
International and National Legal Trends on The Rights To Gender Transition of Transgender Persons and Practices in Some Asian Countries

Mạc Thị Hoài Thương¹

¹Faculty Faculty of International Law, Hanoi Law University (HLU), Vietnam
Corresponding Author: macthihoaituong.hlu@gmail.com

ABSTRACT

Transgender persons, whose gender identity differs from their assigned sex at birth, face legal-social barriers in gender transition a process tied to identity rights and dignity. This study examines the evolution of international legal instruments and national laws on transgender persons right to gender recognition, highlighting global trends toward progressive protection. The research results confirm that for most countries, the national laws on recognizing the legal gender of transgender persons become more open, simple, accessible, and better ensuring the rights of transgender persons. However, this trend develops unevenly among the countries. Besides the open approach of most countries, certain countries keep very strict regulations on legal gender recognition and even do not allow gender transition. This comes from some main reasons, such as cultural traditions, legal frameworks, social perspectives, and perceptions on this issue. This research's novelty lies in its synthesis of international trends with Asian practices, identifying pathways for reform. Recommendations urge Asian states to harmonize national laws with international human rights standards, simplifying gender recognition procedures and fostering societal acceptance to better safeguard transgender dignity and equality.

Keywords: *Gender, Human Rights, Transgender.*

A. INTRODUCTION

Gender is a social concept that describes the differences in roles, behaviors, identities, and expectations between men and women, which are shaped by culture, societal norms, and social interactions, not solely biological (Mulyono et al., 2025)(Bani Syarif Maula & Ariyanti, 2022). Gender transition is a new category, intertwining natural biology with social science. Nowadays, many people have used medical measures (medication, hormones, surgery) to change their body parts or entire

body. Gender transition, from a social perspective, is an interactive process in which a person is accepted and supported by society for their gender identity and gender expression (Aguilar et al., 2022). This process may, but does not necessarily, include medical intervention. From a legal perspective, gender transition is the recognition of a competent state agency to citizen's gender identity and gender expression in society.

Along with the development of social life, medicine, science and technology, the number of people undergoing medical intervention to change their gender have increased significantly (Budge et al., 2024). However, after medical intervention, transgender persons often face difficulties caused by inconsistencies between their identity documents and their preferred gender. As their appearance does not match the information and images on their identity documents, they have many problems in getting married, applying for a job, doing banking transactions, traveling by certain means of transport, etc. while they must use their identity documents to carry out these procedures. Moreover, they also face social stigma, alienation, gender prejudice and discrimination (Dicky Eko Prasetyo, Muh. Ali Masnun, Arinto Nugroho, Denial Ikram, 2024). In addition, the State management agency has no legal basis to change the civil status papers and citizen identification cards for the persons changing their gender. As a result, when citizens request the civil status agency to record their new gender in the civil status book, the competent authority does not know how to start. Transgender persons cannot live in their preferred gender; most of them face discrimination and difficulties in studying, working and finding jobs (Muniz et al., 2025).

In Asia, traditional views on gender and sexuality in culture are still serious and conservative in many countries (Radics, 2025). The number of studies on transgender rights and the right to gender transition in Asia is much lower than other

regions in the world. Statistical data on transgender people in Asia are not enough and updated. Data on physical health, mental health and medical interventions for transgender people are very limited (Oliveira Teles et al., 2025).

A large number of Asian families do not accept their children's sexual orientation and gender expression that is different from traditional gender norms, therefore, they often have strong objections. Many parents put pressure on their transgender children by scolding or economic pressure (reducing or stop giving them money to spend). Some families force their transgender children to drop out of school (Peitzmeier, 2026). These reactions are responsible for low education level of transgender persons, thus, they choose to become sex workers to make a living. Furthermore, some transgender people are even hospitalized by their own families, forced to get married and have children, locked up in the house by their parents for tight control, kicked out of the house, and forced to end parent-child relationship. These negative reactions from their families are reasons why some transgender persons do not want to come out; they choose a double life, that is, they live with their preferred gender identity when living away from home, and live with their biological sex at home. At work, transgender workers are often isolated and hide their private lives, otherwise they may lose their jobs. Psychological pressure as well as concerns about personal safety somewhat reduce their labor productivity. Some transgender persons become victims of various forms of violence and discrimination in the workplace, many of them resign after a long time of suffering. In society, most transgender persons experience stigmatization, discrimination and even harassment (Kumar, 2023).

A survey report on the needs of information, medical services and some other specialized services for transgender people in Vietnam conducted by Lighthouse

Social Enterprise in 2019 with nearly 150 transgender persons indicated that: Most surveyed transgender persons have come out to their families, including directly expressing their gender identity or letting their families implicitly understand (Trang et al., 2022). The analysis results show that families of transgender people have many different ways of reacting, in which the number of transgender people receiving understanding, sympathy and support from their families is extremely low. In general, initial reaction of most families is to disapprove or even not change their mind. In addition, in considering extended family relationships (including grandparents, uncles, and siblings), all transgender participants in the study experience the discrimination and negative reactions from relatives and other members of the families.

Therefore, the recognition of the right to gender transition is an important step for persons whose gender identity are different from their biological sex to live in accordance with their preferred gender. However, gender transition is a legal-social issue closely related to human personality rights, hence, the recognition of this right leads to controversial debates in most countries. The main objective of this study is to (1) affirm that the right to gender transition is a human right; (2) analyze the trends of international law and national law of some Asian countries on the right to gender transition; (3) analyze the impact of international trends on the laws of Asian countries on the right to gender transition; (4) indicates the changes and reforms of Asian countries in the laws on the right to gender transition through historical periods; and (5) evaluate the advantages and limitations of current regulations and propose some solutions to better ensure the right to gender transition.

To achieve the above objectives, this study uses a combination of two typical methods. Statistical method is used to analyze and evaluate the current situation of

transgender persons, the status of recognizing the right to gender transition in the laws of countries in the world and in Asia. Analysis method is used to analyze the statistical data after systematization by stages to indicate the development trends of national laws on the rights to gender transition.

This study focuses on in-depth analysis of the provisions in international and Asian legal documents related to the rights to gender transition, such as the United Nations Charter, the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1966 Convention on Economic, Social and Cultural Rights, the United Nations Resolutions and other relevant documents. Through analysis combined with comparison and evaluation, this study focuses on studying the regulations in current legal documents of Japan and Vietnam. These Asian countries have unique traditional cultures and laws regulating gender transition with a significant development. This study indicates the development trends, advantages and disadvantages of current legal regulations in Asian countries.

B. RESULT AND DISCUSSION

1. The Current Status of Transgender People

Studies around the world show that the rate of transgender persons is from 0.3% to 0.5% of the population (Stutterheim et al., 2021). Transgender is a socio-legal issue associated with human moral rights (Salmon & Jacob, 2025). The rights of transgender persons, also known as the rights to gender transition, have attracted great concern from the international community in the last three decades. There are many reasons why people, at a certain time, identify their genders differently from the ones assigned at birth, including biological factors, such as genetic influences, hormonal

levels before pregnancy, and experiences during childhood or adulthood, etc. Many studies show that a transgender person often has a sense of their own gender quite early by age 3-5 years, but their publicization of other genders depends on their knowledge and the openness of each society (Tyni et al., 2025).

Transgender is different from homosexuality. Transgender relates to a sense of gender (“who do you think you are”), while homosexuality refers to emotional attraction (“love someone”). In terms of expression, a large number of transgender persons do not express themselves by the features of their preferred gender (for example, men dress and behave like women, or women dress and behave like men).

Transgender is not associated with genital abnormalities. Although transgender persons are affected by biological factors, most of them still have complete genitals. In medicine, people born with genitals that are not eligible to identify as male or female are called intersex people. Transgender persons are not necessarily inter-sex people (Conceição et al., 2024). Therefore, many countries believe that transgender is unnecessary to undergo surgery. The definition of transgender is merely an internal sense of one's gender while gender-affirming surgery depends largely on economic conditions, health, and personal needs.

It is unreasonable to stick transgender persons with entertainment-related jobs (Thuong, 2024). Although many transgender persons find job opportunities in the entertainment field, such as singers, performers, makeup artists, etc., transgender persons still want to and can do other jobs. The root cause is unequal access to job opportunities, transgender persons consequently have less opportunity to choose careers other than entertainment-related jobs. American Psychiatric Association (DSM) previously considered transgender as a form of gender identity disorder (a

mental disorder), thereby psychological therapy and hormonal treatment were often applied while gender-affirming surgery was only considered a last option (Sударisan et al., 2026). Therefore, changing gender on legal documents was very difficult. However, transgender indeed is not a type of mental disorder. Mental disorder is the experience of obvious and long-lasting suffering and helplessness, while many transgender persons do not undergo such experience. Based on that discovery, in 2012, transgender was removed from DSM's list of mental disorders and considered as a normal psychological condition (Vincent, 2023). DSM also called for the support and recognition of transgender persons for them to freely express their gender identity and reduce transgender discrimination. After that, many countries consider transgender as a natural human gender identity rather than a mental disorder. As a result, cognitive barriers are removed for the rights to gender transition, and gender affirming surgery is legally realized in most countries.

Regardless of gender-affirming surgery, transgender persons concern about changing names (including both name and middle name from male to female and vice versa) and genders in identity documents. The reason is that name and gender on identity documents are socially specific markers of one's true gender or their desire for gender recognition. In addition, in the case of gender-affirming surgery, the change is necessary for them to avoid the problems in daily life when their new gender identity does not match the name and gender in their identity documents.

In the world, there are 3 ways for transgender persons to exercise the right to change names: (i) Change name through administrative procedures; (ii) Change name by court decision; (iii) Change name by actual declaration procedure. In most cases, this is an unconditional right, meaning that they can change names according to their

desire as the need to change name often comes before the need to change gender (Osella & Rubio-Marín, 2023). Transgender has been a controversial issue in many countries for years. Many aspects are discussed, including the main question: whether legalization of gender transition leads to mass gender-affirming surgery and avoidance of obligations to the state and society.

It is necessary to understand that for legalization, gender-affirming surgery must follow a strict medical-legal process with concrete conditions and standards that are controlled and supervised by many agencies, so the concerns above can be alleviated. The failure to legalize transgender actually leads to many risks for both transgender persons and society, because the "underground" gender transition process is not standardized and controlled.

Firstly, standardization and strict management mechanisms are indispensable requirements to legalize gender transition, because the results of gender-affirming surgery are irreversible (cannot restore the pre-surgery physical condition). In addition, surgery costs a lot of money, health, time, and effort of transgender persons. However, many countries around the world tend to reduce legal procedures to facilitate people wishing to change their genders. Specifically, national laws of many countries recognize changed gender on identity documents with a psychological examination certificate from a competent medical agency, regardless of gender-affirming surgery. The reason is that not everyone affords gender-affirming surgery, while the discrimination and obstacles from identity documents deprive or hinder transgender persons from their educational and career opportunities. Secondly, changing gender to avoid obligations to the state and society, such as military service, is an option that is rarely applied, because there are many other options with less time, money, and risk

than gender-affirming surgery. It can be affirmed that only people wishing to change their genders shall think about gender-affirming surgery.

2. International Practices and Trends in The Recognition Of the Rights to Gender Transition

Human rights are natural, inherent values of humans (Widowati & Vu Le Giang, 2025)(Prasetio, 2023). Human rights are characterized by universalization, which assures everyone's rights without discrimination (Prasetio et al., 2025). In each historical period, human rights are recognized and protected at different levels and scopes. Today, protecting human rights attracts a great deal of concern and becomes a revolution conducted every day at every class in every continent and country. Human rights are protected by many different tools, in which one of the most realistic tools is law (Kastrup, 2025). It means that "to exercise human rights, it is necessary to convert them from natural rights to legal rights by institutionalization". In other words, the legal recognition of a person's enjoyment of basic rights is not the origin of human rights, it is the creation of legal tools to protect human rights (Hatano et al., 2024).

From the perspective of international law, international documents affirm that human rights are the natural values of each person and that everyone has equal rights to enjoy human rights. The United Nations Charter (1945) right in its opening words states that the basic rights, qualities, and values of humans are equal without any distinction (Hammar, 2022). The Universal Declaration of Human Rights (UDHR, 1948) reaffirms that all human beings are born free and equal in dignity and rights and that everyone is entitled to all human rights and freedom set forth in the Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinions, national origin or other society, property, birth or status (Articles 1, 2)

(Putriyanti et al., 2025). Equality and non-discrimination regardless of any factor, such as "sexual orientation" and "gender identity" are recognized and affirmed throughout the International Convention on Civil and Political Rights 1966 (ICCPR), and the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR). Specifically, Article 2 ICCPR and Article 2 ICESCR state: Each State Party to this Convention undertakes to respect and ensure to everyone within its territory and jurisdiction the recognized rights in these Conventions, without distinction of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Everyone is equal before the law and has the right to equal protection of the law, without any discrimination.

In addition, the United Nations issued a number of international documents related to gender transition, such as: Declaration on Sexual Orientation and Human Rights, adopted by the United Nations Human Rights Committee in March 2005; The Yogyakarta Principles on Sexual Orientation and Gender Identity 2007 and later Yogyakarta Principles +10 adopted by the United Nations Human Rights Council, Principle 31 states: "Everyone has the right to legal recognition without reference to or requirement of assignment or disclosure of sex, gender, sexual orientation, gender identity, gender expression or gender characteristics. Everyone has the right to obtain identification, including a birth certificate, regardless of sexual orientation, gender identity, gender expression, or gender characteristics. Everyone has the right to change the gender information in the documents where gender information is included.

Resolution on "Human Rights, Sexual Orientation and Gender Identity" in 2011 expressed a deep concern about acts of violence and discrimination in all regions of the world against individuals because of their sexual orientation and gender identity

(Ojilere, 2024). The resolution requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a report on these issues. That report highlighted the problem facing LGBTI people and reiterated the obligations of state parties to protect the rights of all citizens. The report recommended that all countries should investigate serious acts of violence, abolish the laws criminalizing homosexuality, and enact laws to prevent discrimination based on sexual orientation and gender identity.

In September 2015, United Nations member states adopted a Joint Declaration calling on countries to take urgent actions to stop violence and discrimination against LGBTI people (Peroni, 2024). The Declaration indicated that the failure to protect the human rights of LGBTI persons and to protect them from violence and discrimination constitutes a serious violation of international human rights law. These violations led to negative consequences, such as poor health, including HIV, and social and economic impacts. Furthermore, it emphasized that the primary obligation of state parties under international law is to protect people from discrimination and violence. These violations, therefore, required urgent responses from governments, parliaments, judiciary agencies, and national human rights organizations. The United Nations High Commissioner for Human Rights also recommended that countries should “support the implementation of transgender person’s rights to legal recognition for their preferred gender and to the provision of identity documents proving their preferred genders and names”. During the same period, the United Nations adopted the Sustainable Development Goals (SDG) as a global framework for efforts to end poverty, combat inequality and injustice, and respond to climate change impacts in

2030. The center of this agenda is the commitment to leave no one behind (Dharma et al., 2025). This means taking care of transgender persons and ensuring their rights.

United Nations Human Rights Council Resolution on Combating Violence and Discrimination on the Basis of Sexual Orientation and Gender Identity is adopted on June 30, 2016. Accordingly, the United Nations Human Rights Council appoints an Independent Expert on Violence and Discrimination on the basis of sexual orientation and gender identity with 6 tasks, including (d) Cooperating with States to promote the implementation of measures that contribute to the protection of all people against violence and discrimination on the basis of sexual orientation and gender identity. Report dated July 12, 2018 of the Independent Expert on sexual orientation and gender identity to the United Nations General Assembly affirms that self-determined gender is a fundamental part of freedom and autonomous choices of a person in terms of roles, feelings, forms of expression and behaviors, and are core of the person's identity. Therefore, the obligation of States is to ensure gender recognition consistent with the rights to freedom from discrimination, equal protection of the law, privacy, identity, and freedom of expression. The right to equal recognition before the law is also a central tenet of other rights and freedoms. In practice, it is associated with the rights to health, education, housing, access to social security, and employment insofar as the realization of these rights by the States depends on the identification of individual.

From the above regulations, it is seen that international law initially has no separate regulation on the right to gender transition, but the right is included in a number of other human rights, especially the rights to recognition before the law, the right to equality without discrimination, the rights to personal security, etc. In practice, the right to gender transition and related rights, such as changing one's identity

documents to have a new name and gender, are recognized by international organizations and the United Nations Human Rights Council.

In the point of view that transgender persons enjoy human rights fully and equally, since 2011, international law has gradually improved by encouraging states to recognize gender identity through civil procedures or allowing to change gender in transgender person's identity documents. This trend is appropriate and necessary because legal re-affirmation of gender will be the basis and favorable conditions for transgender persons to enjoy their human rights. In the world now (July 2024), 99 countries and territories legalize the right to gender transition, allowing persons to change their genders. Among those, 33 countries allow gender transition and recognize the changes on identity documents only when transgender persons complete medical intervention, such as gender-affirming surgery or hormone treatment; 22 countries allow gender transition without surgery but require a diagnosis from medical authorities; 94 countries and territories do not allow gender transition.

In practice, not everyone who wishes to change gender can afford the surgery, ensure good health condition, or accept the health risks of surgery. Thus, the requirement that changes in identity documents are made only when gender affirming surgery is completed shall limit the number of people changing or getting recognition for their new genders. Therefore, countries around the world now tend to respect human rights and promote the right to self-determine in determining their gender identity and sex (Correia et al., 2021). Accordingly, in some countries, such as Argentina, Canada, South Africa, Israel, Germany, Malta, etc., a person requesting gender change is not obligated to undergo medical intervention, such as using hormones, breast surgery, or genital surgery as gender-affirming surgery. Many

countries and territories have changed their regulations from requiring (partial or full) medical intervention to not requiring medical intervention before changing a person's gender, including New Zealand (2020), Iceland (2019), Serbia (2019), Pakistan (2019), Brazil (2018), Belgium (2018), Jammu and Kashmir, India (2017), Greece (2017), Australia (2017), Peru (2016), and Norway (2016). This trend is reasonable as gender transition neither changes the person's identity (fingerprints, blood group, etc) nor affects security and national defense. Therefore, there is no reason to hinder the implementation of transgender person's rights to change their gender identity on identity documents.

In countries where gender transition is allowed with or without surgery or hormone treatment, the age of gender transition varies by each country. Some countries require a minimum age for gender-affirming surgery or to be recognized as a transgender person is 18 years old, such as Czech Republic, Spain, Sweden, Turkey, Argentina, Norway, and Finland. Some countries requiring a higher minimum age to be recognized as a transgender person are Germany at 25 years old, Japan at 20 years old (the minimum age for breast surgery is 18 years old), Taiwan at 20 years old), and Hong Kong at 21 years old. While some countries do not require the age of hormone users, such as Spain, some other countries require it, such as Japan at 18 years old (in some cases it can start from 15 years old), the UK, Malta, and Ireland at 16 years old.

It is obvious that the current international trend is to widespread recognition of gender diversity and gender identity, including the right to gender transition. The United Nations took many actions to strengthen the rights of transgender people. This has a positive effect on improving the rights of transgender people in many countries.

However, the speed of change in other countries and regions is still slow. In Asia, transgender people have faced discrimination in all areas of life.

3. Practices and Trends in the Recognition of the Rights to Gender Transition in Asian Countries

Asia is a large, populous, multi-ethnic, multi-religious, and multi-belief continent in the world. The recognition of the right to gender transition is different between Asian countries.

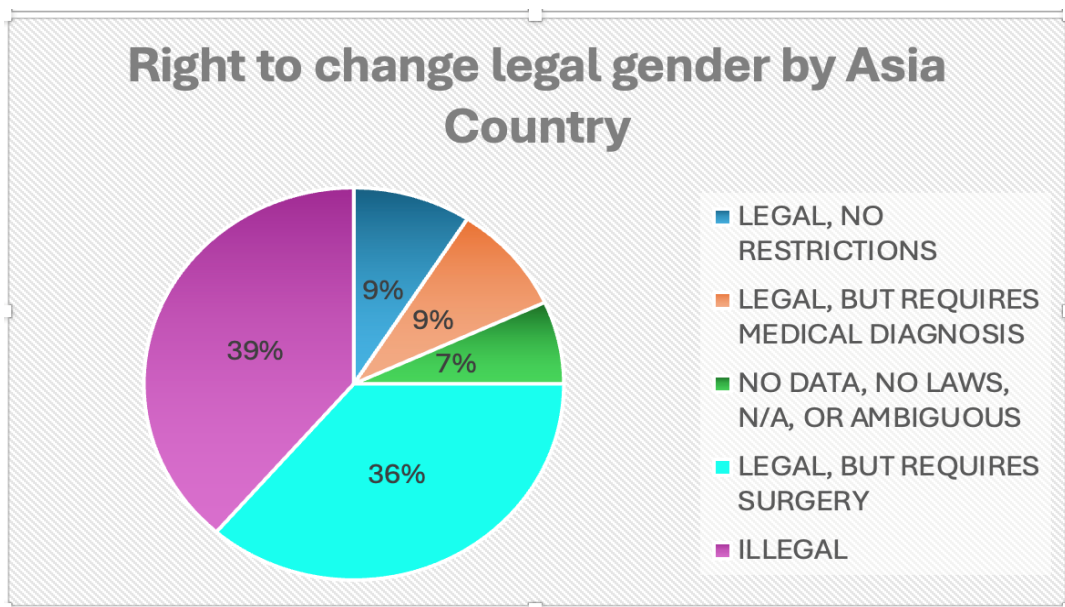


Figure 1. Chart of regulations on gender transition in Asian countries

Source: <https://www.equaldex.com/issue/changing-gender>

The chart indicates that in Asia, the recognition of the right to gender transition is still very low. Only 9% (4 countries) have legal provisions recognizing the right to gender transition without any condition, 36% (16 countries) allow gender transition once the person undergoes surgery or medical intervention, and 39% (17 countries) do not allow persons to change gender. Despite the low percentage, the laws of Asian

countries have gradually made positive changes from not recognizing the right and not allowing persons to change gender to allowing gender transition with strict conditions on surgery and medical intervention. These countries tend to increasingly widespread the recognition and loosen the conditions for gender transition. This article focuses on studying the changing trends of legal regulations on conditions and procedures for gender transition in two Asian countries, including Japan and Vietnam, which have amended laws regulating gender transition issues, with many positive changes recently (Hoi, 2020).

The rights to gender transition are human rights (Rehman, 2023). Returning to the concept of human rights, although it is mentioned and interpreted in different ways by many studies and political-legal documents, the concept of "rights" basically reflects "natural and inherent human needs and interests" (Edge, 2024). Thus, the right to gender transition must be associated with the basic needs and interests that people always aim for. Human nature is the synthesis of social relationships, so everyone living in society needs to maintain social relationships with others and relationships with the surrounding environment to survive. Every person has a need to express and identify themselves to affirm their position in those relationships. In particular, the need and desire to know whether their true genders are male or female, whether their preferred gender is male or female, and whether the desire matches their bodies at birth or not are objective interests and exist along with the existence of every human being. Initially, it is the desire of an individual, then gradually becomes the concern of many groups of individuals and the whole community. Whether these desires are satisfied and accepted by society has certain impacts on the existence and development of each individual and the whole society.

In the history of human society, at different stages, people are born and enjoy different spiritual and material values. The common thing in all stages of development is that people have basic needs, regardless of the society they are born in. Essential needs, such as food, clothing, and shelter, and higher needs, such as economic, political, and social needs, including the need to change oneself to fit their life are objective needs associated with the survival and inevitable development of people and society. "Objective human needs give rise to human rights. A basic human need, logically, gives rise to a right". Thus, human rights, in essence, are not the subjective wills of a particular class or a person, they are natural needs and objectively formed at birth. According to the psychological theory of "Maslow's Hierarchy of Needs", humans have 5 levels of needs including: (1) First level: the basic physiological needs food, water, shelter, sex, excretion, breathing, rest; (2) Second level: Safety need to feel secure about physical safety, employment, family, health, and guaranteed property; (3) Third level: the need of love and belongingness - wanting to be in a certain community group, to have a peaceful family, trustworthy friends; (4) Fourth level: Need of esteem - to feel respected, accomplished, and trusted; (5) Fifth level: Need of intense self-actualization – want to show off abilities, express oneself, achieve success and to be recognized as success (Shahidul Islam, 2026). The term "Rights to Gender Transition" is not associated with a specific need but covers many aspects of human life. By the exercise of the right to gender transition, transgender persons can live with their preferred genders. Transgender persons often face stigma and discrimination because their gender identity or gender expression does not match the sex assigned at birth or the sex in their identity documents, even after gender transition. Due to discrimination and stigma, transgender persons face many difficulties in

studying, working, and finding a job. The discomfort and suffering caused by inconsistency between gender identity and sex assigned at birth causes “gender dysphoria” for some transgender persons which can lead to mental health problems, even suicide.

In summary, gender transition is a civil right of each individual, a natural need stemming from each person who has a sense of incongruence between his or her biological sex and preferred gender. When their bodies develop to a certain level and they are aware of the incongruence, they have the desire to change genders and perform gender transition regardless of being recognized by the state or not. Birth-assigned gender is innate and cannot be chosen. Therefore, once a person has a sense of incongruence in his or her gender, changing gender is an innate desire. This desire, viewed in various aspects, is a human right. Some Asian countries have successfully enacted laws on gender transition, including the recognition of the rights to gender transition. However, the recognition is carried out step by step due to the impact of many objective and subjective factors. Two countries that are considered to make continuous and remarkable progress in this issue are Japan and Vietnam.

In Japan, as a major 2023 survey by Dentsu reveals, 9.7% of Japan’s population identifies as gay, bi, asexual, aromantic, or questioning. 1.15% of respondents identify as transgender. Japan is a party to all core human rights treaties, with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) (Higuchi, 2025). In the international fora, Japan has played a pivotal role in advancing rights of lesbian, gay, bisexual, and transgender people, particularly in the UN system. Japan was one of the drafters of the statement presented in the General Assembly that affirmed that international human

rights protections include *sogi*. It voted for two Human Rights Council (hrc) resolutions to end violence and discrimination on the basis of sexual orientation and gender identity in 2011 and 2014. However, it is ranked low at the 25th position among 36 Organisation for Economic Co-operation and Development (oecd) countries for social acceptance of homosexuality at the domestic level and second to last in legal lgbt and intersex inclusivity, which has improved at a more modest pace than in other countries.

The first law regulating gender transition issue is “Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder” ((性同一性障害者の性別の取扱いの特例に関する法律), hereinafter referred to as Gender Transition Law 2003). The Law was amended in 2018 and took effect from April 1, 2022. Regarding conditions of gender transition, in order to be legally recognized for gender transition, a person must satisfy the concept of "person with gender identity disorder", and the conditions in Clause 1, Article 3 of Gender Transition Law as follows.

First, the applicant for gender transition must be at least 18 years old (Article 3, paragraph 1, point 1, Gender Transition Law). The reason is that gender transition is a very important and serious decision, in order to carry out gender transition, the person must be an adult, that is, have the ability to perceive and control his or her behavior. Japanese Civil Code previously stipulated that the age of majority was 20 years old, but after the amendment of Civil Code in 2017, the age of majority was reduced to 18 years old to ensure compliance with international treaties on children. Therefore, Gender Transition Law was also amended in 2018 to comply with the Civil Code.

Second, the person wishing to change gender must not be currently married (Article 3, paragraph 1, point 2, Gender Transition Law). Because after changing gender, the married couple becomes a same-sex marriage while Japan does not recognize same-sex marriage, as a result, it violates Marriage Law. As an example of this condition, there was a case where a person requested to change gender while being married. At that time, the person met all conditions, except for the condition of marriage, so the person requested the court to declare that the condition of marriage in gender transition procedure violated Article 13 "All citizens are respected as individuals. The rights of citizens related to life, liberty, and the pursuit of happiness must be respected to the highest degree in the process of legislation and other policies of the State, except in cases where it is contrary to the public interest".

and 14 "All citizens are equal before the law and are not discriminated against in political, economic and social relations for any reasons of ethnicity, religion, gender, origin or social class" (...) of the Japanese Constitution. In response to that request, Supreme Court of Japan stated that the condition on marital status in Gender Transition Law "is enacted based on the concern that recognition of gender transition for a person in a marital status would disorder the current marital order which only recognizes marriage between persons of the opposite sex. This provision cannot be considered unreasonable; thus, it cannot be considered that it exceeds the authority of National Diet or violates Article 13, Clause 1, Article 14 of the Constitution [...]".

Third, the person applying for gender transition has no minor child (Article 3, Clause 1, Point 3, Gender Transition Law). This is a controversial condition in the research community as well as in the practice of trial in Japanese courts. The provision is established due to the concern that legal transgender recognition for a person having

minor children affects the mental and physical development of the children when they suddenly have a “female father” or a “male mother”. However, an opposing opinion states that in many cases, before carrying out gender transition procedure, a person with gender identity disorder lives with beliefs and habits of a preferred gender different from their biological sex; therefore, if the person has a minor child, the child gets used to it, and gender transition is not a sudden change that disrupts the child's daily life. In a judgment on November 30, 2021, although the Supreme Court of Japan did not consider the condition of having no minor children as unconstitutional, a judge opposed the condition of having no minor children by the argument that gender transition could not seriously affect the normal development of minor children (Article 3, Clause 1, Point 3, Gender Transition Law)

Fourth, the person applying for gender transition must have no reproductive glands or have reproductive glands that have permanently lost function (Article 3, Clause 1, Point 4, Gender Transition Law). The reasons for this condition are to ensure no social or legal chaos when the person performs a reproductive function according to biological sex and to ensure that the health and physical condition of the transgender person are not affected unexpectedly by hormone secretion from the reproductive glands of pre-transition gender. However, this condition caused a lot of arguments about its constitutionality. Typically, a case led to a change of view on the necessity of this condition from the Supreme Court in a trial with 15 judges. In that case, the applicant whose biological sex was male had the psychological belief that he was female. Although he satisfied most conditions, he did not provide evidence to prove that he had undergone surgery to remove his biological reproductive glands, hence the lower courts rejected his request for gender transition. He repeatedly appealed with the

argument that the condition of no reproductive glands violated Articles 13 and 14 of Gender Transition Law.

In the new judgment on October 25, 2023, Supreme Court downplayed the negative impact of transgender people giving birth by the reproductive glands of pre-transition gender. Accordingly, “People with gender identity disorder, in general, account for a small proportion in society. Moreover, among those requesting gender transition, the number of people undergoing gonadectomy as a treatment to end the discomfort with the physical characteristics caused by biological sex is relatively large; a large number of those have negative feelings about the reproducibility of their natural reproductive glands. Although the request for gender transition without gonadectomy raises a concern about the parent-child relationship when transgender persons give birth, it is very rare to happen”.

“In case, a transgender person uses the reproductive function of pre-transition gender to have children, it can result in “female father” and “male mother”. However, when amendment law in 2008 allows a person with gender identity disorder and having an adult child to apply for gender transition, the existence of “female father” and “male mother” is also recognized. After that, this issue does not cause any social disorder regarding the parent-child relationship”. Furthermore, it has been 19 years since Gender Transition Law was implemented. Up to now, more than 10,000 people are approved for legal gender transition; the understanding of people with gender identity disorder is becoming more widespread while efforts to improve the environment to solve problems in social life have also been carried out at many levels, thus it is unlikely for the above situation to cause sudden and intense events to the whole society”. The Supreme Court of Japan concluded that the initial necessity to impose a

condition on the reproductive glands of applicants for gender transition was significantly reduced by the change in the Japanese social situation.

Regarding the constitutionality of this provision, the Court stated that “The enactment of Gender Transition Law is to improve the effectiveness of treatment and address social disadvantages associated with legal gender transition when persons receiving necessary treatment for gender identity disorder still face many problems in their social life due to their unchanged legal gender. At the time of enactment, gender affirming surgery, including gonadectomy, was considered the final stage of treatment. Therefore, the requirement that the applicant for gender transition must undergo gonadectomy is medically reasonable because it focuses on the benefits of persons receiving necessary treatment for gender identity disorder”.

“However, after the enactment of Gender Transition Law, medical knowledge of gender identity disorder is improved, awareness of various symptoms of gender identity disorder, the methods to treat these symptoms, and the concept of treatment becomes popular gradually. The treatment for people with gender identity disorder depends on the patient’s condition; that a patient should receive the necessary treatment no longer depends on whether the person undergoes gender affirmation surgery or not. Therefore, it must be said that imposing the above requirements has reached a threshold where it lacks reasonableness from a medical perspective”.

“Furthermore, with the advancement of medical knowledge as mentioned above, the restriction of the rights to freedom from physical harm as implied in this provision may become a harsh choice for people with gender identity disorder who do not want to undergo gonadectomy. They must choose between giving up their rights to freedom from physical harm and undergoing a mandatory gonadectomy, which is a serious

physical harm, or giving up their important legal interest in being treated legally according to their gender identity and giving up the application for legal gender transition”.

Finally, the Supreme Court concluded that "The current necessity to restrict the freedom from physical harm under this provision has decreased, the level of restriction has become harsh and cannot be considered reasonable. Therefore, this provision can be said to violate Article 13 of the Constitution". This is a key turning point in Japanese judicial practice, softening the strict conditions of gender transition procedures in this country.

Fifth, an applicant for gender transition must have a body that appears to have parts resembling the genital organs of those of the opposite gender. This condition is to avoid confusion and trouble in social life (such as using public toilets, public baths, etc.). However, this condition receives a lot of criticism because it forces the applicants to undergo surgery or inject hormones to “shape” their genitals. There has been no lawsuit about the constitutionality of this condition. However, if the third condition of having no reproductive glands is considered unconstitutional, it is likely that the fifth condition may be considered unconstitutional.

Regarding the authority and procedures for gender transition, according to Article 3, Clause 1 of Gender Transition Law, the authority to legally permit gender transition in Japan is the Family Court. The gender transition procedure is carried out as a normal civil procedure. The analysis of the conditions for gender transition mentioned above indicates that Japan has very strict regulations to ensure that when applying for legal gender transition, people with gender identity disorders have changed their biological characteristics and appearance to another gender. Therefore,

the general regulations in the Codes and laws promote fairness and equality between subjects with similar legal characteristics rather than focus on the individuality of each subject. Although Japan enacts Law on Enhancing Public Understanding of Diverse Sexual Orientation and Gender Identity (abbreviated as the "Law on Enhancing Public Understanding of LGBT"), the content of the Law merely requires agencies, businesses, and people not to discriminate against employees in the LGBT community, without stipulating favorable conditions, incentives or special measures for transgender people (Judgments of the Supreme Court, 2020).

However, mental and physical differences can become a problem in specific cases. Therefore, in different fields, the associations and agencies can build their own internal regulations to appropriately regulate the treatment of transgender people so as to ensure fairness and equality among subjects. For example, in 2011, the Corrections Bureau of the Japanese Ministry of Justice issued a Notice on the treatment principles for detainees with gender identity disorder. Accordingly, in principle, detainees will be treated according to gender on their household registration papers, but the agency can consider other factors to ensure appropriate decisions. For example, the persons with gender identity disorder are in separate rooms, their bathrooms will be arranged to not encounter others, etc. In recent legal practice, there was a case where a transgender woman (who did not undergo gender affirming surgery due to health reasons, and therefore could not change her gender in the family register) working at the Ministry of Economy, Trade and Industry. The person requested to use the women's restroom, but the request was not approved by the Ministry. On July 11, 2023, the Supreme Court determined that the decision of the Ministry violated the law, distorted and restrict personal freedom. The decision was made when awareness of

transgender issue in Japan was raised. Like most other Asian countries, the recognition of legal gender transition in Japan faces many difficulties and challenges. A recent positive success is that Japan removed gender-affirming surgery from the requirements to carry out gender transition as the court judged that the requirement for gender-affirming surgery is unconstitutional. However, the recognition of transgender person's rights is inconsistent in some cases. For example, in 2022, a transgender woman was denied the right to be a parent to her biological child .

In Vietnam, there are no official, comprehensive statistics or surveys providing data on transgender people. Vietnam is an active member of core international treaties on human rights. In the process of implementing those conventions, at the Universal Periodic Review (UPR), Vietnam received many recommendations on the rights of transgender people (Leshkovich, 2025). On June 29, 2015, as a member of the Human Rights Council, Vietnam and other members voted to adopt a resolution against discrimination and violence to protect homosexuals, bisexuals and transgender people. In recent years, Vietnamese law has made significant progress in recognizing and implementing the rights of LGBT people. Despite many efforts in ensuring human rights, awareness of gender, the rights of transgender people, and the right to gender transition in Vietnam is still limited. The online survey on experiences of equality and discrimination against homosexual, bisexual and transgender people in Vietnam conducted by the Ministry of Labor, War Invalids and Social Affairs in October 2022 with 1,337 participants showed the situations experienced the participants, such as "Family members keep silent, do not talk", "Being prohibited from external relationships", "Being treated more unfairly than other family members", "Forced to get married", "Forced to change appearance and gestures", "Being scolded and

pressured with words", "Being controlled financially", "Lover, lover's family are pressured", "Forced to see a doctor, use medicine for treatment", "Being beaten, assaulted", "Being suggested or forced to move to another place to live", "Parents, relatives lock them at home, not allow them to go out", "Forced to see a shaman, use a spell", and "Lovers are assaulted and beaten". The proportion of transgender people experiencing these situations is higher than other communities, such as bisexuals and homosexuals, in which the two most popular situations are "Forced to change appearance and gestures" accounting for 71.8% and "Being scolded and pressured with words" accounting for 60.6% (Thuong, 2024).

The law on gender transition was formed later with a lower speed of change than other laws. The first legal document mentioning gender transition in Vietnam is Civil Code 2005 (Article 36) which stipulates that persons have the right to reassign their gender only in cases where their gender is congenitally defective or not accurately defined. The law only allows those who are “eligible for reassigning their gender” to change their full name (Point e, Article 27). One of the provisions on changing civil status in Vietnam is “Changing the first name, last name, and middle name that are correctly registered in the Birth Registration Book and the original birth certificate, but the person requests to change it for a legitimate reason according to the provisions of the Civil Code”. Legitimate reasons include duplicate names, name causing confusion, re-determination of bloodline or re-determination of gender. However, this law strictly prohibits gender transition for those who have normal and completed gender and forbids gender transition without permission of the Ministry of Health or Department of Health of provinces and centrally-run cities (Article 4). This made it impossible to

change information on identity documents for transgender people. Thus, this is the first document to mention gender transition but in the form of a prohibited regulation.

On November 28, 2013, the National Assembly adopted new Constitution, in which Article 14 of Constitution 2013 stipulates: (1) In the Socialist Republic of Vietnam, human rights and civil rights in the political, civil, economic, cultural and social fields are recognized, respected, protected and guaranteed in accordance with the Constitution and the laws; (2) Human rights and civil rights can only be restricted in accordance with the provisions of law in necessary cases for reasons of national defense, national security, social order and safety, social morality and public health. At this time, gender transition is not recognized by law, but it is a basic human right that should only be restricted unless so provided by law. However, when Constitution 2013 come into effect, there is no legal document specifying restrictions on gender transition. This means that the provision prohibiting people with completed gender to change their gender in Clause 1, Article 4 of Decree No. 88/2008 on gender transition is inconsistent with the provisions of the national Constitution.

On November 24, 2015, Vietnam issued a new Civil Code. In which, Article 37 of this Code stipulates that "Gender transition is carried out in accordance with the provisions of the law. Persons changing their gender have the right and obligation to register changes in civil status in accordance with the provisions of the law on civil status; have personal rights consistent with the changed gender in accordance with the provisions of this Code and other relevant laws". Thus, Civil Code 2015 is the second document directly regulating the issue of gender transition by legalizing it instead of prohibiting it. The recognition is still insignificant, but this is considered a major breakthrough in the history of legislation in Vietnam. Instead of stipulating the rights

to gender transition as a personal right similar to other personal rights in the Civil Code, the legislator only mentions the status of gender transition, which implies the recognition of person's right to gender transition. To realize the right to gender transition, in 2016, the Prime Minister of Vietnam issued Decision No. 243/QĐ-TTg dated February 5, 2016, of the Prime Minister promulgating the Plan for implementing the Civil Code. In which, the Ministry of Health is assigned to research and develop legal documents on gender transition. Therefore, the Ministry of Health is the agency in charge of drafting the Law on Gender Transition.

During the third cycle of the Universal Periodic Review, Vietnam received many encouraging recommendations on the rights of LGBTI persons and organizations and protecting them from discrimination and violence. Specifically, Vietnam supports Chile's recommendation to develop a law against discrimination based on sexual orientation and gender identity, as well as Malta's recommendation to take further steps to protect LGBTI persons from violence and discrimination. As a member of the United Nations Human Rights Council for the 2014-2016 term, Vietnam was one of the countries voting to support the Resolution on the establishment of an Independent Expert on combating violence and discrimination based on sexual orientation and gender identity. Since 2023, Vietnam has been a member of the United Nations Human Rights Council for the 2023-2025 term. Therefore, the development and adoption of Gender Affirmation Law aligned with international human rights standards shall bring an important opportunity for the country to become a regional leader in transgender person's rights.

Vietnam currently has been in the process of completing the Law on Gender Transition. According to the content of Draft Law, the regulations on conditions and

procedures for gender transition are stipulated as follows: In term of conditions for gender transition, each Vietnamese citizen is allowed to change gender (from female to male or from male to female) according to the provisions of Article 37 of Civil Code only once in their lifetime if they meet the following conditions:

(1) At least 18 years old, have full civil capacity. The regulation on the minimum age for a citizen to request recognition of their new preferred gender is very important. Gender is associated with the personal rights of transgender people, affecting the rest of their lives, therefore, to change gender, they must reach a certain age to ensure mature thoughts about their behavior and the consequences of their behavior. It also ensures that people wishing to recognize their new gender are voluntary, fully aware, and conscious of their actions and possible consequences, and thereby voluntarily carry out gender transition. This regulation of Vietnam is consistent with the age stipulated by most countries recognizing gender transition in the world. (2) Marital status is single (not yet married or divorced or married but the spouse passed away). Medical intervention to change gender is not only a personal right associated with the person requesting gender transition but also affects social relationships, such as spouse relationships, and parent-child relationships that are established before intervention. This provision in the draft law of Vietnam is appropriate and consistent with the current Vietnamese Law on Marriage and Family because current Vietnamese law does not recognize same-sex marriage. Moreover, this condition aims to not disorder or affect the pre-transition relationships of the transgender person and eliminate the impact on the psychology of children in the family when their father or mother changes gender, eliminate the spouse's feeling of being deceived when they are in a legal marriage relationship with transgender persons.

(3) Not currently serving a sentence, having a criminal record cleared, or not currently being prosecuted for criminal liability. This provision is consistent with the State's management of the population and criminal record database, especially in managing the transgender community.

(4) Conduct medical intervention (surgery, drugs, hormones, etc.) to change gender. This provision ensures state management activities when the physical gender matches the gender on the identity document. The Government does not need to amend many legal regulations, ensuring the stability of the legal system. Thereby, persons can confidently express themselves in accordance with the new gender recognized by the State, which is different from the gender assigned at birth.

Regarding the authority and procedures for gender transition in Vietnam, the state management agency of civil status at the district level where the transgender person registers his/her residence has the authority to recognize the new gender of that person.

The number of times for gender transition is only one. Gender transition can lead to many legal consequences; specifically, personal relationships, property relationships, and other relationships related to marriage and family, etc. may be changed accordingly. After gender transition, the legal rights and interests of related subjects may be affected and unstable. If a person reassigns gender many times, the lives of related people will be affected, disrupted, and unstable, especially the psychology of family members. Therefore, it is appropriate to stipulate that each person can reassign gender one time only.

The Vietnamese government always takes care of developing and ensuring the implementation of legal documents on human rights. Vietnamese Constitution 2013 marks a new milestone in human rights in accordance with international standards and

common trends in the world. The new provisions of the Constitution on human rights are the foundation for realizing many human rights of transgender people, such as the right to change name and gender in identity documents, the right to marry, the right to adopt children, etc. Previously, Article 36 of Civil Code 2005 stipulated that persons have the right to reassign their gender, but only in cases where their gender is congenitally defective or not yet accurately defined. On November 24, 2015, the National Assembly adopted Civil Code 2015 which includes provisions on gender transition. With this regulation, Vietnam becomes the 11th country in Asia (after Iran, Israel, Syria, Nepal, China, South Korea, Japan, Taiwan, Philippines, and Singapore) to legalize gender transition. This proves the development trend of Vietnamese law on recognizing the right to gender transition. However, the conditions and procedures for gender transition in Vietnam are still strict, causing certain difficulties for those wishing to change their gender. The mandatory condition of medical intervention is an example while in practice, not all transgender people afford medical intervention.

C. CONCLUSION

Transgender people are a part of society. Their human rights, including the right to legal recognition of gender, must be respected. The lack of legal recognition of transgender people is responsible for their burden of violence, discrimination, and negative medical consequences. The development of transgender laws in many countries reveals a tension between traditional and modern views. The traditional view requires very strict legal recognition procedures for transgender people, in which gender affirming surgery is mandatory. The modern view comes from the new awareness in modern medicine about gender transition and the development of diverse

therapies to change gender; thereby, surgery is no longer the only therapy. As a result, there are more open regulations on legal recognition procedures for transgender people (only need confirmation from an appropriate specialist). The rights of transgender persons in most countries develop in an open approach to recognize gender transition in legal documents, case law, and policies and regulations of federal and state administrative agencies.

The laws on gender transition in Vietnam and Japan as well as most Asian countries are currently in their infancy. The recognition of the right to gender transition is associated with the requirement to change many legal provisions of the national legal system, such as marriage and family law, labor law, military service law, etc. To ensure the stability of social order and the consistency of the current legal system, the trend of most countries is to gradually recognize the right to gender transition in a cautious manner while following the international trend of promoting the rights of transgender people.

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