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The Legal Reconstruction of the Standard of Proof in the Identification of Sexual Minority Status

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Abstract. Against the global context of stable fragmentation in data governance and legal identity recognition, the proof rules for sexual minority status identification are confronted with multiple dilemmas, including the failure of traditional evidence rules, the anomie of judicial discretion, and inadequate privacy protection. Based on the value benchmarks of the right to equality, human dignity, and self-determination, this study systematically reflects on core problems such as the limitations of the principle of objectivity and the unfair allocation of the burden of proof. It further proposes a hierarchical construction of the standard of proof centered on self-declaration priority. Accordingly, this paper establishes diversified evidence rules applicable to different fields such as civil, criminal, and administrative proceedings, and designs supporting procedural safeguard mechanisms. Based on the legal practice of the Guangdong-Hong Kong-Macao Greater Bay Area, this study explores the application path of the forum preference and jurisdiction-first framework under a pluralistic legal system. It aims to promote the transformation of sexual minority status identification from rule interpretation to future order construction and to provide jurisprudential support and institutional solutions for the protection of identity rights under pluralism.

Keywords: sexual minority status identification, standard of proof, self-declaration priority, evidence rules

1. Introduction

Against the backdrop of contemporary digital governance, identity recognition serves as a fundamental cornerstone for data confirmation and personality rights protection. Under the framework of One Country, Two Systems, the Guangdong-Hong Kong-Macao Greater Bay Area has formed a legal pattern featuring the coexistence of multiple jurisdictions across mainland China, Hong Kong and Macao. Divergences in legal rules among different jurisdictions have directly trapped sexual minorities in a dilemma concerning identity recognition.

Sexual minority identity is characterized by high privacy and subjective self-identification. Nevertheless, traditional rules of evidence emphasize objective and tangible evidential requirements, which inherently conflict with the essential nature of identity self-recognition. Consequently, relevant parties are compelled to furnish proof by exposing private information and engaging in self-humiliating conduct.

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In China's judicial practice, judges adopt vague discretionary criteria for the admission of evidence in identity recognition cases involving sexual minorities. Judicial neutrality is undermined by judges' subjective prejudices, and the imbalanced distribution of the burden of proof further places such groups in a disadvantaged position.

With the increasing cross-border population mobility and cross-regional data coordination, and the widespread adoption of the jurisdiction priority principle in global governance, it is imperative for identity recognition rules to break the limitations of a single jurisdiction. Accordingly, reconstructing the standard of proof tailored for special groups, balancing privacy protection and the burden of proof, and addressing multi-jurisdictional conflicts in the Greater Bay Area have become urgent legal and practical issues to be resolved.

Domestic studies predominantly focus on the macro construction of equal rights protection and anti-discrimination systems for sexual minorities, while specialized research on the evidentiary rules of identity recognition remains insufficient. Most existing literature reviews judicial rulings based on individual cases or interprets the value of rights protection from the perspective of personal dignity, lacking the systematic reconstruction of the standard of proof. Though several studies have mentioned the referential value of self-declaration, they fail to establish its applicable principles and normative boundaries. Furthermore, relevant suggestions on evidence improvement remain superficial and do not take into account the special multi-jurisdictional context of the Guangdong-Hong Kong-Macao Greater Bay Area.

Foreign studies have developed sophisticated theories centering on individual self-determination, the preponderance of evidence rule, and anti-prejudicial judicial mechanisms, providing references for the optimization of burden of proof rules. However, European and American legal systems are rooted in a single jurisdiction or federal governance structure, which cannot adapt to the unique institutional arrangement of One Country, Two Systems in China, making their governance models inapplicable to localized implementation.

Overall, significant research gaps remain in existing studies: first, the lack of legal reconstruction on the standard of proof for sexual minority identity recognition; second, the neglect of practical conflicts arising from multi-jurisdictional differences; third, the absence of enforceable substantive rule systems. In view of the above deficiencies, this paper conducts targeted research.

This paper follows the core research logic of legal reconstitution, rule construction and multi-jurisdictional adaptation. It first sorts out the legal theoretical basis of identity recognition and analyzes the functional failure of traditional evidence rules. Guided by the values of equality, human dignity and self-determination, it constructs a tiered standard of proof centered on the priority of self-declaration. Finally, combined with the practical context of the Greater Bay Area, it introduces the jurisdiction priority concept and proposes collaborative governance approaches for cross-jurisdictional issues.

The paper is organized into six sections. It first introduces the research background and methodological basis. It then elaborates on the core legal theoretical basis, analyzes the practical dilemmas of traditional evidence rules, establishes the value benchmarks for institutional reconstruction, constructs specific normative rules, and summarizes the conclusions and future research directions.

Three research methods are adopted in this paper. First, the case analysis method summarizes practical problems through typical judicial cases in mainland China and the Greater Bay Area. Second, the comparative research method draws on foreign experience in standard of proof and minority rights protection. Third, the legal normative analysis method demonstrates the legitimacy and rationality of reconstructed rules based on personality rights and the principle of equality.

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The innovations of this paper are reflected in three aspects. Theoretically, it constructs a tiered standard of proof with self-declaration priority, breaking the rigid constraints of traditional objectivist evidence rules. Practically, it introduces the jurisdiction priority theory into the field of identity recognition to respond to multi-jurisdictional conflicts in the Greater Bay Area. Institutionally, it optimizes rules governing evidence admission and judicial discretion to alleviate the evidentiary difficulties faced by sexual minorities.

Theoretically, this paper fills the research gap in the interdisciplinary study of identity rights and evidence law for vulnerable groups, and enriches the theoretical research on personality rights protection under the multi-legal-system context. Practically, it provides normative references for judicial authorities to unify adjudication standards and mitigate the unfair allocation of evidential burdens. Regionally, it facilitates the coordinated legal development of the Guangdong-Hong Kong-Macao Greater Bay Area, and offers feasible solutions for the cross-jurisdictional rights protection of sexual minorities.

2. Legal foundations and core categories of sexual minority status identification

2.1. Legal connotation and attributes of sexual minority status

Sexual minority identity refers to the stable identity formed by individuals based on their sexual orientation, gender identity and gender expression [1]. Legally, it has the attributes of personal identity, privacy and fundamental rights. It is closely related to the core personality interests of individuals, and should be included in the scope of equality and non-discrimination protection. Identity is self-oriented and highly private, and is not suitable for external mandatory verification and public disclosure [2].

2.2. Functions and fields of application of status identification in judicial practice

The identification of sexual minority identity mainly plays the functions of right qualification confirmation, anti-discrimination violation judgment and legal interest measurement in judicial practice. Its main application areas include: labor dispute cases involving identity discrimination; family law cases such as adoption, guardianship and divorce property division; criminal cases involving hate crimes and identity-related violations; administrative cases such as gender registration, medical and health services and asylum applications.

2.3. Internal relationship between the standard of proof and the protection of fundamental rights

The standard of proof directly determines the difficulty and cost of individuals to prove their identity, and profoundly affects the realization of basic rights such as equality, dignity, privacy and self-determination. The excessively high and rigid standard of proof will aggravate the vulnerability of sexual minorities, lead to self-humiliating proof and privacy violation, and constitute a potential restriction on basic rights. The reasonable allocation of the standard of proof and evidence rules is an important institutional link to realize the protection of fundamental rights in the field of identity identification.

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3. Failure of traditional evidence rules in the identification of sexual minority status

3.1. Limitations of the principle of objectivity: conflict between high privacy and the boundaries of legal compulsion

The traditional evidence law emphasizes the objectivity and tangibility of evidence, but sexual minority identity has the characteristics of high privacy, subjectivity and internalization. It is difficult to produce objective external physical evidence or witness testimony in a conventional sense. The mechanical application of the objectivity principle will force individuals to disclose extremely private fields, resulting in a sharp conflict between legal compulsion and privacy protection, and even constitute unnecessary intrusion into personal life.

3.2. Unfair allocation of the burden of proof: self-humiliating proof and evidentiary deadlock

In judicial practice, the burden of proof is often entirely borne by individuals, requiring them to provide long-term life records, medical certificates, community participation and other materials, which constitutes a self-humiliating proof model. This allocation not only violates the principle of equality, but also easily leads to the situation that individuals cannot provide effective evidence and fall into a proof deadlock, resulting in the failure to protect their legitimate rights and interests [3].

3.3. Judicial cognitive bias: abnormal discretion in the admissibility of evidence

Judicial personnel may have stereotypes and implicit biases against sexual minorities in the process of evidence review and credibility evaluation [4]. These biases are reflected in the low evaluation of the probative force of self-statement, the excessive reliance on medical and psychological reports, and the rigid review of identity consistency, which leads to the abuse of discretion and the deviation of case results from the principle of neutrality and non-discrimination [5].

3.4. Review and summary of typical judicial precedents

By sorting out typical domestic and foreign cases, it is found that the common problems in judicial practice include: requiring individuals to undertake continuous and detailed proof obligations; taking medical identification as a necessary condition; excessively investigating personal private life; and inconsistent judgment standards. These cases reflect the overall failure of the traditional evidence system in the identification of sexual minority identity, and it is urgent to carry out systematic reform.

4. Value benchmarks for reconstructing the standard of proof in sexual minority status identification

4.1. The principle of equal rights and anti-discrimination

The reconstruction of the proof system must take equality and non-discrimination as the primary value. It is prohibited to set higher proof thresholds for sexual minorities than ordinary subjects, and it is prohibited to use identity stereotypes to affect the evaluation of evidence and the application of law. The design of the standard of proof should eliminate structural discrimination and ensure that individuals are treated fairly in the process of identity identification.

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4.2. The principle of human dignity and privacy protection

Personal dignity is the fundamental value of identity identification. The proof procedure and evidence collection shall not insult the personal dignity of the parties, and shall not force individuals to bear humiliating proof obligations. At the same time, a strict privacy protection mechanism should be established to limit the scope of proof collection, prohibit unnecessary disclosure of identity information, and prevent secondary damage caused by judicial procedures [6].

4.3. The principle of self-determination and autonomy of will

Individuals have the right to self-determination and autonomous expression of their identity. The legal system should respect the subjective true will and self-declaration of individuals, and minimize external intervention and mandatory verification. Self-determination is an important basis for constructing the core rule of self-declaration priority, and helps to realize the autonomy of personality and the freedom of identity expression.

4.4. The principle of proportionality and judicial restraint

The exercise of judicial power and administrative power should abide by the principle of proportionality. The means of identity identification must be appropriate, necessary and minimally invasive. Judicial organs should maintain appropriate restraint, avoid excessive investigation of private facts, and do not easily question or deny the identity claimed by individuals without sufficient contrary evidence, so as to maintain the balance between public power and personal rights.

5. Construction of evidence rules for sexual minority status identification under the orientation of fairness

5.1. Core principle: the priority of self-declaration and its legal basis

Self-declaration priority means that the authentic declaration made by an individual about his or her sexual minority identity should be taken as the core basis for identification, and no compulsory medical appraisal, humiliating life investigation or excessive external evidence should be required [7]. Its legal basis is the right to self-determination, the right to privacy, the right to dignity and the principle of anti-discrimination. Self-declaration is the most direct, least invasive and fairest proof method, which can effectively eliminate the unfair burden of proof.

5.2. Hierarchical construction of the standard of proof

A hierarchical standard of proof should distinguish civil, criminal and administrative contexts instead of applying a single rigid model to all forms of identity recognition [8].

In civil cases such as labor discrimination, personality rights disputes and family law, the standard of preponderance of evidence is applicable. That is, as long as the individual's self-declaration and supporting materials make the identity existence more likely than non-existence, the identity can be confirmed, and no high-level certainty proof is required [9].

In criminal procedures involving hate crimes, the identification of identity is mostly used as the background of motive or the basis of aggravating circumstances. The identity facts should be proved beyond a reasonable doubt to ensure the accuracy of criminal facts and avoid improper conviction or sentencing based on vague identity.

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In administrative scenarios such as identity registration, medical services and asylum applications, the clear preponderance standard is adopted, which is higher than the civil preponderance standard and lower than the criminal beyond reasonable doubt standard. It ensures the efficiency and accuracy of administrative acts while respecting individual self-declaration.

5.3. Diversification of evidence types and allocation of probative force

The individual's voluntary and consistent self-statement has the core probative force and is the primary basis for identity identification. Unless there is clear and reliable evidence to the contrary, the self-statement should not be easily denied.

Life experience, social relations, community participation, consistent expression and other factual evidence have auxiliary probative force, which can support the authenticity of self-declaration, but cannot be used as a necessary condition, nor can individuals be forced to provide a large number of such materials.

Medical and psychological assessment reports are optional evidence, not mandatory. It is prohibited to take pathological identification as a prerequisite for identity confirmation. When the parties voluntarily provide such materials, they can be used as auxiliary reference, but cannot override the individual's self-declaration [10].

6. Conclusion

This study systematically analyzes the functional failure of traditional evidentiary rules in the identification of sexual minority identities, clarifies the core value benchmarks centered on the right to equality, human dignity, and individual self-determination, and proposes a tiered standard of proof system based on the priority of self-declaration. Furthermore, this research indicates that the reconstruction of evidentiary rules for sexual minority identity recognition essentially responds to the need to balance identity right protection and judicial order within a pluralistic legal environment. Its core approach lies in internalizing legal divergences across different jurisdictions into manageable institutional constraints, so as to avoid excessive infringement upon individual rights caused by the rigid one-size-fits-all standards of traditional rules.

Institutional improvement should proceed in several directions. First, legislation should clarify the self-declaration priority rule and abolish mandatory medical appraisal requirements. Second, classified proof standards should be formulated for civil, criminal and administrative fields. Third, the types and weight of identity evidence should be standardized, with priority given to self-statement. Fourth, a privacy protection and confidentiality system for identity information should be established. Fifth, judicial discretion should be regulated to promote neutrality and non-discrimination in case handling.

This paper focuses on the theoretical reconstruction of the standard of proof and evidence rules, and the empirical research on large-scale cases needs to be further supplemented. In the future, empirical research can be carried out on the effectiveness of the self-declaration system, the effect of procedural protection, and transnational comparison. At the same time, future research can be expanded to the intersection fields of gender identity, gender expression and digital information protection, so as to form a more refined identity rights protection system.

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