

# *Exploring the Necessity and Potentials of Legalizing Same-sex Marriage in China*

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**Abstract:** In recent years, the LGBTQ+ community in mainland China has been gaining attention of the society. More and more studies have focused on the issue of affirmative action for the LGBTQ+ community, but a more detailed discussion on the legalization of same-sex marriage in mainland China is still lacking. Therefore, this paper aims to discuss the necessity of legalizing same-sex marriage in China and potentially feasible ways to better protect the right to freedom of marriage that the homosexual community deserves. It is expected that this study will advance the process of legalizing same-sex marriage in China to better safeguard the legitimate rights of the homosexual community.

**Keywords:** Chinese society, Chinese government, homosexual, legal rights, same-sex marriage

## 1. Introduction

As the world's most populous country, China has a significant number of people in the LGBTQ+ community. As a result, there are many organizations in Chinese society working on social campaigns for the LGBTQ+ community to increase their social acceptance and reduce discrimination by others [1]. As society progresses and evolves, more and more sexual minorities are choosing to stop hiding their identities. Some of them present themselves to the public and fight for their legitimate rights, especially on the Internet.

However, the Chinese government has never clearly expressed a supportive attitude toward the LGBTQ+ community and has even further reinforced anti-gay sentiment among parts of the population in its official political practices [2]. For example, while not directly prohibiting LGBT-related programmes, the State Administration of Press, Publication, Radio, Film and Television of China censors them as unsuitable for the general population. As a result, in China's social environment, sexual minorities remain vulnerable and in some ways are not afforded the same legal protections as other citizens. To improve their status, promoting the legalisation of same-sex marriage is certainly one way which could be implemented.

Much of the discussion about the Chinese homosexual community focuses on the historical tradition of homosexuality in China [3], the spread of sexually transmitted diseases in homosexuals [4], and homosexual stigmatization [5]. Furthermore, there are studies to discuss the content of Chinese homosexual legislation [6], however, the scope of the legislation is so large that it makes the discussion seem general and not focused enough. There is still a lack of enough research on how to pass laws to protect the legitimate claims, rights, and interests of homosexuals, or at least the

same status as other citizens. Therefore, this paper mainly focuses on the relevant content of legalizing same-sex marriage.

This article focuses on the issues related to the legalization of same-sex marriage. First, this paper will start from the practice of legalizing same-sex marriage in the world, and analyse the legislative practices and forms of legalizing same-sex marriage in various countries. It will also compare the current situation with that of China. Next, this paper will present the current situation of homosexuals in Chinese society through literature analysis to provide a solid background for the discussion of the article. This section also serves as a prelude to the discussion of the necessity and potential ways of same-sex marriage in the following sections. The third part of the article will analyze why the legalization of same-sex marriage is necessary in China today from both individual and societal perspectives. Finally, I will highlight the important role that three different actors - social media, the educational system, and the Chinese government - can play in the legalization of same-sex marriage, thus giving potential ways to implement same-sex marriage.

## **2. The Practice of Same-sex Marriage**

### **2.1. Same-sex Marriage in the World**

According to Britannica, same-sex marriage refers to the practice of marriage between two men or between two women [7]. The acceptance level of same-sex marriage varies among different countries and perspectives. The legal and societal reactions to same-sex marriage have ranged from jubilation on the one hand to punishment on the other, despite the fact that it has been prohibited by law, religion, and custom in the majority of the world's nations. In 2001, the Netherlands passed same-sex marriage legislation, becoming the first country to recognize the validity of registered marriages of same-sex couples. Nowadays, there are currently 34 countries, the whole or part of these countries, around the world that legally support same-sex romantic relationships in different forms, such as Canada, France, and the United Kingdom [8]. However, more critically, only some of these countries acknowledge same-sex marriage with laws. Selected countries choose other legal statuses for same-sex couples, such as civil union, civil partnership, registered partnership, life partnership and so on [9]. However, regardless of the form of recognition of same-sex partnerships, these countries have objectively achieved some degree of protection for the legitimate claims of same-sex couples [10]. This is certainly an important encouragement and support for the homosexual community in their quest for equal rights.

### **2.2. Same-sex Marriage in China**

Being eager for the law of same-sex marriage is not only the need of same-sex couples in the Western world, it also happens in China. According to credible domestic and international polls, Dr. Li Yinhe has calculated that there are between 39 million and 52 million homosexuals in China [11]. The Chinese Academy of Sciences estimates that there were around 70 million homosexuals living in China on average in 2014 [12]. These data undoubtedly show that the homosexual community is also an important socio-demographic component in Chinese society. However, in social practice, their demands are often ignored, or even deliberately disregarded. The practice of same-sex marriage is even more difficult to achieve.

## **3. The Living Situation of Homosexuals in China**

Reviewing the attitude of Chinese authority towards sexual minorities, in 2001, the Chinese classification of mental disorders was enacted, which removed homosexuality from the diagnostic criteria for mental disorders. This means that even after the founding of the People's Republic of

China, Chinese society treated homosexuality as a mental illness for a long time, which made people in those days always hold the impression that homosexuality is a disease; at the same time, Chinese classification of mental disorders still retains the diagnosis of sexual orientation disorder [13]. This has somewhat prevented the complete depathologization of homosexuality.

It's a fact that homosexuality is no longer defined as a mental illness, and sexual behavior between homosexuals is no longer a punishable crime in China. However, the Chinese government has not enacted any laws or regulations to recognize homosexuals, let alone to provide them with any form of legal protection [14]. Article 104 of the Civil Law of the People's Republic of China specifies that the People's Republic of China implements a monogamous and equal marriage system between men and women, without taking into account the need and possibility of same-sex marriage and other forms of civil unions. A "marriage" between persons of the same sex has no legal effect in the People's Republic of China and is not protected or regulated by law [15].

Under the influence of China's social environment, most people are mainly opposed to the act of homosexuality. Over 10,000 randomly selected people from more than 30 different provinces were asked about their attitudes toward homosexuality. More than 75% of them thought homosexuality is completely wrong [16]. Sometimes the basic human rights of the gay community are not effectively protected. For instance, Suen and Chan did a survey consisting of questions relating to the experiences of using medical and mental health care services in China. In a sample of more than 15,000 randomly selected gay people, only 5% were asked about their sexual orientation during sex-related therapy. After they revealed their sexual orientation, about 10% said they received negative feedback, such as verbal abuse [17].

#### **4. The Necessity for Legal Same-sex Marriage**

From the information provided above, it is clear that certain basic rights of the homosexual community are not being met in China, especially in mainland China, let alone the legalization of same-sex marriage. However, nowadays, the legalization of same-sex marriage is significantly urgent. The lack of government-led legislation on same-sex marriage has brought about many related social problems. Especially with the progress and development of the times, more and more homosexuals in mainland China are coming into the sight of the public to pursue equal rights, making the conflict more and more acute [18].

##### **4.1. Impact on Individual Physical and Mental Health**

From an individual perspective, the physical and mental health of homosexuals are at great risk, and this situation needs to be changed urgently.

Since there is no official legal recognition of marriage for the homosexual community, there is a missing explanation in our education system on how to properly handle same-sex relationships. Lack of specialized sex education, which leads to irregular sexual behavior and absence of safe sex in the homosexual community, further contributing to the spread of STDs. For example, the primary hidden cause of HIV transmission in China has been sex between males. The obvious reason for this is the apparent lack of effective laws in China to promote HIV intervention for gay people in China [19].

Without effective government protection, people tend to adopt a principle of heteronormativity and thus strongly reject homosexuals. Homophobia is still a scourge in modern China. In this case, some people may take extreme actions against the gay community, such as discrimination, verbal abuse, harassment or even abuse. This will undoubtedly bring great stress and trauma to homosexuals, making them more prone to mental illness [20]. Nearly 50% of the subjects in a

sample of 365 gays in China believed they were worthless and had a high level of sexual shame, which led to psychological stress and mental issues [21].

#### **4.2. The Intensification of Social Problems and Conflicts**

From a societal perspective, people's negative attitudes towards homosexuals have also led to many social conflicts.

The lack of protection from the institution of marriage for the homosexual community may lead them into traditional heterosexual marriages, ultimately harming heterosexual couples. Some homosexuals choose marital fraud to avoid social pressure, but this can cause their partners to become miserable. Tongqi is one of the tragic phenomena, which refers to the heterosexual marriage partner of a gay man. After giving birth, around 13.6 million Tongqi women frequently learn their husbands' secrets, completing filial and marital duty. Tongqi, however, suffers much from anguish, both physically and emotionally [22, 23]. Long-term repression of their true feelings may also cause some homosexual groups to become mentally distorted and eventually lead to criminal incidents.

Parent-child conflict is also a very serious consequence. A portion of homosexuals, due to social pressure and family expectations, often choose to conceal the truth and are afraid to have their parents indicate their true sexual orientation [24]. However, this does not mean that they can escape the pressure of their families, for example, as they grow older, they also have to face the pressure of their parents to get married, making family relationships awkward. Another group of homosexuals choose to come clean with their families directly about their sexual orientation, and such behavior often leads to violent family conflicts, such as arguments and even beatings. Some parents may choose to cut off their parent-child relationship with their children and refuse to interact with each other [25].

#### **5. Potential Ways to Facilitate Same-sex Marriage**

In such a situation, it is very important to know how to promote the legalization of same-sex marriage. First, social media and social platforms can play a more positive role in providing a better social environment for the homosexual community. In modern society, social media is an important channel for us to get information. If social media is properly used to disseminate positive knowledge about the homosexual community, it will help people understand the true face of this community more objectively [26]. When society becomes more accepting of the gay community, naturally legislation will be more acceptable.

Secondly, building a sound and objective sex education system can help protect the physical and mental health and growth of China's homosexual community, especially adolescents. Providing comprehensive sex education for school students can provide a healthy sex knowledge system for adolescents, effectively reducing the occurrence of high-risk behaviors and reducing the spread of STDs [27]. Setting up homosexual-related sex education can greatly reduce a person's homophobia toward the homosexual community [28]. The education system is an important platform for spreading positive social energy and popularizing the idea of equality. Using education to prepare for legislation is the most natural and efficient way to implement it.

Thirdly, the government should proactively and actively assume social responsibility to protect the basic social rights of the gay community as Chinese nationals. Just as Xia said, only through relevant legislative reforms to recognize the coupling of same-sex couples, financial relationship issues, etc., can same-sex couples emerge from the grey areas of society and gain a truly equal legal and social status [29]. Although they may face traditional cultural pressures and social stereotypes, the adoption of explicit laws defining same-sex partnerships and related rights is the most direct and

effective way to ensure that the homosexual community enjoys an equal social life with other citizens.

## 6. Conclusion

From the above discussion, we can perceive that homosexuals in China is objectively treated unfairly and cannot fully enjoy the same rights as other citizens. However, from both individual and social perspectives, there is a necessity to promote the legalization of same-sex marriage, not only to ensure the physical and mental health of individuals, but also to promote social harmony and progress. Therefore, social media, the education system and the Chinese government should play an active role in protecting the legitimate demands of the homosexual community and promoting the legalization of same-sex marriage from multiple perspectives. Through the joint efforts of many parties, it is expected that soon, the homosexual community will enjoy an equal and better social life as other citizens.

For further research direction, it is recommended to compare in detail the different forms of recognition of same-sex marriage in different countries. It is also a very worthwhile discussion to analyze which forms are more suitable for implementation in China or how to improve these forms with the integration of China's national conditions.

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