



Path Selection of the Legalization for Same-Sex Marriage of China

ZHANG Jichang^{[a],*}; FANG Xiangrong^[b]

^[a]School of Law, Southwest University, Chongqing, China.

^[b]Associate professor, School of Law, Southwest University, Chongqing, China.

*Corresponding author.

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Abstract

With the gay movement rising in the world, the rights protection of Chinese homosexuals is more cause for concern, including Same-sex marriage problem has become a focus of the rights protection. As a way of life, gay marriage will inevitably impact on the traditional concept of marriage and family.

Key words: Same-sex marriage; Legalization; The legislative mode; Path choice

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INTRODUCTION

In Chinese, it is no doubt that exists in the homosexual behavior, however, about homosexuality legislation is still a blank, and same-sex marriage is a contentious topic. The national people’s congress held early in 2013, hundreds of gay parents sent a letter to the National People’s Congress called for the revised “marriage law” as soon as possible, to achieve the gay and lesbian couples marriage rights. (Liu, 2012 February) At the same time, for the legalization of same-sex marriage proposal (suggestion No. 31841st) voting is in like a raging fire.(people.cn, 2013 February) With the passage of time and the increasing population demands more urgent, to protect the legal rights of them will make a careful choice of gay marriage, and focus on the protection of rights and interests of the group.

1. HOMOSEXUALS’ SURVIVAL SITUATION OF CHINA

Because homosexuals want to dare not open their own identity, there has not been an authoritative, accurate data can reflect the current number of Chinese gay. In the enormous population base background of China, The investigation report on Dr. Li Yinhe’s and sampling results as a reference, namely projections the homosexual accounted for about 3% to 5% of the population, the number more than 50,000,000 gay, and with the development of society, the figure shows a rising trend. Then, what with the huge population living conditions?

1.1 Low Degree of Openness, High Psychological Pressure

Generally speaking, “Does not recognize” is the modern homosexuals of China for their sexual orientation identity take the attitude, their difficulties and pressure mainly dose not comes from within, but comes from the outside; dose not from blame or self denial, but from the social norms of fear. This kind of pain, stress and fear motivates most gays chose to enter into a heterosexual marriage. “Survey project of Chinese homosexuals survival condition in 2009”¹ is a report that through the scientific method for homosexuals survival status of census. In this report, 24.44% homosexuals said that no gay friends

¹ The “China survival gay survey project” launched by the 39 Health Network, from June 10, 2009 to July 20th, lasted a month, through the objective, scientific, rigorous, professional analysis means of investigation and statistics, method, combined with various websites and gay forum, to carry out a comprehensive investigation on the basic situation of homosexuality Chinese. The survey received a total of 60,615 valid questionnaires, the questionnaire of gay people in 5,274, non gay population survey in 55314 copies. Gender in the survey population,: male 61.6%, female 38.4%; age: people aged 18~30 accounted for 26.5%; 31~40 years old people accounted for 50.7%; 41~50 years old people accounted for 17.2%; 51~60 year olds people accounted for 4.6%; 60 over the age of 1%, young people surveyed population accounts for the majority of; in education, Doctoral Education accounted for 2.5%; master degree and 5.4%; undergraduate and junior college degree accounted for 31.9% and 26.4%; high school / secondary education or below accounted for 33.8%.

around them; 84.5% no obstacle gay and heterosexual communication; 50.2% homosexuals will not show his homosexual identity to anyone; 35.5% homosexuals think the biggest pressure from familial duties, bear the family name responsibility; because of prejudice 56.3% homosexuals was sad; 62.8% homosexuals will eventually accept the heterosexual marriage (Health Network, 2003, p.13).

Severe depression and psychological discomfort are also present in the gay community, the reason is not that homosexuality itself, but that is caused by homosexuals' social adaptation problem. Too much social pressure cause psychological problems in some of the gay community, such as alcoholism, depression and even Dutch act. For example, a report from a foreign investigation shows that the possibility of the youth group of gay Dutch act is higher 2/3 than other peers, which accounted for 30% of juvenile Dutch act each year (Sun, 2000, p.632).

Because of many homosexuals live a relatively closed and lonely life, they only with other gay community (Troiden) interact, and forming the distinction between so-called "insiders" and "outsiders" "circles" and "community". They often take the "underground" way of communication. If there is no "insider" introduction, "outsiders" is generally doing not enter a "circle". With the rise of the Internet, gay websites (such as the sun belt, love white net) provides a safe and warm communication space for them, and they have regular meetings of the "place", the place is usually at a bar, teahouse, bathroom / sauna and gym, subversion of heterosexual orthodoxy inherent in these places a consciousness in the gay, so as to express the homosexual and the related community building to create the conditions.

1.2 The Higher Cultural Level, the Low Health Level of Guarantee

"Generally speaking, modern Chinese homosexuals' higher average education level, high school and high school degree or above accounted for 69.8%, and the general population is less than 50%; their occupational level is higher, the age is young" (Liu & Lu, 2005, p.329). For the sexual behavior, 60% homosexuals and homosexual had sex; 11.7% homosexuals often occurred one night stand and gay; 29.9% homosexual will not take security measures when they have sex; only 30.1% of the people think that when gay and lesbian couples to have sex there may be infected with aids (Health Network, 2003, p.14). Because of the social life and legal norms have a strategy on gay issues adopted that a "unspeakable", it will make gay have very limited on knowledge and education of sex, the sex studying rights could not be guaranteed basic; and because of the instability of same-sex couples, same-sex sexual behavior disorder, and the lack knowledge of health protection, gay group become the high-risk groups of aids.

Along with the improvement of education level and openness, in recent years many parts of China have initiated similar to gay rights protection movement

actively fights for their own. In 2005, nearly a hundred of homosexuals in Shenzhen washed coast propped up the rainbow flag, calling for tolerance; while in the known as "ay China year" of 2009, and homosexual activity is frequency: June 7 to 14, China ushered in the first ever gay "proud" – "Shanghai Week", China official newspaper "China daily" published a report, "Shanghai Pride Week" to improve the visibility of gay community practices, and USA President Obama declared June to be put on a par with America gay; August, gay theme novel "Gon Freecss's courage" was published by China mainland The North Literature and Art Press; in December 19th, the government of the Dali city of Yunnan province investment help opened a gay bar. In 2002 June, half official background gay community organization "Chengdu LGBT care group" (CGCO) was formally established, in order to provide better help gay. In fact in a large number of gay of China on marriage was in demand, according to a survey of China gay: 89.5% homosexuals support for same-sex marriage (Health Network, 2003, p.14), some people are more practical action to show that the desire for marriage: 24 year old Lu Zhonghe, 20 year old Liu Wang to hold the wedding ceremony in the Fujian of Ningde (Sohu News, 2012 october 17), this is Fujian's first openly gay marriage in January 4, 2013, 36 year old Dong Dong; and 30 at the age of seven seven in Shenzhen in a hotel in Luohu District with a great feast, solemn and lively to tell the whole world: they love each other, will never change until death (21CN News, 2013, January 5).Of course, not everyone recognized homosexuals needs and desires, 2007 August actor Haiying Sun denounced homosexuality is a crime (NetEas, 2007, August 15), his wife in 2011 June actor Lv Liping condemned homosexuality in the micro-blog (NetEas. 2011, July 11), although both met many netizens denounced and rejected, but criticized by public identity is still only represents the scholar Zhang Baichuan Professor, Professor Li Yinhe and several other isotropic field. Do not understand, anti gay voice can be heard without end, in the process of organizing gay wedding, there are a lot of people say is not normal, resolutely oppose (The River Net, March 1, 2009). Even the "internal Chengdu LGBT care group" also has many about lifestyle gay moral standards dispute.

To make a long story short, supporters and opponents of gay voice as one falls, both debate and confrontation precisely reflect the society of this group of gay attention degree is more and more highly.

2. THE NECESSITY OF LEGALIZING GAY MARRIAGE

2.1 The Need for Gay Rights Protection

2.1.1 Respect and Concern for Equality

In 2004 the amendment of China constitution increased the provisions of the third paragraph of article thirty-third:

“the state respects and safeguards human rights”. As the fundamental law of the State Constitution requires respect and safeguard human rights, requires equal treatment to every citizen, but because Chinese law disregard for gay rights in the process, a part of homosexuals in their own right is infringed when unable to seek legal relief, everyone is equal before the law without problems. In a recent survey, 24% of gay men and 10% lesbians have been some form of criminal attacks in the past year (and in the general population, 6% of men and 4% of women suffer from similar attacks in the past), an average of 33% surveyed homosexuals reflect once hunted or tracking; 23% reflect the people to throw things; 18% suffered fist attack or beating; 16% person cars or houses being applied or burning; 7% people spit; 7% was the weapon attack (Gary, 1991, p.31-55). Everyone has a wish to enjoy the respect and equal right to enjoy life. As a special social vulnerable group, gay long-term bear does not understand and discrimination from society, after the double damage of body and mind, also without legal protection should be given. No one can deny that gay rights the qualification, not just because of differences in their sexual orientation aspect and the loss of the most basic human rights. Homosexuality as a social person, should be respected, should be guaranteed by law. This is any person live in the society should have the rights of individuals (Dang, 2005).

2.1.2 Law Does Not Prohibit the Free

Value of freedom is that it is a human right, the person all has, everyone. In August 1999, the World Association for Sexuality through the “Declaration of Sexual Rights” clearly pointed out that the right is a basic human right, and established the “sexual freedom “as the core of the property rights system” (Wen, 2011). Sexual freedom rights for homosexuals are admitted in the harm to social circumstances, without any human intervention, free selective leaning to the right, and should be the social and legal recognition.” Homosexuals should also have to choose their own marriage and marriage rights and undertake corresponding obligations. Unfortunately, in China this free of gay marriage law has been overhead too. “Marriage Law” second stipulates: “the implementation of the freedom of marriage, monogamy, equality between men and women in the marriage system.” Interpretation of the terms can be found, gay is really enjoying the freedom of marriage, but this freedom is established on the premise of opposite sex for marriage. The main purpose of the modern marriage is the individual’s pursuit of happiness, not only to have a son to carry on his family name “— so-called ‘free’ this against gay heart wish or natural physiological needs or freedom? Loss of legal protection of freedom, it is not true freedom” (Yuan, 2011, p.23). This is the moral and ethic as the basis, ignoring minority freedom of choice, in the form of freedom under the cover of disguised gays to kidnap the marriage, the gay sexual orientation discrimination. In violation of the right to sexual freedom of homosexual persons at the

same time, also sparked controversy and disputes over marriage law is more. It is more typical of Anhui province “Wuwei County case” in 1991,² where n18 the first proposed the legitimacy issue of same-sex cohabitation in China. In addition, because China most homosexuals will eventually enter into a heterosexual marriage, it appears some for a spouse with homosexuality or homosexual behavior caused by the divorce proceedings. In such cases, homosexual behavior in gay marriage does not violate the “marriage law” on the “No person who has a spouse living together with others”. According to the “marriage law judicial interpretation (a)” the provisions of section second, “a person who has a spouse living together with others” situation is refers to a spouse and extramarital sex, not in the name of husband and wife, sustained, stable living together. Accordingly, the judicial interpretation precludes the spouse without fault direction and same-sex cohabitation request a fault compensation rights. In the existing legal framework of Chinese, when one spouse as the behavior of the other party lead to marriage to maintain that divorce damages, the court shall not support for non gay party proposed to claim for damages, For example, in Sichuan University a female doctor because her husband is gay so Dutch act of a case, the court dismissed the parents asked her husband compensation claim (Xinhuanet, January 7, 2013).³

2.2 In Order to Build A Stable and Harmonious Society

We must admit that, after the removal of the “gay” label, homosexuals and heterosexuals in work, life, did not show much difference, they also have the same thoughts, feelings, preferences, also excellent even more outstanding. In Chinese, attributable to existing laws on homosexuality legislation blank and culture from society, family rejection caused tremendous pressure, gay is not recognized by the in order to protect their own dignity and dare not open their own sexual orientation and homosexuality, the spirit of long-term in a repressed state. According to the survey between 1981 and 1991 for the (Nanjing survey) by Professor Lu Longguang, 77% homosexuals have experienced severe pain, 34% had a strong idea Dutch act, 10% had Dutch act attempted action, 66% lonely depressed, 50% seriously affecting work, 38% people suffered insult, such as sexual harassment, assault, blackmail and impose exactions on, criticism and punishment other injuries (Liu & Lu, 2005, pp.133-148). “When this depression more than their endurance limits, not understanding and tolerance

²At that time, the Ministry of public security for approval of the case points out: “the same sex cohabitation is not a criminal or gangster behavior, without the need for criminal punishment, can in principle be inadmissible”. This reply though that China toward homosexuality non criminal attitude, but it also revealed the lack of provisions on Legal same-sex cohabitation Chinese legislation.

³Xinhuanet. (2013, January 7). *Sichuan university female doctor jump off building the court of first instance: Gay husband not cheat*. Retrieved from http://www.zj.xinhuanet.com/newscenter/rb/2013-01/07/c_114281972.htm

of the case, will produce a lot of social problems, forms of these problems or hidden or open, may be cold may also be violent” (An, 2011, p.11). Homosexuals have no fixed partner and confusion of sex, prostitution, rape, mutilation, Dutch act, and even violence to harm others it is often seen. Because of lack of social identity and status, such a high proportion of gay civil life long repressed in fear, and pain, which is not commensurate with the demands of society harmonious and stable.

With the human rights movement and the degree of social civilization and the deepening of homosexuals, the voices of legalization for same-sex marriage more and more loudly. Undoubtedly homosexuality as a way of life, it will be to the traditional marriage and childbearing concept impact, and “before the law did not make sure the evaluation, people tend to use the power of morality to be measured” (He, 2006). It is foreseeable, the Chinese person acceptance of homosexuality and same-sex marriage also need a long process. However, in the face of human rights for homosexuals “in the name of life”, we do should not be passive waiting, continued apathy, entangled in must be based on an abstract concept to distinguish “fixed wrong”, but should be based on respect for their national traditions, face reality, special groups of specific the demand, with the development of society and gradually change the concept. As CCTV “24 hours” column criticized Lü lipping back with comments said: “.....homosexuality like us, have to survive in this society and development rights, and this right should not be even violated sense.” Chinese people need to key of harmonious development period, inclusive development as the theme of the social development, our attitude should be firm and clear, that is: eliminate social discrimination and exclusion, determine the gay rights through legislation, to give them to relief system, law and security. Only this kind of attitude, it can let the gay liberation from repression negative attitude to life, the meaning and value of re understanding of their own lives, and to experience itself as a “person” enjoy “people” rights, while allowing gays to better moral, abide by the law, is of great significance to the A stable and harmonious society construction.

3. OBSTACLES AND PATH CHOICE OF THE LEGALIZATION OF SAME-SEX MARRIAGE IN CHINA

Undoubtedly homosexuality as a way of life, it will to impact the traditional marriage and childbearing concept, in China most gay who chose to enter the traditional marriage, the most important reason is that the society on the relationship between same-sex common life issues have not yet formed the proper cultural background and living environment. In heterosexual marriage, in background of carry on the family line oriented social

(cultural), homosexuals in China are not facing harsh persecution and extreme hatred, but the mainstream social (cultural) indifference and contempt.

3.1 On the Disorder Recognition of Same-Sex Marriage Legislation in China Social right into legal right must be recognized and endorsed for the society. Though gay marriage has been legal recognition in some countries, but controversy continues. There is the Chinese same-sex marriage legalization process with many obstacles in concept and system.

1) The abstract of law become a moral initiation law ethics. The human legal history to us clearly shows from the law to the realization of the rule of track: the process of law and morality evolving. The moral legalization stressed the moral concepts of human cast for the law is a good law, forming process. Moralization of law emphasizes law into people’s quality and moral. The traditional method of Chinese core value is “Rites”, “rule of virtue” and “self” and “without me”, informal institution constraint to “ritual” as the characteristics of the human behavior is much larger than the formal legal rules constraint, “this also led to the pan ethics China ancient law and traditional China order the Confucianism” (Wei, 2003).

The result of law moralized is the ethical and moral standards to judge people’s behavior instead of law, from the view of modern law and moral law of phase separation, constitute the law ethics legalization of same-sex marriage Chinese obstacles. The disorder is in the legislative and judicial aspects. Firstly, the morality of law will be compressed mass media for gay rights and free space is not conducive to the China reports, the use of social media to promote the public understanding of homosexuality, gay organizations also inhibited the activity space, the other non-governmental organizations in support of homosexual rights action, which will seriously hinder the same-sex marriage legal approval process. Secondly, the morality of law restricts the legislation, law enforcement and judicial creativity. The legislature will not, dare not to conflict with the traditional morality or public law, maintain the corresponding rights nature impossible, but the key to the problem lies in any culture of innovation needs someone to take the first step, the legalization of same-sex marriage issue is no exception. Third, according to the morality of the law it gives authorities “outside the law to punish”. A people who have the right under the banner of “public order and good customs” and “public interest”, and suppress human rights situation has occurred, the conflict between the government power and civil rights is the result of vulnerable groups of power, individual rights, absolute obedience to the state power. Finally, the morality of law makes the moral personality, ignoring the legal personality, ignoring the individual value. The lack of legal personality, individual value of human consciousness and method to Chinese law culture

which makes people to ensure rational legal person, leads to a lack of understanding of social discrimination in gay and gay rights security system.

2) "Center of Home" concept questions and obstacles of same-sex marriage appeals. In China, homosexuality has existed since ancient times, The Shang dynasty have "Bi Wan Tong", Han dynasty have "Duan xiu", spring and Autumn "Yu tao", the Warring States have "Long yang", "An ling". But in China the relationship of gay couples to the relationship between husband and wife, there seems to be no historical records (Zheng, 2009). "Center of home" is the most significant feature in Chinese culture is different from Western culture and has profound influence on the Chinese law culture. In the traditional Chinese family is not only a safeguard mechanism, but also is a category a system; not only production, living and entertainment center, but also the basic unit of state governance. It is because the family is so important, marriage, birth and parenting by autonomy not marriage, marriage is closely linked with carry on the family line. "The book of rites faint righteousness" said: "marriage in good two surnames, to do the ancestral temple, the next generations to continue", marriage is not just to achieve order or meet the emotional needs, also is the offspring, raising children to build a home security system requirements. One of the reasons for thousands of years of homosexuality or homosexual more tolerant in China, they meet the needs of society is based on family -- as long as have been married, completed the pre task name, so although the "bizarre", also can contain.

In Chinese legal and religious repression by homosexuals far less than Western homosexuals, but it is from the family, social and ethical constraints are far greater than the western homosexuals. China "home culture" is based on family, children and thus extends to the brothers and sisters and marriage network based. Gay families do not have the conditions, such as marriage can't have children, family, a family cannot constitute network etc... Family-oriented and based on obligation home culture restrict gay rights and the pursuit of personal happiness space, which China legalizing gay marriage "filial piety" shackles, forcing gay in "disloyalty", "There are three forms of unfilially conduct, of which the worst is to have no descendants" and accused the pressure to dare not "coming out" or to the opposite sex marriage. "When sex, love, marriage three-in-one relationship can be established, emotional and sexual each other to meet the first become a basic requirement for marriage, marriage of gay appeared, and homosexuals into the traditional marriage also accused began" (Guo, 2009).

3.2 Path Selection of the Legalization of Same-Sex Marriage in China

The legislation in the world about same-sex marriage, it has shown such a trend: face the same-sex marriage requires, and through gradually legal reforms to

protect the rights and interests. With the reform and development of the society, China currently not only vigorously to strengthen and improve the legal system, but also in unceasing enhancement and protection of human rights. No matter in what attitude on gay marriage, to solve the problem of protecting the right of the gay community has become an urgent requirement, the implementation of same-sex marriage system, or to give same-sex and heterosexual couples the same rights, for the implementation of the socialist system of China, is a matter of time. For the problem of selecting the path of legalization of same-sex marriage in China, the author has proposed in the previous paper, proposed a similar to UK partner the companion legislation mode of civil registration system in China.

Registered partner legislation mode for the purpose of establishing the common life of a stable, by allowing gays to partner status to the relevant authorities for registration, the rights and obligations of both parties and the establishment of clear legal relationship between the parties concerned. Needs to be emphasized is, must give homosexuals a legal status registered partner legislation mode, concluding that give them a legal status -- the status and effect of relieving aspects can be "marriage law" the relevant provisions of reference and draw on the successful experience of foreign similar. The legislative mode not only plays a role in the legal protection of same-sex couples, guide the adjustment concept of social progress and the accumulation of experience, but also avoids shaking the traditional marriage system status, alleviated and the mainstream society (cultural) conflict. Some suggestions about Chinese registered partner legislation mode specific regulation:

3.2.1 Elements of the Establishment About the Registration of Partnership

3.2.1.1 Substantial Elements

1) Necessary condition: Conclusion both parties shall be registered partnerships for same-sex; conclusion both parties must register their relationship entirely voluntary; Conclusion both parties registered partnership age required to reach the legal age. The statutory age is on the basis of "marriage law" provisions of legal age, suitable for 25-30 years of age, in the hope that the two sides know and consider more fully in a registered partnership.

2) Prohibiting conditions: Neither same-sex partner or with others have same-sex couples; Belonging to the family law relationship range: brothers or sisters (including whole blood or half blood), uncle and nephew, uncle and nephew and niece, aunt, aunt and niece; Suffering from medically considered inappropriate for a registered partnership disease (For a registered partner relationship, should be forced to undergo a medical examination, in order to protect the parties of personal safety and health.)

3.2.1.2 Form Elements

To apply for a registered partnership shall go through the formalities of registration to the registration organ cannot produce a registered partnership legal effect. The registration authority should be associated with the Chinese marriage registration authorities, the same level, in order to facilitate the registration authority shall examine and approve the application conditions of the parties concluded partnership, but also conducive to the “marriage law” and registered partnership law of unity and cohesion (Chen, 2010).

3.2.2 Registered Partner Status Effect

Registered domestic partner equal in status, in accordance with the registered partnership law enjoys the equal right to identity. The identity right about registered partner settings can be husband and wife about reference “marriage law” based on the relationship between both parties of the spouse and enjoy the relevant rights and obligations shall be constructed, but should be fully considered and combined with the particularity of same-sex couples, appropriate to change the identity right, Specific include: the right to equality, the right of name, the right of personal liberty, the right to know, right of claim and cohabitation, cohabitation obligation of fidelity, the right of daily family agent, minor children guardianship etc.. The question of the right for adoption, because of the controversial provisions, we can learn from the British “same-sex relations act” registered partner does not have the joint adoption rights to same-sex couples, a separate party guardianship of minor children, the other party does not get custody of the children, but have the right to participate in matters related to the children’s decision. In case of emergency, the other party may take all necessary legal measures to protect the interests of children of guardianship, but must have custody of the party informed as soon as possible. Registered partner separation, no custody shall not enjoy the right to participate in decisions (Civil Partner Act 2004).

3.2.3 Property Rights and Obligations of the Registered Partner

Registered partner property form, refer to the “marriage law” mainly to the legal property system, property system for the agreement to add property system, take the property system based on

registered partnership of all their property (including the conclusion of the registration of all property relationship before and after a registered partnership income property) still belongs to all, and freedom to dispose of the property system; They also can choose the partner relationship continues to exist during the agreed property registration and before the conclusion of partnership property to all, common to all or part of the property of their respective all, part of the common property of all system, there is no agreement or the

agreement is not clear, for separation of property, but the property ownership is not clear, presumed to be common. The law establishes registered partnerships both parties are entitled to the property rights shall include the right of disposition of property management and the value-added income distribution, property right, property right, the maintenance request assistance, family housing possession, use and maintenance of rights, insurance interests enjoy rights and separation conditions of property rights. In succession, refer to the rules of the German “life partner relations act”, registered partner enjoys the right of inheritance to death, where one partner has first, second in line to the throne, registered partner respectively, have the right to inherit the entire estate of 1/4 and 1/2; Death without first partner, second in line to the throne, registered partner inherited all property.

3.2.4 Termination and Effect of Registered Partnerships

To cause the registration of legal facts relationship termination including: one partner dies; agreement or a party requests the termination of registered partnerships. The parties agree to terminate, must to the partnership registration authority for termination of registered partnerships. Unilateral termination of appeals, it can unilaterally to the registration department to apply, the consent of the other party the content of the application and the signature (seal), the two sides to lift the registered partnerships; the other party does not agree to the content of the application, apply for a party to the court, the court’s decision results to determine whether to cancel the registration and partnership.

Termination of registered partnerships, destroy the relationship based on partnership and enjoy the rights and obligations. For both sides of the property, because the friend one death and cancel the registration and partnership, had established the will, in order to testamentary succession, not will established, in legal inheritance. Before the property division in a registered partnership between choices of property, property by agreement between the two parties, if no agreement is reached, by the people’s court according to the principle of equitable distribution with specific property judgment. Partnership is dissolved; common debt outstanding, original partner relation between two parties shall bear joint and several liabilities. Special provisions: In the termination of registered partnerships without fault or no economic source side can be obtained from the other party of alimony. (referring to the Holland “same-sex marriage law” provisions.)

CONCLUSION

Along with the evolution of human society and human rights movement rising, human rights and freedom concept gradually win support among the people, whether to adopt

the same sex marriage legislation pattern directly, or choose a different from the traditional marriage legislation of indirect, revealing the trend of the legalization of same-sex marriage. In today's China, understanding of homosexuality has basically realized the decriminalization - Qubing - normalization. "The 'progressive' is social and cultural compromise and tolerance, 'relative sacrifice' is gay price to pay, the price is not compromised, but with the social and the cultural reconciliation... Civilization desires happiness, pain necessary civilization"(Chen, 2012). To promote the legalization of same-sex marriage process, we cannot bound in the "traditional" ideas, also can not solely rely on legal reasoning to make major changes in public policy, but rather through the positive publicity and legislative activities actively guide social public recognition and acceptance of gays and their marriage, in order to protect homosexuals as well as they should, including marriage rights.

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