
对我国同性婚姻的立法思考

摘 要

在中国关于同性婚姻这个话题比较敏感。我国既没有法律明确规定同性婚姻合法,也没有出台政策禁止同性之间的现实结合。随着“国家尊重和保障人权”于 2004 年写入宪法修正案,在社会现实中涌现出很多有关同性婚姻的诉求。2016 年中国宪法研究会将“同性恋者申请婚姻登记第一案”作为中国十大宪法事例之一向社会公布,该案成为宪法事例也说明了其所具有的法律意义。它不仅涉及到我国宪法文本中婚姻、家庭这些概念解释同时也涉及到我们对于婚姻、家庭这些既具有传统价值,又必须回应社会现实某些事物和现象的宪法学上的考量问题。有学者研究,我国国内同妻人数不少于 1000 万。这么一个庞大的数量,我们不得不去重视与反思该群体的生存状况。因此本文试从法律关怀的角度出发去探讨我国同性婚姻问题。

关键词: 同性恋; 同性婚姻; 立法的可行性; 必要性; 立法建议

ABSTRACT

Same-sex marriage is a sensitive topic in China. In China, there is no legal provision for same-sex marriage, nor is there any policy prohibiting the practical union between the same sex. As "the state respects and protects human rights" was amended to the Constitution in 2004, there have been many demands for same-sex marriage in the social reality. In 2016, China Constitutional Research Society announced the "first case of gay people applying for marriage Registration" to the public as one of the top 10 constitutional examples in China. The fact that this case became a constitutional example also demonstrates its legal significance. It involves not only the interpretation of the concepts of marriage and family in the text of our constitution, but also our consideration of the traditional values of marriage and family, which must respond to certain things and phenomena in the social reality. According to some scholars, the number of tongqi in China is no less than 10 million. Such a large number, we have to pay attention to and reflect on the living conditions of this group. Therefore, this paper tries to discuss the issue of same-sex marriage in China from the perspective of legal concern.

Key words: homosexuality; Same-sex marriage; The feasibility of legislation; Necessity; Legislative proposals

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