

Event Report

The Future of the GID Act: A Paradigm Shift in Trans People's Gender Recognition

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This symposium was an interdisciplinary event held to reflect on the unconstitutionality decision concerning the Act on Special Cases in Handling Gender Status for Persons with *Seidouitsusei-shogai* (= gender identity disorder) (hereafter, the GID Act) handed down by the Grand Bench of the Supreme Court on 25 October 2023. The aim was to explore the future trajectory of the GID Act and gender recognition legislation. The initial idea for the event took shape in November 2023. At that time, I had just joined the research institute as an assistant in October. Coincidentally, oral arguments regarding the GID Act were underway at the Supreme Court at the time of my appointment to CGS, creating a sense that a ruling was imminent. Indeed, a landmark ruling followed: on 12 October, the Shizuoka Family Court Hamamatsu Branch permitted changing gender marker without meeting the sterilisation requirement, and on 25 October, the Supreme Court invalidated the requirement as unconstitutional. These decisions marked a critical step in addressing longstanding issues surrounding the GID Act and the system it underpins.

At the same time, these rulings sparked numerous questions, concerns, and uncertainties—not only for me but likely for many transgender individuals, communities, and those interested in transgender issues. Among the questions I grappled with were: Why was this decision made at this particular moment in 2023? How should gender recognition laws and the legal concept of gender evolve, and under what frameworks should they be implemented? How should

this ruling be interpreted, received, and problematised amid the intensifying backlash against transgender rights, especially in the UK and North America? These questions are not merely academic but hold profound relevance in the real world, particularly for the survival and dignity of transgender people. Building on these pressing questions, the concept for the event quickly gained momentum.

The selection of speakers was crucial to the symposium's design. Guided by the questions outlined above, the choice of speakers naturally aligned with the symposium's objectives. I was fortunate to secure the participation of three key figures: Tomoyasu Oyama-san, a legal practitioner who represented a transgender individual in the case involving the GID Act; Mai Ishijima-san, a civil law scholar specialising in gender recognition laws and the legal implications of gender; and Hidenobu Yamada-san, a researcher examining the medical-legal order shaped by the *seidouitsusei-shogai* regime, including the GID Act. Additionally, the symposium featured commentary and discussion moderated by Yutori Takai-san, a researcher and activist focused on social issues related to transgender survival, who is also the author of *Toransu-jenda to Seibetsu Henkou: Koremade to Korekara (Transgender and Legal Gender Change: Past and Future)*. The event thus extended beyond the confines of law and academia to engage with a broader audience.

The symposium took place on Saturday, 6 July 2024, in the International Conference Room. Both in-person and online participation were facilitated to maximise accessibility. While this hybrid format posed operational challenges and raised concerns about discriminatory comments during the Q&A sessions, we decided to proceed in this manner to provide access to as wide an audience as possible, including those beyond academia.

The symposium opened with a statement of purpose, followed by 40-minute presentations by each speaker. The first session, titled *Breaking Down the Provisions of the GID Act: From Petition to Unconstitutionality*, featured a presentation by Oyama-san. He provided an overview of the GID Act, the 2019

Supreme Court Petty Bench decision, subsequent legal and social changes, and the 2023 ruling's implications. His presentation outlined the following points:

The GID Act defines 'persons with *Seidouitsusei-shogai*' under Article 2 and stipulates five requirements under Article 3 for the adjudication of gender status changes. These provisions impose various highly stringent conditions. In the 2019 and 2023 rulings, the sterilisation requirement and the external genitalia conformity requirement under Article 3 were the primary points of contention. The GID Act, by imposing such requirements, effectively mandated surgical procedures, rendering it an unparalleled law in the 21st century. While it was speculated that these provisions might be abolished within 20 years, the plaintiffs pursued litigation to accelerate this process, aiming to contribute to its earlier elimination.

The issues with these requirements were contested primarily on the basis of the 'right to be free from unwanted bodily interventions', a concept that is intuitively compelling. While the lower courts dismissed the case, citing legislative discretion, the 2019 Petty Bench decision did not reject it outright as being within the scope of legislative discretion. Instead, the Court conducted a constitutional review, raising concerns over the indirect restrictions on personal freedom posed by the provisions and the accompanying doubts about their constitutionality. However, the Court ultimately deemed the provisions constitutional at that time, stating that the matter had been 'comprehensively weighed', and refrained from providing a definitive rationale for its judgement.

Since the 2019 Supreme Court ruling, there has been an increase in both domestic and international critiques of the GID Act's constitutionality. Concurrently, debates around the Act on Promotion of Public Understanding of Diversity of Sexual Orientation and Gender Identity gained momentum in society and the Diet. The passage of this Act, due to its inadequacies, appears to have highlighted the limitations of the legislative branch, thereby prompting the judiciary to intervene. Against this backdrop, the 2023 ruling by the Grand Bench declared the sterilisation requirement unconstitutional. This ruling

diverged significantly from the 2019 decision, as it explicitly stated that the requirement infringed upon the constitutional right to bodily autonomy as enshrined in Article 13. Additionally, the Court noted that the social circumstances that had justified such restrictions had diminished, concluding that the requirement forced individuals into a harsh binary choice: either relinquishing a fundamental legal interest or complying with invasive medical interventions.

While this landmark decision offers much to learn from, it also highlights ongoing challenges. The invalidation of the fourth requirement under Article 3 of the GID Act was groundbreaking, as the Court dismissed concerns about ‘social confusion’, a justification previously invoked to maintain the requirement. This decision is expected to influence the constitutionality of other provisions and systems under the GID Act. Moreover, the case demonstrated the influence of not only domestic legal developments but also international trends, such as the WHO’s statements and European Court of Human Rights rulings. The fact that the precedent was overturned within five years, an unusually short period, is commendable. However, challenges remain, such as the lower courts’ remand of the fifth requirement and the failure to explicitly establish the ‘right to be treated in accordance with one’s gender identity’, as a fundamental human right. The plaintiff’s claim, grounded in the ‘right to be free from unwanted bodily interventions’, was a strategic legal approach aimed at achieving their goals. Nevertheless, the decision fell short of fully addressing the plaintiff’s ultimate aspirations, warranting further consideration in the future.

The symposium also addressed the second session, *Different Models of Legal Gender Recognition: Medical Intervention and Self-Determination*, presented by Ishijima-san, a civil law scholar, who delivered a lecture examining the foundations of gender recognition laws and the legal significance of gender. Their presentation provided the following insights:

There are three primary frameworks for legal gender change in Japan: the

medical model, the RLE (Real Life Experience) model, and the self-determination model. The medical model allows for legal gender change based on a diagnosis of *Seidoutsusei-shogai* and/or medical intervention. The RLE model permits legal recognition based on the social reality of having already transitioned gender. The self-determination model recognises gender change solely based on an individual's gender identity.

The medical model, which underpins Japan's GID Act, requires medical intervention as a precondition for legal gender change. When the Act was enacted in 2003, it was based on treatment guidelines for *Seidoutsusei-shogai*. However, it did not adequately account for individuals who do not require medical intervention. Furthermore, the Act conditions the significant benefit of legal gender recognition on factors such as family structure and medical condition, thus justifying the intrusion of public authority into private matters. This aspect deserves serious consideration in the further amendments.

The RLE model bases legal recognition on observable lived realities and has been increasingly referenced in recent Japanese case law. Compared to gender identity, the visibility of lived experience may serve as a political compromise, avoiding prejudices that label gender identity as 'temporary and arbitrary self-assertion'. However, the lived experience model raises concerns about who conducts the examination of lived realities and how this process might allow public authorities to intrude into private lives. Additionally, the question of whether legal gender should merely reflect lived realities necessitates deeper exploration. Ishijima-san illustrates how requiring evidence of lived realities can impose unjust burdens on individuals, citing an example from European asylum cases, where applicants were denied recognition as transgender because they had been unable to transition in their countries of origin.

In 2024, Germany introduced a self-determination model, which has drawn significant attention to recognising gender change based solely on an individual's gender identity. This law does not require medical or external

validation, and the process can be completed through registration at a civil registry office. It is founded on the principles of personal dignity and sexual self-determination enshrined in Germany's Basic Law. The German law incorporates safeguards such as a three-month reflection period and a one-year prohibition on reapplication following a change, balancing caution with individual freedom. While the legal frameworks in Japan and Germany are based on different premises, a comparative analysis raises critical questions about the meaning of legal gender and its relationship to human rights. These are essential topics that require further in-depth consideration in Japan.

In the third session, *Rethinking the Gender Backlash in the 2000s and the GID Act: From the Perspective of Trans Theory*, Yamada-san delivered a lecture exploring the issues surrounding backlash through the conceptual framework of '*Seidouitsusei-shogai*'. Their presentation provided the following insights:

They examined the critical relationship between the gender backlash of the 2000s and the GID Act. They noted that the Act was established with requirements such as the 'no child requirement', intended to maintain family order. The coexistence of the backlash and the Act has been critiqued by some commentators, who argue that the Act's enactment by pointing to its structure, which conservatives could accept: a framework that framed deviations from gender norms as 'disorders' or 'illnesses' to regulate them. While this framing is compelling, it obscures the deeper problems inherent in the "*Seidouitsusei-shogai*" model.

The gender backlash of the 2000s centred on the concept of 'gender-free'. Conservatives criticised 'gender-free' as a notion that would create 'genderless humans'. In response, mainstream feminists argued that 'gender-free' sought liberation from rigid gender roles, not the denial of distinctions between men and women. However, the mainstream feminist response was problematic because it effectively suppressed the potential of the 'gender-free' concept and the possibility of anti-binary gender practices to challenge the belief that 'human gender/sex/sexuality is, by default, determined as either male or

female’.

On the other hand, conservatives attempted to explain human gender biologically by citing sex differences in the brain caused by prenatal hormones. Conservatives, some individuals with *Seidouitsusei-shogai*, and the GID Act framed *Seidouitsusei* (= ‘gender identity’) not as the psychological self-awareness of gender/sex but as the consistency between an individual’s self-awareness and their physical sex. *Seidouitsusei-shogai* was thus interpreted not as a disorder of gender identity but as a congenital mismatch between one’s self-awareness and one’s assigned sex at birth, causing significant distress. This model operated under the understanding that human gender is binary-determined innately and consistently across physical, psychological, and social dimensions.

The gender backlash and the enactment of the GID Act are closely tied to how the question ‘What is gender identity?’ is approached. To explore the concept of ‘gender identity’, one must reflect on ‘identity’ as a gendered being (such as male or female)—in other words, ‘what it means for me to be myself as a gendered being’. More fundamentally, one must ask, ‘What does it mean for a human to be a particular gender?’. Thus, this question inherently challenges the assumption that ‘a human is, by default, consistently male or female’ (The concepts of ‘gender-free’ and the assertion that ‘sex is also gender’ originally contained this implication). However, not only conservatives and some individuals with *Seidouitsusei-shogai* but also mainstream feminists of the time shared a consensus in assuming the framework that ‘human sex/gender/sexuality is consistently determined as either male or female’, ultimately suppressing attempts to reconsider this premise.

Today, amidst the Supreme Court’s unconstitutionality ruling and the expanding recognition of trans rights, anxieties surrounding the breakdown of the belief that ‘human sex/gender/sexuality is consistently determined as male or female’ have resurfaced. Conservative factions, gender-critical feminists, and some individuals with *Seidouitsusei-shogai* oppose the recognition

of gender identity and aim to uphold the perceived self-evidence of binary and congenital gender. Within the global rise of anti-gender movements, this backlash against the recognition of gender identity and the reinforcement of binary gender culminates in violence and exclusion based on 'gender', measured through appearance and physical traits. Such developments not only threaten the freedom of trans individuals but pose dangers to the freedom of gender for all people.

After two breaks, including those between the sessions, a discussion among the panellists and a Q&A session with the audience were held, moderated by Takai-san. Takai-san began by summarising key points: that the GID Act was developed against the backdrop of a medical framework; that the societal circumstances surrounding transgender individuals continue to evolve; that judicial interpretations and decisions interact dynamically with these changes; and that the meaning of laws and their constitutionality can shift in response to social and medical developments.

The discussion covered a wide range of topics, including the judiciary's current perspective on the children of transgender individuals, the distinction between recognising gender identity as a 'significant legal interest' versus a human right, the implications of state intervention into private lives via the GID Act, what legal gender should represent, exceptions within Germany's new legal recognition framework, and concerns surrounding the disruption of consistency in male and female categories. These topics were explored in depth through active dialogue between the moderator and the panellists.

During the Q&A session, fundamental questions surrounding the GID Act were discussed. Topics included the feasibility of assessing 'lived experience criteria', the reasons behind opposition to the unconstitutionality ruling among some trans individuals, the relationship between the backlash and the Supreme Court's decision, the potential for legal recognition of non-binary identities, and the interplay between adopting a self-determination model and establishing non-binary legal registrations.

Through these discussions, Takai-san concluded by stating that for Japan to move towards a model closer to a self-determination framework based on gender identity, society must transform into one that respects individual identity and human rights. They also emphasised that the implementation of the law and the lived realities of transgender individuals are inseparable.

The hybrid format of the symposium appears to have been effective, as it attracted participants from various regions who might not have been able to attend in person. The audience included a diverse range of people, such as ICU students and other university students, transgender individuals, legal practitioners, scholars, healthcare professionals, researchers on transgender issues, and activists involved in related causes. Feedback from the post-event survey indicated that attendees found the symposium insightful from their respective perspectives. Overall, I believe that this event successfully brought together individuals with a broad interest in the GID Act.

I hope this event serves as a foundation for a more multifaceted understanding of the various issues related to the GID Act. Lastly, I would like to express my heartfelt gratitude to the speakers, commentators, and participants who attended despite the summer heat, to the student staff who assisted with the venue setup, to my colleagues Oka-san and Chloe-san, who provided valuable advice on the various questions and concerns that arose during the planning and preparation stages, and to Hamasaki-san, Assistant Professor by Special Appointment, who offered guidance and support in many aspects of organising and managing this large-scale university event, my very first of its kind.