



The Implications of Legalizing Same-Sex Marriage in Taiwan

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ABSTRACT

This article intends to examine the background of Taiwan's legalization of same-sex marriage in 2019 and its implications for the Asian region. It argues that such legalization is not only to ensure marriage equality in Taiwan but is also likely to create a snowball effect on the regional level. This study utilizes the concept of equality to discern the struggle of same-sex couples in advocating for their right to marry. The success of Taiwan can undoubtedly proffer a new spirit for the LGBT community in the region. This study was conducted in qualitative research, while the data collected from secondary sources include relevant articles, books, and webpage on a website. This article found that Thailand, Cambodia, and Vietnam are potentially the following countries to approve same-sex marriage after Taiwan. The reasons are that they are considered open-minded countries, their track record in responding to the issue of same-sex marriage, and the struggles of non-governmental organizations, activists, the LGBT community, and pride festivals in these countries. However, some conservative, authoritarian and religious countries in Asia will not be likely to accept same-sex marriage.

KEYWORDS

Concept of equality; LGBT; same-sex couples; same-sex marriage; Taiwan

INTRODUCTION

Taiwan¹ became the first country in Asia to legalize same-sex marriage in 2019 (Chang, 2020; Lee & Lin, 2020). This achievement was attested through Taiwan's Legislative Yuan that voted in the majority to pass the draft law called 'The Enforcement Act of the Judicial Yuan Interpretation No. 748' and came into effect on 24 May 2019. Under this law, same-sex couples in Taiwan receive the right to marry legally and take many advantages, including taxes and child custody rights as heterosexual couples (Hollingsworth, 2019; Shen, 2020). As a country, this achievement also bolsters Taiwan's reputation at the international level as an open-minded nation. The legalization of same-sex marriage is undoubtedly an extraordinary moment in Taiwan's history. As stated by Tsai Ing-wen, Taiwan's President, "We took a big step towards true equality, and made Taiwan a better country" (Kuo, 2019).

Undeniably, Taiwan's LGBT (Lesbian, Gay, Bisexual, Transgender) community performs a critical role in pushing the government to acknowledge same-sex marriage. Their struggle for years can finally pay off and provide equality for same-sex couples in the context of marriage. The LGBT phenomenon is a global topic that occurs in various countries all over the world. Even though they have different stories

from one country to another, all LGBT people encounter the same thing, namely discrimination, especially in terms of marriage. In Taiwan, discrimination against LGBT people comes from colleagues or the community and family circles who even reject their family members who claim to be part of the LGBT community (BBC News, 2019; Shen, 2020).

It is worth noting that most countries in Asia still consider the issue of same-sex marriage as a taboo subject. They even thought it a violation of religious law and human nature, and mainly it is a new challenge for Taiwan which is still thick with Chinese culture (Swinburne, 2017). Even so, same-sex marriage has been permitted in Taiwan, which has indirectly changed the country's status quo and has a regional impact. This article argues that the legalization of same-sex marriage in Taiwan is not only to ensure marriage equality but is also likely to create a snowball effect on the regional level. Indeed, it might lift the spirit of LGBT activists and same-sex couples in other Asian countries to urge their governments to legalize same-sex marriage shortly.

This article is structured as follows. First, the authors conduct a literature review by describing previous studies and later identify a research gap. Second, the method used in this article will also be briefly described. Third, in the results and discussion section, the authors describe several things: The Struggle of the LGBT Movement for Same-Sex

¹ Taiwan is a somewhat different case due to its problematic status. Taiwan is recognized by only 15 states, while most of the country does not have diplomatic relations with Taiwan. See Portada et al. (2020). This article considers Taiwan as a country.

Marriage in Taiwan; Defining the Concept of Equality: Same-Sex Marriage; The Likelihood of other Asian Countries to Follow Taiwan's Footsteps in Legalizing Same-Sex Marriage. Last but not least, the authors summarize several critical points in the conclusion.

LITERATURE REVIEW

Lin et al. (2020) examine how the personality of Taiwanese citizens can contribute substantially to the legalization of same-sex marriage. Collected data in Taiwan in 2017, they came up with several findings based on three indicators: 1) levels of agreeableness; 2) conscientiousness; 3) openness to experience. First, they found that people with higher levels of agreeableness tend to express disagreement with same-sex marriage. Second, a higher level of conscientiousness does not shape a similar perception between the younger generation and older adults. While teenagers endorse same-sex marriage, senior citizens go the other way around. Third, young people with a higher level of openness to experience tend to support same-sex marriage, while older people with a higher level of openness oppose it. Lin's study is clearly about explaining the choice of voters in the same-sex marriage referendum in Taiwan in 2018.

Nonetheless, Aspinwall (2019) describes Taiwan's 2018 referendums as 'a confusing and chaotic process' because voters did not deliver a clear message about whether or not to legalize same-sex marriage. Indeed, 61% of voters agreed to

protect the rights of same-sex couples outside the Civil Code, while 72.5% agreed to restrict Civil Code marriages to heterosexual couples. The vote emerged as a response to the results of Taiwan's high court voting in 2017 supporting same-sex marriage and asking the nation's legislature to amend the marriage act in the country to accommodate same-sex couples within two years (Ho, 2019). Some experts also considered the results of the referendum non-binding. At the same time, Amnesty's regional campaign manager for Taiwan Suki Chung affirmed that the Taiwanese government should respect the Court's decision in 2017 to allow same-sex couples to marry (Humayun & Cullinane, 2018). Hence, Taiwan's Legislative eventually legalized same-sex marriage law on 17 May 2019 (Ramzy, 2019).

Another scholar, Chen (2019), attempts to scrutinize the legalization of same-sex marriage in Taiwan from a different angle, emphasizing investigating social movement dynamics and constitutional politics. In this context, she explores the undisclosed histories of marriage equality and the growth of marital supremacy and proves how marriage equality can be contested in the political realms today. Concerning the government's decision of legalizing same-sex marriage, Chen (2019, p.65) argues that "Taiwan's constitutional court decision and the marriage equality movement demonstrate a case of migrating marriage equality without feminism, presenting challenges for

transnational feminism in terms of its absence.” To put it differently, Chen is trying to say that it may no longer require the existence of feminism to pursue marriage equality.

All scholars mentioned above offer sufficient explanations and descriptions regarding the Taiwanese government’s approval process for same-sex marriage. It starts from preferential voting and the court’s decision outlined by Lin et al. and Aspinwall to Chen, who examines the entry of the same-sex marriage debate into the political sphere. However, none of them pay attention to the impact of Taiwan legalizing same-sex marriage in other countries, especially at the regional level. It is vitally essential because Taiwan could become a role model for other countries in Asia which are struggling to convince their governments to recognize the right of same-sex couples to marry legally. Therefore, this study shall try to fill this gap. In particular, this article will adopt the concept of equality to analyze the topic.

METHODS

This article employs qualitative research. According to Fossey et al. (2002, p. 717), “qualitative research aims to address questions concerned with developing an understanding of the meaning and experience dimensions of humans’ lives and social worlds.” Qualitative research is used in this study to explain the struggles of same-sex couples in Taiwan in obtaining their right to marry and how recognizing their marriage can encourage the effort of other LGBT people in Asia.

The data used in this study is a type of secondary data emanating from journal articles, books, and web pages on a news website.

RESULTS AND DISCUSSION

The Struggle of the LGBT Movement for Same-Sex Marriage in Taiwan

Taiwan’s LGBT movement began in 1986 when a gay man named Mr. Chi Chia-Wei applied for marriage and was later rejected by the Taipei district court because homosexuals were ‘sexually deviant and abnormal’ (Jhang, 2019). Mr. Chi’s made a second plea attempt in 2000 but faced the same failure. Chi even went to prison for claiming to be gay when democratic Taiwan was under brutal martial law (Horton, 2019).

In 2001, 2003, and 2006, Hsiao Bi-Khim – a DPP (Democratic Progressive Party) parliament member, attempted to protect and recognize same-sex marriage by proposing a bill, but his efforts were fruitless. The issue of same-sex marriage continued to grow from year to year until it finally received attention and was reported by the mainstream media in 2013. The point of marriage equality was later not only to be discussed in the realm of policymakers but also in every family of LGBT people in Taiwan (Jhang, 2019).

The marriage-equality amendment bill was successfully backed up and later introduced by twenty-three lawmakers from the DPP to the Legislative Yuan in the same year. This achievement is considered the first proposal on same-sex marriage reviewed and read by the Legislative Yuan’s Judicial Committee.

Soon after, the conservative churches in Taiwan responded to the proposal by marching 150,000 people into the streets to oppose the discussion of same-sex marriage in the Legislative Yuan. This demonstration even led to a violent conflict and was reported in Taiwanese mainstream media (Jhang, 2019).

In 2016, under President Tsai Ying-Wen's DPP administration, discussions in the search for marriage equality continued with two draft amendments to Taiwan's Civil Code proposing legalizing same-sex marriage and allowing same-sex couples to adopt children. This progress was, once again, responded to by conservative churches by organizing demonstrations in major cities in Taiwan against same-sex marriage proposals. One week after the march, however, the proponents of same-sex marriage also held a massive protest that outnumbered the previous rally – 250,000 supporters of marriage equality – in front of the Presidential Office in Taipei (Jhang, 2019). Despite delays in the decision process due to several conflicts arising from such demonstrations, the Constitutional Court eventually issued the 'Taiwan Judicial Branch Constitution Interpretation No. 748 Act,' which allowed the expansion of marriage in the Civil Code and secured permission for same-sex couples to marry by 24 May 2019 (Jhang, 2019).

The LGBT movement in Taiwan also plays a pivotal role in encouraging the government to grant same-sex couples the right to marriage. Apart from lobbying, the LGBT community also

harnesses the Pride Taiwan Festival to mobilize social movements, attract government attention, and encourage same-sex marriage to come into law. Since the first performance in 2003, the Pride Festival has finally reached its peak in 2016, triggered by the suicide death of Jacques Picoux, a National Taiwan University lecturer. Picoux's death was caused by the Taiwanese government not giving gay partners the same right to marry as heterosexual couples. His death subsequently encouraged the LGBTQ and non-LGBTQ community to fight for same-sex marriage. The fundamental reason was to prevent suicide deaths from happening again in the LGBT community (Swinburne, 2017; Cheng et al., 2021).

The establishment of the Taiwan Alliance to Promote Civil Partnership Rights (TAPCPR) in 2009 also contribute enormously to drafting a same-sex marriage bill and convincing the Taiwan parliament to recognize the right of same-sex couples to marry (Chuang, 2015). Registered with the Ministry of the Interior in August 2012, TAPCPR has several main tasks, including lobbying and social initiatives, litigation, monitoring gender policies, volunteers and local cooperation, public speaking on gender/sexuality rights, and cultural events. In 2012, TAPCPR successfully drafted three bills of 'diversified family formation' aiming to advocate the rights of same-sex couples to marry and provide constitutional protection to families who are not in the form of marriage (TAPCPR, n.d). It is clear that

TAPCPR endeavors to formulate strategies for marriage equality to come into law, and in 2013 its action was even endorsed by DPP lawmakers and welcomed by the legislature for the first reading (Ho, 2020).

Defining the Concept of Equality: Same-Sex Marriage

This concept has been utilized in various topics, such as the idea of equality in civil procedure (Rubenstein, 2001), the notion of equality in a historical context (Wetterberg & Melby, 2001), the concept of equality in Indian Law (Canby, 2010), and many more. In this study, the idea of equality in same-sex marriage will shed light on the struggle of same-sex couples to get legally married in Taiwan.

Lee (2010) argues that the tenet of equality can be used to acknowledge the same-sex relationship formally. In this sense, she explained that the recognition of equality has been through an arduous and lengthy process, starting from decriminalizing sodomy to advocating for discrimination based on sexual orientation and recognizing the rights of same-sex couples to get married. This concept of equality illustrates the big picture of human dignity used in major international human rights covenants, including The Universal Declaration of Human Rights (UDHR). To put it in a nutshell, Lee (2010, p.4) says that “several places have shown the world what equality means to those who once dared not speak the name of their love.”

Hughes (1998) understands ‘equality’ as a circumstance in which all

people receive equal and consistent legal treatment – not considering what sort of their sexual orientation is. The aim is that the exercise of legal rights will open up more excellent opportunities for accepting gays and lesbians into the community. Same-sex couples’ right to marry is considered a fundamental aspect of equal protection and a course of vigorous action to welcome them into society. Ho (2019), on the other hand, attempts to link the terminology of equality with a marriage where he describes marriage equality as a fight between gays and lesbians against cultural and religious conservatives, and this event is becoming a worldwide phenomenon. In this regard, recognizing same-sex couples’ rights only emerges if they succeed in winning the battle. If so, it implies changes in the social and political order of society.

The Likelihood of other Asian Countries to Follow Taiwan’s Footsteps in Legalizing Same-Sex Marriage

The legalization of same-sex marriage in Taiwan demonstrates the struggle for equality for LGBT rights and has the potential to cause a snowball effect in the region. Snowball effect is “a situation in which one action or event causes many other similar actions or events” (Merriam-Webster, n.d). In this regard, the authors argue that some open-minded countries in Asia might follow in the footsteps of Taiwan to legalize same-sex marriage. The term open-minded countries are used to describe Asian countries that are open to change. About

48 countries in Asia, yet the authors only pick three countries (Thailand, Cambodia, and Vietnam). Their selection is based on the extent to which same-sex marriage has been advocated and how the LGBT community and other actors struggle in the country.

Thailand could be the following country after Taiwan to allow same-sex couples to marry. Indeed, this country not only has its LGBT Pride festival and but is also recognized as a friendly country for LGBT people. Chinese guys even call Thailand 'the Land of smiles' and 'second homes' (Liu, 2017). Human rights activists, academics, and the LGBT community in Thailand also continue to advocate encouraging the government to legalize same-sex marriage. Sternlicht (2020) asserts that Thailand has done an excellent job thus far where the government has agreed to a civil partnership that allows gays and lesbians to adopt children and combine finances. Although the bill does not endorse same-sex marriage, it will be a cornerstone for the formal union of same-sex couples through marriage in the future.

The following country is Cambodia. Even though the legalization of the same sex in this country is still quite far away, the struggle of non-governmental organizations, youth groups, activists, and the LGBT community is very intense; even the government has indicated steps to respect same-sex couples (Chhourkimheng, 2021). As the head of the Cambodian Human Rights Committee, Keo Remy, stated, "the government had called for an end to

discrimination against the LGBTIQ community and supported all forms of freedom of expression" (Dara, 2019). It is indeed a breath of fresh air in the struggles of various actors in Cambodia to advocate for same-sex marriage. Since 2014, Cambodia has also committed to reforming the program on individual rights, formulating policies to end multiple forms of discrimination, respecting freedom of expression (Rathgeber, 2018); all of which is the basic foundation to provide equality for same-sex couples in marriage in the future.

Vietnam is the last country predicted in this article to legalize same-sex marriage. The well-known global magazine, *Forbes*, told that "Vietnam legalized same-sex marriage in 2015 but never followed up with enforcement" (Jennings, 2017). In other words, Vietnam has recognized the right of same-sex couples to marry but has encountered obstacles, including no state regulation for homosexual couples. Lewis (2016) agreed that there was no follow-up from the government to provide legal protection for same-sex couples after the 2015 ratification, thereby discriminating and bullying against LGBT people occur in society. However, the struggles of the LGBT community in Vietnam who continue to protest against the injustice and inequality they face, and Vietnam's annual VietPride event to promote equality, freedom, tolerance for the LGBT community in Vietnam are clear enough (Nguyen, 2020). Hence, the authors believe that these actions may put pressure on the government, and it can

someday revive the spirit of same-sex marriage legalized in 2015.

Thailand, Cambodia, and Vietnam are examples of many Asian countries predicted to follow Taiwan's lead in legalizing same-sex marriage. Actors fighting for LGBT rights in these three countries vindicate the same issue, namely equality in marriage. They crave the same rights as heterosexuals, including property rights, child adoption, finance, and others. In this context, 'equality' can be illustrated as a weapon used by LGBT people to fight discrimination, demand protection, and ensure human rights in the context of same-sex marriage.

However, no one can deny that the Asian region is quite dynamic and diverse in several aspects of life, including culture, religion, government system, and so forth; thus, not all Asian countries can follow in Taiwan's footsteps. Indeed, conservative countries will not be likely to legalize same-sex marriage. The term conservative refers to Asian countries that maintain their traditional values and ideas and resist change. To put it differently, they will try to preserve the status quo. These include authoritarian countries like China, Laos, North Korea, and regions heavily influenced by religion, such as Malaysia, Indonesia, Philippines, South Koreans, South Asia, and the Middle East (Jennings, 2017).

CONCLUSION

Same-sex marriage, legalized in Taiwan in 2019, is a vital step towards ensuring

marriage equality. The movement started in 1986 by Chi Chia-Wei finally bore fruit on 24 May 2019. The result was marked by the issuance of the "Taiwan Judicial Branch Constitution Interpretation No. 748 Act" by Taiwan's constitutional court, allowing for an extension of marriage and permitting same-sex couples to marry. Although there was a 2018 referendum, it was considered insignificant due to the unclear outcome of whether Taiwanese would desire to support same-sex marriage or the other way around, not to mention the non-binding referendum results. Finally, the Taiwan court's decision became a legal instrument to approve same-sex marriage.

Using the concept of equality, the author has also noticed how the LGBT community in Taiwan strives to convince their government to settle on same-sex marriage. The tenet of equality is perceived as a powerful weapon to fight for the rights of LGBT people who are equivalent to heterosexuals and provide protection against the existence of same-sex couples. The authors also discern that the achievement related to same-sex marriage in Taiwan can proffer a new spirit for surrounding countries to convince their governments to follow Taiwan's lead in recognizing the rights of same-sex couples to marry legally. It can be seen from the consistency and sustainability of the struggle of the LGBT community up to date.

Some of the Asian countries that the authors predict can legalize same-sex marriage in the future are Thailand,

Cambodia, and Vietnam. These three countries are considered open-minded countries because of their openness to change and their track record in responding to the dynamics of same-sex marriage issues. In addition, the struggles of non-governmental organizations, youth groups, activists, the LGBT community, and festival parades have also offered a new color in advocating the issue of same-sex marriage in these three countries. Having said that, the snowball effect of same-sex marriage in Taiwan may not target conservative countries strongly influenced by their styles of government and religion, such as China, Laos, North Korea, Malaysia, Indonesia, Philippines, South Koreans, South Asia, and the Middle East.

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