

On the Obstacles and Paths of the Protection of LGBT in China

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Abstract: With the rise of the international human rights movement, the protection of the rights of LGBT has become a hot issue for discussion in various countries in the world, especially in the West. Ensuring the rights of LGBT poses new challenges to China. Starting from the definition of special groups, this paper find out the plight and path of protecting special groups and to promote the development of human rights in China.

Keywords: human rights; LGBT; protection of rights

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On December 15, 2017, the State Council Information Office published a white paper entitled “New Progress in Legal Protection of Human Rights in China”, which shows the international community the progress and importance of human rights protection in our country. The protection of human rights of LGBT is an indispensable and important part in the protection of human rights of China.

1. Definition of LGBT in China

The appellation of LGBT is derived from the concept of China, which is also called “sexual minorities” or “third sexes” in various countries in the

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world. LGBT in the world are mainly classified as homosexuals, transsexuals, bisexuals and asexuals.

This concept was first proposed by American geneticist Anne Fosto-Stirling in 1993. He believed that those who are different from ordinary gender characteristics should not make rigid choices about their gender. There is also no universal definition of the concept of third-person in the world. Dr. Li Yinhe, who has made remarkable achievements in the research of homosexuality in China, speculates that the number of homosexuals in the world is between 39 million and 52 million according to the results of authoritative surveys worldwide.^① According to Liu Dalin's survey, there are more than 30 million homosexuals in mainland China. At the same time, more than 1, 000 people in China have completed sex change surgery.^② Chinese scholars define the special group as a biological male or female individual. Although they clearly know their biological gender, they feel that they are heterosexual psychologically and are eager to change their biological gender.^③

2. Difficulties in the Protection of Human Rights of LGBT in China

2.1 *Lack of legislative orientation for the legal status and rights of LGBT*

Our country's legislative attitude to the protection of the rights of LGBT is not clear. China's Constitution does not clearly define the protection of human rights for LGBT. LGBT only enjoy the same rights and interests as others on the basis of the principle of equality, and there are no protective measures for infringement. There are vacancies in departmental law. China's Criminal Law has not yet regarded sexual assault on special groups as a crime. In civil legal relations, the adoption, cohabitation and property of LGBT are not protected by law.

① Li Yinhe: *Homosexual Asia-Pacific Culture* [M]. Beijing: China Friendship Publishing Company, 2002.48-72.

② Liu Dalin, Lu Longguang: *Research on Homosexuality in China* [M]. Beijing: China Social Press, 2005.94-158.

③ Chen Huanran and Lu Liping: *Legislation on Transgender Surgery* [J]. *Science and Technology and Law*, 2002, 1:70.

2.2 The Rights of LGBT cannot be Effectively Enforced by Law and Judicial Protection

Since the 18th National Congress of the CPC, China has made great strides in the work of enforcing human rights and judiciary work. However, China still faces various discrimination and prejudices on the protection of human rights of LGBT. Our country lacks the way of tort protection for LGBT. They have inferiority complex and often dare not defend their rights when their rights are violated. This has directly led to the formation of a pattern of unfair law enforcement, non-correction of violations of the law and judicial apathy in China. Law enforcement and judicial personnel often exercise their powers and powers with subjectivism to aggravate their punishment, which makes their human rights not guaranteed by law.

2.3 LGBT Lack of Effective Policy Support

China has opposed homosexuality since ancient times. China lacks effective policies to protect the rights of LGBT. The government has not taken into account the existence of LGBT in the construction of public infrastructure, and the social system has not seen effective policies and measures to protect the human rights of LGBT. And China's social security system has not paid enough attention to the special groups. There is a lack of legitimate official LGBT rights protection organizations.

2.4 LGBT Lacks the Consciousness of Safeguarding their Rights and Broad Social Identity

With the progress of society, the openness of Chinese thought has also been enhanced. The identity and social status of the special groups have, to some extent, also been recognized by society, but still can not be accepted by most people. When the rights of LGBT are infringed, they seldom choose to defend their rights, which leads to their self-abandonment, revenge on society. In our country, although LGBT enjoy basic human rights in the name of the law, in essence, the recognition of LGBT by the public is low.

3. Effective Path of Human Rights Protection for Special Groups in China

3.1 Incorporate LGBT into existing Legal Provisions

China should perfect the relevant legislation. Incorporating LGBT into legal

norms concerning human rights protection. It should be made clear that LGBT enjoy the same rights and interests as ordinary citizens, such as freedom of speech, employment rights and fair competition. Our country may give LGBT the legal status of marriage subject in the Marriage Law. In the Criminal Law, we can expand the scope of application of the object of crime in the identification of crimes in the Criminal Law. At the same time, the Supreme People's Court can expand the scope of the object of rape and compulsory indecency by issuing judicial interpretations, that is, to include men.

3.2 Strengthen law enforcement and judicial protection of the rights of LGBT

When dealing with LGBT cases, law enforcement organs and judicial organs should remove their colored glasses and abandon their personal views and moral and ethical consciousness. They should treat LGBT as ordinary people. They should not deviate from the law enforcement and judicial system by their inner moral evaluation. They should enforce the law impartially and conduct cases in strict accordance with legal procedures. In this way, special groups enjoy equal rights in the law and will not enjoy privileges because of their special status. More fully safeguard their legitimate rights and interests.

3.3 Strengthening social policy support for human rights of LGBT

We should guarantee LGBT in policy. For example, in the fields of employment, social security and medical treatment, LGBT are given equal or even better treatment than ordinary citizens, and discriminatory recruitment of employers is severely punished. The government should encourage social justice to respect and relate to LGBT, oppose campus bullying, and actively publicize the necessity of protecting the rights and interests of LGBT under international human rights, so that we can slowly change the prejudice of the society towards LGBT and gender orientation freedom. Create an inclusive and harmonious atmosphere.

3.4 Strengthening the Self-identity and Social Identity of Special Groups

In our country, we should give full play to the role of community, school and network. For example, health lectures for LGBT are regularly issued in the society. In schools, we should strengthen the guidance of students' mental health and pay attention to the future development of LGBT. Actively use the network communication platform to help special groups to gain more knowledge and opportunities

and integrate into society.

At the international level, China should strengthen cooperation, communication with other countries in human rights protection. China should embody an inclusive and peaceful attitude in international cooperation and show the image of a responsible big country to all countries in the world.

Conclusion

After many years of development, China is still a developing country. Therefore, there is still a certain gap in our country with respect to the protection of human rights in the developed western countries. Therefore, our country should actively respond to the rights needs of specific groups, learn from the relevant provisions of the international community, pay attention to the role of human rights protection, strengthen the legislation on the protection of human rights of particular groups, maintain a fair and equitable attitude in the process of law enforcement and judicial process, and fill in the lag of law in policy and public opinion, so as to improve China's human rights protection system for special groups, improve China's international voice, and promote the development of international human rights cause.

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