

Research on the Legal Issues of Same-sex Marriage in China

– Taking the Revision of the Law in Taiwan as a Reference

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Abstract: With the increase of the number of same-sex people in China, the legal issues related to same-sex marriage as an important part of the national legal framework have attracted much attention. The enactment and revision of the same-sex marriage law has far-reaching significance. By studying the revision process of Taiwan's same-sex marriage law and the value game behind it, this paper deeply analyzes the current situation of same-sex marriage in China and puts forward some suggestions. Across the globe, more and more countries and territories have legalized same-sex marriage. Even in China, acceptance of homosexuality is rising sharply. In this paper, some problems of discrimination against homosexuals and how to solve them are also raised. The challenges facing same-sex marriage in China also point to a lack of legal support. Therefore, the protection of homosexual crimes should be strengthened, and social problems such as sexual orientation discrimination should be prohibited.

Keywords: same-sex, marriage, same-sex marriage status, same-sex marriage suggestions

1. Introduction

In contemporary society, the legal issue of same-sex marriage has attracted much attention. Data show that the world's homosexual population is currently about 300 million, an annual growth rate of 4%. According to a 2011 survey of 7,841 French people, 6.6% of the respondents identified themselves as homosexual (3.6%) or bisexual (3.0%), and 90.8% identified themselves as heterosexual. According to a 2014 survey with a sample size of 10,000 people, 90% of the French population is heterosexual, 3% is bisexual, and 4% is homosexual. According to a 2016 survey of Parisians, 79% of men and 90% of women in Paris identify as heterosexual, 13% of men and 1% of women identify as homosexual, and 6% of men and 4% of women identify as bisexual.

With the huge homosexual population, the legal issue of same-sex marriage has attracted much attention as an important part of a country's legal framework, the formulation and revision of same-sex marriage laws have far-reaching significance. The legalization of same-sex marriage is not only a guarantee of individual rights, also a reflection of equality and justice. Currently, same-sex marriage has been legally recognized by more and more countries around the world. In recent years, Taiwan has made a series of amendments to its same-sex marriage law, becoming the first Asian area in the world to legalize same-sex marriage. Behind the revision of the law in Taiwan is the force of social diversity and progress. Through deliberation, debate and the final voting process, the world was

presented with an image of a society that is open, inclusive and respectful of diversity, which also provided valuable experience and inspiration for other countries and regions.

Behind the revision of the law in Taiwan is the power of social diversity and progress. Through the deliberation, debate, and eventual voting process, Taiwan presents an image of a society that is open, inclusive, and respectful of diversity. The legalization of same-sex marriage is not only a guarantee of individual rights, but also a manifestation of equality and justice. This breakthrough change prompts us to realize that traditional concepts and prejudices are gradually being transcended, setting a new benchmark for people's rights to pursue happiness and freedom.

The legislation of gay marriage has been attracting people's attention, it involves the personal interests of individuals and social morality, order and many other major issues, some people believe that the legalization of same-sex marriage is bound to destroy human morality, also hinder social progress.

However, in mainland China and elsewhere, the legal issue of same-sex marriage remains challenging and controversial. Although legislation has begun to be explored in some places, the push to legalize same-sex marriage across the country still faces various difficulties and resistance. Taiwan's experience with law reform is crucial to understanding how to balance the protection of individual rights and social consensus at the legal level, and how to deal with the challenges of social change.

By studying the process of same-sex marriage law amendment in Taiwan and the value game behind it, this article deeply explores legislative models, possible strategies and coping methods, and get inspiration from them. In the analysis, it is evident that while upholding individual rights, due consideration must be given to the diversity of societal values and unique circumstances. This involves striking a balance between traditional and progressive demands and, subsequently, identifying a solution that aligns with the specific needs of China as a nation and its respective regions. China's same-sex marriage legal issues have been concerned and discussed. In this diverse and progressive society, equality and respect should be the basic rights of everyone. However, while same-sex marriage is legally recognized in many countries around the world, China still faces legal challenges and controversies. Take marriage as an example, it not only represents the love between two people, but also symbolizes the tolerance and progress of society.

Therefore, learning from the experience of Taiwan's same-sex marriage law amendment is an important step for us to promote the legal reform of same-sex marriage. Through in-depth research and understanding of the legal environment and social realities in different countries and regions, it will be possible to contribute to building a more equal, inclusive and progressive society.

2. The Evolution of Same-sex Marriage Protection in Taiwan

2.1. The Evolution of Same-Sex Marriage Protection in Taiwan's Region: Social Movements and Judicial Rulings

The trajectory of same-sex marriage protection in the region of Taiwan can be traced back to significant legal and societal transformations in recent years.

Since 2012, advocacy groups representing LGBTQ+ individuals (including lesbian, gay, bisexual, transgender, and queer individuals) in Taiwan have actively campaigned for the legalization of same-sex marriage. In 2003, Taiwan passed the "Gender Equality Education Act," which was the first law in Taiwan aimed at safeguarding the rights of the LGBTQ+ community by combatting gender discrimination.

In 2017, the Constitutional Court of Taiwan issued a landmark ruling, declaring that the prohibition of same-sex marriage violated the constitutional principle of equal protection. This ruling mandated that the Taiwanese legislature amend relevant laws within a two-year period to ensure the legalization

of same-sex marriage. Subsequently, various movements and protest activities advocating for the legalization of same-sex marriage flourished within Taiwanese society, pressuring the government to pass legislation within the stipulated timeframe.

The court ruling contended that the ban on same-sex marriage contravened constitutional provisions regarding human rights, dignity, equality, and the freedom to marry. In May 2019, Taiwan became the first region in Asia to legalize same-sex marriage. The “Same-Sex Partnership Act” in Taiwan officially came into effect in the same year, establishing a marriage registration system for same-sex couples. This system issued marriage certificates, granting legal legitimacy to same-sex marriages and endowing same-sex couples with stable and equal legal status. Moreover, it conferred a range of marriage-related rights, including spousal custody rights, inheritance rights, medical decision-making, spouse visas, and tax exemptions.

This legislation ensured the legality of same-sex marriage, encompassing various rights and protections that were previously exclusive to heterosexual marriages.

2.2. Analysis of the Reasons for the Transformation of Same-Sex Marriage Protection in Taiwan

The legalization of same-sex marriage in Taiwan has had a significant impact on other regions in Asia, setting a benchmark for progress and equality. This transformation has not only instigated positive societal changes within Taiwan itself but has also garnered widespread recognition and support globally. It is important to note that the above content serves as a brief overview of the evolution and relevant regulations of same-sex marriage protection in the region of Taiwan. For a more comprehensive understanding and in-depth research into this issue, reference to additional legal documents, official statements, and relevant social studies is required. The reasons behind the transformation of same-sex marriage protection in Taiwan’s region can be attributed to the following factors:

2.2.1. Social Progress and Diverse Values

With the advancement of society and an increasing openness to diverse perspectives, more and more people have come to recognize the diversity of sexual orientations and advocate for values of equality and inclusivity. This has spurred public support and demand for the legalization of same-sex marriage. In the broader context of Taiwan’s society, there is a prevailing consensus that every individual should have equal marriage rights, regardless of their sexual orientation. Same-sex couples should also be entitled to the same legal protection, rights, and societal recognition as heterosexual couples.

2.2.2. Awakening of Human Rights Awareness

The respect and protection of individual rights are issues that cannot be ignored in modern society. For the LGBTQ+ community, the legalization of same-sex marriage is a crucial step in safeguarding their equal rights, dignity, and freedom. Legalizing same-sex marriage is a fundamental human rights issue, as it acknowledges the basic rights that same-sex couples should have concerning intimate relationships, family life, property, and more.

2.2.3. Social Movements and Public Support

LGBTQ+ advocacy groups and activists have long been actively advocating for the legalization of same-sex marriage. Through social movements, awareness campaigns, and efforts to increase public consciousness, they have garnered profound attention and support for this issue among the general public.

It is important to emphasize that these factors collectively contributed to the transformation of same-sex marriage protection in Taiwan's region. This transformation reflects not only a legal change but also a broader societal shift towards recognizing and respecting the rights and dignity of all individuals, regardless of their sexual orientation.

2.2.4. Judicial Progress and Rulings

The historic ruling by the Constitutional Court played a crucial role in advancing the legalization of same-sex marriage. The ruling asserted that the prohibition of same-sex marriage violated constitutional provisions related to human rights, dignity, equality, and the freedom to marry. It provided clear legal grounds for legislative action.

2.2.5. Global Trends and International Examples

On a global scale, an increasing number of countries and regions have legalized same-sex marriage. These successful cases served as examples to Taiwan's region, demonstrating the feasibility and positive impact of legalizing same-sex marriage. They inspired local efforts to push for relevant legislation.

Therefore, the reasons behind the transformation of same-sex marriage protection in Taiwan's region are multifaceted, encompassing societal progress, the awakening of human rights awareness, judicial rulings, international exemplars, and the impetus of social movements. These factors collectively facilitated the process of legalizing same-sex marriage. It can be said that Taiwan's support for same-sex marriage legalization is rooted in considerations of equality, human rights protection, diverse values, and societal progress. This stance has garnered the support of many Taiwanese citizens and has made Taiwan the first region in Asia to legalize same-sex marriage. The journey of Taiwan towards same-sex marriage legalization can be summarized as follows:

3. Current Status and Challenges of Same-Sex Marriage Protection in China

3.1. The Current Status of Same-Sex Marriage Protection in China

3.1.1. Legal Perspective

Currently, mainland China has not yet established explicit legal protections or recognition for same-sex marriage. The "Marriage Law of the People's Republic of China" and related legislation define marriage as a union between one man and one woman. Despite this, some local governments have begun to explore relevant legislation and, in practice, offer a certain degree of protection for the rights of same-sex couples. For example, cities such as Beijing, Shanghai, and Guangzhou have introduced registration systems for same-sex partnerships, enabling these couples to enjoy certain family rights, even though they lack national legal recognition in mainland China.

3.1.2. Social Perspective

From a societal perspective, within the cultural context of China, many same-sex individuals eventually enter into heterosexual marriages or form mutual assistance marriage relationships. [1] China's acceptance of homosexuality is gradually increasing, especially among the younger generation, which tends to be more open and inclusive. Mainland China has witnessed the emergence of LGBTQ+ community organizations and media platforms that provide support, resources, and spaces for communication among LGBTQ+ individuals. Additionally, some civil society organizations actively advocate for the legalization of same-sex marriage and promote related issues through various forms of activities and campaigns. LGBTQ+ groups and activists vigorously

advocate for equality and rights protection, prompting increased public attention and discussions regarding same-sex marriage protection issues.

Chinese society is becoming more aware of and supportive of the rights and issues related to homosexuality and LGBTQ+ individuals. More people are advocating for and working towards the legalization of same-sex marriage. Professor Fang's viewpoint suggests that addressing same-sex marriage issues should clearly distinguish between rights and commodities, equating rights to names and commodities to realities. Professor Fang's perspective seems to represent a middle-ground stance. However, whether Chinese LGBTQ+ individuals should gain the label of marriage should also consider the actual social realities in China rather than merely importing Western modern theories. [2]

3.1.3. Cultural Perspective

Professor Zhang Xianglong's analysis, rooted in the differences between Chinese and Western philosophies, highlights how Confucianism's stance on same-sex marriage differs from that of liberalism and the Christian tradition. The analysis presented in this article is profound and thought-provoking. However, regarding the potential societal issues that the legalization of same-sex marriage might engender, further discussion of the author's arguments is necessary. In fact, the legalization of same-sex marriage is unlikely to have the severe impact on the institution of marriage, family dynamics, or societal norms as the author imagines. [3]

China possesses a rich traditional culture and value system that places significant importance on traditional family structures and concepts of marriage. This may lead some individuals to maintain conservative views on same-sex marriage. However, with ongoing societal changes and the influence of globalization, an increasing number of people are reevaluating traditional beliefs and advocating for inclusivity, equality, and individual rights.

3.2. Challenges of Same-Sex Marriage Protection in China

3.2.1. Lack of Legal Support for Same-Sex Marriage

One of the primary obstacles to the protection of same-sex marriage in China is the absence of unified national legislation. The "Marriage Law of the People's Republic of China" defines marriage as a union between one man and one woman, omitting any mention of same-sex marriage. This legal definition restricts the recognition and protection of same-sex marriage under the law. While some local governments have implemented registration systems for same-sex partnerships, these do not provide the same level of rights and protections as heterosexual marriages. Same-sex couples still face limitations in areas such as inheritance rights, social security, and medical visitation.

3.2.2. Obstacles Stemming from Social Beliefs and Cultural Traditions

Chinese society holds conservative traditional beliefs and values, including conventional views on family structures and marriage. Prejudices and discrimination against homosexuality and same-sex marriage are rooted in these traditional beliefs and cultural backgrounds. These conservative beliefs and cultural attitudes create significant resistance to the legalization of same-sex marriage and pose a major barrier to its advancement.

4. Recommendations for Enhancing Same-Sex Marriage Protection in Mainland China

4.1. The Realistic Basis for Legalizing Same-Sex Marriage in Mainland China

Globally, same-sex marriage is legally recognized in some countries, while in mainland China, it remains a matter that scholars call for in the context of protecting the human rights of a minority. [4] China is a vast country with a population of 1.4 billion, and research generally estimates that the proportion of same-sex individuals (including bisexuals) among the sexually mature population is approximately 3%-5%. Some experts estimate that China has a population of 39 million to 70 million LGBTQ+ individuals. Calculated based on an average of 3.7 people per family in China, the population affected by this issue ranges from 140 million to 190 million. Currently, LGBTQ+ individuals in China are increasingly seeking legal norms and safeguards, entering an era where their demands for recognition and protection of rights are growing. As mentioned earlier, the legalization of same-sex marriage in Taiwan was built upon an awakening of public consciousness and social progress. Taiwanese society gradually accepted and recognized the equal rights of LGBTQ+ individuals, paving the way for legislation on same-sex marriage. Currently, Chinese society is undergoing a shift in its awareness and attitude towards homosexuality and same-sex marriage. Increasing social support and consciousness are providing hope and impetus for pushing forward with legal reforms. In mainland China, it is possible to explore a similar approach by amending existing marriage laws or enacting new legislation to explicitly recognize same-sex marriage and outline related rights and protections.

4.2. Recommendations for Improving Legal Protection of Same-Sex Marriage in China

4.2.1. Amend the “Marriage Code of the Civil Law” to Clearly Define the Legal Status of Same-Sex Marriage

Given the inherent differences between same-sex and heterosexual marriages, they should be treated differently. Drawing on legislative models from other countries and considering China’s specific circumstances, it is advisable to adopt a legal model for same-sex couples, labeled as “same-sex partners.” This model should have distinct criteria for establishment, legal effects, and property systems that differ from the institution of marriage. [5] Key points to incorporate are as follows:

Clearly define the freedom to love and marry for same-sex individuals as a human right equal to that of heterosexual individuals.

Allow same-sex individuals with the requisite legal capacity and age to jointly register their marriage, which, once registered, would receive legal protection, free from interference and discrimination based on any factors.

Grant same-sex marriages equal legal status to traditional heterosexual marriages, ensuring that all rights and obligations applicable to citizens in traditional marriages also apply to same-sex couples.

Require mutual economic and life support within the marriage. In case of one party’s demise, the surviving spouse should have inheritance rights equivalent to those in heterosexual marriages.

Apply existing provisions on divorce property matters from the “Marriage Code of the Civil Law” to same-sex marriages.

Allow legally established same-sex families to adopt children through prescribed procedures.

These amendments will establish a legal framework that recognizes and protects the rights of same-sex couples, creating a more inclusive and equitable society.

4.2.2. Clarifying Equal Treatment for Homosexual Individuals and Ensuring Privacy Protection

As medical, ethical, and sociological research delves deeper into the phenomenon of homosexuality, a global legislative movement for legal protection of marriage and family rights for homosexuals has been gaining momentum. The legitimate demand of homosexuals for a permanent union deserves legal protection. [6] Homosexual individuals have the right to enjoy the rights of social participation fairly, and they should not be subjected to discrimination or defamation in any way due to external factors. All forms of media should not casually disclose information about homosexuals or make unwarranted assumptions. No one should reveal their private information such as names and addresses. People's courts may conduct closed hearings for cases involving homosexual marriage to safeguard dignity and privacy, similar to closed hearings in sexual crime cases.

4.2.3. Clarifying the Legal Status of Same-Sex Marriage and the Rights and Obligations of All Parties

Clearly define the freedom to love and marry for homosexual individuals as a human right equal to that of heterosexual individuals. Allow homosexual individuals with the requisite legal capacity and age to jointly register their marriage, which, once registered, would receive legal protection, free from interference and discrimination based on any factors. Same-sex marriage should have an equal legal status to traditional heterosexual marriage. All rights that citizens are entitled to and all obligations they must fulfill should equally apply to homosexual individuals. In marriage, both parties must support each other economically and in their daily lives. In case one party passes away, the surviving spouse should have inheritance rights similar to those in heterosexual marriages. The existing provisions on divorce property matters in the "Marriage Code of the Civil Law" can also be applied to same-sex marriages. Same-sex families meeting certain conditions should be allowed to legally adopt children.

4.2.4. Strengthening Legal Responsibility in Media's Neutral Reporting

In the debate over same-sex marriage, arguments in support of equal rights and marriage freedom based on shared values have dominated mainstream media opinions, influencing Western politics and academic discourse. [7] Some media outlets in China, driven by public curiosity and a desire to profit from prying into others' privacy, have sensationalized news related to homosexuality for commercial gain. They have portrayed homosexual individuals in a negative light, associating them with crimes or AIDS. Such demonization and sensationalism have led to biases and isolation against the homosexual community. Some media personnel, wearing "colored glasses" while approaching the homosexual community, along with their lack of professional knowledge, have failed to objectively and accurately represent this group to the public. Their subjective factors have misguided the public, further exacerbating biases and misunderstandings. Therefore, media professionals bear significant social responsibility. Reporting on homosexuality should be truthful, neutral, and objective, allowing the homosexual community to progress toward a more equal position in the struggle for their voice. The issues facing the homosexual community are societal issues that the entire population needs to face together. Media personnel should adhere to the constitution, laws, and administrative regulations, using legal awareness to guide their actions. In-depth investigations, authentic interviews, and comprehensive reporting should be employed to reveal the most authentic aspects of the homosexual community.

4.2.5. Enhancing Legal Protection for Homosexual Sexual Offenses and Divorce Cases

Decriminalizing Homosexual Sexual Acts: It is recommended to remove homosexual sexual acts from the realm of criminal law and no longer treat them as criminal offenses. This can eliminate discrimination and persecution against homosexual individuals, safeguarding their human rights and freedom.

Prohibiting Sexual Orientation Discrimination: Enact or amend anti-discrimination laws to explicitly prohibit discrimination based on sexual orientation. This includes ensuring that homosexual individuals are not subject to unfair treatment in areas such as employment, education, and housing due to their sexual orientation.

Legalizing Same-Sex Marriage: Promote the legalization of same-sex marriage to ensure that same-sex couples have the same legal status and rights as heterosexual couples. This includes protection in areas such as property inheritance, medical decision-making, and parenting rights, as well as providing legal safeguards in divorce proceedings.

Improving Legal Protection Against Sexual Assault: Strengthen legal protection against sexual assault, ensuring that sexual offenses, whether involving same-sex or opposite-sex individuals, are subject to legal prosecution and punishment. Establish a robust legal process and support institutions to provide timely and fair judicial remedies for victims.

Providing Psychological Counseling and Support: Establish specialized psychological counseling services to offer psychological support and guidance to homosexual individuals. This can help them address issues related to marriage, sexual orientation identity, and promote healthier and more equitable family relationships.

Enhancing Legal Education and Awareness: Through legal education and awareness campaigns, raise public awareness and understanding of laws related to homosexual sexual offenses and divorce. This can reduce discrimination and prejudice against homosexual individuals and promote social inclusivity and equality.

5. Conclusion

In the cultural context of Chinese society, most homosexual individuals eventually enter heterosexual marriages or form mutual-support marriage relationships. Analyzing and evaluating the social impact and the rationality or irrationality of these marital relationships from the perspective of the function of marriage can provide a more objective view of the homosexual community. The legalization of same-sex marriage protection is necessary:

To construct a well-ordered society in China, as effective institution-building through a comprehensive legal system is essential to ensure the normal acquisition of basic conditions for human beings. Establishing legal norms and regulations for same-sex relationships is conducive to the orderly construction of the homosexual community, making it essential for the legal framework to be in place. This is a significant reason for the legalization of same-sex marriage.

To genuinely implement China's Constitution, which includes provisions on equal rights and human rights. For Chinese homosexuals, this is a psychological liberation, as they no longer consider their sexual orientation a mental illness but rather a normal psychological phenomenon. Consequently, their rights should be protected by the law, and their marriages should be safeguarded by the state. Society should show homosexuals the respect they deserve.

Discrimination and social exclusion caused by the lack of legal protection for homosexuality can lead to unfair treatment and societal rejection of homosexuals. This estrangement from society can result in psychological alienation for homosexuals. Thus, legalizing same-sex marriage can not only enable more homosexuals to choose the marital life they desire but also prevent tragedies. It will bring happiness to more Chinese citizens and offer the homosexual community in China a brighter future.

In conclusion, China should recognize and protect same-sex marriages by amending and improving its legal framework. This recognition should ensure equal rights and privacy protection for homosexual individuals, promote neutral and accurate media reporting, and strengthen legal protections against sexual offenses and in divorce cases. With collective efforts from society, same-sex marriage protection in China will undoubtedly progress toward legalization and further improvement.

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