

# **SAME-SEX MARRIAGE FROM THE PERSPECTIVE OF TRADITION, MORALITY AND LAW IN VIETNAM**

Abstracts:

The marriage between two people of the same-sex is a hotly contested issue between supporters and opponents, sometimes causing profound social segregation. Supporters of same-sex marriage argue that legalizing this type of marriage is to ensure human rights, equality between sexual orientations and reduce discrimination in society. Opponents of same-sex marriage raise concerns about tradition, morality or broken traditional family models, etc. Countries and territories around the world have different religious characteristics, cultural, political and social awareness levels of people, so they also take different steps to legalize same-sex marriage. Thus how does Vietnamese law approach and regulate this issue? According to the provisions of the Vietnamese Law on Marriage and Family, the law neither prohibited nor recognized same-sex marriage. However, along with the social development, the issues of same-sex marriage have had a strong change in the perception and practice of modern social life. With that in signification, the article's content analyzes legal aspects of the marriage between two people of the same-sex, thereby giving some orientations to improve the Vietnamese law on this issue in the current context of integration and development. With that meaning, the content of the article analyzes the effects of traditional and moral factors on the legal aspect of marriage between the people having the same sex, thereby giving some suggestions to improve the Vietnamese law on this issue.

In Vietnam, marriage is defined as the combination between two individuals of two different sexes through certain steps with certain rituals to establish a family, to perform the main functions of reproduction, educating children and economic production. Marriage is usually the combination of individuals in terms of emotional, social, religious ... legally between people called husband and wife. Same-sex marriage is defined as a marriage between

two people of the same biological sex. Same-sex marriage is also known as “marriage equality,” the term most commonly used by the advocates.

### **1. The relationship between tradition, morality and law in same-sex marriage.**

From the traditional perspective, it can be viewed that the fact that many people still have an apprehensive view of same-sex marriage is because it is not part of an old habit, an old routine that human society is used to calling tradition, culture. However, it can be seen that customs also move and develop over time. There have been many legal issues that preceded custom, like monogamy, or women's equal rights. Tradition is created by people, to serve people, not to bind and control people. Giving rights to others does not mean taking away your rights. Legislation opens up equal opportunities to more people, which leads to a happier society. No one can infringe anyone's rights. Homosexual people are not strangers but can be our descendants or siblings, relatives, neighbors, friends, colleagues. They work and contribute to society like anyone else, but suffer from many disadvantages and prejudices. Whoever you are, you have the right to be yourself and be with the people you love.

Morality or moral standards is the system of rules and requirements for human social behavior, which establishes common views and concepts about justice and injustice, good and evil, about conscience, honor, responsibility and other categories of the moral and spiritual life of the society. Morality is the spiritual foundation for legal regulations to be formulated and implemented. It can be said that in many cases, subjects in society comply with some legal provisions not because they know and understand the law, but because they come from moral rules. However, in the process of applying law and morality to social life, conflicts and differences will inevitably arise. In general, there are no profound contradictions between law and morality, because they both share the same goal of protecting good behaviors, eliminating bad views and acts, and aiming to define the right order and harmonize the common interests of the society. In terms of human factors, morality is the field with strong compassion

and humanity. Meanwhile, progressive law, although it considers people as the center, but the law is still responsible for regulating the social order, so sometimes it does not fully meet the moral demand of people. Therefore, there are behaviors that are considered to be moral violations but not against the law, but breaking the law is often an moral violation because the law is built on the foundation of morality, the law is the protection moral values. After all, a humane and civilized society must ensure that all its citizens are equal in all respects.

In the opinion of many people, it is unusual for two people of the same sex to marry each other, but if one recognizes that everyone has the right to pursue happiness, and which is a legitimate happiness, comes from sincere love, it will not be difficult to answer the question of whether same-sex marriage is reasonable or not. In fact, allowing same-sex couples to get married does not jeopardize the legitimate rights and interests of others, on the contrary, it brings happiness and protection to same-sex people that they are the normal part of natural and inseparable of the society. The recognition of same-sex marriage will also help the relationship of same-sex people become more cohesive and responsible. As long as the law has not recognized them, they will still feel anxious, worried and vulnerable when living together, because they are not legally bound together. Equally important, the recognition of the law also has a profound spiritual meaning, demonstrating that society respects the dignity of every human being equally and protects the legitimate interests of all citizens. That is also equality. Everyone in society has the same obligations, they must have the same rights. Marriage is not the prerogative of any group of people, everyone has the right to marry as long as it is voluntary and does not affect the rights of others.

## **2. Society's perspective on this issue**

In Vietnam, legislators, researchers, social activists, doctors, lawyers... are arguing and giving opinions on whether to support the recognition of same-sex marriage in the Law on Marriage and Family. Specifically, there are many

current views on marriage between people of the same sex, but in general, there are two main opposing views and each has its own arguments to defend.

The point of view in favor of legalizing same-sex marriage is that legalizing same-sex marriage shows equality and fairness among individuals in society. From the human perspective, people of the same sex have the same right to marry and to pursue happiness as everyone else. Because the law is designed to protect human values, it is not possible to deny their human rights because of differences in sexual orientation. It would be easy if everyone was born with normal physical and psychological development. Marriage is the goal for many people, and so is for people of the same sex. The legalization of same-sex marriage shows the progress of the majority of people in society in recognizing, evaluating, sharing and empathizing with the people around them. It must be affirmed that, at present, Vietnamese society has a much more open view towards homosexuals. The proof is that now, same-sex people no longer have to hide their gender, they live openly as a community and have their own groups. The desire for gender recognition has come true. They are free to love, free to live true to their gender.

In recent years, Vietnam has also had activities and campaigns to call for support for same-sex marriage, typically the "I agree" campaign. Launched in 2013, this online campaign, jointly implemented by groups, organizations and individuals supporting same-sex marriage, received great support in the community and made a remarkable remark before the National Assembly of Congress XIII, paving the way for important changes related to the amendment of the law for the LGBT community in Vietnam. After the "I agree" campaign in 2013, the Ministry of Justice amended the Law on Marriage and Family to be more open, changing same-sex marriage from "forbidden" to "not recognized" in the Law on Marriage and Family in 2014.

The initial success of the campaign proved one thing: everyone's strong desire for an equal and non-discriminatory Vietnamese society, thereby

upholding the diversity of life. living. For the same purpose, the “I agree” campaign continues to move to the next phase in 2020 - 2025.

However, in reality, under the pressure of traditional culture and morality, the LGBT community has still been suffering from many stigmas and discriminations from family and society about their gender, sharing about their feelings and true gender is still very difficult.

According to the results of the national survey on: "Social attitudes towards same-sex marriage" conducted by the Institute of Sociology (Vietnam Academy of Social Sciences) and the Institute of Social Research, Economics and Public Environment announced on March 26, 2014: Vietnam has about 1.6 million gay, bisexual and transgender people, aged 15-59, accounting for about 3-5% of the population. The legalization of same-sex marriage is 33.7% support, 66% oppose. In recognition of the right to live together as husband and wife between people of the same sex, the number of supporters is 41.2%. This shows that the rate of opposition to same-sex marriage is still a significant figure in society.

The opposing view argues that, in addition to love, marriage also carries an important mission of maintaining the race. Same-sex marriage will not fulfill this traditional mission. From the moral perspective, accepting same-sex marriage risks affecting the younger generation. Because of the reality in society, there are many cases where many young people think they are homosexual. And young people always want to show themselves as people of the era, if young people who are wondering about that gender all follow the same sexual orientation, it will lead to gender deviation. In fact, the gay couples who have openly held weddings in Vietnam are in their nineteen and twenty years of age. Who can be sure it's not a youthful impulsiveness? On the other hand, Vietnam is the country where social relations are governed by many traditional moral characteristics and values, it is difficult to accept a marriage contrary to such fine customs and traditions.

### **3. Harmoniously handling the relationship between morality, tradition and law on same-sex marriage**

Previously, according to the provisions of Clause 5, Article 10 of the Law on Marriage and Family of Vietnam in 2000, marriage between people of the same sex was in one of the five cases where marriage was prohibited and will be punished if those who violate. At this time, a part of society believes that marriage between people of the same sex can degrade moral values and change the traditional standards of Vietnamese society. There are also opinions that same-sex marriage will degrade the race and go against the values of life. Therefore, the issue of same-sex marriage is now completely banned. At that time, in Vietnam, there were still weddings between people of the same sex that were held singly under the curiosity of a large number of people and according to Article 8 of Decree 87/2001/ND-CP in case it is detected, they will be administratively sanctioned in the field of marriage and family for same-sex marriage. Others choose to live together quietly, accepting the fact that they cannot hold a wedding to publicize their love or gender because the law prohibits this behavior. Along with being more open and friendly towards the society's view and perception of same-sex marriage, on June 19, 2014, the Law on Marriage and Family in 2014 replaced the Law on Marriage and Family in 2000 which has abolished the prohibition on marriage between people of the same sex, instead in Clause 2, Article 8 of this Law: "The State does not recognize marriage between people of the same sex". This is the legal change in the recognition of marriage between people of the same sex in our country and the result of the process of social mobilization and discussion for many years, leading to the fact that legislators must have a more positive view on the equal right to marriage and the right to pursue happiness of people of the same sex. This means that people of the same sex can hold a wedding according to traditional marriage procedures and live together as husband and wife. However, according to the Law, marriage between people of the same sex is not recognized as legal marriage. Therefore, couples of the same sex will live

together as husband and wife, but they cannot register their marriage, are not granted a marriage certificate, their marriage will not be recognized by law, between them will not have the same rights and obligations as normal couples.

Thus, between the points of support and opposition, Vietnamese law chooses not to ban same-sex marriage, but at the same time does not recognize it. In fact, there are still many same-sex couples who hold weddings without the law interfering. This is a good news for those who want to move towards same-sex marriage. It can be seen that the legislators are keeping a neutral attitude towards same-sex marriage, neither recognizing nor prohibiting which shows the lawmaker's flexibility in limiting unequaled and harsh controversies in society. In Vietnam, marriage between people of the same sex is influenced by many cultural, political, and social influences. With a social context heavily burdened with traditional ideas on the concept of marriage, same-sex marriage is still suffers from a lot of social stigma. Therefore, Vietnam needs to consider following a suitable process to avoid causing controversy and disturbing social relations, and at the same time, for people to have better understand, feeling and sharing about the marriage between people of the same sex. The refusal to recognize same-sex marriage as a legal marriage mainly depends on social prejudices and cultural traditions. However, along with the development of society, people increasingly have a more objective view and more people empathize with same-sex marriage. People in same-sex marriage also want to live a legally recognized marriage in order to exercise their rights and protect their rights.

Vietnamese law has not yet raised the issue of recognizing marriage between people of the same sex as a legal marriage, but in the view of the research team, the issue of recognizing or not recognizing marriage between people of the same sex will have its good and bad sides. To get a more complete direction, it is necessary to evaluate and consider from many different angles. However, it is also necessary to consider the recognition at the appropriate time to avoid controversy in society. In addition, same-sex marriage must be

regulated by law. Same-sex marriage relationship has already existed, it is necessary to have an adjustment law to regulate that relationship in society according to the framework of the law, as well as for the State to be able to perform well the management, can resolve these marital conflicts in the best and objective way.

From the legal perspective, to be able to legalize same-sex marriage, it is necessary to supplement and further perfect the provisions of the law related to issues of husband and wife relationship, identification of father and mother, children, property relations and other issues specified in the regulations on marriage and family. Only in this way can we ensure equal rights, legitimate rights and interests for related entities.