

Legal Protection and Recognition of Homosexuality in China

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Abstract: As the homosexual population in China is increasing constantly, more people are becoming more open-minded. Attitudes of ordinary people towards homosexuality have slowly changed from exclusion to acceptance. Chinese legal system needs several modifications to better protect the legal rights of homosexuals, including restrictions on violence and same-sex rape and same-sex marriage laws. Due in part to this predicament and traditional social rejection, gays live in an environment rife with violence, prejudice, pressure, psychiatric issues, and even suicide attempts. This research suggests three solutions to obtain their legal rights and social acceptance: homosexual education, a homosexual organization, and legal reforms. This study aims to further the cause of binary-sex individuals while assisting the homosexual community—and, in an ideal world, all sexual minority groups—in obtaining their legal rights and protection. It also aids in identifying the areas of the Chinese legal system that require alteration as contemporary society moves toward a more liberal ideal.

Keywords: homosexuals, sexual minorities, LGBTQ, legal rights, law

1. Introduction

In modern society, the protection of the rights of sexual orientations is gaining more and more attention from the community, and people are beginning to be aware of this issue. The harm caused by gender discrimination may not be apparent, but there is a substantial infringement of the rights of homosexual minorities. In China, discrimination of sexual minorities is becoming more visible. We can see from this that their living environment faces many oppositions. In traditional Chinese culture, only heterosexuality should be supported, and homosexuality is absurd. Although there are many homosexuals in China now, their living conditions are very concerning, as the public cannot accept them. Compared to the current living environment, the lives of these homosexuals in the past were complicated.

Oppositions from schools and family members homosexual people face are also becoming severe. For example, on April 20, 2000, Ye Yongzhi's dead body was found in the toilet of his school. It was identified as suicide. This is due to his "feminine" appearance and behaviors, being recognized as homosexual, which led to school bullying. Furthermore, many pieces of evidence show the concerned living environment in China of transgender people. Another example of this would be Axing. Since childhood, his father passed away, and he grew up with his grandmother. Because he often plays with girls, his classmates bullied him. Later, this became more severe; they removed his pants to check if he was a woman. One other day, he was dragged to the forest by three senior students who wanted to take off his pants. When he was in college, he realized that he was a homosexual.

The living environment of homosexuals is based on social discrimination against sexual minorities. Research shows that they experience domestic violence, bullying, and social discrimination. Gender dysphoria affects 80% of transgender people. Among the 2,060 valid trans interviewees, 61.5% have depression, 73.2% have anxiety, 46.2% have thought about suicide due to their transgender identity, and 12.7% have tried. 90% of families find it difficult to accept their transgender children entirely, and 59.7% of transgender people said their families offered no support. [1]

For this essay, content is divided into four parts. First, this research will introduce the infringements on the legitimate rights and interests of homosexual groups. This research dives into the necessity and scientific validity of laws used to protect the rights of sexual minorities in other parts of the world. It compares them with Chinese cases of homosexual discrimination. Second, this research will explain and analyze the reasons for these infringements. According to some Chinese culture, the content of this part would be viewpoints of traditional people or people opposing homosexuality. Lastly, discovering some potential and primitive drawbacks in Chinese law, a possible solution will be proposed contributing to a law reform that supports homosexuality.

2. Rights Infringement and Causes of Homosexuality Discrimination

According to the Beijing Prison Administration records, from 2003 to 2004, crimes because of same-sex sexual attacks accounted for 4% of the full range of crimes in that year. In current years, such incidents have additionally proven a clear upward trend. In those instances, almost 70% of them are sufferers of same-sex violence. However, because of felony gaps, perpetrators of same-sex violence can't be punished. Just as people have been discussing incidents of same-sex sexual violence, on the give up of June 2005, in Suzhou, a migrant employee named Liu was repeatedly subjected to sexual violence with his boss's aid. Liu filed a crook prosecution in court. However, the case was no longer filed because of a loss of evidence.

Another example would be on June 13, 2005, Liu was sexually assaulted by his boss, Li. Due to the worry of dropping his job, he was subjected to sexual attacks for numerous nights. Eventually, Liu could not undergo it and arrived at the People's Court of Huqiu District, Suzhou, on July three to document a lawsuit. However, the Huqiu Court could not confirm a case because of the shortage of felony safety for identical intercourse attack rights. [2] In China, discrimination against homosexuals particularly comes from society, especially for men, as they undergo the conventional duty of inheriting children. Among the 30 million homosexuals, at least 80% have or are going to enter heterosexual marriage because of traditional and social strain. This behavior transfers social pressure to the individual's marriage. This will further trigger many tragic marriages.

Currently, the number of homosexuals between the ages of 15 and 60 in China is about 30 million; 20 million are homosexual and bisexual, and 10 million are lesbian. For a long time, homosexuals on the societal threshold have mainly lived in worry and guilt. Experts have surveyed male homosexuals who stay in middle and upper cities, have obtained advanced education, and are energetic. The consequences display that the mental health of homosexuals could be very concerned. Due to social discrimination, 30% to 35% of homosexuals have had sturdy suicidal thoughts, 13% have had suicidal conduct, 67% feel "very lonely", and 63% feel "pretty depressed". More than 1/2 of humans have felt very painful and severely affected their lives and paintings because they are no longer understood. [3]

Some people think marriage ought to be a union of two sexes. The association of ladies and men is marriage's primary function and prerequisite; the same-intercourse block can't represent marriage. Because same-intercourse marriage can't reproduce races and keep society, it is going towards herbal laws. However, gay conduct is brazenly found in capitalist international locations along with the United States, France, Germany, and New Zealand. They are establishing companies for homosexuals and increasing their promotion in their purpose.

Some people also think marriage ought to be a union of two sexes. The association of ladies and men is the primary function and prerequisite of marriage, and the same-intercourse block can't represent marriage because same-intercourse marriage can't reproduce races and keep society. They also think that homosexuality is an infringement of Taoism. In marriage, there must be yin and yang factors (women and men). The cohesion of parents is referred to as love, and love is with inside the contrary intercourse, and love inside the equal intercourse will necessarily result in poor consequences.

In terms of mental health, homosexuality was eliminated from the categories of mental disorders in the Chinese Classification of Mental Disorders (CCMD-3) in 2000. However, many specialists in this field still consider homosexuality a mental health issue that needs to be medically cured by SOCE (sex orientation conversion efforts). Many hospitals have established SOCE, providing medical facilities all over China [4].

According to my observation of people posting their experiences on social media in such organizations, countless parents attempt to "save" their kid's sexual orientation through numerous means. They ship their kids to 'hospitals' and 'schools'. Let them receive 'treatment' and 'guidance'. Various "therapies" and numerous "tutoring". Electric shock, imprisonment, whipping, scolding. Pressured marriage is considered reasonable compared to inviting a person to rape one's daughter.

3. Current Legal Protections on the Rights and Interests of Homosexual Groups

Due to the grey area in China's criminal law concerning same-sex rape, if a man is the victim, he is not punished. According to Article 236 of Chinese criminal law (2020) [5], whoever rapes a woman shall be sentenced to fixed-term imprisonment of between 3 and 10 years; whoever has sexual intercourse with a girl under the age of 14 is committed of rape and shall be given a heavier punishment; and whoever committed either one of the above, that the commitment has a flagrant circumstance, raping multiple women and girls, raping in public space, raping done by various people or causing severe injuries, shall be sentenced to fixed-term imprisonment of not less than ten years, life imprisonment or death. This article only mentioned the situation of "raping women", but not men, or nonbinary genders, which means that raping men cannot be defined as the crime of rape. However, raping a man can be identified by the corruption of indecency. Article 237 of Chinese criminal law (2020) [5] mentioned that whoever uses violent coercion to coerce others or insult women indecently shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; whoever gathers or commits the crime mentioned in the previous paragraph in public places, or have other severe circumstances, shall be sentenced to fixed-term imprisonment of not less than five years. A man or woman raping another man can only be identified by the crime of indecency, as in article 237, the word "others" includes man. Unfortunately, the offense will be sentenced to a shorter imprisonment than the crime of rape of no less than five years, which is not enough enforcement considering the commitment of rape.

China has not made explicit provisions on same-sex marriage in legislation. Article 1041 of the Chinese Civil Code (2020) [6] states that marriage must be based on freedom of marriage, monogamy, and equality between men and women. The lawful rights and interests of every Chinese citizen are protected. Article 1048 of the Chinese Civil Code (2020) [6] states lineal or collateral relatives by blood within three generations are prohibited from marriage. Article 1049 of the Chinese Civil Code (2020) [6] states that men and women proceeding to a marriage shall report union registration in person with a registration authority. All current Chinese laws mention the marriage between "one man and one woman"; therefore, same-sex marriage is currently prohibited in China.

There are currently no laws in China regulating specific rights of homosexuals. But it does say to protect all Chinese citizens, including homosexuals. Article 34 of the Chinese Constitution (2022) [7] states that all citizens of China who have reached the age of 18 have the right to vote and stand for

election, regardless of personal differences, except for those deprived of political rights. Article 38 of the Chinese Constitution (2022) [7] states that either insult libel should not violate the personal dignity of Chinese citizens or false accusations. Article 46 of the Chinese Constitution (2022) [7] states all Chinese citizens should have the right to receive compulsory education. Schools should offer young adults, youths, and children moral, intellectual, and physical education. Article 48 of the Chinese Constitution (2022) [7] states that women in the People's Republic of China enjoy equal rights with men in politics, economics, culture, and daily life. Women deserve equal pay and work and cadres' selections.

Lack of explicit mention of sexual minority groups. Like women, homosexual groups are currently as underprivileged as women before. But unlike women, there are multiple specific mentions in Chinese law, such as "women deserve equal as men," currently, to protect women's equal rights. There are no terms like "transgender," "sexual minority," or "gender identity" appearing in China's legal system currently. Firstly, this creates an absence of regulations forbidding harassment and aggression, which elevates the levels of prejudice and harassment they encounter [8]. By adding these terms, more people can accept and understand sexual minorities as recognized by the legal system, preventing more discrimination. Secondly, this creates a grey area of victims being raped that aren't women. Currently, the law only regulates the consequences of "raping women", where it ignores victims of other gender identities. This reduced the cost of committing rape on a man (or different genders), either by women or men, where the crime can only be sentenced as a crime of indecency.

Lack of provisions on same-sex marriage. In today's China, homosexuals are no longer a group with a deficient population. This group deserves an authoritative identification from the government of their love and relationship. This can help them deal with some social pressures, as they can marry a partner of the same sex legally.

4. How to Improve Legal Protection of Homosexuality

4.1. Put Legal Forces on Sexual Education

Courses on sexual orientation in moral education can also assist individuals in better safeguarding themselves and others. For adolescents, both sex education and sexual orientation education are essential courses. Lastly, we also promote forums, round-table discussions, lectures of experts in related fields, and speeches done by actual transgender students to make students more active and attentive, which can make students more aware of sexual minority rights.

Students' awareness and advocacy can gain more attention and support. Young adults and children can accept this more easily than most adults because they usually have more internet experiences. Through education, teenagers can better understand their bodies and emotions and learn to protect their rights and safety. Simultaneously, one can also learn to honor the choices and freedoms of others and avoid harm and discrimination.

4.2. Provide Propagandas on Homosexuality Rights

Another solution would be to increase propaganda of sexual minorities in the public. Posters will be posted in public areas like schools, airports, shopping malls, scenic spots, restaurants, and residential estates, acknowledging people of sexual minorities. There will be signs like LGBTQ posted on each door of the bathroom cubicles. Also, in secondary and high schools, propaganda can be done by increasing the awareness of sexual minorities, especially in public schools, as it usually has very traditional ideologies. This propaganda will not be posted in primary schools or kindergartens as this might shift their sexual orientations. The promotion of sexual minorities can strive for greater rights and recognition.

Furthermore, an organization will be required to promote the expectance of sexual minorities socially. Firstly, this organization must support LGBTQ candidates in the election of political officials to increase their political influence. Officials elected by LGBTQ will make more people accept this group, impacting policy adaptation and legislative discussions, which approach law reforms promoting legal LGBTQ rights [9]. Secondly, this organization should arrange fairs that include buying commodities, music, dances, and food representing sexual minorities. For example, there can be books, booklets, and stickers that contain quotes from non-binary Chinese citizens describing the social discrimination that they experience. Also, music and dances can help the audiences understand sexual minorities. This can also be a fundraising channel. Last, this organization will need social media accounts on popular platforms in China, for example, TikTok, Weibo, Little Red Book, and WeChat, to publish articles or posters promoting the rights of sexual minorities.

4.3. Improve and Perfect Regulations and Punishments to Protect Homosexuality

Currently, there are no wordings related to LGBTQ in the Chinese legal system, which means that every law that prevents “Chinese citizens” from violence is not gender specific. Transgender people are usually under social discrimination, which makes it easier to become the victim of violence. According to the Anti-Domestic Violence Law of the People’s Republic of China (2015) [10] Article 5, minors, the elderly, disabled, pregnant and lactating women, and critically ill patients who suffer from domestic violence should be given special protection. This article especially listed underprivileged groups under violence for further protection. But considering the previously mentioned content, LGBTQ or transgender people should also be regarded as disadvantaged if they are under more social pressure. Therefore, the law should say the word “transgender groups” specifically in this article. Also, the law should put more enforcement on the definition of “civil dispute”, which is considered a lighter punishment than violence. According to the Public Security Administration Punishments Law of the People’s Republic of China (2012) [11], if the parties reach an agreement through accommodation from the police, no punishment shall be imposed. Because of this, many abuse cases, not considering the gender of the victim, are considered “civil disputes” in which the abuser wasn’t punished. That’s why, under Article 21 of this law, the victim can be liberated by their guardians, and there have been no transgender people being released legally under domestic violence so far. [8]

The People’s Republic of China’s Criminal Law [5] Article 236 that whoever rapes a woman is to be sentenced to not less than three years and not more than ten years of fixed-term imprisonment. Notably, this regulation solely protects women. Courts may only impose a penalty for the rape of a male under the category of “intentional harm.” Of course, this assumes that any investigation into sexual harassment or violence against a transgender person happens, which is doubtful in some situations. [8] On the other hand, for Sexual assaults, Article 237 of Chinese criminal law (2020) [5] mentions that whoever uses violent coercion to coerce others or insult women indecently shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention. In this case, the word “others” is included, and the victim can be a Chinese citizen of any gender. For the crime of rap, the victim of rape should not only be women but “others”, so it protects all gender of victims.

Chinese legal system currently has no clear regulations on same-sex marriage. According to Article 1041 of the Chinese Civil Code (2020) [6], marriage must be based on freedom of marriage, monogamy, and equality between men and women. This means marriage can only happen between a legal man and a woman in China. However, in response to Inquiries about the Termination of the Marriage Relationship Following the Sex Change of One of the Parties, Ministry of Civil Affairs General Office Letter No. 127 reads that the marriage that was registered initially remains valid if one of the parties successfully changes legal gender, which cannot declare the marriage invalid based on this sense [8]. Even in this case, same-sex marriage is not legal since it cannot be registered

according to the same legal gender. Therefore, marriage should happen between two people of “any gender” without restrictions on whether one’s gender should differ from the other partner.

5. Conclusions

In conclusion, the Chinese legal system still needs multiple adaptations for the legal rights of homosexual people, including legal restriction of violence and same-sex rape and legal provisions on same-sex marriage. Partially due to this situation, as well as traditional nonacceptance in society, the living environment of homosexuals is filled with violence, discrimination, pressure, psychological problems, and even suicide attempts. Therefore, This research proposes three solutions: education related to homosexuality, a homosexual organization, and law reforms to acquire their lawful rights and social recognition. The value of this research is to help the homosexual group, and if ideal, entire sexual minority groups, to obtain legal rights and protection while ensuring the benefit of binary sex people at the same time. It also helps to discover the parts of the Chinese legal system that need adaptation, as modern society is developing into a more open ideal. However, there are a few limitations of my research. First, there is a lack of primary sources used. This research only used statistics as primary sources; a few actual interviews on, for example, lawyers, homosexuals, and parents of homosexuals will be significant to my research. Second, many Chinese news articles are used as references, and some information might not be as authoritative as journal articles. In the future, more possible law reforms based on the legal rights of homosexuals and more ways of enhancing the quality of their lives socially shall be discovered. Hopefully, homosexual groups could be fully recognized by Chinese society and the law.

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