

Research on the protection of gay marriage rights and interests

Pengnian Jin ^a, Xiao Wan ^{b,*}

No. 51, ZJ Road, XH District, Hangzhou, Zhejiang, China

^apnj2018@163.com, ^bwanxiaoju@163.com

*Corresponding author

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Abstract: At present, more and more countries in the world have confirmed the legal status of same-sex marriage in the form of legislation, but due to the influence of traditional ideas for a long time, there is still no relevant legislation. Moreover, judging from the current situation in China, the domestic tolerance and acceptance of homosexuality is generally low, and the relevant legislation of same-sex marriage cannot be introduced in a short time. But homosexuality, as a subject of fact, has the status of legal citizen in our country, and should enjoy the basic rights and interests as a citizen. Obviously, the urgent need to protect the rights and interests of homosexual groups is contrary to the current situation of imperfect legislation. How to protect the legal rights and interests of homosexual groups in the absence of same-sex marriage legislation is one of the problems that need to be solved urgently. This paper attempts to provide some suggestions and thoughts for the protection of the legitimate rights and interests of homosexual groups based on the current legal system in China.

1. The concept of homosexuality and the lack of protection of legitimate rights and interests

The so-called concept of homosexuality, as the name implies, is opposite to heterosexuality in sexual orientation. It can only love the same sex, and it is difficult to have sexual interest and love for the opposite sex. On the issue of homosexuality being congenital, most scholars hold negative opinions on the constructive theory of homosexuality. Most scholars think that the sexual orientation of homosexual groups is not acquired, often caused by congenital factors, and related to some congenital genetic factors. For some bisexuals or those who choose to live with the same sex because of some factors, they do not belong to the homosexual group we are discussing here. According to a 2014 statistical data, China's gay population is about 70 million (about 30 million gay men and 40 million lesbians). Of course, this data should also be a more conservative data, because many homosexuals often choose to hide their homosexual identity because of social and family pressure. This also makes a lot of statistical research very difficult. And it is precisely because of the dual pressure from society and family that gay groups are facing that many gay groups are in a very difficult life state, and some homosexuals have serious mental diseases. According to a survey, 30%-35% homosexuals have a certain degree of suicidal tendency, 9% -13% of homosexuals have even committed suicide to varying degrees, 67% of people have a "very lonely" psychological feeling, 63% of people think their life is "very depressed".

Homosexual subculture has appeared in ancient times, which is not a new thing. However, due to the lack of cognition in ancient times and the backwardness of scientific research, there is no relevant research on homosexual groups. And throughout the history of human, we can find that human society has always been heterosexual and heterosexual family as the main model of family composition. Homosexual groups have always been on the edge of society, which has long been ignored, even in exclusion and persecution. Its legitimate rights and interests are difficult to be effectively protected. In recent years, due to the rise of the world human rights movement and the importance and strengthening of the protection of rights and interests, many countries have established the legal status of same-sex marriage through legislation. But through the legislative

history of homosexuality in many countries, we can find that many countries have experienced more twists and hardships in the legislative process of homosexuality. This is mainly because for a long time, the fixed pattern of heterosexual dominated family composition has led to human beings always treat homosexual groups with different views. If our country do not reach the mature stage of the same-sex marriage legislation in our country, it will not only be difficult to protect the legitimate rights and interests of homosexual groups, but also cause serious damage to their legitimate rights and interests, and even cause them to suffer a certain personal crisis. Therefore, legislation on same-sex marriage is not blind and easy. At the stage when the national conditions of our country have not reached the level of legislation, it is impossible to carry out compulsory legislation. Therefore, the legislation of same-sex marriage cannot be accomplished overnight. Therefore, in the current situation of our country, the most suitable solution is not to establish the legal status of same-sex marriage through legislation, but to protect the same-sex group interests under the current legal framework.

2. Comparison of legislation on the protection of gay marriage rights and interests in different countries

It has become the main trend in the world to establish and improve the relevant legislation of same-sex marriage and gradually strengthen and safeguard the protection of human rights. Looking around the world, in order to protect the basic rights and interests of homosexuals, many countries have confirmed the legal marriage rights and interests of homosexuals through legislation. As we all know, the law should not only protect the rights and interests of the majority, but also the rights and interests of the minority. Even the rights and interests of some vulnerable groups should be the focus of legal attention. Homosexuality, as a group of people whose legal rights have been neglected for a long time, should be the main concern of national legislation now and for a long time to come. At the same time, the protection of gay rights should be treated as a major issue.

Generally speaking, there are three ways to legislate on same-sex marriage in different countries: Same-sex marriage legislation, same-sex partnership legislation, civil integration.

Table 1: countries and regions around the world that legalize same-sex marriage

Subordinate continent	Countries and regions
Europe	Netherlands, Belgium, Spain, Norway, Sweden, Portugal, Iceland, Denmark, France, UK (England, Wales, Scotland), Luxembourg, Ireland, Finland, Slovenia, Germany, Malaysia, Austria (17 countries)
Asia	Taiwan, China (1 region)
Africa	South Africa (1 country)
America	Canada, United States, Mexico, Argentina, Brazil, Uruguay, Colombia (7 countries)
Oceania	New Zealand, Australia (2 countries)

The first way is to directly establish the same-sex marriage system to confirm that homosexual groups have the right to enter into marriage completely equal to heterosexual groups. The second is to establish the same-sex partnership which is different from the heterosexual marriage. This kind of marriage is similar to heterosexual marriage, which is established by registration. But the difference is that the legal rights and obligations of the marriage relationship between the opposite sex are more strict, and the rights and obligations obtained from the legal relationship are more comprehensive. The rights and obligations of same-sex partnership formed by same-sex partners are less than that of heterosexual marriage. The third is a kind of state of marriage in fact, which is a factual marriage relationship. Generally speaking, there is no legal marriage or partnership between the same-sex partners, but their rights and obligations are close to or equal to the marriage or partnership. Even in

some countries, this kind of civil relationship can be formed not only between the same sex, but also between the opposite sex.

From the table in the figure, we can see that there is a big gap between China and the European and American countries with sound legal system in the protection of gay groups and marriage rights and interests. From the current international trend, countries all over the world pay more attention to the protection of human rights, the same-sex marriage legislation has become an inevitable trend. Countries can carry out different legislative practices according to their national conditions, and can adjust the content and form of legislation in their own countries, but ignoring the rights and interests of homosexuals will not only lead to the failure to protect the rights and interests of homosexual groups, but also cause the international community to continue to question the protection of human rights in China and affect the international reputation of China. In the context of the continuous strengthening of international human rights protection, we must pay some attention to the issue of homosexuality, in the existing legal system, improving the mechanism of human rights protection and strengthening the protection of human rights of homosexual groups which is one of the most issues that should be considered in the process of improving the construction of the rule of law in China in the future.

3. The Countermeasures of the guarantee of the right to conclude gay marriage in China

As for the protection of human rights of homosexuality, China's current situation determines that China cannot legalize sexual marriage through the same-sex marriage legislation. Therefore, the civil integration method is more suitable for China. Moreover, the author believes that it is the most convenient way to protect the legitimate rights and interests of homosexual groups under the existing legal framework based on the premise of minimal damage to homosexual groups. Through this gentle, respectful and non-interventional approach, legislation that maximizes protection and minimizes the harm to the interests of homosexual groups is an optimal legislation.

At present, the most moderate way is definitely to introduce the same-sex partners into the de facto marriage legal system of non-marital cohabitation by means of legal interpretation. The representative countries adopting this form of legislation mainly include: Hungary, Sweden, etc. In this way, we can not only protect the marriage right of same-sex partners, but also respect the privacy right of some homosexual groups who are not willing to disclose their homosexual identity. This model is a treatment scheme that blurs the marriage model that was not accepted by ordinary people into a cohabitation relationship model under the existing legal framework.

According to laws related to cohabitation relationship, some legal problems caused by the separation of same-sex partners can be easily resolved.

Because this legal system did not create a new legal system, nor did it explicitly stipulate that same-sex marriage belongs to the legal marriage mode, so it did not touch the foundation of a traditional marriage family model consisting of the opposite sex. Therefore, this solution will not cause strong resistance from some extremists who oppose same-sex marriage. This kind of solution is suitable for our country's current legal system and people's acceptance, so it is the most suitable solution for our country's national conditions. Of course, there are some problems in this legal protection mode. Many countries that implement this type of protection have a pre-registration or oath system. However, whether these pre-procedures are necessary for a same-sex couple to enter into a cohabitation relationship or optional, and the laws of many countries have not clearly stipulated. And some scholars believe that this kind of legislative model, which does not prescribe whether the pre-procedure is necessary or optional, belongs to a "soft marriage" model. However, the pre-sworn procedure or registration procedure will cause the homosexual identity of some homosexuals who are not willing to declare their homosexuality to be exposed, so their privacy cannot be maintained. At the same time, this mode of non-mandatory registration also prevents same-sex couples from forming a stable partnership. How to form a compulsory registration system while protecting the privacy of homosexuality, and at the same time to form a solid partnership between same-sex couples, etc., will be the issues that the legislation in the future will focus on.

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