

Legislative Protection of Transgender People in China

Tianhe Wang*

School of Urban Governance and Public Affairs, Suzhou City University, Suzhou, China

* Corresponding Author: 1807040126@stu.hrbust.edu.cn

Abstract. Reports of transgender people have been in the focus of public attention in recent years. Transgender people have formed a social group that cannot be ignored. They are stepping into the social vision step by step, and the subsequent legal problems are also increasing. In 2017, the national health committee issued the gender reset technology management specification (2017 edition) and the gender reset technology clinical application quality control index (2017 edition), the "sex change surgery" this change to "gender reset technology", further standardize the gender reset technology clinical application, meet the document conditions will have the opportunity to change the gender through "gender reset technology". However, the rights and interests of transgender people after the completion of gender reassignment surgery are still insufficient, which makes their daily life a lot of inconvenience. This paper intends to explain the gender recognition of transgender people in China, how Chinese laws protect their rights, and the existing obstacles and put forward relevant suggestions.

Keywords: Transgender; Civil Code; Rights; Protection.

1. Introduction

At present, Chinese laws and regulations do not make a clear definition of the concept of transgender people, etc [1,2]. The concept of transgender people is often confused with transgender people and other related terms. In 1949, Cauldwell first proposed the concept of "transgender". In 1964, Ho (J. Hoenig) Pointed out the four elements of the definition of transgender people: psychological gender is different from the physical gender, in each occasion insist that they are the opposite sex, the implementation of sex change surgery, hope that people around to accept themselves as the opposite sex. But this definition cannot better separate "transgender". In 1992, at the international Conference on Transgender Law and Employment, "transgender" was identified as a collection term, including transgender, drag, costume, king and queen, and the third gender in any transgender transition period [3].

From Chinese current law, the legal gender of natural person is on the basis of the household registration management authority registration gender to determine, the sex of the medical certificate of birth, birth medical certificate is doctors according to the newborn infant first sign to judge, in the body surface characteristics is not obvious, then according to the internal reproductive organs, only in special circumstances to chromosome sex determination [4].

Therefore, according to the Ministry of Public Security on citizens change of gender after gender project approval "(male [2002] 131) and the" approval about citizens gender change after gender project related issues " (male [2008] no. 478), Chinese transgender only in the civil affairs department of the tertiary hospital show effective proof and I apply in writing, meet the relevant conditions can change id card and hu kou book.

2. Chinese Legal Protection on Transgender People

2.1. Transgender Gender Selection Confirmation

Gender recognition and gender barriers have been one of the main points of debate in recent years, especially in China. The legal landscape of the People's Republic of China (PRC) on gender dysphoria and gender-positive medical treatment has long been seen as opaque and unmanageable.

In recent years, China has improved greatly, first gender anxiety in China and allow treatment, the People's Republic of China admitted that gender disorder is a disease in the Chinese mental disorders classification (CCMD-3), the gender anxiety translation is defined as follows: "characterized by abnormal behavior of sexual psychopathological disorders include a strong desire to change their gender (gender identity disorder) [5]."

China issued two formal administrative regulations on the regulation of gender confirmation surgery technology, namely in 2009 the gender confirmation surgery technical regulations (legal hospital after patients with transsexual surgery, should issue the relevant operation certificate to help transgender people survive in society) and 2017 the gender reset technology management specification (2017 edition), the gender reset technology clinical application quality control index (2017 edition), according to the above regulation, qualified natural person will get transsexual surgery [6].

At the same time, paragraph 3 of Article 33 of the Chinese Constitution stipulates that "the state respects and protects human rights", so the change of gender, gender and gender should also be protected by law. Article 1103 of the Chinese Civil Code, which came into effect in 2021, stipulates that "a natural person enjoys the right of body. The physical integrity and freedom of movement of a natural person are protected by law. No organization or individual shall infringe on the physical right of others." Although the law does not separately specify the right of natural person to change sex, this law grants natural person the right to choose to have sex surgery, and there is no legal provision prohibiting natural person to change sex.

On October 23, 2008, the Ministry of Public Security public security administration to make "about the surgical change gender after the approval of gender project" (public [2008] no. 478), clear the implementation of sex surgery citizens need to change the registration gender project materials and procedures: first, shall provide gender certification issued by domestic tertiary hospital and notarial certificate, or certificate issued by the judicial appraisal department, the (city) department of the public security organ, after the approval by the public security police station gender change formalities. Second, after the change of gender items, the resident ID card number should be re-compiled. If the resident identity cards have been obtained, the public security organ shall pay them off and apply for a new resident identity cards for them.

To sum up, it can be seen that in China, both law and medical treatment all support the way of natural persons to apply for new household registration certificate after medical surgery.

2.2. The Main Rights of Transgender are Stipulated in Chinese Law

After a natural person passes the sex change surgery, the transgender person who applies for the new gender household registration certificate shall enjoy the corresponding rights in Chinese law.

According to the ninety-one nine hundred and ninety-one "civil subject personality right is protected by law, any organization or individual shall not infringe", article nine hundred and ninety "personality right is the right to life, body, the right of health, name, name, portrait, reputation, honor, privacy, etc. In addition to the right of personality prescribed in the preceding paragraph, a natural person shall enjoy other personality rights and interests generated based on personal freedom and personal dignity". The aforementioned law does not exclude transgender persons.

The Chinese civil code of the first thousand 046 "marriage shall be men and women both sides completely voluntarily, prohibit any party to the other party, prohibit any organization or individual to interfere", article 10047,1 thousand 048 banned the two big marriage, there is a certain close

relatives, 2 it is not married age. It can be seen that transgender people do not violate the mandatory provisions of the marriage law. The parties applying for marriage registration and the gender registration of a man and a woman, as long as they meet the marriage requirements stipulated by the law, marriage registration [7].

Article 1098 of the Chinese Civil Code provides that the adopter should have: (1) no children or only one child; (2) the ability to bring up, educate and protect the adoptee; (3) no disease medically deemed not to be adopted; (4) no criminal record detrimental to the healthy growth of the adoptee; (5) at the age of 30. These conditions do not limit the transgender population.

To sum up, it can be seen that the basic rights of transgender people who have changed sex through surgery and obtained new gender household registration certificates in China are protected by Chinese laws.

3. The Challenge of Transgender Rights Protection

3.1. Social and Cultural Challenges

China is deeply influenced by Confucianism and Buddhism, and has had profound ethical and moral concepts since ancient times [8].

Most people have a very narrow understanding and knowledge of transgender people, and tend to think that transgender people are pathological and abnormal existence. This prejudice and discrimination not only damages the trans self-esteem and personal dignity, but also makes their lives extremely difficult. They struggle to integrate into the mainstream, find suitable jobs and housing, and are often ostracized and bullied even in school. This leads to their generally low social status and standard of living.

3.2. It is Difficult to Change Their Gender According to Existing Chinese Laws and Treatment Norms

Although the Chinese Public security Department stipulates the relevant provisions on obtaining new gender household registration certificate, the Technical Management Code of Gender Reset (2017 Edition) and Quality Control Index of Clinical Application (2017 Edition) shall meet the following conditions: (1) the requirement for gender reset for at least 5 years without repeated process; (2) receiving psychological and mental treatment for more than 1 year before surgery; (3) not in marital status; (4) age older than 20 years old and having full capacity for civil conduct. In addition to the above conditions, the following materials should be provided: (1) the certificate of no criminal record issued by the surgical object issued by the local public security department; (2) the chronic disease diagnosis certificate issued by a psychiatrist or psychologist; (3) the written report of the operation and notarization; (4) the certificate of the immediate family members to perform the gender reset operation. To meet all the above conditions for people who need transgender surgery [9].

The data show that more than 400,000 people in China are eager to experience sex-confirmed SUGERY (GCS) for surgery, but only more than 1,000 people have succeeded in changing their gender. The reason for this situation is closely related to the legislative situation in China in this regard. For the protection of equal medical rights in China, there are few relevant laws and regulations about GCS, the theoretical research foundation is weak, and it is difficult for the rights of needy groups in sex-change surgery to be met in time.

3.3. One-sidedness of the Law

China mainly adopts the identification method of primary and secondary characteristics. Similarly, this gender determination method also has some problems, and it cannot solve the problem of hermaphrodites. Hermaphrodites refer to intersexual people with XXY chromosomes. This kind of special population has not only the first secondary sexual sign of women, but also the first secondary

sexual sign of men. Therefore, there is a one-sided problem to judge only by the method of sexual sign [10].

In addition to the transgender laws that pass sex surgery and obtain a new gender household registration certificate from the public security department, there is a lack of legislative protection for "transgender people" who have not obtained new gender household registration evidence through sex surgery.

4. The Relevant Legal Rights of Transgender People Need to be Further Clarified

China currently does not recognize same-sex marriage, and only men and women can make marriage relationships. In 2002, the General Office of the Ministry of Civil Affairs recognized the right to change in a question on how to dissolve the marriage. Therefore, Chinese law does not specify whether the marriage still exists if one couple performs sex change surgery. If both parties are still willing to maintain the marriage relationship, how to deal with it is also not specified by Chinese law.

5. Propose

5.1. Treatment Norms and the Legislative Level Need to be Improved

According to the statistical data, the current norms of transgender surgery are too strict. It is suggested to reasonably study the conditions of transgender surgery and appropriately relax the threshold of transgender surgery to solve the needs of transgender groups.

For the "transgender people" who have not obtained new sex change surgery, it is necessary to make legal research to protect the relevant groups as soon as possible.

5.2. Social Education and Awareness Promotion

Strengthen civic education to enhance civic awareness and reduce public discrimination against "transgender people".

6. Conclusion

In April 2014, the Supreme Court of India recognized transgender groups, including transgender and preusers, as the legal third gender; in August 2016, the new draft constitution of Thailand adopted a referendum to recognize the third gender and protect the third gender human rights; in May 2018, Pakistan passed a bill committing to basic rights of transgender persons in the country, which regards discrimination and harassment of transgender as a crime. From January 1, 2019, German law officially recognized the "third gender" (das dritte Geschlecht). Infants are not have to choose between male (mannlich) and female (weiblich), with a third option "divers" (English "diversity" diversity for "multiple" gender "). It can be seen that some countries or regions in the world have made significant progress in the protection of legal rights of gender identity and gender change, and China needs to do more in the treatment norms of transgender people and the legislative protection of "transgender", in order to fully protect this group.

References

- [1] LJ McCormack, EW Cauldwell, BJ Anson. Brachial and antebrachial arterial patterns: A study of 750 extremities. *Surgery Gynecology & Obstetrics*. 1953,96(1):43-54
- [2] Jie Shen. Discussion of gender change and marriage relationship among transgender people. Zhenjiang: Jiangsu University, 2008.
- [3] First International Conference on Transgender Law and Employment Policy, Organizational pamphlet. January, 2017.
- [4] Zhang Yingxiu, legal confirmation of transgender gender, *Law Forum*, May 2010.

- [5] Chen, Yanfang. "Chinese Classification and Diagnostic Criteria for Mental Disorders (CCMD-3)" ["Chinese Classification of Mental Disorders (CCMD-3)"]. Chinese Classification of Mental Disorders (CCMD-3), Apr.2001. Accessed 20 Mar.2024.
- [6] The dilemma and countermeasures of sex reassignment surgery. *Medicine and Philosophy*, 2013(12B):86-88.
- [7] Zeng Xianyi. *Marriage and Family Law*. Beijing: China Renmin University Press, 2005:33.
- [8] Wang Liangbin, Li Han. Research on the Medical Legal Dilemma and Countermeasures of Transgender Population in China. *Chinese Health Law* 2018,26 (06).
- [9] Zhu Jing. On the Protection of the Rights and Interests of Transgender Persons from the Perspective of Public Security Law Enforcement. *Public Security Journal (Journal of Zhejiang Police College)*. 2018(01).
- [10] Wang Jieyi, Ge Zhihua. Restriction and protection of the right to change gender identity in transgender individuals and its derivative rights. *Journal of Changjiang Normal University* 2019,35 (03).