,” *Scientific Research on Aging* 6 (2020): 51.

41. Xiao Jinming, *Research on Policies and Laws for the Social Participation of the Elderly* (Jinan: Shandong University Press, 2015), 188-189.

specific measures in practice for the social participation rights of the elderly stipulated in the *Law on the Protection of the Rights and Interests of the Elderly*. Therefore, the state needs to provide clearer legal provisions in specific areas. For example, the United States enacted the *Older Americans Act* in 1965, with the aim of focusing on the social welfare of the elderly and ensuring their social participation. In 1967, the *Age Discrimination in Employment Act* was passed, followed by the *Age Discrimination Act* in 1975 and the *Retirement Equity Act* in 1984. Thus, a relatively complete and operable legal support system for the social participation of the elderly has been formed.⁴²

The root cause of the social participation problem among the elderly in China lies in the traditional perception of the elderly as “dependents.” Nearly 60 percent of the elderly in China have low social participation.⁴³ Therefore, it is an effective way to enable the elderly to accomplish something by transforming their social role through legislation and removing legal barriers to their social participation. The social role of the elderly should be flexible and active. It should not be unilaterally considered that the elderly are objects that need to be taken care of and helped.⁴⁴ The whole society should see the positive value of the elderly to social development and specifically combine their ability to do something with the provision of care for the elderly through legislation. Legislation to promote the social participation of the elderly will transform their social role from dependents on families and society to drivers of social and economic sustainable development.⁴⁵ This will fundamentally change society’s understanding of population aging.

2. Protecting the labor rights of the elderly and making sure that they can accomplish something in their old age

Protecting the labor rights of the elderly and organically integrating the elderly’s participation in social construction and sharing of development results is the essence of actively responding to the population aging. Article 4 of the *Law on the Protection of the Rights and Interests of the Elderly* stipulates that “The state and society should take measures to improve the various systems for safeguarding the rights and interests of the elderly and enable them to accomplish something in old age.” The *Opinions of the Central Committee of the Communist Party of China and the State Council on Strengthening the Work on Aging in the New Era* propose exploring flexible employment models suitable for the elderly. Maintaining the labor rights of the elderly and developing the human resources of the elderly is the general trend of social development.

The international community has reached a consensus on the protection of the

42. Li Tao, *Research on the Legal Response to the Aging Population in China* (Wuhan: Wuhan University Press, 2017), 116-118.

43. Xie Lili, Wang Fei and Hu Kang, “Social Participation Patterns of Chinese Elderly and Their Impact on Social Adaptation,” *Population Research* 5 (2021): 49.

44. Peng Xizhe and Hu Zhan, “Population Aging in China from the Perspective of Public Policy,” *Social Sciences in China* 3 (2011): 131-132.

45. Liu Song, “Difficulties and Countermeasures of Elderly Social Participation under the Framework of Active Aging,” *Journal of Nanjing College for Population Programme Management* 4 (2006): 9.

labor rights of the elderly. The *Vienna International Plan of Action on Ageing in 1982* stipulates in Article 37 of the “Recommendations for Action” that “Governments should eliminate discrimination in the labor market for older people and ensure equal treatment in their professional lives.” The *United Nations Principles for Older Persons* stipulates that “older persons should have access to employment opportunities or other income-generating opportunities.” One of the goals of the *Madrid International Plan of Action on Ageing in 2002* is to “provide employment opportunities for all older persons who want to work.” In the United States, the *Age Discrimination in Employment Act* of 1975 and the *Retirement Equity Act* of 1984 provide comprehensive legislative protection for the elderly’s employment. These acts explicitly stipulate that, except for industries with age and physical condition restrictions, the mandatory retirement system is abolished in all sectors of society, ensuring that no individual or entity can exclude the elderly from the labor market on the grounds of age and violate their right to equal employment. In Germany, if an employer dismisses a worker based on their age and receiving retirement benefits, the employee has the right to file for exemption from retirement and dismissal protection.⁴⁶ In Japan, laws such as the *Employment Measures Act*, the *Employment Stability Act*, and the *Act on Stabilization of Employment of Elderly Persons* address the issue of age discrimination against older workers.⁴⁷

In China, safeguarding the labor rights of the elderly is becoming increasingly important. Due to the improvement of social welfare conditions and the continuous increase in life expectancy, a large number of younger elderly people have the conditions and willingness to continue working.⁴⁸ Although the forms of social participation for the elderly are diverse, it is undeniable that employment is still the best and most important way. The employment of the elderly not only has positive significance for promoting their own development, but also has practical effects in alleviating the social and economic pressure regarding pension shortage.⁴⁹ Currently, the prominent problem hindering the employment of the elderly in China is that legislation excludes the elderly from the formal labor market. This not only leads to the waste of labor resources, but also brings about prominent legal issues such as age discrimination in employment and infringement of equal employment rights.⁵⁰

There is a systemic lack of protection for the rights and interests of over-age workers in China’s laws, mainly manifested in the fact that over-aged workers are not covered in laws and regulations such as the *Labor Law*, the *Labor Contract Law*, and the *Regulation on Labor Security Supervision*. The rights to work of over-age

46. Cui Yan, “How to Protect the Rights and Interests of Over-Age Workers,” *Shandong Human Resources and Social Security* 9 (2021): 32-33.

47. Li Tao, “Legal Regulations of Age Discrimination in the Employment of Older Workers,” *Jianghai Academic Journal* 1 (2019): 160.

48. Shi Zhipeng and Li Rui, “Do Something in Old Age to Make the Retired Life Better,” *People’s Daily (Overseas Edition)*, January 10, 2022.

49. Peng Xizhe and Hu Zhan, “Population Aging in China from the Perspective of Public Policy,” *Social Sciences in China* 3 (2011): 131.

50. Lu Xiaoming, “Protection of Employment Rights and Interests of Older Workers from the Perspective of Active Aging,” *Legal Forum* 4 (2021): 122-123.

workers are subject to age discrimination.⁵¹ A large number of physically healthy and experienced older workers are being denied entry into the labor market or unable to establish labor relations. In most judicial practices in China, it is generally recognized that older workers who have reached retirement age and enjoy pension benefits form a service relationship with their employers after retirement, rather than a labor relationship. Therefore, older workers cannot receive protection by the Labor Law, and labor disputes can only be resolved through civil litigation, which is time-consuming and costly.⁵² For example, there is controversy in judicial practice regarding whether injuries suffered by older workers during work can be recognized as work-related injuries.

To eliminate unreasonable regulations on the labor of the elderly, the following measures can be taken: first, clearly stipulate the prohibition of age discrimination in the *Labor Law* and the *Employment Promotion Law*, and timely introduce the *Anti-Employment Discrimination Law*, with age as one of the elements prohibited from employment discrimination. Second, further refine the specific provisions prohibiting age discrimination in employment. Legislation can specify the criteria for determining age discrimination in employment from the aspects of the objects of regulations, objective and subjective standards, and burden of proof. Third, unblock and improve legal relief channels for over-age workers to safeguard their rights against employment discrimination. For example, prohibitions on discriminatory behavior, economic compensation for loss of income, and compensation for mental damages caused by infringement of basic labor rights.⁵³ Legislation needs to systematically regulate discriminatory behavior in the labor market against older workers, so that the labor rights of the elderly can be effectively protected and truly achieve meaningful contributions in their later years.

III. “There Will Be Successors”: Optimizing the Legislation on Reproductive Welfare and Promoting the Improvement of the Population Structure

Legislation addressing the issue of elderly care in the context of population aging should also focus on promoting higher fertility rates and increasing newborns in order to fundamentally solve this problem. In the short term, this can provide a longer “window period” for actively responding to the population aging, such as concept updating, system design, and resource integration; in the long term, this is the fundamental strategy to slow down the process of population aging and solve the problem of population aging.⁵⁴

A. Optimizing family planning policies through legislation to promote improvement in population structure

Among the two key factors determining the process of population aging, “the

51. Over-aged workers refer to workers who have reached the national statutory retirement age.

52. Cui Yihua, “Construction of the Insurance System for Work-related Injuries of Over-Aged Workers,” *China Social Security* 11 (2021): 58-59.

53. Ai Lin, “Legal Regulations Against Age Discrimination in Employment in the Context of Aging,” *Jilin University Journal Social Sciences Edition* 4 (2021): 41-43.

54. Qing Lianbin, “Another Approach to Addressing Population Aging,” *Huxiang Forum* 1 (2019): 46.

elderly and children,” the increase in life expectancy of China’s population is irreversible, but the fertility rate is a variable factor that can be actively acted upon. The *Decision of the Central Committee of the Communist Party of China and the State Council on Optimizing Family Planning Policies to Promote Long-Term Balanced Development of the Population* points out that “Optimizing fertility policies is conducive to improving population structure, slowing down the process of population aging, and promoting intergenerational harmony.” The *Decision* emphasizes that “The optimization of the family planning policy should be guaranteed by the rule of law. The reform of the family planning policy will transform the innovative ideas, reform achievements, and practical experience of the Party and the people in coordinating the solution to the population problem into laws.”⁵⁵

During the decade from 2011 to 2021, China’s family planning policy has undergone a huge transformation from “allowing one-child couples to have two children” to “completely allowing three children,” which is driven by the urgent reality of a significant decrease in China’s newborn population. China’s society has entered a “low fertility rate era” with obvious characteristics of “fewer birthrates.”⁵⁶ In 2020, China’s birth rate was only 0.852 percent, falling below 1 percent for the first time.⁵⁷ In 2021, China’s net population growth was only 480,000, approaching zero population growth.⁵⁸ By the end of 2022, the national population decreased by 850,000 compared to the previous year, officially entering the process of negative population growth. The change in China’s population structure is characterized by an excessively rapid decline in the birth rate and an excessively rapid increase in population aging.⁵⁹ The significant decrease in the number of newborns and the rapid growth of the elderly population have jointly contributed to the severe aggravation of population aging in China. The main risks of China’s population have shifted from excessive population size and rapid growth to sustained negative growth, extremely low fertility rates, and rapid aging. Currently, China’s family planning policy is gradually being relaxed, but the overall fertility willingness remains low due to factors such as the burden of child-rearing, social attitudes, and lifestyle. China still needs to further optimize its family planning policy through legislation, mobilize the entire society to establish a social sharing mechanism for the costs of reproduction, child-rearing, and education, create a supportive social environment for proactive fertility, and unleash the potential of the society for reproduction.

55. “Decision of the Central Committee of the Communist Party of China and the State Council on Optimizing Fertility Policies to Promote Long-Term Balanced Development of the Population,” website of the Chinese government, accessed August 27, 2023, http://www.gov.cn/xinwen/2021-07/20/content_5626190.htm.

56. Chen Wei, “China’s Low Fertility Rate and Three-Child Policy: An Analysis Based on the Data of the Seventh National Population Census,” *Population & Economics* 5 (2021): 25-26.

57. *China Statistical Yearbook 2021*, website of National Bureau of Statistics, accessed August 26, 2023, <http://www.stats.gov.cn/tjsj/ndsj/2021/indexch.htm>.

58. “Press Conference on the Economic Operation of China in 2021 by the State Council Information Office,” website of the Chinese Government, accessed March 26, 2023, http://gov.cn/xinwen/2022-01/17/content_5668787.htm#1.

59. Qing Lianbin, “Another Approach to Addressing Population Aging,” *Huxiang Forum* 1 (2019): 47.

B. Legislative guarantees for the “three-child policy” and supporting measures

China’s family planning policy has gradually been relaxed and has entered the era of a three-child policy. Legislation aims to optimize the family planning policy in two aspects: first, to eliminate legal restrictions on childbirth, which is the question of “can or cannot give birth”; second, to reduce the burden of childbirth from a legal perspective, which is the question of “willing or unwilling to give birth.” Legislation to optimize the family planning policy must not only allow childbearing but also support childbearing, and provide specific legislative guarantees for the implementation of the three-child policy and supporting measures. The two amendments to the *Population and Family Planning Law* highlight not only the relaxation of birth restrictions, but also the crucial implementation of proactive measures to support childbirth.

1. Relaxing birth restrictions and advocating for timely marriage and childbirth

First, the *Population and Family Planning Law* in 2021 stipulates that “a couple can have three children,” providing legislative guarantees for the implementation of the three-child policy. According to international experience, the total fertility rate needs to reach at least 2.1 to ensure a normal level of population replacement. According to the previous two-child policy, even if the average couple in the country has two children, the population of China will still show a slow decrease in the long run. In addition, some couples of childbearing age have a low willingness to have children, no willingness to have children, or are unable to have children. There are also some young people of marriage age who have no intention of getting married. Therefore, not unless at least some couples have more than three children can the long-term balanced development of China’s population be ensured. Population development is characterized by long-term cycles and strong inertia. Once problems occur, they will persist for a long time. China has a large population base, and it is necessary to pay special attention to the accumulation and amplification of population risks. The “baby boom” is the driving force behind the continuous development of the country.⁶⁰ The revision of the *Population and Family Planning Law* provides a legislative guarantee for the three-child policy, which helps stimulate the social fertility potential and promotes the long-term balanced development of the population.

Second, the “state advocates age-appropriate marriage and childbearing” newly added to the 2021 version of *Population and Family Planning Law* is not an empty publicity slogan, but a legal norm with value connotations. To construct the normative connotation of advocating age-appropriate marriage and childbearing, the concept of “active childbearing” can be introduced at the legislative level. Promoting age-appropriate marriage and childbearing plays the role of value implementation and normative commandments and has system adjustment requirements for the entire legal system related to population, including the *Constitution, Civil Law, Social Law*, etc.⁶¹ Pro-

60. Mu Guangzong, “Establishing a Positive View of Population and Fertility,” *Chinese Cadres Tribune* 12 (2015): 68.

61. Zhang Xiang, “The Normative Connotation of ‘Common Prosperity’ as a Constitutional Socialist Principle,” *Science of Law* 6 (2021): 19.

moting age-appropriate marriage and childbearing is an important way to promote the formation of a social atmosphere that encourages childbirth through the rule of law. However, it should be noted that the normative development of the “active childbearing” concept must pay attention to the coordination of public power and private rights. Increasing publicity, strengthening value guidance and improving support measures are the primary ways to implement the “active childbearing” concept. In the normative development of the “active childbearing” concept, it is necessary to try to avoid replacing “family independent childbearing arrangements” with “socially mandated birth plans.”⁶²

2. Improving support measures and alleviating the burden of childbearing

The *Decision of the Central Committee of the Communist Party of China and the State Council on Optimizing Fertility Policies to Promote Long-Term Balanced Development of the Population* points out that “Economic burden, child care, and women’s concerns about career development have become the main factors restricting childbirth.”⁶³ Therefore, reducing the costs of childbearing, childcare, and education and protecting women’s employment rights are important components of improving and implementing legislative guarantees for active childbearing support measures.⁶⁴ Article 24 of the *Population and Family Planning Law* stipulates that “The state shall adopt support measures in finance, taxation, insurance, education, housing, and employment to alleviate the burden of childbirth, child-rearing, and education on families.” At the same time, the *Population and Family Planning Law* needs to coordinate with relevant laws such as the *Social Insurance Law*, *Personal Income Tax Law*, *Education Law*, *Compulsory Education Law*, *Labor Law*, and *Law on the Protection of Women’s Rights and Interests*, as well as the detailed provisions and specific implementation of local regulations.

Demography believes that the level of fertility willingness is determined by the level of childbearing cost.⁶⁵ The costs of childbearing can be divided into three major parts: first, the “direct costs” represented by the expenses of raising children; second, the “income loss” represented by the loss of income during childbirth; third, the “human resource loss” represented by quitting job due to childbirth.⁶⁶ On July 25, 2022, the National Health Commission and other 16 departments jointly issued the *Guiding Opinions on Further Improving and Implementing Active Childbearing Support Measures* (referred to as the *Guiding Opinions*), aiming to accelerate the establishment of

62. Mu Guangzong, “Establishing a Positive View of Population and Fertility,” *Chinese Cadres Tribune* 12 (2015): 69.

63. “Decision of the Central Committee of the Communist Party of China and the State Council on Optimizing Fertility Policies to Promote Long-Term Balanced Development of the Population,” website of the Chinese government, accessed March 27, 2023, http://www.cn/xinwen/2021-07/20/content_5626190.htm.

64. In this context, “cost of childbearing” refers to the cost of childbearing in a narrow sense, which is different from the broad sense of the cost of childbearing (including the costs of childbearing, upbringing, and education).

65. Li Zhongsheng, *A History of Population Economics in Europe and America* (Beijing: Beijing World Publishing Corporation, 2013), 116.

66. James R. Walker, “The Effect of Public Policies on Recent Swedish Fertility Behavior,” *Journal of Population Economics*, vol. 8, no. 3 (1995): 226-228.

an active childbearing support policy system and provide strong support for promoting a moderate level of fertility and long-term balanced population development. Surveys show that childbearing groups at different ages have significant differences in sensitivity to different types of childbearing costs. Economic pressure is a common issue faced by the post-70s, post-80s, and post-90s generations. However, the post-70s and post-80s generations are mainly forced to give up childbirth due to direct costs and loss of income, while the post-90s generation is more sensitive to human resource loss and actively chooses to give up childbirth considering personal development and quality of life.⁶⁷ Therefore, in order to address the concerns and needs of different groups, it is necessary to improve a set of “legal combinations” for active childbearing support measures.

First, it’s necessary to improve the maternity leave and insurance system to reduce the cost of childbearing.

Improving the maternity leave system is an important legal means to reduce the cost of childbearing. For one thing, maternity leave can help women reduce income loss during childbirth. Article 25 of the *Population and Family Planning Law*, Article 56 of the *Social Insurance Law*, Article 62 of the *Labor Law*, Article 27 of the *Law on the Protection of Women’s Rights and Interests*, and other explicit provisions stipulate that maternity leave is a statutory right enjoyed by women during childbirth. Several regions including Beijing, Shanghai, Zhejiang, Hubei, and Shaanxi have revised the *Regulations on Population and Family Planning*, explicitly extending maternity leave. For another thing, the central government has proposed to “explore the implementation of parental leave and support pilot projects in places with conditions for parental leave.”⁶⁸ In 2021, Article 25 of the *Population and Family Planning Law* added “the state supports places with conditions to carry out parental leave” to encourage the implementation of parental leave through legislation. At the local level, many regions such as Beijing, Shanghai, Zhejiang, Hebei, Shanxi, and Heilongjiang have allowed parental leave. Extending maternity leave, adding parental leave, and paying normal wages during the leave will greatly reduce the financial and time pressure on families with children, especially women.

When legislating to improve the maternity leave system, consideration should be given to the fact that excessively long maternity leave exclusively for women may not be conducive to protecting women’s rights and interests. For example, according to the *Draft Amendment to the Population and Family Planning Regulations of Shaanxi Province*, the maternity leave for giving birth to a third child in Shaanxi can be as long

67. Yang Baoyan and Wu Shuang, “From ‘Restraint of the Childbearing Costs’ to ‘Value Orientation of Happiness’: Changes in the Childbearing Views of Urban Post-70s, Post-80s, and Post-90s Generations,” *Northwest Population Journal* 6 (2021): 43.

68. The Proposal of the Central Committee of the Communist Party of China on Formulating the 14th Five-Year Plan for National Economic and Social Development and the Long-Range Objectives Through the Year 2035, passed at the Fifth Plenary Session of the 19th CPC Central Committee, proposes to “explore the implementation of parental leave.” The Decision of the Central Committee of the Communist Party of China and the State Council on Optimizing Family Planning Policies and Promoting Balanced Population Development further specifies “supporting pilot projects of parental leave in places with conditions and improving the mechanism for sharing the cost of leave with employers.”

as 350 days.⁶⁹ Increasing the burden on employers may have the opposite effect. In 1974, Sweden became the first country to replace female maternity leave with shared parental leave, successfully increasing the fertility rate from 1.5 to 2.0.⁷⁰ Shared parental leave by both spouses not only helps alleviate the economic and time pressures of raising a child, but also reduces the risks and discrimination that women face in interrupting their work due to childbirth, which in the long run is more beneficial for safeguarding women's rights and interests.⁷¹

Improving the maternity insurance system is also an important legal means to reduce the cost of childbirth. In 2021, maternity insurance was included in the highest-level document of the national population strategy for the first time. The *Decision of the Central Committee of the Communist Party of China and the State Council on Optimizing Family Planning Policies to Promote Long-Term Balanced Development of the Population* states that we should "improve the maternity insurance system and reduce the burden of childbirth medical expenses."⁷² Article 24 of the *Population and Family Planning Law* stipulates that "The state establishes and improves the social security system for maternity insurance." Maternity insurance is a basic social insurance system stipulated in the *Social Insurance Law*. However, compared to elderly care insurance, medical insurance, etc., the role of maternity insurance has not been fully utilized.⁷³ Article 54 of the *Social Insurance Law* stipulates that maternity insurance benefits include maternity medical expenses and maternity allowances. Maternity insurance not only provides medical security for female workers giving birth, but the allowance system also has wider coverage functions of institutional protection. However, China's current maternity insurance system was formulated during the period of family planning, with problems such as narrow coverage, low level of benefit security, and lagging of maternity allowances reform. In order to adapt to the current population strategy of promoting fertility in China, it is necessary to timely revise and update the legislative goals, institutional content, and operational guarantees of maternity insurance.⁷⁴

69. The *Draft Amendment to the Population and Family Planning Regulations of Shaanxi Province* stipulates that for employees who legally give birth to children, an additional 60 days of maternity leave shall be granted on the basis of the 98-day statutory maternity leave stipulated in the Labor Law; female employees who participate in pre-pregnancy examinations shall be granted an additional 10 days of maternity leave on the basis of the statutory maternity leave; and female employees who give birth to a third child shall be granted an additional half-year of bonus leave. In Shaanxi, the total maternity leave for giving birth to a third child can be as long as $98+60+10+182=350$ days.

70. China Population and Development Research Center, *International Population Policies Reference* (Beijing: Huawen Publishing House, 2018), 166.

71. Yang Fan, "Parental Leave: Practices in Developed Countries and Their Implications for China," *Population and Health* 8 (2021): 33-34.

72. *Decision of the Central Committee of the Communist Party of China and the State Council on Optimizing Fertility Policies to Promote Long-Term Balanced Development of the Population*, website of the Chinese government, accessed March 27, 2023, http://www.cn/xinwen/2021-07/20/content_5626190.htm.

73. Zhuang Yuxia, "Coverage, Influencing Factors, and Expansion Strategies of Maternity Insurance Benefits: An Empirical Analysis Based on the Third Phase of Chinese Women's Social Status Survey," *Population and Development* 5 (2019): 78.

74. Yuan Tao and Fan Jing, "Countermeasures and Suggestions for Improving the Maternity Insurance System under the Three-child Policy," *Population and Health* 9 (2021): 41.

Second, it's necessary to strengthen tax and housing support to reduce the cost of raising children.

To reduce the cost of raising children, it is necessary to provide basic public services fully and equally with the government as the main body in the field of redistribution.⁷⁵ We should provide institutional solutions through legislation to ensure the stability, transparency, standardization and fairness of services. In terms of alleviating the burden of raising children in families, Article 27 was added to the *Population and Family Planning Law* in 2021, which stipulates that the state will take tax, housing, and other support measures to alleviate the burden of raising children in families. Due to the influence of the family planning policy, there are a large number of families composed of two only children in China. These families have to support four elderly people and raise multiple children, which puts enormous economic pressure on them. The changed costs of raising children have a significant impact on the fertility willingness of these families. In 2022, the State Council issued the *Notice on the Establishment of Special Additional Deductions for Personal Income Tax for Infant and Toddler Care Under the Age of 3*, adding infant and toddler care expenses as a special additional deduction for personal income tax to alleviate the financial burden on families. The issue of fertility concerns not only the continuation of individuals and families, but also the sustained development of society. The government should regulate individual taxes to stimulate social fertility willingness through legislation. For example, Germany's personal income tax system has a "fertility-friendly" feature. The government externalizes the child-rearing costs of families through special deduction projects, special expenditure deduction projects, extraordinary expense deduction projects, and tax-exempt projects for allowances and subsidies, in order to promote the willingness of families to have children.⁷⁶ Adjusting tax legislation to help child-bearing families alleviate economic pressure is the reflection of the humanistic care of tax law.⁷⁷

At the same time, housing, as an indispensable basic material condition for people's survival and development, has a significant impact on family fertility willingness. As the saying goes, "How can you raise children without shelter?" Many childbearing-age families dare not or delay having children due to housing problems.⁷⁸ High housing prices are a systemic problem, and strengthening legislation to guarantee public rental housing can alleviate the housing pressure on families raising children. The *Decision of the CPC Central Committee and the State Council on Optimizing Birth Policies to Promote Long-Term Balanced Population Development* proposes that "When allocating public rental housing, local governments can give appropriate

75. Cai Fang, "Reducing the 'Three Child-Rearing Costs' and Releasing the Potential for Childbirth," *Northern Economy* 10 (2021): 6.

76. Yu Xiuwei and Hou Yingchun, "Construction of a 'Fertility-Friendly' Individual Income Tax System: Based on the Experience of Germany," *Taxation and Economy* 4 (2018): 88-89.

77. Lv Chunjuan and Li Jing, "Optimized Design of the Special Additional Deduction System for Individual Income Tax under the Three-Child Policy," *Administration Reform* 9 (2021): 43.

78. Li Yonghui, Shen Bolan and Li Xiaolin, "How Can You Raise Children Without Shelter? Research on the Impact of Housing on Fertility Willingness of People of Childbearing Age," *China Economic Studies* 2 (2021): 68.

consideration to the number of underage children in terms of housing type selection, etc.”⁷⁹ The Beijing Municipal Commission of Housing and Urban-Rural Development issued a *Notice on Strengthening the Review and Allocation Management of Public Rental Housing Qualifications*, which stipulates that “for families with a large number of underage children who have obtained the qualification for public rental housing registration, the district housing security management department can directly issue housing selection notices and organize housing selection based on the reality in the district.” Beijing has become the first city in China to formulate public rental housing allocation policies in accordance with the three-child policy, showing positive demonstration effects. However, in terms of content, this policy still needs details regarding the allocation criteria. At the same time, local regulations can be formulated by the Beijing Municipal People’s Congress to enhance the level of effectiveness.

Third, it’s necessary to promote balanced and scientific development of education, and reduce education costs.

In China, the childbearing view has generally shifted towards “having fewer children with better quality.”⁸⁰ The high cost of education has become a “roadblock” for many families in terms of childbearing. Article 27 of the *Population and Family Planning Law* stipulates that the state adopts supportive measures to alleviate the education burden of families. Although the *Individual Income Tax Law* provides for special deductions for children’s education, which can to some extent alleviate the cost of education, it cannot fundamentally solve the sharp increase in education costs caused by excessive competition. The Sixth Plenary Session of the 19th CPC Central Committee proposed “ensuring education for all.”⁸¹ “Ensuring education for all” is mainly reflected in two aspects: balanced development of education and scientific development of education.

First, promoting the balanced development of education is an effective way to avoid excessive competition and reduce education costs.⁸² The right to education for citizens is a fundamental right stipulated in the *Constitution*, and the *Education Law* guarantees the implementation of the right to education for citizens. Article 11 of the *Education Law* stipulates that “The state takes measures to promote educational equity and promote balanced development of education.” Article 6 of the *Compulsory Education Law* stipulates that “The government should reasonably allocate educational resources and promote balanced development of compulsory education.” The cost

79. *Decision of the Central Committee of the Communist Party of China and the State Council on Optimizing Fertility Policies to Promote Long-Term Balanced Development of the Population*, website of the Chinese government, accessed September 28, 2023, http://www.gov.cn/xinwen/2021-07/20/content_5626190.htm.

80. *Decision of the Central Committee of the Communist Party of China and the State Council on Optimizing Fertility Policies to Promote Long-Term Balanced Development of the Population*, website of the Chinese government, accessed August 28, 2023, http://www.gov.cn/xinwen/2021-07/20/content_5626190.htm.

81. *Explanation of the Resolution of the Central Committee of the Communist Party of China on the Major Achievements and Historical Experience of the Party over the Past Century (Adopted at the Sixth Plenary Session of the 19th Central Committee of the Communist Party of China on November 11, 2021)*, xinhua, accessed March 28, 2023, http://www.news.cn/2021-11/16/c_1128069706.htm.

82. Xue Haiping and Shi Huanhuan, “Research on the Impact of Balanced Education on Shadow Education Expenditure of Families,” *Journal of National Academy of Education Administration* 8 (2021): 24.

of children's education has always been an important part of household expenses in China. Promoting balanced development of education and reducing education costs is an important responsibility of the state. In 2021, the *Draft of the Shenzhen Special Economic Zone Social Construction Regulations* proposed that "We will promote the enrollment and management model of pan-school districts, establish a teacher mobility system for compulsory education schools, and improve the mechanism for sharing high-quality educational resources." Through local legislation, Shenzhen has made steps to address enrollment difficulties based on household locations and promoted balanced development of education. However, it should be noted that "balanced development of education" does not mean "equal distribution of educational resources." To promote the balanced development of education, laws and regulations should be used to guide schools to develop distinctive education and avoid homogeneous competition that will increase education costs.⁸³

Second, promoting the scientific development of education is an important method to prevent improper teaching and reduce the burden caused by education. Currently, there are practical problems in China's basic education, such as the monopoly of high-quality educational resources, the expansion of market-oriented education, and the tendency of utilitarianism.⁸⁴ The heavy burden of education suppresses the willingness of young people to have children and even creates a fear of childbirth among young people.⁸⁵ Education and teaching should follow the laws of students' growth and achieve scientific development of education. Article 34 of the *Compulsory Education Law* stipulates that "Educational and teaching work should conform to the laws of education and the characteristics of students' physical and mental development." The *Opinions on Further Reducing the Homework Burden and Extracurricular Training Burden of Students in the Compulsory Education Stage* proposes the "dual reduction" policy, which aims to reduce students' heavy homework burden and regulate extracurricular training.⁸⁶ The "dual reduction" policy is an important guidance for the scientific development of education made by the government, which fundamentally guides the direction of education development and solves the problem of excessive educational burden from the source. The "dual reduction" policy provides policy support for the specific implementation of the relevant provisions of the *Education Law* and the *Compulsory Education Law*. The *Education Law* and the *Compulsory Education Law* provide legal guarantees for the implementation of the "double reduction" policy. Implementing the "double reduction" policy in accordance with the law is an effective measure to address the excessive burden of education and the resulting "fertility anxiety".

83. Shen Suping, "Systematic Guarantee for Education Legislation and the Right to Education," *Educational Research* 8 (2021): 47.

84. Yang Chengrong, Zhang Yishan and Zhang He, "Fairness in Basic Education and Economic and Social Development," *Management World* 10 (2021): 152-153.

85. Lin Bao, "Where Does 'Fertility Anxiety' Come From," *People's Tribune* 31 (2018): 60-61.

86. "Opinions of the General Office of the CPC Central Committee and the General Office of the State Council on Further Reducing the Homework Burden and Extracurricular Training Burden of Students in Compulsory Education Stage," website of Ministry of Education, accessed August 28, 2023, http://www.moe.gov.cn/jyb_xxgk/moe_1777/moe_1778/202107/120210724_546576.html.

Fourth, it's necessary to improve childcare services to reduce the burden on women and protect their employment rights.

For one thing, promoting gender equality and protecting women's employment rights are important legislative goals in China. Childbirth is an important turning point in women's careers and social life, as women temporarily exit the labor market due to childbirth.⁸⁷ Objectively, childbirth has a negative impact on women's labor participation rate and income level, becoming an important factor affecting women's willingness to have children.⁸⁸ It is difficult to address the adverse effects of childbirth on women's employment solely through market regulation, and strict regulation through laws is necessary. Implanting the concept of childbirth protection into the whole society through scientific legislation is an important way to reduce the burden of childbirth for women and boost their willingness to have children.⁸⁹ In 2012, the State Council issued the administrative regulation *Special Provisions on Labor Protection for Female Workers* to address the special difficulties faced by female workers. Article 3 of the *Population and Family Planning Law* of 2021 stipulates that "Population-related work should be combined with increasing women's employment opportunities and improving women's status." Article 26, newly added, states that "The state guarantees the legitimate rights and interests of women's employment and provides employment services for women whose employment is affected by childbirth." Articles 13, 29, 58, 62, etc. of the 2018 version of the *Labor Law*, and Articles 22, 23, 24, 26, 27, etc. of "Chapter 4: Labor and Social Security Rights and Interests" of the 2018 version of the *Law on the Protection of Rights and Interests of Women* specifically provides equal labor rights for women. These articles stipulate that employers shall not discriminate against female workers based on gender and marital and reproductive status, and shall provide special protection for women during pregnancy and childbirth. In 2021, the *Law on the Protection of Rights and Interests of Women* underwent another revision, and the *Draft Amendment of Law on the Protection of Rights and Interests of Women* elaborated on the specific meaning of "discrimination against women." The draft clearly lists the main situations of "gender discrimination in employment," including prohibiting the use of women's marital and childbearing status as employment conditions.⁹⁰ Furthermore, the draft further improves the mechanism for eliminating gender discrimination in employment, establishes a system for employers to be interviewed and rectified, and promotes special collective contracts for female workers' special rights and interests. These measures help encourage employers to assume their social

87. Xia Jing and Liu Li, "How to Create Maternity Benefits? Promotion of the Three-Child Policy and the Construction of Supporting Measures from the Perspective of International Comparison," *Journal of Guangzhou University (Social Science Edition)* 6 (2021): 85.

88. Zhang Kangsi and Gu Jingshuang, "Research on the Impact of Childbirth on Women's Employment," *Population & Economics* 5 (2020): 19-20.

89. Lin Yanling and Wang Chunguang, "Research on Maternity Leave and Protection of Rights and Interests of Female Employees during Breastfeeding in the Workplace," *Journal of China University of Labor Relations* 6 (2021): 61.

90. "Solicitation of Opinions on the Revised Draft of the Law on the Protection of Women's Rights and Interests," website of China National People's Congress, accessed August 29, 2023, <http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff8081817ddb134a017deac847ed20e0>.

responsibility for creating a friendly environment for childbirth.⁹¹ Through systematic and scientific modifications, the draft plays a comprehensive legal and social role of prevention, prohibition, and punishment, providing stronger legal protection for women's rights, especially women's employment rights.⁹²

For another thing, the Sixth Plenary Session of the 19th CPC Central Committee proposed "ensuring care and education for young children."⁹³ Childcare services help alleviate women's concerns about balancing childbirth and work.⁹⁴ Research shows that for every 2.9 percent increase in the coverage of childcare services, the fertility rate will increase by 0.82 percent.⁹⁵ The *Decision of the Central Committee of the Communist Party of China and the State Council on Optimizing Family Planning Policies to Promote Balanced Population Development* emphasizes the inclusion of infant and child care services in the economic and social development planning, and the vigorous development of various forms of inclusive services. Improving childcare services is an effective way to reduce childcare labor costs. Legislative protection is the legal basis for improving the development of an inclusive childcare service system. In 2021, Article 11 was added to the *Population and Family Planning Law*, which stipulates that "Efforts shall be made to strengthen maternal and child health care and infant and toddler care services, and promote family development." The newly added Article 28 stipulates that "Governments at all levels shall promote the establishment of an inclusive childcare service system, and improve the accessibility and fairness of services for infants and young children and their families."⁹⁶ The legislation positions childcare services as a government-led public service and social welfare, which can mobilize various social actors such as public institutions, enterprises, and communities to jointly build an inclusive childcare service system. The promotion and popularization of childcare services can help families save energy and time in caring for their children, and alleviate concerns about childbirth. The *Population and Family Planning Law* stipulates that the state encourages and guides social actors to establish childcare institutions and supports kindergartens, government agencies, enterprises

91. "Protect 'Her': Law on the Protection of Rights and Interests of Women to Be Revised," website of the National People's Congress, accessed August 29, 2023, <http://www.npc.gov.cn/npc/c30834/202112/3530883d-59d44cd0a29aeb1f2be3fcb6.shtml>.

92. Tang Fang, "Definition of Gender Discrimination in Women's Employment and Legislative Improvement of the Law on the Protection of Rights and Interests of Women," *Journal of China Women's University* 6 (2021).

93. "Explanation of the Resolution of the Central Committee of the Communist Party of China on the Major Achievements and Historical Experience of the Party over the Past Century (Adopted by the Sixth Plenary Session of the 19th Central Committee of the Communist Party of China on November 11, 2021)," xinhua, accessed September 29, 2023, http://www.news.cn/2021-11/16/c_1128069706.htm.

94. China's Balanced Population Development Research Group of Wuhan University, "It is Urgent to Build a Fertility Support System to Achieve Moderate Fertility Levels," *Population and Development* 6 (2021): 6-7.

95. Xia Jing and Liu Li, "How to Create Fertility Benefits? Promotion of the Three-Child Policy and the Construction of Supporting Measures from the Perspective of International Comparison," *Journal of Guangzhou University (Social Science Edition)* 6 (2021): 93.

96. "Decision of the Central Committee of the Communist Party of China and the State Council on Optimizing Fertility Policies to Promote Long-Term Balanced Development of the Population," website of the Chinese government, accessed August 29, 2023, http://www.gov.cn/xinwen/2021-07/20/content_5626190.htm.

and institutions, and communities in providing childcare services.⁹⁷ At the same time, the *Population and Family Planning Law* emphasizes the government's main responsibility, guiding responsibility, and supervisory responsibility in the construction of an inclusive childcare service system, and specifies various support measures to promote the construction of an inclusive childcare service system. Legislation to promote the construction of an inclusive childcare service system helps reduce the cost of raising children, improve welfare expectations, and promote families to realize their unfulfilled fertility desires.⁹⁸

Conclusion

Population aging is a fundamental national condition that China is currently facing and will continue to face in the future. Actively addressing population aging is closely related to Chinese modernization. We should build and improve the legal system for addressing the issue of elderly care in the context of population aging, focus on solving the urgent and daunting problems faced by the elderly, strengthen the construction of "the elderly and children" service system, strive to take a path with Chinese characteristics that is in line with China's reality to actively respond to population aging, and better promote Chinese modernization.

To solve the issue of elderly care in the context of population aging, it is important to give full play to the important role of the rule of law in establishing a solid foundation, stabilizing expectations, and benefiting the long term. Building a scientific and systematic legal system is an important foundation for addressing the issue of elderly care in the context of population aging. To build a legal system for addressing the issue of elderly care in the context of population aging, it is necessary to follow a systemic approach, and achieve "vertical and horizontal integration" in the framework. In terms of content, it is necessary to formulate specific legal approaches around "the elderly and children," with a focus on guaranteeing the livelihood and protection of the rights of the elderly while taking into account childbirth, employment and other issues. The legal system for addressing the issue of elderly care in the context of population aging should not only improve the legislation on elderly care, protect the social participation rights and labor rights of the elderly, and timely and effectively respond to the pressure of rapid population aging, but also optimize the family planning policy, reduce the burden caused by childbirth, promote population structure improvement, and fundamentally solve the issue of elderly care brought about by population aging in the long term.

(Translated by *CHEN Feng*)

97. Pu Xiaolei, "Providing Legal Protection for the Three-Child Policy and Supporting Measures," *Legal Daily*, August 23, 2021.

98. Cai Fang, "Reducing the 'Three Child-Rearing Costs' and Releasing the Potential for Childbirth," *Northern Economy* 10 (2021): 5-6.