

Judicial Determination of Property Division in Same-Sex Cohabitation Relationships: Legal Framework and Practical Dilemmas Under China's Civil Code

Junyi Dong

School of Economic Law, Southwest University of Political Science and Law, Chongqing, China

Keywords: Comparative Law, Gender and Law, Transplanting Legal Innovations.

Abstract: This study investigates the legal regulation of property division in same-sex cohabitation in China. By analyzing international models such as France's PACS (civil solidarity pact) and the Netherlands' same-sex marriage legislation, combined with China's judicial practices, it identifies the core challenges in protecting same-sex partners' property rights: heterosexual marriage-centrism has led to ambiguous legal norms and inconsistent adjudication standards. The research proposes a phased reform framework: establishing a property registration system to stabilize relationships in the short term; legally recognizing same-sex cohabitation under the existing "cohabitation relationships" framework in the medium term; and advancing same-sex marriage legalization with supportive legislative revisions in the long term. This framework aims to progressively enhance legal protections for sexual minorities' property rights and promote inclusive societal development.

1 INTRODUCTION

With the evolution of societal progress and shifting ideological paradigms, same-sex partnerships have gradually emerged as a visible social phenomenon in contemporary China. The legal and social recognition of such relationships has varied significantly across historical epochs and cultural contexts. Globally, the status of homosexuality has undergone a transformative trajectory from criminalization to decriminalization and from pathologization to depathologization. In the Chinese context, societal regulation of homosexual conduct has predominantly relied on moral censure rather than formal legal codification (Li, 1995). The weakening of traditional procreation-oriented values, coupled with heightened social inclusivity and reduced moral condemnation, has fostered increasing openness toward the LGBTQ+ community in mainland China (Zhang, 2019). Since the Reform and Opening-up era, Chinese society has demonstrated progressive tolerance toward same-sex relationships, accompanied by more objective understandings of homosexuality. Two pivotal legal milestones marked this transition: the abolition of the "hooliganism" offense in 1997 and the removal of homosexuality

from the Chinese Classification of Mental Disorders in 2001. These reforms formally transitioned same-sex relationships in China into a non-criminalized, non-pathological status. This paradigm shift not only mirrors the evolution of societal perceptions but also lays institutional groundwork for advancing legal protections for same-sex partnerships. Crucially, it creates a more permissive socio-legal environment for addressing concrete juridical challenges, particularly in resolving property division disputes arising from same-sex cohabitation arrangements.

What individuals in same-sex relationships seek extends beyond specific rights within a harmonious legal system; they fundamentally desire societal respect for their partnerships akin to that accorded to marital unions. Since social acceptance often hinges on legal recognition, the pursuit of legal validation under the principle of equality has become their primary demand (Coester & Deng, 2004). Amid growing societal pluralism and heightened rights consciousness, over thirty countries worldwide have legally recognized same-sex marriage or civil partnerships through legislation or judicial precedents. In China, however, the Marriage and Family Section of the current Civil Code strictly adheres to the traditional concept of heterosexual

marriage between one man and one woman. Consequently, judges addressing property disputes among same-sex cohabitants must rely on general provisions from the Contract Section of the Civil Code—such as those governing civil agreements and joint ownership relationships (e.g., Article 464 and Article 308). Non-economic contributions (e.g., domestic labor, care giving) remain difficult to quantify, leading to inconsistent rulings in judicial practice. This legislative gap not only exacerbates the vulnerability of sexual minorities' rights but also conflicts with the constitutional principle of equality and the goal of achieving "substantive justice" under the rule of law. As the demand for property protection among same-sex cohabiting couples grows, we cannot solely await the legalization of same-sex marriage in China. Simultaneously, it is imperative to identify the most viable legal pathways within the existing framework to address property division in same-sex cohabitation arrangements.

Current legal scholarship on same-sex unions remains relatively limited, with most studies focusing on issues such as legal dilemmas and potential reforms of same-sex marriage or safeguarding the rights and interests of same-sex partners. Specialized research addressing property division in same-sex cohabitation is even scarcer, and existing works predominantly engage in theoretical discussions, lacking in-depth analysis of judicial practice or detailed elaboration on constructing concrete institutional frameworks. This paper employs a comprehensive methodology, reviewing domestic and international legal regulations, academic literature, and case materials to fully map the theoretical foundations and practical realities of property protection for same-sex couples. These findings provide theoretical grounding and empirical evidence for the study. Building upon this foundation, the research conducts a comparative analysis of property regimes for same-sex partnerships across various countries and regions, distilling lessons from these experiences to offer valuable insights for refining China's legal framework governing property protection in same-sex cohabitation relationships.

2 **LEGAL PROTECTION DILEMMAS IN PROPERTY DIVISION FOR SAME-SEX COHABITATION RELATIONSHIPS UNDER CHINESE LAW**

2.1 **Legislative Lacunae in Legal Protections**

In the case of Sun et al. v. Furong District Civil Affairs Bureau of Changsha City (2016), the plaintiffs sued the bureau after being denied marriage registration but ultimately lost, a ruling that starkly reflects the current state of China's marriage system. Article 1041 of the Civil Code of the People's Republic of China stipulates: "The state protects marriage and family. Marital freedom, monogamy, and gender equality shall be upheld." This provision confirms that China's marriage system exclusively applies to heterosexual unions, denying same-sex partners legal recognition as spouses through marriage registration. Consequently, they are excluded from marital property protections such as the joint property regime, inheritance rights, and divorce-related asset division safeguards, effectively barring them from the statutory marital property distribution framework.

The Judicial Interpretation (II) on the Application of the Marriage and Family Section of the Civil Code issued by the Supreme People's Court outlines principles for dividing property in cohabitation disputes where neither party is married. However, these rules do not explicitly address same-sex cohabitation, leaving same-sex couples unable to directly invoke these provisions during property division. In practice, courts often resort to the Property Section of the Civil Code and its principles for dividing jointly owned assets. Yet, applying the concept of "joint ownership" to same-sex cohabitation disputes faces significant limitations. First, establishing joint ownership requires clear evidence of mutual intent regarding shared property—a presumption readily applied to married couples but rarely extended to same-sex partners due to their lack of legally recognized status. Second, joint ownership rules prioritize quantifiable financial contributions, failing to account for non-economic contributions like domestic labor or emotional support within same-sex relationships. For example, in long-term cohabitation where one partner manages household duties while the other earns income, the

homemaker's non-financial contributions may receive no compensation under strict joint ownership rules, resulting in substantively inequitable outcomes that undermine equal protection of property rights.

A review of recent cases reveals inconsistent judicial approaches. In property disputes over jointly purchased homes, some courts rigidly allocate ownership based on financial contributions, while others adjust shares by considering the unique dynamics of cohabitation. In *Xu v. Ji and Zhi* (2017), the first-instance court ruled that the same-sex relationship between Ji and Xu fell outside the Marriage and Family Law's scope, concluding that neither long-term cohabitation "as spouses" nor jointly acquired property during cohabitation could establish joint ownership. The court emphasized the independence of same-sex partners' personal and property relations, applying general property acquisition rules. Conversely, in *Shen v. Liu* (2016), the court recognized a decade of cohabitation with commingled assets and upheld a co-ownership claim based on the property's joint registration and a written agreement between the parties. Such disparities in adjudication create unpredictability for same-sex couples, increase dispute resolution costs, and erode judicial credibility.

2.2 Inadequate Legal Enforceability of Cohabitation Agreements

In the absence of legal marital relationships as a safeguard, some same-sex couples choose to enter into property agreements when cohabiting to clarify the ownership and distribution of their assets. Such contracts can be emotionally and financially costly, while potentially negatively impacting their relationship at the same time (Müller, 2002). The common law system's failure to scrutinize the substantive fairness of cohabitation agreements—exemplified by jurisdictions like England and Wales prioritizing procedural fairness as the primary validity criterion—creates structural oppression in same-sex property relations. Excluded from matrimonial equity doctrines (e.g., compensation for domestic labor, equitable distribution principles), vulnerable partners face dual risks: acquiescing to disadvantageous contractual terms to avoid litigation costs or losing bargaining power due to legal unpredictability (Probert, 2004). Within China's judicial practice, the ambiguous legal status of same-sex partnerships—unrecognized under current law—subjects their property agreements to unpredictable public order and good morals reviews. Courts may adopt conservative or even dismissive stances toward

such agreements based on traditional moral perceptions of "appropriate social order," rendering same-sex couples' property arrangements precarious and unstable. This legal ambiguity undermines their ability to effectuate asset distribution aligned with mutual intent.

3 INSTITUTIONAL PRACTICES IN PROPERTY PROTECTION FOR SAME-SEX UNIONS: A COMPARATIVE LEGAL PERSPECTIVE

3.1 The Same-Sex Marriage Model

The Netherlands, as a paradigmatic example of this model, revised its Civil Code based on constitutional equality principles to fully extend civil marriage rights to same-sex couples, granting them equivalent rights and obligations as heterosexual spouses in property, inheritance, and social welfare, thereby eliminating institutional discrimination.

On April 1, 2001, the Netherlands amended Book 1 of its Civil Code, becoming the first country to legalize same-sex marriage globally. This revision redefined marriage as a union between two persons—regardless of gender—fundamentally recognizing same-sex marriages. It explicitly granted same-sex spouses identical rights to heterosexual spouses, including joint property regimes, inheritance rights, tax benefits, and transnational marital recognition, establishing near-identical legal status. Following this precedent, Germany achieved full legalization of same-sex marriage in 2017. Legislators eliminated discriminatory treatment through amendments to Article 1353 of the German Civil Code, formalizing equality between same-sex and heterosexual marriages. Since legalization, property division rules for same-sex couples in Germany have fully aligned with those for heterosexual marriages, ensuring equal rights in asset distribution.

3.2 The Registered Partnership Model

Developed as a compromise between LGBTQ+ demands and societal acceptance in Western contexts, this model addresses same-sex couples' need for legal recognition while accommodating prevailing social norms. It provides a legal framework defining rights and obligations, bridging the gap between marriage and ordinary cohabitation.

In 2004, the United Kingdom enacted the Civil Partnership Act, effective December 5, 2005. Under this law, registered same-sex partners gained civil rights equivalent to heterosexual spouses in property, inheritance, immigration, and taxation. Civil partnerships require formal registration without the ceremonial obligations of marriage, lowering barriers to legal recognition and expanding protections for same-sex couples.

A similar approach existed in Germany prior to its 2017 marriage equality reform. The 2001 Life Partnership Act established civil unions, granting same-sex couples most marital rights (e.g., inheritance, tax benefits) except joint adoption. However, these unions were not legally classified as "marriage," rendering them a form of "limited matrimony."

This model aligns with same-sex couples' demands for marital rights. While avoiding explicit "marriage" terminology, it ensures near-identical legal protections to heterosexual marriages, achieving parity in property regimes and other institutional safeguards.

3.3 Hybrid Contractual Legislative Model

The hybrid contractual legislative model refers to an intermediate legal framework that combines statutory rights and obligations with party autonomy through civil agreements, granting unmarried partners certain marital rights while retaining core restrictions on marital status.

France's Pacte Civil de Solidarité (PACS) exemplifies this innovative model. Established in 1999, PACS provides a legally recognized form of union for same-sex couples and unmarried heterosexual partners. It is a civil contract entered into by same-sex or heterosexual adults for shared domestic life, occupying a legal status intermediate between marriage and ordinary contracts. Distinct from traditional marriage, PACS creates a unique legal framework for partnerships (Shao, 2007). The formation process is streamlined: partners need only sign an agreement and register it with a court, bypassing complex religious or civil ceremonies (Steiner, 2000). This model prioritizes party autonomy, particularly in property arrangements, where contractual freedom is paramount. Couples may select from three property regimes through written agreements: a separate property system (maintaining full independence of pre- and post-agreement assets), a joint ownership system (sharing assets proportionally or equally based on

contributions), or a hybrid system (combining shared ownership of specific assets, such as real estate, with individual ownership of others). Absent explicit agreements, PACS property relations default to partnership rules under the French Civil Code, meaning jointly acquired assets may be treated as communal property. However, distribution is determined by each party's contributions and circumstances, with jointly purchased assets typically divided according to financial input.

3.4 Analysis of Global Legislative Models

Legislation on same-sex unions globally has evolved from exclusion to differentiated protection and, increasingly, comprehensive recognition. Historically, many nations criminalized or rejected same-sex relationships. As societal attitudes shifted and human rights awareness grew, some jurisdictions began offering limited legal protections. Early reforms, such as the UK's Civil Partnership Act (2004), introduced civil unions or registered partnerships to provide tailored safeguards for same-sex couples. Today, the global trend leans toward full legal equality, driven by demands for civil rights and human dignity (Martin, 1994).

A comparative review reveals that under marriage equality and registered partnership models, same-sex and heterosexual couples adhere to identical property regimes. These models emphasize legal parity, ensuring same-sex couples receive property protections equivalent to their heterosexual counterparts. In contrast, contractual models (e.g., France's PACS) resemble voluntary, notarized property agreements that regulate asset arrangements without conferring marital status. While respecting autonomy, such frameworks effectively resolve property disputes between same-sex partners. These legislative practices demonstrate that nations—whether through marriage equality or partnership laws—are striving to achieve substantive equality in property relations for same-sex couples, providing clear and enforceable legal safeguards. This trend has heightened international attention to LGBTQ+ rights, spurring continuous refinement of legal systems worldwide and fostering more inclusive societal frameworks.

4 RECOMMENDATIONS FOR IMPROVING PROPERTY PROTECTION IN SAME-SEX COHABITATION RELATIONSHIPS IN CHINA

Many scholars argue that legalizing same-sex marriage would resolve all property division issues for same-sex cohabitants. However, given China's current social and political realities, the path to same-sex marriage legislation remains lengthy and fraught with challenges, making its realization unlikely in the near term. Simultaneously, as societal acceptance of homosexuality gradually increases and the LGBTQ+ community continues to grow, the urgent need to address the property protection challenges faced by same-sex couples under the existing legal framework cannot be overlooked. Therefore, it is imperative to actively explore and implement protection mechanisms suited to China's national conditions. This includes expanding the legal recognition of 'cohabitation relationships' to explicitly include same-sex partnerships and establishing a reasonable property registration and division system to safeguard the property rights of same-sex cohabiting couples.

4.1 Short-Term Strategy: Establishing A Property Registration System for Same-Sex Cohabitants

In the short term, China could draw on the property registration practices of France's Pacte Civil de Solidarité (PACS) to create a property registration system for same-sex couples. This system would clarify the ownership and management of shared assets (e.g., real estate, vehicles) and reduce disputes arising from ambiguous property relationships. The state could establish specialized institutions or systems for same-sex cohabitation property registration, allowing same-sex couples to voluntarily register their jointly owned assets. Detailed registration procedures should be formulated to ensure standardization and transparency, such as requiring couples to submit asset inventories, proof of cohabitation, and other documentation during registration. Registered information could serve as preliminary evidence in property division cases, and notarized property agreements could be filed online to establish third-party enforceability. Registered assets should be managed and divided according to the registered terms during and after the relationship, providing clearer legal protections and minimizing disputes.

4.2 Medium-Term Strategy: Expanding the Legal Definition of 'Cohabitation Relationships'

As societal acceptance of homosexuality improves, China could revise judicial interpretations or amend laws to explicitly include same-sex cohabitation within the legally recognized scope of "cohabitation." This recognition would apply to couples who demonstrate a sustained and stable intent to share a life together and engage in actual cohabitation, without requiring marital intent or formal procedures (Xia, 2017). Specifically, the definition of "cohabitation relationships" should be expanded to "a durable and stable shared living arrangement," removing gender-specific language. Same-sex couples meeting certain conditions (e.g., cohabitation duration, mutual intent) would gain legal recognition. For instance, similar to France's PACS requirements, China could mandate cohabitation agreements and joint life commitments. This approach would build on existing legal frameworks, avoiding direct challenges to the traditional marriage system while providing minimal safeguards, such as granting same-sex couples rights comparable to heterosexual cohabitants in property disputes.

4.3 Long-Term Strategy: Progressive Realization of Marriage Equality

Respect for human dignity, recognition of individual autonomy, and the social reality of same-sex partnerships necessitate their legal normalization (Xiong, 2007). The impact of any legal reform depends on its alignment with societal values (Scott, 2000). If same-sex marriage is perceived as incompatible with contemporary norms, its acceptance and influence will remain limited. While China's political and cultural context currently precludes legal recognition of same-sex marriage, the state could initiate social surveys and public discussions to gradually increase awareness and acceptance, laying the groundwork for future legalization. In the long term, China could follow the examples of the Netherlands and Belgium by revising the definition of marriage in the Civil Code (Article 1041) to explicitly include same-sex couples. This would entail comprehensive legalization of same-sex marriage, granting equal rights in property regimes, inheritance, and other marital protections. Such reforms would align China's legal framework with constitutional equality principles (Article 33) and global human rights advancements, ensuring substantive justice for sexual minorities.

5 CONCLUSION

The legal regulation of property division in same-sex cohabitation relationships embodies the practical implementation of the constitutional principle of equality within the domain of family law. Through comparative legal analysis and domestic empirical research, this study uncovers the institutional challenges and reform pathways for protecting the property rights of same-sex couples in China. From a comparative perspective, international practices such as France's Pacte Civil de Solidarité (PACS) and the legalization of same-sex marriage in the Netherlands provide valuable insights for refining China's legal framework for same-sex partnership protections. Tailored to China's sociopolitical context, a phased strategy framework—encompassing short-, medium-, and long-term measures—serves as an effective path toward gradual improvement: establishing a property registration system in the short term to enhance relational stability, expanding the legal recognition of "cohabitation relationships" to explicitly include same-sex partnerships in the medium term, and advancing toward marriage equality through legislative reforms in the long term to ensure comprehensive legal protections. Perfecting the property protection regime for same-sex cohabitation not only provides clear legal safeguards for LGBTQ+ couples and reduces disputes but also promotes societal pluralism and inclusivity, advancing the constitutional principle of equality and the goal of "substantive justice" in a rule-of-law society. Moving forward, sustained attention to theoretical and practical developments in protecting same-sex couples' property rights, coupled with legislative and judicial innovations, will drive progress in safeguarding the rights of sexual minorities, contributing to a fairer, more just, and inclusive social environment.

REFERENCES

Coester, M & Deng Jianzhong. 2004. A Comparative Analysis of Legislative Dynamics on Same-Sex Issues in Europe. *Journal of Comparative Law* 02: 149-160.

Li Yinhe. 1995. Singlehood and Homosexual Identity. In Jieqiong Lei & Zhuo Zhang(eds), *Marriage and Family in China and Their Transformation*: 185. Harbin: Heilongjiang People's Publishing House.

Müller, C. 2002. An economic analysis of same-sex marriage. *German Working Papers in Law and Economics* 14: 1-39.

Martin, J. 1994. English Polygamy Law and the Danish Registered Partnership Act: A Case for Consistent Treatment of Foreign Polygamous Marriages and Danish Same-Sex Marriages in England. *Cornell International Law Journal* 27(2): 419-446.

Probert, R. 2004. Sutton v. Mischon de Reya and Gawor & Co-Cohabitation Contracts and Swedish Sex Slaves. *Child and Family Law Quarterly* 16(2): 453-464.

Steiner, E. 2000. The spirit of the new French registered partnership law-promoting autonomy and pluralism or weakening marriage. *Child and family Law Quarterly* 12(1): 1-14.

Scott, E. S. 2000. Social norms and the legal regulation of marriage. *Virginia law review* 86(8):1901-1970.

Shao Tingjuan. 2007. French Civil Solidarity Pact (PACS) System. *Global Law Review* 03: 76-83.

Xiong Jincai. 2007. Comparative Legislative Models for the Legal Recognition of Same-Sex Partnerships: A Case Study of the UK Civil Partnership Act and Canada's Civil Marriage Act. *Pacific Journal* 07: 64-74.

Xia Yinlan. 2017. Legislative Research on the Marriage and Family Book of the Civil Code: Specific Provisions. *China Legal Science* 03: 71-86

Zhang Mei. 2019. Consensus Status and Expression of Sociocultural Issues in the Weibo Sphere: A Case Study Based on Heated Discussions Regarding the Legalization of Same-Sex Marriage in the United States. *Journal of Fujian Normal University (Philosophy and Social Sciences)* 06: 112-123.