

Analysis on the Status Quo of Chinese LGBT Community and the Necessity of Legislation

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ABSTRACT

With the development of The Times and the gradual improvement of social living standards, the main form of social contradictions has gradually changed from the struggle for survival resources to the conflict of consciousness and ideology, the discrimination against LGBT groups is a typical example. In the field of gender rights, there is a special group, namely sexual minorities. Sexual minorities refer to groups that are different from the majority of the society in terms of sexual orientation, gender identity, sexual identity or sexual behavior, which is often referred to as LGBT groups in the media. Gays, lesbians, bisexuals, asexual, transgender and intersex people are all sexual minorities. Based on the research in related fields, some consensus in the academic community and the reality of the LGBT community, no matter in what era and cultural background, a small number of vulnerable groups are the main groups subjected to discrimination and bullying. As a sexual minority, LGBT people are more vulnerable to infringement of their rights. In daily life, especially under the severe situation of the epidemic, the extent and scope of the infringement on THE LGBT community continue to expand, and there is still a lack of substantive legal protection for the LGBT community. Through empirical analysis, historical investigation, comparative analysis and other research methods, this paper mainly studies the necessity of legislative protection for LGBT community in China, and then promotes the legislative process of LGBT community in the world.

Keywords: *LGBT community, rights, protection, legislation.*

1. INTRODUCTION

With the development of the economy and the improvement of human living standard, people's acceptance of LGBT community is getting higher and higher. However, discrimination based on gender and gender identity is still very serious in countries and regions with relatively conservative ideological and cultural traditions. Take China for example, as the country with the largest LGBT communities, the scope and impact of discrimination are very serious and the visibility of minority groups is very low. Therefore, the survival of LGBT community is an urgent issue to be paid attention to and solved at present [1]. In the face of the pressure and dilemma brought by different social backgrounds, the author thinks that it should be solved from the perspective of legislation, by formulating a law in line with the social status quo of the corresponding region to improve the LGBT community's psychological, family, employment and other survival problems. This study is expected to reduce the degree of social discrimination against LGBT people, and call for more

scholars to study the legislation of LGBT people, so as to improve the status quo of LGBT people.

2. OVERVIEW ON THE LGBT IN CHINA

2.1. Background

The LGBT community faces a number of economizing dilemmas, the most embarrassing of which are their mental and health problems. It is generally believed that sexual minorities are the induction and division of certain types of people based on sexual orientation, gender identity and sexual expression [2]. Sexual orientation refers to a person's deep emotional, emotional and sexual attraction and ability to form intimate and sexual relationships with individuals of a different sex, the same sex, or not limited to one sex [3]. Studies have found that sexual minorities face incomprehension and oppression from all aspects of society, and face great pressure for survival. Such pressure will affect their self-regulation ability and social cognition, thus increasing their risk of mental and mental

diseases, and thus affecting their physical health. Sexual minorities also often face difficulties in accessing mental and health services due to discrimination, stigma and social exclusion. Many counsellors or doctors often pathologize and pathologize the sexual orientation, gender identity and gender expression of LGBT people, and even perform reversal therapy on LGBT people in accordance with the wishes of their families. There have also been cases of sexual minorities being involuntarily admitted to psychiatric hospitals [4]. They often find it difficult to obtain self-identity and social identity in life and are used to denying themselves, which is extremely difficult for them to carry out social activities and survive in society. This shows, that the existing law does not protect their dignity and hope, so LGBT rights legislation is the key step in the LGBT community's social identity, laws are basic criteria of survival, and through legislation, can in the legitimacy of law to give sexual minorities live, under the protection of the law, deter some people actually bullying sexual minorities, So that they can live happily in the sun like most people.

2.2. Family discrimination

In terms of family, LGBT people also face difficulties. They have the same right to pursue self and choose family form as heterosexuals. However, due to the pressure from family and public opinion, especially some people with self-identity disorder, they are more likely to enter into the wrong marriage, which is called "shape marriage". In China, the law does not recognize any form of marriage other than heterosexual marriage, and the traditional idea of procreation is deeply rooted in the minds of most people. A large number of LGBT people choose heterosexual marriage and reproduce, resulting in a series of social problems such as tongqi and tongfu. Therefore, in law, the sexual orientation of LGBT community should be treated equally to that of the heterosexual community, and the public's attitude towards the LGBT community should be correctly guided through the guiding role of law, so as to reduce the possibility of gay marriage and gay husband, and reduce the possibility of the heterosexual community being hurt due to the sexual orientation of LGBT community. It helps preserve the traditional order of heterosexual marriage.

2.3. Employment discrimination

According to the Social Attitude Survey report, the employment stability of sexual minorities is low, and the unemployment rate is higher than that of non-sexual minorities [3]. According to the "Country Report on Comrades in Asia" program for China released by the United Nations Development Program and the United States Agency for International Development (USAID), Workplace discrimination based on sexual orientation is widespread. Some work units will take punitive measures

against the gay community, such as pay reduction, suspension, or even dismissal [4].

3. COMPARATIVE STUDY OF LAW

3.1. International Law

In terms of protecting the rights of THE LGBT community, European countries and the United States are leading the world in laws, and the government has enacted various laws to safeguard the legal rights of the LGBT community. After the Second World War, as the UN charter and the universal declaration of human rights, the international covenant on civil and political rights, the international covenant on economic, social and cultural rights and the promulgation of "convention against torture, sexual minorities protection of human rights has gradually become one of the important content of international law. The United Nations Declaration of Human Rights clearly states that "adults have the right to choose their own partner and enter into marriage regardless of nationality, color and religion". This provision in the UN Declaration of Human Rights clearly guarantees the legal rights of LGBT people, especially their freedom to choose marriage. Despite the provisions of the Declaration of Human Rights on the rights and interests of LGBT people, LGBT people are still under pressure from all aspects of society in real life, and are discriminated against to varying degrees in employment, medical care and other fields. This discrimination is also on the rise amid the COVID-19 pandemic.

3.2. Chinese law

On August 23, 1999, the World Sexology Congress was held in Hong Kong, China. The General Assembly adopted the Hong Kong Declaration on Sexual Rights, which gave a comprehensive and standardized interpretation of sexual rights. As the subject of rights enjoyment and obligations under international human rights law, the state should take the initiative to assume responsibility for the rights and interests of protective minorities [5]. However, the legal protection of LGBT rights in mainland China is relatively blank, which is closely related to China's traditional culture for thousands of years.

4. DISCUSSION

In the laws and policies of mainland China, although there are several provisions that different genders should enjoy equal rights and prohibit discrimination based on gender, there is no direct mention of "sexual orientation", "gender identity", "gender expression" and other words. Based on legal reasoning, the academic community prohibits gender discrimination to be applied to sexual minorities, because "gender" should theoretically cover minorities with sexual orientation, gender identity and

gender expression [6]. China has promoted and guaranteed gender equality in employment, education and other areas, and has made corresponding international commitments. However, there are no clear provisions in law or policy regarding the equal rights of sexual minorities.

4.1. Marital rights

In terms of equality for sexual minorities, there is much room for improvement in China's laws and policies. For example, the marriage rights of sexual minorities are still not included in the laws of mainland China. Prior to the introduction of the civil Code, there had been calls for the incorporation of same-sex marriage into law, but they failed under pressure. It is undeniable that the appropriate advance of legislation is indeed conducive to reflecting the progress of the society, and the law should indeed protect the interests of vulnerable groups in the society, so as to reflect the value of humanistic care of the law. But the law is not the will of a single person or a group of people, it should be the will of the majority. With the progress of the social development concept, the public's attitude toward homosexuality has been eased, but such groups and behaviors are still not widely recognized by the government and ordinary people in reality. It is a gradual process from legal recognition of homosexual partnership to recognition of same-sex marriage, and we cannot achieve it overnight. It is not realistic to make same-sex marriage legal at this stage [7].

4.2. Transparency

The rise of the Internet in modern times has greatly reduced the difficulty for people to obtain information, and the LGBT community is also known by more people. The equal rights movement represented by the gay community is rising around the world. But sexual minorities are becoming less visible in the dissemination of information to the public. As the only national industry organization in China's Internet audio-visual field association (level), [8], the Chinese association of Internet audio-visual program service June 30, 2017, passed the "general principles of network audio and video content audit", which requires association member if it is found that Internet audio-visual program contains "performance and display abnormal sex, sex, Such as incest, homosexuality, sexual perversion, sexual assault, sexual abuse and sexual violence, "shall be cut, deleted and broadcast;If the problem is serious, the whole program shall not be broadcast "[9]. Association members and the service includes the central radio and China central television, the People's Daily online, xinhuanet, tencent, iQIYI heavyweight information platform, the visibility of audiovisual means sexual minority groups in the network down, this does not directly show the discrimination against LGBT community, but indirectly expressed their interest in sex

a few thoughts, this is undoubtedly a very wrong approach.

4.3. Supportive by the law

In today's social situation, it is very important to provide legal support for THE LGBT community and protect their legal rights. The author believes that the state, as the subject of rights and obligations under international human rights law, should take the initiative to assume the responsibility of protecting minority rights and interests[8]. No matter at the legal or social level, the state should play a guiding role in an inclusive manner, rather than covering up the reality of its existence. This is obviously contrary to the original intention of legislation. First, when formulating laws to protect basic human rights, any country should take into account the provisions of its basic law and basic legal principles and must not violate them. For example, China's Constitution stipulates that all citizens of the People's Republic of China are citizens of the People's Republic of China. All citizens of the People's Republic of China are equal before the law. The state respects and safeguards human rights. It can be seen that the legislation on the rights of THE LGBT community reflects the basic requirements and concepts of the Constitution, in order to better protect the legal rights of the LGBT community and better implement the contents of the Constitution guaranteeing the rights and obligations of citizens and protecting human rights. Secondly, compared with advanced countries in the world, China's legislation on LGBT activities and rights protection has a late start and a small scale, with a large number of legal gaps. We have not formulated a special rights and interests protection law, and the existing laws on LGBT rights protection are also in a state of non-compliance. This undermines the basic human rights of the LGBT community.

5. CONCLUSION

This study mainly analyzes the necessity of LGBT protection from the perspective of legislation. LGBT people long for respect and understanding and equal reproductive rights, equality and other rights. The author believes that legislation is the most effective way to solve the above problems. And when legislating for THE LGBT community, we should consider the national conditions and formulate laws with our own characteristics based on facts and laws. We should not copy the laws of other countries. The more local laws are, the more vitality they have in law. Therefore, for China, we should draw up laws with Chinese characteristics and in line with national conditions on the basis of the legislation of western developed countries, so as to fundamentally solve the problems faced by THE LGBT community[10]. As with many forms of discrimination around the world, the LGBT community is likely to face many challenges, and it is still a long way

from when it will receive fundamental legal protection. As legal researchers, we should be forward-looking, beyond the lag and limitations of law, so as to combine law with social development, better guarantee the basic rights of vulnerable groups, and then realize equal protection in the real sense.

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