

Opinion – When Political Fear Trumps Rights: Same-Sex Couples in Hong Kong

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KA HANG WONG, SEP 23 2025

In 2023, Hong Kong's Court of Final Appeal (CFA) ruled that the government must establish a legal framework for recognising same-sex partnerships, setting an October 2025 deadline. In July 2025, the government responded with a proposal to recognise only same-sex partnerships registered overseas, granting limited rights in areas such as healthcare and post-death matters. However, for the first time since the electoral reform, Hong Kong's legislature has rejected the government's bill. If that limitation were not enough, the government also failed to create a domestic registry to allow local same-sex couples to formalise their relationships—raising the question: why not? The answer may lie in history. In 1999, the CFA issued a landmark judgment on the right of abode for mainland-born children of Hong Kong residents. Rather than implement the ruling, the government asked Beijing to reinterpret the Basic Law, effectively overriding the court. That precedent continues to shape how the government handles politically sensitive legal issues today. On the very first day after the 1997 handover, hundreds of mainland-born children of Hong Kong permanent residents gathered outside the Immigration Department, demanding recognition of their right of abode. They based their claim on Article 24 of the Basic Law, which grants permanent residency to individuals born outside Hong Kong if their parents are Hong Kong permanent residents. This reflects Section XIV of Annex I of the Joint Declaration.

Yet neither text clarified whether the parents had to already hold permanent residency at the time of the child's birth. The Immigration Department rejected their claim. A legal challenge followed, ultimately reaching the CFA. On 29 January 1999, the court ruled that mainland-born children of Hong Kong permanent residents were entitled to the right of abode, regardless of their parents' residency status at the time of birth. The ruling triggered a major political crisis—the first sign of erosion in the “one country, two systems” model.

Rather than implement the ruling, then Chief Executive Tung Chee-hwa requested the Standing Committee of the National People's Congress (NPCSC) to reinterpret the Basic Law, fearing that 1.67 million people might become eligible for residency and strain Hong Kong's resources. The court responded that it would abide by NPCSC interpretations and could not question the NPCSC's authority. This concession showed the CFA's vulnerability to political pressure. On 26 June 1999, the NPCSC issued an interpretation of Article 24(3), limiting eligibility to children whose parents were already permanent residents at the time of birth. Although the government initiated Beijing's intervention in 1999, the episode established a precedent for external influence over Hong Kong's legal system. It undermined the rule of law, a cornerstone of the city's governance, and marked the beginning of the gradual erosion of “one country, two systems”, culminating in the National Security Law (NSL) in 2020.

Fast forward to the present: Jimmy Sham brought litigation arguing under the Hong Kong Bill of Rights that his overseas same-sex marriage should be recognised. While the courts rejected his claim, the CFA mandated that the government create a recognition framework within two years. The government must now find another way to comply with the court's ruling. Hong Kong's legislature no longer includes pro-democracy voices, and the remaining lawmakers largely opposed the bill, with few exceptions such as Regina Yip's New People's Party. At the same time, LGBTQ groups have urged the government to expand the proposal and set up a civil registry locally. While LegCo rarely blocks government bills today, the government likely calculated that introducing a local civil partnership registry would provoke a political backlash and potentially entangle the courts with Beijing again.

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Even in the absence of a civil registry bill, conservative figure Junius Ho has already urged the government to refer a separate case to Beijing for interpretation, echoing the 1999 right-of-abode crisis. A new interpretation of the Basic Law could define marriage strictly as between a man and a woman, potentially marking a social regression in Hong Kong and aligning it with the mainland. If an interpretation of the Basic Law were to happen, it would represent a political setback for a government already criticised internationally for eroding “one country, two systems”. It is likely that the government chose a narrower path to avoid this scenario. By recognising only same-sex marriages registered overseas and limiting the rights to healthcare and death, the government likely intended to prevent a request to issue another interpretation of the Basic Law. This approach, even if it had passed the legislature, would have created clear inequality. Many couples cannot afford the time or money to marry abroad, leaving recognition to the privileged few.

The government’s proposal has three major implications.

First, it undermines the spirit of the Bill of Rights Ordinance, a legacy of British colonial rule. At its core, the Bill of Rights is about equality: restricting recognition to same-sex couples who can marry abroad creates a two-tier system where the wealthy gain rights, while others are excluded. Second, Hong Kong’s approach sets an unprecedented global example. No other jurisdiction recognises only overseas same-sex marriages without providing a domestic mechanism. Hong Kong’s failure to establish a local pathway makes its position uniquely restrictive. Third, the proposal highlights the government’s political caution. By avoiding a local registry, it signals reluctance to exercise genuine autonomy, prioritising the avoidance of potential Beijing scrutiny over equality for its own citizens.

The parallels with the 1999 right-of-abode case are striking. Then, the government sought Beijing’s reinterpretation rather than implementing the CFA ruling, setting a precedent for external intervention in local legal matters. Today, by limiting recognition to overseas same-sex marriages, the government is echoing this pattern: avoiding a domestic framework that could trigger Beijing’s scrutiny, even though the CFA has mandated action.

In both cases, political caution trumps full legal compliance, leaving ordinary residents—whether mainland-born children in 1999 or same-sex couples today—trapped in a system that prioritises procedure and appearances over substantive rights. This historical echo underscores how past interventions continue to erode Hong Kong’s autonomy, exposing the widening gulf between judicial rulings and political realities under “one country, two systems”. The legislature’s refusal to pass the government’s bill, driven by hardliners like Junius Ho who continue to insist that Hong Kong is merely a part of China, illustrates how ideology and nationalism prevail over equality and the rule of law.

About the author:

Ka Hang Wong is a PhD candidate at the University of Technology Sydney. His thesis provides a historical analysis of BN(O) status and how it evolved from being a token of British nationality into a tool of political resistance against a totalitarian party-state’s assault on Hong Kong. He is a regular contributor to E-International Relations on topics related to Hong Kong.