

# Fragmented Sexual Citizenship in China: Marriage Law, Assigned Guardianship System, and Gay Lives

Kaiqiao Tang<sup>1</sup>

<sup>1</sup> Xi'an Tie Yi High School, Xi'an, China.

Correspondence: Kaiqiao Tang, Xi'an Tie Yi High School, Xi'an, Shaanxi, China.

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## Abstract

The legalization of same-sex marriage in China remains unlikely to be achieved. Some same-sex couples have begun to use legal guardianship as a way to obtain some of the rights of marriage. Even if the assigned guardianship system grants some marriage privileges, it denies same-sex couples access to social aid, protection from domestic violence, a reduced mortgage, and communal property, among other things. In this paper, I analyze and evaluate the Civil Code of the People's Republic of China and conduct interviews with a lesbian couple and a gay couple who have previously applied for assigned guardianship to determine how the assigned guardianship system in China prevents same-sex couples from attaining full sexual citizenship.

**Keywords:** fragmented sexual citizenship, sexual citizenship, marriage law, assigned guardianship system, LGBTQ+ lives, same-sex marriage

## 1. Introduction

On April 13, 2016, the first national case on gay marriage rights was decided; Sun Wenlin and Hu Mingliang lost an administrative lawsuit against the Civil Affairs Bureau of Furong District, Changsha City, regarding the registration of their marriage. The case exemplifies the courageous fight for the rights of homosexuals in China under the dominant heterosexual culture. It serves as a voice for the legalization of homosexual marriage. However, it also demonstrates that legalizing homosexual marriage has a long way to go. I investigate sexual citizenship, including freedom of speech, physical autonomy, government recognition, and marital rights. I also examine how China's government secures sexual citizenship by allowing marriage for straight couples and applying assigned guardianship to homosexual couples. This research also explored how same-sex couples utilize guardianship as an alternative to partially acquire rights that marriage provides and argues that the assigned guardianship system cannot be considered same-sex marriage, whether culturally or politically. In order to delve into these issues, it is first necessary to define the concept of assigned guardianship.

### 1.1 Contextualizing Guardianship

When the assigned guardianship system was implemented in China at the start of 2021, thousands of same-sex couples understood that the document could give them partial rights like marriage. Both parties can obtain notarized guardianship certificates and become each other's legal guardians, which is partially equivalent to a marriage certificate. Many sociologists in China, including Dr Li Yinhe, indicated that assigned guardianship could be regarded as a temporary solution to same-sex marriage for gays and lesbians.

The assigned guardianship system was initially designed for seniors over 60, including widowed seniors, elderly individuals living alone, and elderly couples experiencing marital crises. If citizens are concerned about their status in the future, they do not have to recognize their spouse or children as their legal guardians. However, they can instead assign it to someone else. Through the assigned guardianship system, citizens can determine the individual in whom they can place their trust as a potential guardian.

The General Provisions of the Civil Law went into effect on October 1, 2017, for the first time, expanding the users of the assigned guardianship system from 60-year-olds to adults with total civil conduct capacity. The newly promulgated "Civil Code of the PRC" continues the concept of "The General Provisions of the Civil Law." It clarifies the conditions surrounding the guardian's responsibilities. The revised article reads as follows:

*"For an adult with total capacity for civil conduct, he or she may negotiate with his or her close relatives or other individuals or organizations that are willing to act as the guardian in advance and determine his or her*

*guardian in writing; if they lose or partially loses the capacity for civil conduct, such guardian shall fulfill the guardianship responsibility (The Civil Code of the People's Republic of China, 2021)."*

This indicates that the relationship under guardianship is no longer bound by age, blood, or marriage. It is possible that the Chinese government widened the concept of guardianship as a method to alleviate pressure on the state to recognize marriages between people of the same sexual orientation. In this sense, guardianship, much like civil unions in the United States in the early 2000s, includes only some of the rights and privileges associated with marriage.

The Chinese legal system does not explicitly discriminate against or protect the homosexual community, leaving the protection of their rights undefined. The state's purported neutral stance toward homosexuality denies gays and lesbians the same legal rights as straight people, thereby creating a category of second-class citizens.

## **2. Literature Review**

### *2.1 Sexual Citizenship*

David T. Evans first suggested the concept of sexual citizenship in 1993. He desired to modify social constructionist theories of sexuality to emphasize the material basis of sexualities from a neo-Marxist standpoint (Evans, 1993). Currently, the idea, established primarily in the United Kingdom, is mainly employed to highlight the political aspects of eroticism and the sexual component of politics (Hekma, 2004). Sexual citizenship has emerged as an essential idea in the social sciences. It describes the rights and obligations of citizens in sexual and intimate life, including arguments over equal marriage and women's human rights, as well as influencing how citizens view citizenship in general (Hekma, 2004). This concept of sexual citizenship will be significant for defining the distinctions in rights between marriage and assigned guardianship.

Traditional conceptions of citizenship include the right to vote in elections, own property, and be employed. Many scholars have expanded this traditional understanding to include "sexual citizenship." The contributions of sociologists, beginning with Evans (1993) and including Richardson (1998), Plummer (2004), and Weeks (1998), were essential to how sexuality and citizenship literature developed. However, to assume that this literature had no predecessors would be a mistake. Feminist scholarship, in particular, has highlighted issues that we now refer to as 'introducing concepts of sexual citizenship' and 'intimate citizenship' (Segal, 2013). In the 1980s, Pateman argued that the sexual contract is fundamental to citizenship, emphasizing the significance of a married heterosexual couple as the norm for full citizenship status. Pateman does not emphasize in her analysis that this also promotes heterosexuality to a specific sort of masculinity (Johnson, 2002). It may reflect a common assumption in much of feminist theory that gender and sexuality must be examined jointly, with gender typically taking precedence over sexuality (Richardson, 2016). This is apparent in the literature review on sexuality and citizenship, which mirrors many of the concerns that cut across citizenship studies in general, such as an understanding of the public and private; universalism and differentiation; processes of normalization, and the production of others; how majorities and minorities construct themselves concerning one another; and what it means to be recognized as a member of a group. In addition, analyses that emphasize sexual citizenship as a means of theorizing exclusions from various forms of citizenship rights based on sexuality reflect the long-standing connections that recognize marriage, parenthood, and military service as the pillars of the liberal regime of modern citizenship (Pateman, 1988).

In the book *The Straight State*, Margot Canaday argues that "homosexuality, as a category, was in part created at the federal level because, in creating the category, it was easier to regulate and control. Homosexuality is not just a medical or psychiatric category" (Canaday, 2011). Canaday asserts that having full citizenship means getting all the benefits of social welfare, immigration, and the military. "As important as documenting the legal construction of a barrier for sexual minorities in terms of who would be able to immigrate, soldier, and collect benefits in America" (Canaday, 2011). For instance, INS, the Immigration and Naturalization Service in the U.S., used the terms moral turpitude and disorderly conduct to define homosexual aliens as having psychopathic personalities based on the Immigration and McCarran-Walter Acts. Once the immigrants were depicted as psychopathic, they would be sent back to their country and banned from coming back to America.

There are parallels and variations between citizenship for gay and lesbian people in the US and China. The federal government crafted citizenship policies that crystallized homosexual identity (Canaday, 2011), fostering a process in which specific individuals began to view their sexual orientation in political terms, often because they were denied full legal rights. Similarly, many homosexuals in China seek full citizenship in political terms, such as marriage rights and workplace protection legislation. In the US, married couples have access to many federal rights and privileges that unmarried people do not. Married people have more than 1,000 laws and unearned privileges (DePaulo, 2018). In China, according to the Civil Affairs Bureau, married couples have access to a

five percent lower interest rate on mortgage loans, pensions, and over five hundred government-provided social welfare rights (Wang, 2012). Therefore, the right to access marriage is still essential to gain full sexual citizenship.

## 2.2 The Conditions of China's LGBTQ+ (Note 1) Citizens

As international human rights and gay affirmative action movements have grown in the past few years, same-sex couples have been recognized and protected worldwide. Some countries and regions have recognized same-sex marriage, as Figure 1 shows, such as the Netherlands in 2001, Norway in 2009, and the Taiwan Province in the PRC in 2019 (Note 2). However, China's Mainland still does not allow same-sex marriage. Based on official domestic and international surveys, Dr. Li Yinhe estimates that there are between 39 and 52 million gays and lesbians out of a population of 1.3 billion in China (Li, 2002). For this reason, I believe this issue is essential and necessitates the full consideration of the state to assess citizenship rights for LGBTQ+ people in China, including marriage rights for same-sex couples.

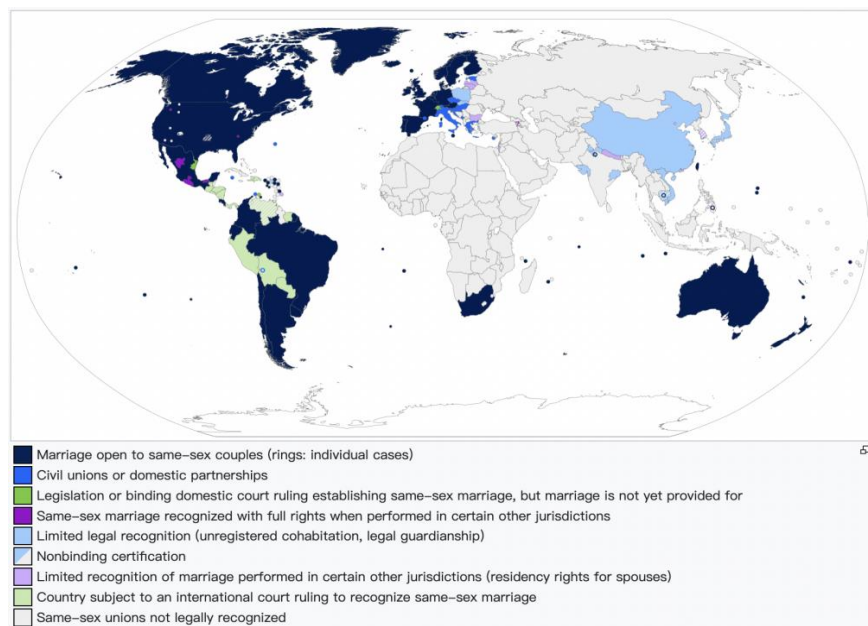


Figure 1

Sources: Wikipedia on same-sex marriage

### 2.2.1 The Difficulty of Ensuring Homosexual Rights in China

Protecting the rights of the homosexual community is uncertain, straddling the line between legal and illegal. At a 2000 seminar on the revision of the Marriage Law, Dr. Li Yinhe advocated for inclusion in same-sex marriages, despite many scholars holding the opposing view. Some opponents argue that “the primary reason for opposing the legalization of same-sex marriage is its conflicts with customs” (He, 2016). The government in China is unwilling to acknowledge same-sex marriage, so recognition remains a distant dream (He, 2016).

Some might say there is no reason to fight for gay marriage, given how unpopular marriage is in general. Based on China's Ministry of Civil Affairs, approximately 8.1 million people got married in 2020, representing a decrease from 9.27 million marriages in 2019, as Figure 2 shows. Even if fewer and fewer younger generations decide to marry, access to marriage remains significant because of legal rights and social recognition.

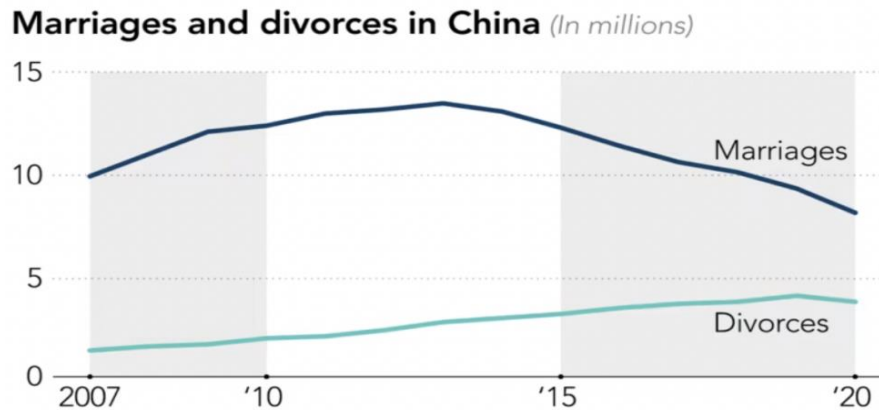


Figure 2

Source: Chinese Ministry of Civil Affairs

Furthermore, the LGBTQ+ community is frequently compelled to enter into heterosexual marriages to have children and pass on their heritage, following the traditional ideology of “no filial piety, no offspring,” which means people who do not have children when they grow up are unfilial to their parents. Many homosexuals cannot control their sexual orientation and lead a life of homosexual relationships outside of marriage. For example, gay men who are married often find same-sex partners outside of marriage to meet their physical and mental needs; however, this usually leaves the wives out, leading to unhappy and short-lived marriages (Fu & Zhang, 2013).

Not all lesbians and gay men are compelled to enter into heterosexual marriages to pass on their inheritance; some do find the courage to engage in cohabitation. Similar to heterosexual marriages, same-sex relationships face various issues, including property, mutual assistance, and separation. A significant number of problems are challenging to resolve legally during cohabitation. Is the other party permitted to make medical decisions, for instance, if one of the parties is hospitalized and gravely ill (Wang, 2013)? When they have these problems, they cannot use the legal system to get their fundamental rights protected or to settle their disputes.

### 3. Methodology

To explore how China’s assigned guardianship fragmented sexual citizenship, I used the People’s Republic of China Civil Code of marriage rights and assigned guardianship. I also interviewed one gay couple and one lesbian couple who had already applied for assigned guardianship to explore how these newly expanded laws fragmented sexual citizenship in their daily lives.

#### 3.1 People’s Republic of China Civil Code

The Civil Code of the People’s Republic of China, Part Five Marriage Court, Chapter 1, General Provisions, Article 1041 describes marriage in China as:

*“A marriage system based on the free choice of partners, on monogamy and on equality between men and women shall be applied” (The Civil Code of the People’s Republic of China, 2021).*

In the Civil Code of the People’s Republic of China, Chapter 2 Natural Person, Section 2 Guardianship, Article 33:

*“For an adult with full capacity for civil conduct, he or she may negotiate with his or her close relatives or other individuals or organizations which are willing to act as the guardian in advance and determine his or her guardian in writing; if he or she loses or partially loses the capacity for civil conduct, such guardian shall fulfill the guardianship responsibility.” (The Civil Code of the People’s Republic of China, 2021)*

Article 34 describes that:

*“A guardian is in charge of representing the ward in his or her performance of civil juristic acts and protecting the ward’s personal rights, property rights, and other legitimate rights and interests” (The Civil Code of the People’s Republic of China, 2021).*

By analyzing these articles, I concluded that the Chinese government only recognizes marriages between males

and females. Therefore, same-sex couples cannot legally marry in China, and guardianship does not constitute marriage. Therefore, same-sex couples who seek assigned guardianship cannot get certain marriage benefits. Moreover, same-sex couples in China do not have access to each other's healthcare and social services, nor do they share property. One partner can only access the other's property and medical care in an emergency.

### 3.2 Interview

I had begun to wonder why only married couples can access social welfare. In order to see how fragmented sexual citizenship plays out in peoples' lives, I interviewed two couples, one gay and one lesbian, about their relationship to guardianship. Ban and Liu are influencers on China's social media, and I got a chance to meet them last year. In the last few months, they published a video about applying for assigned guardianship, and I talked to them more about assigned guardianship. He and Shu are school teachers and will apply for assigned guardianship this year. While drafting the interview questions, I tried to eliminate potential bias in the results, both from the wording of questions and the response bias.

I interviewed Ban and Liu (Note 3), a couple who work in the media field and live in Chengdu. Chengdu is one of the most LGBTQ+-friendly cities in southwestern China. Ban is 25 years old, and Liu is 27 years old.

"I do not want to look at anything else now that I saw him," said Ban, who lived blissfully with his partner, Liu. During the interview, I never saw Ban's eyes leave Liu. The seven-year couple made me feel like they were always in the honeymoon phase. Ban and Liu met in their first year of college. Liu and Ban have been happily together for seven years. However, their situation is precarious. As a same-sex couple living in China, they cannot marry. Liu and Ban lived together contentedly as a gay couple until Liu began to worry. They could not make decisions on their properties or medical care. Consequently, they agreed to act as each other's guardians this year.

I also interviewed a four-year lesbian couple, He and Shu (Note 4), who both work in the field of education in Xi'an in northwestern China. He is 26 years old, and Shu is 27 years old. About five years ago, He and Shu first crossed paths at work, but they did not start dating until about four years ago. Recently, they have expressed an interest in being able to co-sign each other's legal and medical paperwork. In addition, they submitted an application for the assigned guardianship and regarded it as their 'marriage certificate.'

The interviews show frustrations and fears over health issues before applying for assigned guardianship. During the interview, Liu said, "The assigned guardianship gives us many rights to take care of each other. I remember Ban was in the hospital and needed an appendix operation, which required a signature from parents or guardians. I had to call his parents for the flight to Chengdu and get them to sign the autograph. Ban had to suffer the pain for hours, and I do not want the same situation to happen to Ban again. We wanted to take care of each other and can make decisions for each other in a medical emergency."

Moreover, He and Shu said after applying for assigned guardianship, "We planned to purchase a condo in Chengdu. Unlike married couples, the property will be shared commonly, but for us, only one of us can own the property. We can only sign both our names on the housing property certificate if we pay in full, but the money is unbearable for us. Therefore, we had to make loans, and the interest rate was around 5% higher than that of married couples. On the other hand, we cannot settle in Chengdu as citizens like other married couples." "I learned that gays and lesbians still cannot access a lower interest rate on mortgage loans, pensions, and over five hundred government-provided social welfare rights (Wang, 2012)."

In conclusion, same-sex spouses get certain privileges when petitioning for guardianship. Ban and Liu want to take care of each other and can make medical decisions for each other in an emergency, but He and Shu want to formalize their long-term commitment. Even if they have distinct motives for applying for guardianship, they both encounter obstacles in social assistance and purchasing joint properties.

## 4. Analysis and Discussion

### 4.1 The Value of Assigned Guardianship for Chinese Homosexuality

Considering the current scenario in China, the proposal to legalize same-sex marriage would not only fail to address the actual issues at hand but would also spark new societal disputes. Given these circumstances, the existence of a system of assigned guardianship can, at least partially, resolve some of the problems that arise during the non-marital cohabitation of gays, thereby providing homosexual couples with some protection under the law. This condition creates a reason for same-sex couples to utilize assigned guardianship to attain partial rights. Moreover, access for the gay community to legal or policy protection on real issues (such as assigned guardianship) is seen as more advantageous than concealing their sexual orientation, despite concealment preventing discrimination from society. Although there are still some same-sex couples who are reluctant to

reveal their sexual orientation, it is expected that some will do so since an assigned guardianship system can remove a substantial portion of the difficulties of living together. Therefore, the LGBTQ+ community can benefit from the allocated guardianship system.

#### 4.1.1 Assigned Guardianship System Can Provide Personal Protection for the LGBTQ+ Community

Through the ward's autonomy, the assigned guardianship system can offer the guardian certain rights, including the civil right to sign a timely permission form for the ward's surgery. In accordance with Article 26 of the Law of the People's Republic of China on Medical Practitioners, doctors must notify patients or their families of their medical issues truthfully while taking precautions to avoid unwanted repercussions. When one spouse of a legal couple is unwell or requires a signature before surgery, the other spouse may exercise his or her rights as a couple to learn about the state of the ill spouse or to sign on behalf of the ill spouse. However, for same-sex couples, even if they have the same emotional base and relationship as a legal couple, they are not allowed to inquire about their partner's condition or sign for them before surgery. If the partner has been assigned guardianship, the other partner can exercise the right of guardianship to learn about the status of the other partner or sign for the other partner's right to life and health.

#### 4.1.2 Assigned Guardianship Can Provide Safeguards for Cohabitation in the LGBTQ+ Community

The LGBTQ+ community is profoundly impacted by traditional ethical constraints and a lack of cultural variety. Without the protection of marriage, there are numerous difficulties in committing to each other for life, and the rights and interests of partners are not adequately protected. When one of the same-sex partners living together becomes unconscious due to an accident or ages into a state of civil incapacity, it can be beneficial for the other partner to execute a guardianship arrangement in advance. For instance, when one of the partners becomes incapacitated due to an accident, someone must take care of them. The legal guardian, such as a spouse, parents, children, or other close relatives, will generally be his guardian. However, the other partner in a homosexual partnership cannot exercise the guardianship powers of a spouse because they are not considered a 'spouse' under our law. This issue can be resolved if both couples sign a written agreement for guardianship and the other party (the trustee) becomes the guardian once the same-sex spouse (the principle) loses civil ability. Then, one of the same-sex partners can serve as the incapacitated person's guardian and legal representative.

#### 4.2 Guardianship's Shortcomings Compared to Marriage — Creating Fragmented Sexual Citizenship

Many public members have speculated that this system is the first step in China to recognize same-sex marriage at the legislative level. Is this the case? Although there is some overlap between assigned guardianship and marriage relationships, it is not equivalent to marriage registration, nor does our country recognize same-sex partnerships at the legislative level.

First, in an assigned guardianship relationship, the guardian shall only assume guardianship responsibilities when the ward has lost or substantially lost the capacity for civil behaviour. Marriage rights are continuously valid, and married couples can consistently have privileges. However, the validity of assigned guardianship only occurs when one guardian is in an emergency. For instance, one assigned guardian can only have the right to access another's healthcare and approve the surgery when another is incapacitated, such as in a coma. Otherwise, the guardian does not have these rights. In other words, for the guardian's rights to be exercised, the ward must be in a severe condition and unable to make independent judgments. Establishing a guardianship relationship is a conditional legal act, and fulfilling their responsibility and rights cannot be assessed.

Furthermore, the guardian's primary duty under the assigned guardianship relationship is to safeguard the ward's rights and interests throughout one's lifetime. Not included are the use and inheritance of the ward's property, social welfare, and other rights. Medical treatment, long-term care, property custody, rights protection, and temporary guardianship may be included in the scope of an assigned guardianship. The husband and wife's salaries, bonuses, intellectual property, and other property income are jointly held and controlled by both parties during their marriage. However, the two persons in the assigned guardianship relationship do not possess these rights and interests by default. This also means that both parties to the assigned guardianship cannot be protected by the Marriage Law's division of property upon the termination of the assigned guardianship relationship. The guardian cannot exercise the spouse's legal right to inheritance upon the demise of the ward. If the ward desires to leave his property to the guardian upon his death, they must notarize a will. By analyzing the interviews with two same-sex couples, I found some evidence that can prove that assigned guardianship provides no rights to access the common property and more than five hundred social welfare services that marriage can bring. According to the Marriage Law in China, a person's property shall be placed in the custody of his or her spouse, adult children, and parents of the property. Therefore, homosexuals in China cannot access each other's common property by applying for assigned guardianship.

Both the couples I interviewed planned to purchase a condo in their cities. Unlike married couples, the property will be shared commonly, but only one person can own it for them. They can only sign both names on the real estate certificate if they pay in full. However, the price for the house in its entirety is unaffordable for both of them. According to China Daily, home ownership is now viewed as a critical source of wealth creation and a status symbol in China, accounting for 41% of family expenditures in 2019, as Figure Three shows. Local governments rely significantly on land sales to pay their budgets as well. As a result, in China, real estate remains vital for people's investments and wealth storage. However, real estate is not the only property they cannot share; properties such as cars, bonds, and other investments and assets are also not jointly owned. For instance, the married couple will enjoy tax exemption for the first two years on income taxes. They can purchase a house at a lower price and do not have to pay sales tax. Ban and Liu are going to make loans together to purchase a condo. The interest rate is around five percent higher than that of a married couple.

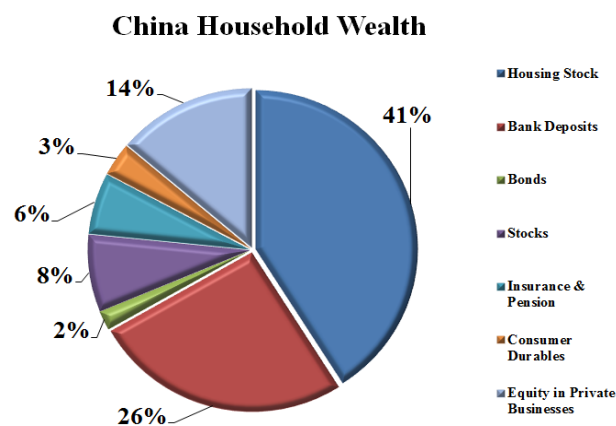


Figure 3

Source: China Daily

When a couple decides to break the assigned guardianship, two guardians cannot be protected by some rights in the Marriage Law. Regarding the personal character of the assigned guardianship relationship, both the assigning party and the entrusted party can unilaterally request the arrangement's dissolution. Terminating assigned guardianship relationships is synonymous with terminating the contractual relationship, and both parties enjoy the rights of agreement termination and statutory termination. The applicant for the divorced registration shall be established just on the consent of the husband and wife, or the marriage connection shall be dissolved in the form of a judgment after one party sues and the people's court determines the relationship between the husband and wife has indeed broken down. Moreover, in a determined guardianship relationship, the terms of sub-entrustment can be determined beforehand. A guardian may transfer guardianship without the ward's agreement if certain circumstances are met. Although the appointed guardian can perform the guardianship responsibilities, the delegation will be more conducive to achieving the ward's interests. This also indicates that an assigned guardianship relationship lacks the same stability as a marriage.

Moreover, same-sex domestic violence is not protected by the Marriage Law. When discussing domestic violence, we tend to neglect violence against the LGBTQ+ community. In China, it is more challenging to recognize domestic abuse in LGBTQ+ partnerships, both for victims and for the government, because mainstream domestic violence services do not often identify domestic violence in same-sex relationships and have less expertise in dealing with such situations. However, statistics indicate that violence occurs in one in four LGBTQ+ relationships, similar to heterosexual relationships (De, 2019). Therefore, unlike married couples, same-sex couples may not be protected by policies when domestic violence happens.

Furthermore, in China, same-sex couples are prohibited from adopting children. Because China does not legally acknowledge homosexual partnerships, homosexuals cannot adopt children. According to the Civil Code, only the childless married couple has the right to file for adoption and the ability to care for a child. Therefore, many same-sex couples choose international adoption, while some lesbian couples may use sperm donation. In addition, same-sex couples may struggle with the custody of their partner's children. In the Civil Code, custody

of a partner's children is defined for married couples but not same-sex couples. The first case involving same-sex couples, Di (Note 5) and Da (Note 6) vying for child custody in China, was formally filed in April 2020. In 2016, Di and her same-sex spouse Da registered their marriage in Los Angeles. In 2017, the two parties underwent embryo transfer in the United States and gave birth to a son and a daughter. The eggs of the embryos developed by Di were given to their respective mates. The American hospital's birth certificate revealed that on May 31, 2017, both parties gave birth to a boy in the United States, with the defendant listed as the child's mother. Di gave birth to a daughter in the United States on June 28 of the same year, and the birth certificate listed her as 'mother.' In July of 2017, they relocated to China with two American children. In November 2019, Di and Da parted ways. Da requested Di leave their shared home, and Di never saw the two children again. Di sued Da for stripping her of custody of the children but was unsuccessful. The case illustrates the absence of unambiguous child custody provisions for same-sex spouses.

## 5. Recommendations to the Government

### 5.1 How to Address the Application of Assigned Guardianship to Gain Full Sexual Citizenship

First, I believe the government should formulate administrative regulations on the assigned guardianship of homosexual groups. Some scholars argue that the objective existence of homosexuality in China renders the issue of human rights protection for homosexuals unavoidable and therefore propose the enactment of the Law of the People's Republic of China on the Protection of the Rights and Interests of LGBTQ+ to protect the human rights of the LGBTQ+ community (He, 2012). Nonetheless, the subcultural status of homosexuality remains unchanged, and distinct regulation exists, so it is too early to pass separate legislation. In actuality, the absence of legal protection for homosexuality has resulted in many social issues involving the frequency of crimes motivated by homophobia, many of which have caused irreparable harm to the victims and their families (Wang, 2012). At the same time, the fear of exposure felt by gays provides criminals with an opportunity to exploit their fear, and extortion crimes against homosexuals are prevalent. Although legislation to safeguard the rights and interests of homosexual groups cannot eradicate legal and social discrimination, it can at least objectively improve the situation. The provisions of Article 33 of the General Principles of Civil Law pertaining to assigned guardianship lack normativity and practicability. It merely specifies that adults with total capacity can choose a guardian before losing their full capacity. However, there are no specific requirements for agreeing on assigned guardianship, when to begin assigned guardianship, or how to define the guardian's responsibilities. For the LGBTQ+ community to achieve the goal of a lifelong relationship and individual autonomy set forth by China's Constitution through the assigned guardianship system, I believe that the State Council should enact some regulations on the application of assigned guardianship, including adding provisions on shared custody of children, joint property ownership, and contract dissolution protections.

Furthermore, the core of the assigned guardianship system, the guardianship agreement, is not expressly provided for in the General Principles of Civil Law. The parties can negotiate the specifics of the assigned guardianship agreement, including the subjects and authority of the guardianship, the selection of the assigned guardianship supervisor, and so on. Professor Li Yinghe argues that the core of an assigned guardianship agreement for adults is the guardian's handling of property relations for the ward and that a guardian's ability to make medical decisions should be discussed separately from their ability to make decisions regarding property (Li, 2018). Professor Man Hongjie contends that guardianship can also play a role in medical decision-making (Man, 2016). I feel that the agreement for assigned guardianship should include the right to make medical decisions (Man, 2016). The right to make medical decisions should be included in the assigned guardianship agreement in accordance with national law. In most countries, legislation on same-sex marriages and partnerships allows same-sex couples to make mutual healthcare decisions and visit their hospitalized partners (Xiong, 2010). Concurrently, the right to medical visitation is required to address the problem of same-sex couples being removed from hospital rooms. The right to medical visits and the right to make medical decisions are two insurance policies that protect same-sex couples. It is essential to stress, however, that exercising medical decision-making rights trumps and respects the patient's preferences. Suppose the ward anticipates losing civil ability before death. In that case, they may create an advance directive (i.e., a living will) to include in the guardianship agreement special medical considerations, such as whether to intubate in the case of liver failure, the number, and origin of cardiac bypasses, etc. First, the guardian should make medical decisions based on the ward's advance directive or other inferred desires. Medical decisions should be made in accordance with the principle of what is best for the patient and following the patient's known personal values in the absence of explicit instructions and requests (Man, 2016). Article 10 of the previous Ministry of Health's 2010 Basic Standards for Medical Record Writing addresses the topic of surgical signature:

*"For medical procedures that need written consent from the patient, the patient must sign the medical record."*



*The patient should sign an informed consent form for any medical procedures that require written approval. If the patient lacks full civil capacity, the patient's legal guardian should sign."*

By engaging in a guardianship agreement, the legal representative of same-sex couples can sign the informed permission form if the other spouse becomes unconscious and requires surgery.

## 6. Conclusion

With the economic and political development of human society, the growth of social heterogeneity, and the promotion of law, the globalization of human rights protection will become increasingly apparent. In several countries, sexual orientation has long been recognized as a fundamental human right. Sexual citizenship in China under marriage rights is fragmented. Although the assigned guardianship system provides some rights to same-sex couples, they still cannot access common properties, more than five hundred social welfare services, protection when domestic violence happens, adoption privileges, and straightforward legal guidance regarding the custody of their partner's children. Moreover, the rights that assigned guardianship provides are only accessible when one is in an emergency.

In recent years, the implementation of the assigned guardianship system has also offered some protection for the rights of gays. Additionally, a select number of cities, like Nanjing and Shanghai, have made it permissible to designate homosexuals as guardians in some cases. However, much of the LGBTQ+ population in China does not understand how guardianship may defend their rights and interests. Furthermore, guardianship still has several issues, such as insufficient contractual regulations and monitoring methods. The LGBTQ+ community is largely unaware of the consequences legalized same-sex marriage in China would have. Hate crimes, blackmail, and other forms of violence against gay and lesbian persons would likely decrease. Although the assigned guardianship may not give them the same privileges as heterosexual couples, it expands access to some benefits for the LGBTQ+ community.

The degree of fragmentation of sexual citizenship depends on many factors. The government's attitude towards same-sex marriage is one of them. As Figure Four shows, several nations have passed a constitutional prohibition on same-sex marriage, with Georgia in 2018 and Russia in 2020 being the most recent. These nations restrict same-sex couples from attaining full sexual citizenship, preventing same-sex couples in Russia and Georgia from accessing each other's healthcare and sharing shared property. Lesbian, gay, bisexual, transgender, and queer (LGBTQ+) Russians face insurmountable impediments to enjoying their fundamental rights to equality, healthcare, education, and association (Human Rights Watch, 2018). In China, even if no provision of marriage rights for same-sex couples excludes them from gaining full citizenship, assigned guardianship provides partial rights, leading to fragmented sexual citizenship. Regarding the anticipated protection of homosexuals, there is still a considerable distance to travel regarding how to fight for our full sexual citizenship.

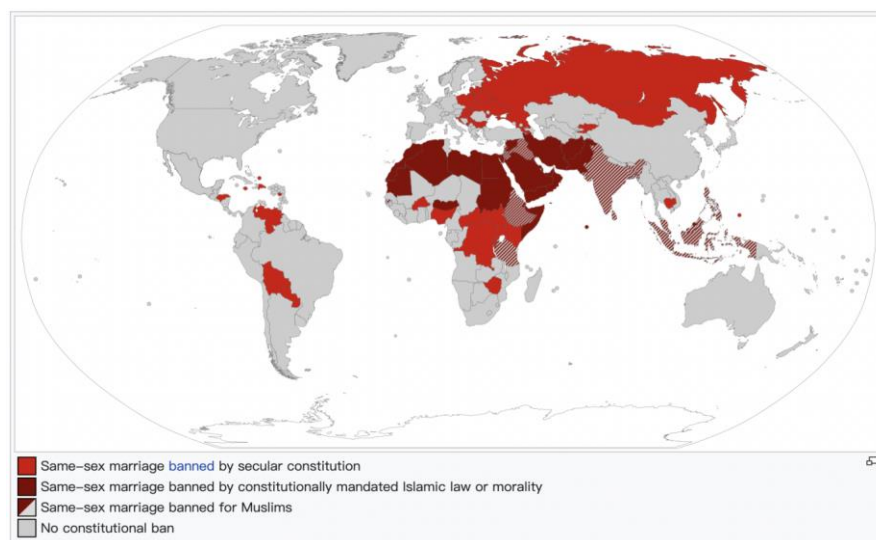


Figure 4

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## Notes

Note 1. LGBTQ+: The acronym represents Lesbian, Gay, Bisexual, Transgender, Questioning and more and represents diversity in sexuality and gender identity-based cultures.

Note 2. According to the Wikipedia article Same-sex marriage, same-sex marriage is legally performed and recognized (nationally or in certain regions) in the following nations: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Colombia, Costa Rica, Denmark, Ecuador, Finland, France, Germany, Iceland, Ireland, Luxembourg, Malta, Mexico, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, Taiwan Province of PRC, the United Kingdom, the United States, a. In Switzerland, same-sex marriage will become legal on July 1, 2022.

Note 3. To ensure the privacy of the interviewer, anonymity is used here.

Note 4. To ensure the privacy of the interviewer, anonymity is used here.

Note 5. To ensure the privacy, anonymity is used here.

Note 6. To ensure the privacy, anonymity is used here.

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