

# On the Marital Validity and Legal Application of Fraudulent 'Same-Straight Marriage'

LI, Yuanhui<sup>1\*</sup>

<sup>1</sup> Xinjiang Normal University, China

\* LI, Yuanhui is the corresponding author, E-mail: 367279998@qq.com

**Abstract:** For a long time, due to China's law does not recognize same-straight marriage, resulting in "same-straight marriage" long-standing, and triggered a series of problems. In fact, "direct marriage" is contrary to the value orientation recognized by the Marriage and Family Code of the Civil Code and does not have the legitimacy basis protected by law. The nature of "concealing sexual orientation" is similar to "concealing major diseases," which constitutes fraud in the true sense of civil law and violates the privacy rights of spouses. The "same-straight marriage" with concealed sexual orientation should be regarded as a revocable marriage, and its spouse should be given the right to revoke the marriage. The provisions on revocable marriage in China's "Civil Code" are not completely closed, and the relevant judicial interpretations do not strictly limit the circumstances of revocable marriage. Therefore, "Same-sex wife" may apply the provisions of Article 148 of the Civil Code to request the court to revoke the marriage.

**Keywords:** Same-sex, Same-straight Marriage, Marital Validity, Fraudulent Marriage, Revocable Marriage.

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## 1 PROPOSING THE PROBLEM

As early as 2001, the Chinese Psychiatric Research Association deleted the word "homosexuality" from the Chinese Classification and Diagnostic Criteria for Mental Disorders, and "homosexuality" was terminated. However, due to the influence of traditional ideas and social ideas, homosexuality is still a more obscure word. Although with the progress of society, people's concept of marriage and family is constantly changing, the traditional concept of marriage still occupies an important position, believing that getting married and having children is a major event that young people must complete at the age of marriage. At the same time, along with the phenomenon of "anti-homosexuality" and "homophobia" in the mainstream culture of society, Same-sex men have to bear the double pressure from family and society. In order to prove that their sexual orientation is the same as that of ordinary people, many homosexuals will hide their true orientation and marry the opposite sex. This kind of marriage is called "same-straight marriage", also known as mixed-orientation marriage, that is, the marriage relationship between homosexuals and heterosexuals. "Same-straight marriage" is divided into two types: one is the marriage based on the agreement of both sides of consciousness. One is the marriage concluded by sexual orientation fraud. In society, "same-straight marriage" is mainly a mode of marriage between Same-sex men and heterosexual women, also known as "same wife". After

investigating and analyzing the situation of homosexuality, Professor Zhang Beichuan estimated that 80 % of male homosexuals would choose to marry women, and the number of "Same-sex" groups reached 16 million. [1] This group is often in a weak position, and legal rights and interests cannot be effectively guaranteed. In view of the gender of our population and the proportion of homosexuality in both sexes, the number of "Same-sex" groups is higher than the number of "Same-sex" groups. Affected by family factors, social factors and other factors, the problems faced by "Same-sex" are more prominent. Due to the inapplicability of the law and the difficulty of proof in divorce, it is difficult for the "Same-sex wife" group to solve the marriage problem and break away from the marriage relationship. In order to make the expression of the article concise, this article will discuss with "Same-sex wife".

With the change of social concepts and the hype of Tanbi dramas in recent years, the tolerance of the society to sexual minorities has gradually increased, and the phenomenon of "Same-sex wives" has gradually exposed the public's vision. The corresponding protection of the rights and interests of "Same-sex wives" has also attracted great attention from the society. In view of the fact that the academic research on this issue is relatively weak, this paper will carry out specific research. Under the "Civil Code of the People's Republic of China" (hereinafter referred to as the "Civil Code") system, the "same-straight marriage" has the following problems: First, does the husband's intentional

concealment of sexual orientation in the "same wife" group constitute fraud ? 2.If it constitutes fraud, can the spouse revoke the marriage according to the provisions of Article 148 of the Civil Code ? At present, there are few studies on the above two issues in the academic community, and there is no general theory. From the perspective of value analysis and interpretation theory, this paper will analyze the marriage effectiveness and legal application of "same-straight marriage", in order to provide reference for the issue of "same-straight marriage" in judicial practice.

## **2 “SAME-STRAIGHT MARRIAGE” DOES NOT HAVE THE VALUE BASIS RECOGNIZED BY THE “CIVIL CODE”**

Value analysis is a legal analysis method, which focuses on the analysis of legal issues from the perspective of values and value judgments.[2] This method not only focuses on the legal norms themselves, but also considers the value orientation behind the law. The value orientation of the marriage and family part of China's Civil Code mainly includes : freedom value, order value and fairness value. To judge whether a thing has the basis recognized by the law, it is usually compared with the value orientation of the law. Because the value orientation of law is an important prerequisite for the creation of legal norms and an important basis for carrying out legal activities. Through the value analysis method, a comparative analysis of the marriage and family of " same-straight Marriage" and "Civil Code" will lead to the conclusion that "same-straight Marriage" does not have the value basis recognized by the "Civil Code".

### **2.1 “SAME-STRAIGHT MARRIAGE” VIOLATES THE REQUIREMENTS OF THE VALUE OF FREEDOM.**

The value of freedom is one of the core values of the marriage and family part of the Civil Code. It is mainly reflected in the freedom of marriage and family activities. However, compared with other parts of the Civil Code, the freedom of marriage and family is generally more restricted. Because marriage is not the embodiment of personal will, but also involves the social relations of family, children, property and so on. From a specific point of view, in marriage and family, the personal interests of husband and wife are contrary to the interests of the family to some extent. If too much emphasis on personal interests, while ignoring the overall interests of the family, the marriage is easy to collapse. The provisions of Article 1043 of the Civil Code fully reflect that the purpose of the Marriage and Family Code is to maintain the whole family. In addition, the provisions of divorce cooling-off period, maintenance obligations, family agency and other aspects are also reflected.

Although China does not recognize same-straight marriage, homosexuals can clarify their personal and

property rights through voluntary guardianship, wills and other forms. The husband of "direct marriage" conceals his sexual orientation and enters into marriage with others, which is actually an abuse of freedom of marriage and an infringement of the spouse's right to know the sexual orientation of the other party. And this act of concealing sexual orientation is actually a restriction on the free will of the spouse, making it violate the autonomy of the will to conclude a marriage. The realization of individual freedom should not hinder the realization of the freedom of others, otherwise neither the individual nor the whole society can achieve benign development. To sum up,"same-straight marriage" is not only inconsistent with the essence of the value of the freedom of marriage and family in the Civil Code, but also contrary to the function of marriage and family, so it does not have the value basis recognized by law.

### **2.2 “SAME-STRAIGHT MARRIAGE” DOES NOT CONFORM TO THE CONNOTATION OF ORDER VALUE**

Order value requires the orderly development of legal relations under legal norms. Throughout history, the value order of marriage and family law in China is closely related to national politics, reflecting China's cultural value and social concept, and its connotation follows the development of national and social norms. In the past, the order value of marriage and family law was reflected in the isomorphism of family and state under the rule of patriarchy. The patriarch enjoyed "absolute power" in the family, and the family members had to obey the patriarch absolutely. Nowadays, the order of marriage and family law not only maintains the stability of social and family order, but also respects and protects the rights of each family member, and pays attention to the balance between the two. In essence, the order of marriage and family is based on the content of ethical combination, which is the ethical order recognized by the law. Human relations order is an important foundation and premise to realize the function of marriage and family, which is embodied in the intimate relationship between husband and wife, which is emotionally dependent and mutually supported on material property. The formation of a mutually beneficial community between husband and wife is the specific requirement of the content of ethical integration, otherwise it does not have the basis for the formation of marriage and family order. The ethical combination of mutual benefit is now a unity of subjectivity and objectivity between husband and wife. In the "same straight marriage", the husband subjectively fails to reach the true meaning of sharing the pains with his wife, and objectively fails to fulfill the rights and obligations between husband and wife. Therefore, "same marriage" does not have the essential requirement of mutual benefit. It can be said that " same marriage" itself does not have ethical combination and mutual benefit, and the lack of ethical combination and mutual benefit of marriage itself is contrary to the concept of marriage, so it does not meet the essential requirements of marriage.

The order value of the marriage and family part of the "Civil Code" requires the establishment of a harmonious development of marriage and family relations, while "straight marriage" not only disturbs the healthy marriage and family order, but also endangers the social stability order. Therefore, "same marriage" does not have the order value recognized by the "Civil Code".

### **2.3 "SAME-STRAIGHT MARRIAGE" IS CONTRARY TO THE SPIRIT OF FAIR VALUE**

The fair value aims to achieve the balance of interests between the parties and the reasonable distribution of rights and obligations. It is one of the important values of the marriage and family law. The orientation of fair value in the marriage and family part of China's "Civil Code" is mainly reflected in : on the basis of standardizing the establishment of rights and obligations, the protection of vulnerable groups such as women, children, the elderly and the disabled, especially the protection of women's legitimate rights and interests. Specifically reflected in the "Civil Code" marriage and family compilation takes into account the fact that women generally undertake family labor in real life. Therefore, in the "Civil Code", in addition to Article 1087, which stipulates that the distribution of divorce property should take care of the rights and interests of the woman, Article 1088 also requires compensation for the party who bears more obligations such as raising children, caring for the elderly, and assisting the other party's work. In addition, women's rights and interests are given priority in family relations, children's relations, divorce property division and so on, so as to realize the preferential protection of women.

Although "Straight marriage" can bring positive social evaluation to Same-sex husbands, the essence behind it is to damage the legitimate rights and interests of wives. Although spouses can apply for divorce, divorce is not a common thing in "Same-straight marriage". Even if the marital status is worse, Same-sex husbands have no intention of divorce, which means that "Same-straight marriage" can only be achieved through litigation procedures. Moreover, not to mention the high cost of litigation divorce, and the difficulty of proof of "Same-sex wife", in general, litigation will not be allowed. In general, "Same-sex wives" are in a weak position on property issues, leading them to be passive in divorce issues. From the perspective of fair value orientation, the divorce of "same straight marriage" is not conducive to the protection of the woman, and the interests of the two are unbalanced during the marriage. This is not only inconsistent with the value orientation of the marriage and family part of the "Civil Code," but also contrary to the fair value of society.

## **3 THE LEGAL NATURE OF "SAME-STRAIGHT MARRIAGE" BELONGS TO FRAUDULENT MARRIAGE.**

The husband's concealment of his wife's sexual orientation is one of the direct causes of "same-straight marriage". [3] In the academic circles, some people think that sexual orientation is related to the privacy of individuals. Based on the protection of their own privacy, the parties have the right to not let others know, and the spouse is no exception. Others believe that the husband's act of entering into marriage with his wife without a real intention to marry is a genuine reservation, and the principle of legal act of genuine reservation is valid and does not affect the legal effect of marriage, so the legal effect of "same straight marriage" is not affected. The above point of view seems to be reasonable, and its point of view is to confuse the boundary between privacy and the right to know, fraud and the reservation of true meaning. In fact, the marriage concluded by the husband concealing his sexual orientation constitutes a fraudulent marriage and violates the spouse's right to know.

### **3.1 SPOUSES HAVE THE RIGHT TO BE INFORMED OF THEIR HUSBAND'S SEXUAL ORIENTATION**

The protection of rights must follow the provisions of the right hierarchy. If it is not distinguished, it will aggravate the disorder and confusion of rights and obligations. When multiple rights are in conflict, the law should protect the rights of the high rank and restrict the rights of the low rank. Through the analysis of the structure of the personality right of China's "Civil Code," the right to life, the right to body and the right to health are located in the second chapter of the part, after the first chapter "general provisions," which belongs to the first order of the protection of the right of personality.[4] On the contrary, the right to privacy has not yet become a separate chapter, has not yet been fully rights, and personal information protection is placed in the last chapter, and there are many exceptions. This shows that the right to privacy is at a lower level and the exercise of rights is more restricted. In straight marriage, the husband's concealment of sexual orientation and the wife's marriage directly damage the rights of one of the spouses, including the right to life, the right to body and the right to health, and these rights are higher than the right to privacy. As mentioned above, when there is a conflict between the two rights, the right to a higher rank should be protected first, so the husband's right to privacy is limited to the wife's right to know, and this restriction is based on the need to maintain marriage and family relations. In other words, if you want to maintain this relationship, you need to give the wife the right to know.

Compared with other private laws, the marriage and family part of the Civil Code has a strong social color, and many provisions reflect the attributes of social law. [5] For example, the raising of minors between husband and wife, the guardianship of minor children, and the protection of the legitimate rights and interests of women, minors, the elderly, and the disabled are not only the protection of individual and family interests, but also the protection of social welfare. The two are highly unified. Through comparative law, the provisions of foreign countries are analyzed. In general, the

law will give spouses a broader right to know. The reason is that marriage is a lifelong matter, and the gender orientation, physical and mental health, and intellectual status of one party are important spouses of ordinary people. Conditions, and these conditions cannot be met will affect the quality of marriage and thus affect family stability, and family stability is often the basis of social stability. The problem of sexual orientation directly affects whether the husband and wife can have a normal birth and live together. If one party's concealment of sexual orientation not only infringes on the legal rights of the spouse, but also damages the social public welfare, which is contrary to the value orientation of the marriage and family part of the Civil Code. In addition, from a medical point of view, homosexuality is a high-risk group susceptible to sexually transmitted diseases such as AIDS. From the perspective that the husband's individual will affect the spouse's right to life and health, for the purpose of protecting the legitimate rights and interests of the spouse, the spouse should be given the right to know the other's sexual orientation.

To sum up, the husband has the obligation to inform the spouse of his sexual orientation, and the spouse has the right to know the husband's sexual orientation. The husband's behavior of concealing sexual orientation is not a simple reservation of true meaning. In fact, civil law countries or Anglo-American legal countries, their mainstream views are opposed to the application of the reservation system to marriage. And the question about the practical value of the true reservation is also increasing. For example, the scholar Ji Hailong pointed out: The meaning of the true reservation system in practice is limited.[6] However, China's "Civil Code" does not stipulate the reservation system of true meaning. The mainstream view of the academic community is to include the reservation of true meaning in the textbook or teaching system into the interpretation system of intention expression. From this point of view, the husband's behavior of concealing sexual orientation to enter into marriage cannot be interpreted as true reservation, and its logic lacks theoretical support and normative basis.

### 3.2 "STRAIGHT MARRIAGE" IS A FRAUDULENT MARRIAGE

According to the provisions of Article 148 of the Marriage and Family Code of the Civil Code of China, fraudulent civil legal acts can be revoked. However, not all frauds in the field of marriage and family can be revoked. Only a fraudulent marriage can affect the effectiveness of marriage and constitute a revocable marriage. Otherwise, there will be a large number of revocable marriages, which will affect the stability of the family and society. Regarding fraudulent marriage, Article 1053 of the Civil Code of China stipulates that one party suffering from a major illness should be truthfully informed, otherwise the other party may request the people's court to revoke the marriage. In the legislative reasons stipulated in this article, the legislator believes that "major diseases" will affect the common life between

husband and wife and the physical and mental health of children, which involves the "essence" of marriage, so the spouse is given the right to know and the right to revoke. Through analysis, "same straight marriage" in addition to concealing sexual orientation and the content of article 1053 does not conform to the provisions, other with the provisions of the legislative spirit fully fit. Concealing sexual orientation is an act of dishonesty, which is contrary to the principle of good faith in the Civil Code and infringes on the legitimate rights and interests of spouses, so it constitutes a fraudulent marriage. Some scholars have pointed out that in their exchanges with legislators participating in the "Civil Code," they have learned that it is not a matter of not noticing that concealing sexual orientation is actually a "fraudulent marriage" issue, but taking into account that this issue is highly sensitive and should not be directly stated in the "Civil Code," but does not affect the specific operation of judicial practice. [7]

At present, the constitutive elements of fraud mainly include four aspects. Objectively speaking, one party needs to commit fraud, so that the understanding of others is not correct, or there is the possibility of incorrect understanding. The fraud committed by it is an important reason for the victim to make a wrong intention. Subjectively, the fraudster is in an intentional state. The fraudulent "same-straight marriage" is divided into the following two situations. One is that homosexuals deliberately conceal their sexual orientation for the purpose of marriage, and through the false act of expressing love for others, the other party mistakenly thinks that homosexuals have a good feeling for themselves, and is convinced that the two sides have already had feelings, thus concluding marriage. The other is that homosexuality in the process of developing feelings with heterosexuality, homosexuality does not inform the other party of their own sexual orientation related things, and hypocritical acceptance of the other party's love or the same good feelings, so that the other party mistakenly think that homosexuals are heterosexuals and have the will to live together with themselves, and to enter into marriage. These two kinds of fraud are divided into act and omission, which have constituted fraud in law. Concealing or fabricating important facts - sexual orientation - that can influence whether or not the other party intends to enter into marriage. For homosexuals, their own behavior will cause the other party to have a certain wrong understanding, but still allow or hope that the other party has a wrong understanding, which is in line with subjective intent. Heterosexuals misunderstand that the other party is heterosexual and has true love for themselves due to the fraud of homosexuals, thus expressing their willingness to marry the other party. The intention and behavior of heterosexuals to enter into marriage are also based on homosexuals fraudulent behavior, so there is a causal relationship between the two, that is, homosexuals conceal their sexual orientation and hypocritically express their willingness to live together. There is a causal relationship between the intention of heterosexuals to enter into marriage. Therefore, "same-straight marriage" has

fraudulent behavior and constitutes a fraudulent marriage.

To sum up, in addition to the above-mentioned spouses right to know, the constituent elements of "same-straight marriage" also include one party's concealment of sexual orientation and making the other party fall into error and marry it. One party intentionally conceals sexual orientation. The intention here refers to the fact that the perpetrator has a clear understanding of his sexual orientation at the time of marriage. In judicial practice, some people do not determine their sexual orientation before marriage, but gradually recognize their sexual orientation after marriage and conceal it from their wives. This situation cannot be regarded as a fraudulent marriage. If this leads to the inability to maintain the marriage relationship, it can only be divorced on the grounds of other circumstances that lead to the breakdown of the couple's feelings. On purpose, subjective malice is also required, that is, the actor knowingly knows that he is Same-sex, deliberately conceals his sexual orientation to enter into marriage with his spouse and cannot conduct normal conjugal life with his spouse after marriage. Subjectively foresee their own behavior will infringe on the legitimate rights and interests of the spouse. In particular, there are some people who are Same-sex in reality, but after marriage, they have a normal couple life with their spouses and jointly manage family affairs. Although it conceals sexual orientation, it is not subjectively malicious, but it overcomes psychological barriers and has the willingness of couples to live together, which does not constitute a fraudulent marriage. On the other hand, make each other fall into mistakes and marry them. In fact, the actor's concealment of sexual orientation is the ultimate goal of entering into a marriage relationship, and the marriage he entered into is "nominal". This error is the error of the nature of marriage, because according to the general concept of society, a heterosexual person will not marry a homosexual without being cheated. The so-called essence of marriage is to maintain public welfare for the purpose of husband and wife should live together, mutual help, help as the connotation, with the husband and wife living together as the external form of content. The judgment of whether the essence of marriage is wrong should be judged by the general concept of society. The misunderstanding of the nature of human beings, such as status, property, morality and character, does not belong to the misunderstanding of the nature of marriage. Based on the parties misunderstanding of the "nature of man", it cannot be used as a requirement to revoke the marriage. Therefore, it can be learned that the actor's packaging of himself for the purpose of entering into marriage does not constitute fraud. Because these "external descriptions" do not involve the nature of marriage.

## 4 ANALYSIS OF THE MARITAL VALIDITY OF "SAME STRAIGHT MARRIAGE"

The problem of "same-straight marriage" stems from the fact that one party conceals sexual orientation in the

marriage field and constitutes marriage fraud, which leads to a significant impact on spouses, families and society. On this issue, the "Civil Code" of course cannot be ignored. Does this fraud affect the effectiveness of marriage? At present, there are controversies in the academic community, and there are overwhelming mainstream views. This paper argues that to solve the above problems, we must correctly understand the "Civil Code" marriage effectiveness system as the premise. On this basis, it is concluded that whether "same-straight marriage" is similar to "concealing major diseases" fraudulent marriage is revocable.

### 4.1 ANALYSIS OF THE MARRIAGE EFFECTIVENESS SYSTEM OF THE "CIVIL CODE"

The "Civil Code" continues the provisions of the original "Marriage and Family Law" on the validity of marriage, and adopts a dual system of invalid marriage and revocable marriage. This is highly unified with the validity system of legal acts in the general provisions of the civil code and the validity system of contracts in the contract. However, legislators, based on the consideration of marriage and family and social stability, the marriage and family part of the "Civil Code" has limited the effectiveness of marriage. For example, major misunderstandings, gross injustice and other situations can affect the effectiveness of legal acts and contracts, but these situations cannot affect the effectiveness of marriage.

The formulation of China's "Civil Code" marks that China's marriage and family law has changed the previous legislative model of the former Soviet Union. The marriage and family law under the "Civil Code" system is no longer independent, and it is highly consistent with other divisions of the "Civil Code" and maintains a high degree of uniformity of the law. Otherwise, the formulation of the "Civil Code" will be reduced to the compilation of seven laws in form, and it will not be possible to achieve unity in content. Therefore, the marriage effectiveness system of the Marriage and Family Code of the Civil Code is obviously different from the original Marriage and Family Law, which is manifested in the expansion of the scope of revocable marriage and the narrowing of the scope of invalid marriage. Article 1051 of the Civil Code stipulates that there are three types of invalid marriages, namely bigamy, kinship with prohibited marriages, and underage marriage. Compared with the original "marriage and family law", the situation of "suffering from a disease that is medically considered not to be married" is deleted. Interpretation of the Supreme People's Court on the Application of the Marriage and Family Part of the Civil Code of the People's Republic of China (1) Article 17 also provides for closed restrictions on invalid marriages. Invalid marriages can only be bigamy, have a relative relationship that prohibits marriage, and have not reached the legal age of marriage. In three cases, based on the circumstances outside the three cases, the marriage is invalid, and the court should reject the claim. However, the provisions on revocable marriage and invalid marriage are different. The provisions on revocable marriage in Articles 1052 and 1053 of the "Civil

Code" are not as restrictive as those in Article 1051, and the circumstances of invalid marriage are not clearly listed. In addition, the Interpretation of the Supreme People's Court on the Application of the Marriage and Family Part of the Civil Code of the People's Republic of China (I) does not prohibit the parties from filing a request for annulment of marriage with the court in circumstances other than articles 1052 and 1053. Based on this, through the above analysis, the marriage and family system of the "Civil Code" adopts a "semi-open and semi-closed" attitude, which provides the possibility for the application of the provisions of the general provisions of the "Civil Code" on legal acts.

## 4.2 A REASONABLE ANALYSIS OF "STRAIGHT MARRIAGE" AS A REVOCABLE MARRIAGE

According to the provisions of the Civil Code, fraudulent civil legal acts can be revoked, and the fraudulent marriage should also be regarded as revocable marriage. At present, there is a view in academia that based on the principle of protecting the stability of marriage and family and maximizing the interests of children, even if the behavior of one party constitutes a fraudulent marriage, it should not be revoked, which will undermine family stability and children's rights and interests. But this view is obviously not true. First, the perpetrator's fraudulent marriage due to concealing sexual orientation hinders the freedom of the spouse to enter into marriage. In terms of contract behavior, the "Civil Code" allows the parties to revoke the untrue intention. Compared with contract behavior, marriage behavior pays more attention to the true meaning of the parties. At this time, a question arises, why contract fraud can revoke the contract, and the fraud of marriage cannot revoke the marriage? the only statutory reason for the restriction of the right of revocation in the "Civil Code" is the reliance interest. In the "same marriage", due to the fraud of the actor, it is obvious that the relative person has not formed trust.

Therefore, there is no need to impose restrictions on the parties to revoke the marriage. Secondly, from the perspective of comparative law, the right to give spouses the right to revoke their marriage due to fraud is generally visible in the legislation of foreign countries. Therefore, there is no legal obstacle to the application of the rules of "Civil Code" on fraud in marriages concluded due to concealment. Finally, the annulment of marriage is not in conflict with the "principle of maximizing the interests of children". In a deformed marriage, the relationship between parents is actually not conducive to the healthy growth of children. In this case, the revocation of marriage, but in line with the "principle of maximizing the interests of children" requirements. The essence of the principle of maximizing the interests of children is to ensure the maximization of the interests of children on the basis of balancing the interests of parents and children in normal marriage. The practice of sacrificing parental relationship to ensure the maximization of children's interests remains to be discussed. Because children are not necessarily the victims of the annulment of

marriage, but can benefit from the dissolution of marriage. [8]

The main reason why marriages that conceal major diseases can be revoked is to undermine the sustainable development of marriage and family and the legitimate rights and interests of spouses, and major diseases cannot be cured in the short term. However, in the long run, major diseases have the possibility of being cured, and the law still grants the right of revocation, which aims to protect the legitimate rights and interests of the other party. The fraudulent marriage concluded by concealing sexual orientation leads to the inability of spouses to satisfy even the most basic rights of marriage and family. In general, the problem of sexual orientation is rooted in the heart, and there is almost no change, but its damage to marriage and family is no less than "concealing major diseases". In summary, whether it is based on the connection between the marriage and family part of the "Civil Code" and the general provisions of the "Civil Code," or based on the protection of the legitimate rights and interests of marriage and family and spouses, "same-straight marriage" should be treated as a revocable marriage.

## 5 ANALYSIS OF THE APPLICATION OF THE LAW OF "SAME STRAIGHT MARRIAGE"

The general part of the "Civil Code" is a basic provision, and this basic attribute determines its posteriority in application, while the marriage and family part of the "Civil Code" is a special provision. The attributes of the two determine that only when the special provisions are exhausted can the basic provisions be applied. Therefore, the general part and the marriage and family part belong to the relationship between the general law and the special law. The application of the two in law needs to follow the principle of "special law is superior to general law." "Union marriage" should be so in the application of law.

### 5.1 PRIORITY TO THE APPLICATION OF THE "CIVIL CODE" MARRIAGE AND FAMILY RULES

The marriage and family rules of the Civil Code should be applied to "same marriage" first. According to the principle of special law is superior to general law, marriage and family law should be used as a special law to deal with marriage and family affairs. If the "Same-sex wife" for the purpose of invalid marriage from the beginning, it should be based on their own marital status, test whether it meets the provisions of article 1053 of the "Civil Code." In judicial practice, the husband of "straight marriage" not only conceals sexual orientation, but also conceals major infectious diseases such as AIDS from his spouse. Based on this situation, "Same-sex wife" may apply article 1053 of the Civil Code, which provides for a request to the court for annulment of the marriage on the grounds that her husband is suffering from a

serious illness. However, it should be noted that if the husband's concealed disease does not meet the "significant" standard or does not conceal AIDS, the "Same-sex wife" cannot apply this provision to file a marriage revocation request to the court.

When there is no situation stipulated in Article 1053 of the Civil Code, it should be considered whether there is a possibility of application of other legal provisions in the Marriage and Family Code of the Civil Code. If the "Same-sex wife" does not aim to invalidate the marriage from the beginning and regains the status of "unmarried", the provisions of Article 1079 of the Civil Code can be applied to file a lawsuit for divorce in the court. Article 1079 of the Marriage and Family Code of the Civil Code supplements the content of the situation that divorce should be granted on the basis of Article 25 of the original Marriage and Family Law, which actually reduces the difficulty of litigation divorce. If the husband also causes damage to the legitimate rights and interests of the "Same-sex wife" due to "fraudulent marriage," the provisions of Article 1091 of the Civil Code can also be applied to claim damages. Special attention should be paid here to the fact that although the husband's behavior violates the spirit of the "general provisions" of the "Civil Code" marriage and family part, "Same-sex wives" cannot bring a lawsuit to the court on this basis. Because the "general provisions" are moral norms about marriage and family, they are not litigable.

## 5.2 RESTRICTING THE APPLICATION OF THE RULES OF THE GENERAL PART OF THE "CIVIL CODE"

If there is no applicable law after reviewing the marriage and family part of the "Civil Code," the general provisions of the general part of the "Civil Code" can be applied at this time. The "Same-sex wife" may claim the application of the provisions of article 148 and request the court to annul the marriage. It is noted here that Article 148 of the "Civil Code" stipulates that the subjects entitled to revocation are the people's courts and arbitration institutions. However, according to the provisions of Article 1052 of the Civil Code, the people's court has the right to revoke the subject of marriage. However, since Article 1052 of the Civil Code is a special provision in the field of marriage and family, Article 148 of the Civil Code is a general provision of the General Provisions. Therefore, the provisions of Article 1052 of the Civil Code should be applied. The "Same-sex wife" applies for the revocation of marriage according to Article 148 of the Civil Code, and the subject of the request can only be the court.

It should be noted that the marriage and family system of the "Civil Code" is not closed, otherwise the internal logic of the general provisions will be cut off. Due to the particularity of marriage and family, the provisions of the general provisions cannot be directly applied in many cases. It is necessary to find the combination point between the

institutional systems through scientific demonstration and analysis, and to analyze the consequences after application. Obviously, there is no substantial obstacle between the fraud of concealing sexual orientation by "same marriage" and the application of Article 148 of the "Civil Code".

## 6 CONCLUSION

For a long time, due to the traditional concept and the inapplicability of the law, the problem of "same-straight marriage" has been put in the dark, and the rights and interests of "same wife" cannot be effectively guaranteed, so a large number of problems have been accumulated, which will affect social and family stability. Such problems were solved after the promulgation of the "Civil Code". On the one hand, "straight marriage" does not conform to the value orientation of the marriage and family part of the "Civil Code", that is, it is contrary to the values of fairness, order and freedom, and lacks the legitimacy basis protected by law. On the other hand, under the "Civil Code" marriage effectiveness system, the legal nature of "same-straight marriage" is clarified-revocable marriage. Spouses can choose to file a lawsuit against the court for divorce based on their own circumstances or choose the provisions of Article 148 of the Civil Code to file a revocation of marriage with the court to protect their legitimate rights and interests.

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The original contributions presented in the study are included in the article/supplementary material, further inquiries can be directed to the corresponding author.

## CONFLICT OF INTEREST

The authors declare that the research was conducted in the absence of any commercial or financial relationships that

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## AUTHOR CONTRIBUTIONS

Not applicable.

## ABOUT THE AUTHORS

LI, Yuanhui

Xinjiang Normal University, School of Political Science and law, Xinjiang, Urumqi 830017.

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