

Transgender in Hong Kong: Ethics and Medicolegal Perspectives

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Imagine the confusion you would feel if you saw a lone male patient hospitalized in a female ward – this is what a colleague of mine witnessed in her internship year, with the patient apparently suffering from surgical complications following metoidioplasty – a procedure almost none of her colleagues had heard of before. This is hardly a surprise, as sexual reassignment surgery (SRS) is not regularly included in local medical curricula. This precisely highlights the complexities of sex and gender, and the potential issues that can arise from current Hong Kong laws regarding the topics, which I will be discussing in this essay.

To start, sex and gender are separate concepts: sex being biologically determined, including one's chromosomes, genitals, gonads, hormones, and secondary sexual characteristics.

^[1] One's assigned gender at birth (commonly referred to as one's AGAB) is usually determined by the genitals one is born with, but in the case of intersex individuals, AGAB can be surgically assigned – this comes with a long list of ethical issues that warrants its own thorough discussion.

Gender on the other hand, refers to the socially constructed behaviours, characteristics, and roles associated with each gender category such as man, woman, and other genders. This can differ between cultures and can evolve with time. Gender identity refers to the abovesaid behaviours and roles that an individual identifies with, and each person has their own unique experience with it. ^[2] Conflating sex and gender can lead to dire consequences and is out of date with modern

medicine. In most individuals, the two are congruent, meaning they are cisgender, and hence the need to differentiate between them is seldom apparent. In transgender individuals, there is a mismatch between one's gender identity and their AGAB, ^[3] and they often experience varying degrees of gender dysphoria – the sense of unease caused by this mismatch. ^[4] The exact etiology is unknown, despite numerous theories including in-utero variations in exposure to hormones, but there is strong evidence that gender transition, which can include social and medical transition, works to alleviate dysphoria in most transgender individuals. ^[5,6]

In Hong Kong, sexual reassignment surgery (SRS), which includes not only the reconstruction of external genitals to match one's gender identity but also the removal of the internal reproductive organs, is needed before a transgender individual can obtain their desired gender marker on their Hong Kong Identity Card and hence other official local documents. This has been met with longstanding criticism from advocates and activists, who point out that mandatory SRS is cruel and degrading, as it essentially requires that transgender people are sterilized before their identities can be acknowledged; it also requires people to go through surgery that they do not have a medical need for, sacrificing bodily integrity and reproduction rights for gender recognition. ^[7] Metoidioplasty, mentioned earlier, is a type of female-to-male gender affirming surgery that elongates the visible part of the clitoris to create male-looking genitalia; but in the case of a transgender man, metoidioplasty is not enough to warrant a change in his official gender marker – he would also require complete removal of internal reproductive

organs – a total hysterectomy with bilateral salpingo-oophorectomy. ^[8] As many as one out of four transgender people opt not to have SRS, due to reasons including, but not limited to, being poor surgical candidates, concerns for surgical risks and complications, financial difficulties, and unaccepting family or environments. In other words, the current law denies at least a quarter of all transgender people in Hong Kong from living authentically. As many as forty-seven different jurisdictions around the world have allowed gender recognition without SRS, meaning transgender people are able to have their gender markers changed based on their gender identity and official medical diagnosis of gender dysphoria by a physician, regardless of surgeries they've had or future plans of receiving SRS. Local organizations including the Legislative Council have proposed that Hong Kong adopt a similar system, which they see as more ethical.

The medicolegal issue touches upon several ethical principles. Patient autonomy is launched into the grey zone by mandatory SRS, as it is unclear if patients would consent to such drastic surgeries and their risks to alter deeply intimate parts of their bodies if not for the coercion of the law. Gender dysphoria can be physical, social, or both; the severity of the discomfort in relation to specific body parts differs between each individual and the type of procedure undertaken in gender transition should be up to the individual, instead of being pre-determined by the law. Contrary to popular belief, there is no absolute endpoint to gender transition outside of the arbitrary definition in the law – a transition is complete when the concerned individual determines it as enough, as it only involves their body and gender identity is a subjective

experience. For many, gender transition is a lifelong process, which may or may not involve various surgeries. It is also worth exploring whether the principles of beneficence and nonmaleficence are practiced when requiring these surgeries – are patients’ internal gender dysphoria relieved by performing such surgeries, or are they only seeking them to gain themselves legal respect? If the latter is true, are the many risks of extensive surgeries justified, or are we doing more harm than good?

There have been unsuccessful appeals in court by transgender individuals in recent years to acquire official gender change without SRS in Hong Kong. Transgender men who have had mastectomies and testosterone replacement therapy who are living as men in their daily lives have been repeatedly denied legal male status, as they have chosen not to undergo genital reconstruction and removal of internal reproductive organs. ^[9] The counsel for the commissioner of registration brought up emergency situations where a segregation of the sexes would be required and allowing self-identification would complicate the matter, although the frequency of such scenarios is estimated to be low compared to the times transgender people are subject to embarrassment due to a mismatch of their presenting gender and official gender marker. ^[10] So long as the law holds onto the outdated concept that surgical transition is essential for transgender people to be validated, the outlook for significant reform is far from optimistic. The gender marker on a Hong Kong Identity Card (HKID) potentially brings about many everyday hurdles. With countries like the USA and United Kingdom adopting the gender recognition model

without strict surgical requirements, transgender Hong Kongers often end up with different gender markers on their British passports and their HKID (for example, a transgender woman who has not gone through SRS will be marked as *Male* on her HKID, but *Female* on her British passport if she chooses to apply for a gender change on the latter), leading to false accusations of fraud and being denied access to services other people take for granted – such as creating a bank account, going through customs when travelling, and making phone appointments. There have been cases of bank workers shying away from the discrepancy of the gender markers on transgender people’s identification documents and outright refusing to work with them. Others are denied access to phone banking services as workers decided that the transgender people’s voice – say, a transgender man with a typical man’s voice but still “F” on his HKID – do not match what they expected from their official gender marker. There have also been cases where transgender people were subjected to excessive body searches while going through customs as their outward presentation did not match what was expected of them based on their official gender marker. ^[11,12]

There is considerable pushback from stakeholders, and a point worth noting are the concerns surrounding the topic of single-gender spaces, such as gendered public bathrooms. The idea that allowing transgender individuals to utilize gendered bathrooms according to their identity increases the incidence of sexual harassment, is challenged by a lack of scientific evidence, ^[13] yet it is frequently used as the reason against its legalization. On the contrary, in a

society such as Hong Kong where transgender people are poorly represented and often face discrimination, restricting transgender people to the bathrooms of their assigned gender at birth often puts them at even more danger. There is evidence that transgender people, particularly transgender youth, are subjected to higher rates of sexual assault when their bathroom access is restricted. ^[14] In Hong Kong, transgender individuals who have not received SRS can receive a doctor's note explaining their situation and need to use single-sex facilities that correspond to their identified gender. This is often called the Real Life Experience (RLE) letter, where RLE marks the period before SRS when transgender individuals live as their identified gender. The letter however does not serve as a legal document. The law prohibiting "male persons" from entering public spaces allocated to "female persons" and vice versa can be found in the *Public Conveniences (Conduct and Behaviour) Regulation*, though "male person" and "female person" are not defined by the regulation, and the statements have not been revised since being established in 1961. ^[15] There have been local cases in Hong Kong where transgender individuals have been interrogated by police simply for using public bathrooms while presenting as their identified gender, which included being asked invasive questions regarding their genitals and a search through their personal belongings. ^[16] There exists a concern that cisgender men could pose as transgender women and enter female bathrooms with the malicious intent to harass, but it is inaccurate and frankly disingenuous to conflate predatory lawbreakers with transgender people, who are already oppressed on a systemic level, as this is an example where victims are blamed in a system under which they barely benefit. Another argument against allowing

transgender people in single-gender spaces according to their identity, such as single gender hospital wards, is that it would shock and cause unease in other users. This is hardly a clear-cut issue however, as in most social interactions phenotypes are more important in expressing gender than a person's assigned gender at birth, and a transgender man who phenotypically passes as male to the average eye would arouse arguably more anxiety in female patients if he was allocated to a female ward than if he was allowed to be in the male ward.

The way forward would involve better education on gender identity and transgender people for the public, medical students, and medical professionals. Despite being an international city, traditional Chinese Confucian values are still deeply rooted in Hong Kong, and the gender binary and their associated roles corresponding to *Yin* and *Yang* are in many locals' subconscious and are therefore difficult to break down. Medical students do not receive education on different types of gender-affirming procedures and are limited to the layman's concept that people can undergo one "sex change" procedure, instead of a combination of hormonal and surgical operations. For medical professionals, training resources to enhance their sensitivity to LGBTQ+ patients have been introduced by the government,^[17] but these are presented in an "Us versus Them" manner, where the author assumes only patients can be LGBTQ+, and that none of the medical professionals under this training could be a member of the sexual or gender minorities themselves. This is evident from the lack of policies under the Hospital Authority regarding transgender medical workers, which has in the past led to a transgender doctor being outed – her

transgender status exposed – to every hospital in which she was undertaking her internship and was refused female bathroom access, after a worker in the female bathroom reported her on the account of “a man being in the women’s bathroom”.^[18] As a lawful compromise, a popular suggestion is the introduction of gender-neutral bathrooms to satisfy most parties, and to expand the range of choices for people in different parts of their transition journey. This is especially true for changing rooms leading into operation theatres, which are divided into the two genders, without even an accessible gender-neutral toilet as an option. Take a transgender woman for example. It is illegal for her to use the women’s bathroom before having her gender marker officially changed on her identification documents, but it is impractical for her to use the male bathroom as well, given that she presents herself as a woman. On top of gender dysphoria, she risks putting herself in danger for harassment too. Without access to the bathroom of their gender, or even gender-neutral bathrooms, the situation becomes complicated and anxiety-inducing for transgender individuals, who have to fear for their safety on top of skirting the law. It is without a doubt to say this potentially drives transgender medical workers from going into surgery, anesthesiology, or working as surgical nurses.

As a closing note, laws are made by people, and are subject to constant review and reform. Awareness of transgender issues have been on the rise in Hong Kong, with government announcements urging non-discrimination against transgender individuals.^[19] With different stakeholders and hypotheticals concerning the unknown, there is surely a long way to go, and a

lot of trial and error is anticipated. Under the medical system, it is worth further exploring the options that can be tailored based on modern understanding of sex and gender, so that regulations can be more ethically sculpted with all patients' best interests in mind.

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